(2018) 12 CAT CK 0165

In the Central Administrative Tribunal

Case No : Original Application No. 4299 Of 2017, Miscellaneous Application No. 4459 Of 2017

Anil Kumar And Ors — APPELLANT

Vs

Union Of India Through And Ors — RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:
Administrative Tribunals Act, 1985 — Section 21
Administrative Tribunal (Procedure) Rules, 1987 — Rule 10

Citation : (2018) 12 CAT CK 0165

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Division Bench

Advocate : S.K. Vashisht, Rajiv R. Raj

Judgement

1. Briefly stated, the facts of the current O.A. are that in pursuance to the Notification issued by Staff Selection Commission for Combined Graduate Level Examination in Scheme-B, the applicants applied for the same and were selected for the post of Auditors. On 06.01.2001, after completing the selection process the Staff Selection Commission issued a final list of selected candidates. The names of the applicants were above Sh. Manoj Kumar Meena, who was issued appointment letter on 26.03.2004 and who joined the office of Controller of Defence Accounts, Southern Region as Auditor. The applicants were also issued appointment letters and they joined their respective duties as Auditors on the dates as indicated in the table below:-

S.No.

Name

Date of Apptt.letter

Date of Joining

1.

Anil Kumar

26/07/04

27/07/04

2.

Kaushal Kumar Singh

03/03/04

27/03/04

3.

Shailendra

Kumar

03/03/04

26/03/04

Thakur

4.

Mahesh

Chand

17/02/04

09/03/04

Meena

2. It is submitted by the applicants that on 22.12.2003, the Government of India, Ministry of Finance issued a Notification bringing into existence a New Pension Scheme w.e.f. 01.01.2004 for the Government Servants (candidates) who are appointed/selected on or after 01.01.2004.

2.1 Since the applicants and other similarly situated candidates (Mr. Manoj Kumar Meena) were not being considered for the benefits of the Old Pension Scheme alleging that their appointment is after 01.01.2004, Mr. Manoj Kumar Meena filed OA-272/2011 before Jaipur Bench of Central Administrative Tribunal praying to consider him under the provisions of Old Pension Scheme with other consequential benefits arising therefrom. On 24.01.2014, the said O.A. was allowed giving the benefit of Old Pension Scheme and consequential benefits to the applicant. The said decision was upheld in CWP-9430/2014 by the Hon'ble High Court of Judicature of Rajasthan Bench at Jaipur vide order dated 30.09.2014 and was subsequently confirmed by Hon'ble Supreme Court vide its order dated 31.07.2015.

3. Thereafter, vide letter dated 28.01.2016, the Controller General of Defence Accounts, New Delhi directed as under:-

"Consequent upon dismissal of SLP by the Hon'ble Supreme Court vide order dt. 01/10/2015 and approval of Department of Personnel & Training as well Ministry of Law and Justice, New Delhi, the competent authority has decided to implement the order of Hon'ble CAT Jaipur Bench dt. 24/01/2014 in OA No. 272/2011 to the applicant of Subject OA only.

In view of above it is request that necessary action to implement the order of Hon'ble CAT Jaipur Bench dt. 24/01/2014 may be initiated. Accordingly a Compliance affidavit may also be filed before Hon'ble CAT Jaipur Bench to vacate/ drop the contempt petition no. 55/2015 in OA No. 272/2011."

4. In view of the aforementioned developments, applicant No.1 submitted a representation dated 28.03.2017 to the Controller General of Defence Accounts for ante-dating promotion from Auditor to Senior Auditor, and for considering him under the Old Pension Scheme (GPF) instead of the New Pension Scheme. However, Principal Controller of Defence Accounts vide letter dated 23.05.2017 intimated that benefit extended to Sh. Kumar Meena is in compliance to Court order and cannot be extended to non applicants.

5. Aggrieved, the applicants have filed the current O.A. seeking the following reliefs:-

"(a) to direct the respondents to consider the applicants for the benefits of old pension scheme (GPF) & other consequential benefits instead of new pension scheme (NPS).

(b) to award any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the applicants and against the respondents alongwith cost of the application in the interest of justice."

6. The respondents aver that O.A. is barred by Rule-10 of Central Administrative Tribunal (Procedure) Rules, 1987 as the applicants have sought multiple reliefs. It is mentioned that the O.A. is also barred by limitation under Section 21of Administrative Tribunals Act, 1985 as the applicants have challenged the Notification dated 22.12.2003 after a period of 14 years, (28.03.2017).

