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**(2019) 05 DEL CK 0384**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 4775 Of 2019, Civil Miscellaneous No. 21292, 21295 Of 2019

Delhi Jal Board (Djb)

APPELLANT

Vs

Surender Kumar & Ors

RESPONDENT

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**Date of Decision :** 14-05-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 227

**Citation :** (2019) 261 DLT 628

**Hon'ble Judges :** Vipin Sanghi, J; Rekha Palli, J

**Bench :** Division Bench

**Advocate :** S.K. Singh, Sangeeta Bharti

**Final Decision :** Dismissed

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## Judgement

Rekha Palli, J

1. The present writ petition under Articles 226 and 227 of the Constitution of India filed by the Delhi Jal Board assails the order dated 24.09.2018

passed by the Principal Bench, Central Administrative Tribunal, New Delhi in OA No. 3578/2016. The aforesaid Original Application (hereinafter

referred to as "OA") had been preferred by the respondent nos. 1-17 herein seeking inter alia fixation of their pay as Lower Division Clerk at

par with their batchmates as also coverage under the old pension scheme governed by the provisions of the CCS (Pension) Rules, 1972.

2. Pursuant to a requisition made by the Delhi Jal Board/petitioner, the Delhi Subordinate Service Selection Board/respondent no.18 issued an

advertisement in the year 2000 inviting applications for the post of Lower Division Clerk (LDC) in the Delhi Jail Board. The respondent nos. 1-17

(hereinafter referred to as "respondents") applied for the said post and

appeared for the written examination held in 2002. The result thereof, only pertaining to the unreserved (UR) category, was declared on 17.09.2002 and the appointments of those candidates were accordingly carried out in 2003. Subsequently, the result of the candidates belonging to the Scheduled Tribe (ST) category was also declared on 31.08.2003. However, the result of the candidates belonging to the Scheduled Caste (SC)/ Other Backward Classes (OBC) Category was not declared at that stage on account of the pendency of the LPA No. 625/2002 titled DSSSB v. Kunwar Pal Singh and Ors (hereinafter referred to as "LPA") wherein the issuance of caste certificates to persons born and brought up in Delhi on the basis of the caste certificates issued to their fathers who were migrants from other states, was under consideration.

3. Thus, while the result of the candidates belonging to the UR and ST categories was declared in 2002 and 2003 resulting in their consequential appointment in service before 01/01.2004, the result of candidates belonging to the SC/OBC category from the same selection process was thereafter declared only in December 2004 and, resultantly, the respondents, being candidates belonging to the SC/OBC Categories, were appointed to the post of LDC only in April 2005-April 2006.

4. During this period, the aforementioned LPA came to be dismissed on 13.05.2005 when this Court specifically directed the petitioner to grant consequential benefits of seniority and pay scales to the respondents at par with their batchmates from the year 2003, i.e., the date of appointment of the respondents' batchmates. Pursuant to the aforesaid directions of this Court, the petitioner granted increments to the respondents w.e.f. 2003, i.e., the year of their batchmates' appointment, but failed to extend the benefit of the old pension scheme under the CCS (Pension) Rules, 1972 to them as made applicable to their batchmates and, instead, applied the new pension scheme to them on the premise that the same was applicable to all employees joining service in GNCTD w.e.f. 01.01.2004. The petitioner also failed to grant them pay fixation at par with their batchmates. Aggrieved by the same, the respondents made several representations to the petitioner and, thereafter, preferred the aforesaid OA.

5. Before the Tribunal, the respondents prayed that since their appointment had been impeded owing to the pendency of the LPA before this Court,

they were entitled to be governed by the old pension scheme at par with their batchmates who had been appointed as LDC pursuant to the same

selection process initiated in 2001. The respondents also relied on the decision dated 11.02.2011 of the Tribunal in OA No. 3719/2009 titled Yogesh

Kumar and Ors. V. MCD and Ors. wherein the Tribunal had upheld the entitlement of the applicants therein to pay scales and seniority at par with

their batchmates. Per contra, the petitioner had opposed the OA on the ground that the respondents' appointment was made only after 01.01.2004,

and, therefore, they could neither be granted the benefit of the old pension scheme under the CCS(Pension) Rules, 1972 nor could their pay be fixed at

par with their batchmates who, unlike them, had been appointed prior to 01.01.2004.

6. After considering the rival contention of the parties, the Tribunal vide its impugned order allowed the OA by observing as under:

"I have considered the rival submissions of both sides. It is not disputed by the parties that the applicants are similarly situated like the applicants in

aforementioned OAs. Hence, the present O.A. is allowed. The respondents are directed to grant similar benefits to the applicants as given to the

applicant in OA-3719/2009 (supra) and OA-924/2013 and other connected OAs. Applicants wherein are similarly placed as the applicants in OA-

3578/2016. The respondents are also directed to fix the pay of the applicants at par with their batchmates and regulate their pension under the Old

Pension Scheme governed under the CCS (Pension) Rules and not under the New Pension Scheme made effective from 01.01.2004. This may be

done within a period of three months from the date of receipt of a certified copy of this order. No costs."

7. Aggrieved by the aforesaid directions of the Tribunal in the impugned order, the Delhi Jal Board has preferred the present petition.

8. Before us, learned counsel for the petitioner reiterates the same plea taken before the Tribunal and submits that the respondents having been

appointed after 01.01.2004, they are bound to be covered by the provisions of the new pension scheme which was made applicable to all employees

joining government service after 01.01.2004.

9. We have considered the submission of the learned counsel for the petitioner and perused the record with his assistance, and do not find any

infirmity in the impugned order. Merely because the appointment of the respondents was delayed due to the pendency of the LPA before this Court, the respondents cannot be made to suffer. Once it is an admitted position that their batchmates were issued letters of appointment in 2003 itself, and that-had the respondents been issued similar letters of appointment in time, they would also have become members of the old pension scheme like their batchmates; then the respondents could not be discriminated vis-a-vis their batchmates owing to a delay, which is not attributable to them.

10. In this regard, reference may be made to a decision of this Court in *Inspector Inspector Rajendra Singh & Ors. Vs. UOI & Ors.* (2017) 240 DLT

576 (DB) wherein this Court, while dealing with a similar fact situation where the appointment of some of the selected candidates was delayed on

account of them being initially found to be medically unfit, had allowed the writ petition. The Court had, by relying on an earlier decision of this Court

in *Shoorvir Singh Negi v. Union of India and Ors.* in WP (C) 5830/2015 had observed as under:

“30. The respondents have contended that the final results of the petitioners had been declared by the Staff Selection Commission in November,

2004 long after the New Pension Scheme was given effect. If there was delay in declaration of the results and issuance of letters of appointment, the

incumbents are not to suffer. May be, as contended by the respondents, the petitioners had been declared unfit. However, in the Review Medical

Examination by Review Medical Board, they were found fit. It is not the case of the respondents that they were unfit earlier by reason of any ailment

or disorder, of which they were cured later. Even otherwise, there was no reason for delaying the Review Medical Examination and the Interview. In

any case, as observed above, the issues are covered in favour of the petitioners, by the judgment of the Supreme Court in *Shoorvir Singh Negi* (supra).

31. In our considered opinion, there can also be no discrimination between batchmates, only because some were, at the time of appointment, informed that the New Pension Scheme would apply, while others were not.”

11. In view of the aforesaid, we find no reason to interfere with the impugned order. The writ petition and pending applications, being meritless, is dismissed.