6.1 They further contend that reliance placed upon the judgment is in personam and not in rem. The respondents have placed reliance on the decision of Hon'ble Supreme Court in the case of State of Bihar Vs. Radha Krishna Singh & Ors., 1983 SCR(2)808 in which the following has been held:-

"Thus, summarizing the ratio of the authorities mentioned above, the position that emerges and the principles that are deducible from the aforesaid decisions are as follows:-

(i) A judgment in rem e.g, judgments or orders passed in admiralty, probate proceedings, etc, would always be admissible irrespective of whether they are inter parties or not;

(ii) judgment in personam not inter parties are not at all admissible in evidence except for the three purposes mentioned above.

(iii) on a parity of aforesaid reasoning, the recitals In a judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the judgment would be wholly in admissible in a case where neither the plaintiffs nor the defendants were parties.

(iv) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety. is precious little.

(v) Statements, declarations or depositions, etc., would not be admissible if they are post litem motam. "

6.2 It is submitted that Sh. Manoj Kumar Meena passed the exam conducted by SSC held in 1999 and his dossier was received in O/o PCDA (SWC) on 25.11.2003. He was issued appointment letter on 26.03.2004 and appointed as Auditor on 02.04.2004, therefore, he was covered under the New Pension Scheme. The respondents state that Sh. Manoj Kumar Meena was extended the benefit of Old Pension Scheme in compliance of Court's order. However, the applicants are not entitled for any such relief as sought in the current O.A.

7. I have gone through the facts of the case and considered the rival submissions. It is not in dispute that the applicants in the current O.A. were together selected for the post of Auditors in pursuance to Notification issued by SSC in the year 1999 for Combined Graduate Level Examination. The final select list was published on 06.01.2001. Due to certain administrative delays, the appointment letters were issued to the applicants in the year 2004, due to which reason they could only join the respondent organisation after 01.01.2004.

7.1 However, it is also a fact that one similarly situated candidate, namely, Sh. Manoj Kumar Meena, who had also received his appointment letter in 2004 and appointed as an Auditor on 02.04.2004 got a favourable order from CAT, Jaipur Bench on 24.01.2014 in OA-272/2011. It is not disputed that the applicants are senior to the said Sh. Manoj Kumar Meena, who has now been given the benefit of Old Pension Scheme by the respondents due to the orders issued by the CAT, Jaipur Bench on 24.01.2014, subsequently upheld by Hon'ble High Court of Rajasthan, Jaipur Bench on 30.09.2014 and confirmed by the Hon'ble Supreme Court vide their order dated 31.07.2015.

7.2 The respondents vide the impugned order dated 23.05.2017 have denied similar benefits to the applicants herein only on the ground that the benefit extended to Sh. Manoj Kumar Meena for bringing him under the purview of the Old Pension Scheme was on account of a Court order, which does not extend to the applicants.

7.3 It is indeed unfortunate that the respondents are making the applicants to run from pillar to post and incur substantial expenditure by not following already settled issues. I am not impressed by the arguments of the learned counsel for the respondents that the case of the applicants is hit by limitation, and that the judgments relied upon are judgments in personam and not in rem. The fact of the matter is that the applicants figured in the list of selected candidates where their name was in the merit list. It is also a fact that the applicants had cleared the selection process as early as 06.01.2001. A similarly placed candidate Sh. Manoj Kumar Meena, who was below in order of merit to the three applicants in OA, was also issued an appointment letter subsequent to the introduction of the New Pension Scheme i.e. 01.01.2004. Initially, the benefit of Old Pension Scheme was denied to everyone. However, on the basis of an OA filed by Sh. Manoj Kumar Meena before CAT, Jaipur Bench, he was granted benefit of Old Pension Scheme (GPF) with all consequential benefits. This order has withstood the judicial scrutiny right upto the Hon'ble Supreme Court. Once the issue has been decided on principle and a batchmate of the applicants offered the benefits of Old Pension Scheme, it cannot be denied to the applicants, who now form a homogeneous category.

8. In view of the above stated facts, I direct the respondents to consider the applicants for the grant of benefit of the Old Pension Scheme and other consequential benefits instead of New Pension Scheme as done in the case of Sh. Manoj Kumar Meena. This shall be done within a period of three months from the date of receipt of a certified copy of this order. No costs.

