

(2010) 02 DEL CK 0239

In the Delhi High Court

Case No : Writ Petition (C) No. 1131 of 2010

Manoj Kumar Bajpai and Others

APPELLANT

Vs

UOI and the Secretary

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 02 DEL CK 0239

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : S.K. Sinha and Ms. Seema Kashyap, for the Appellant; Nawal Kishore Jha, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners had sought directions from the Central Administrative Tribunal, Principal Bench to the respondents to prepare their appointment letters on notional basis to cover up old pension scheme at par with Sh. C. Mukhopadhyay and to give them relaxation, if any, required to be covered up under the old pension scheme and to quash and set aside the order dated 14th June, 2007 which was dismissed in Original Application no. OA 1989/2008 titled as Manoj Kumar Bajpai & Ors. Vs. UOI through Secretary, Ministry of Civil Aviation by order dated 10th September, 2009 and review application R.A. No. 189/2009 was also dismissed by the Tribunal, Principal Bench by order dated 14th October, 2009 which are challenged by the petitioners in the present writ petition.

2. The petitioners were offered appointments on Group "A" posts of Airworthiness officers, however, their request to be covered under the old pension scheme under CCS (Pension) Rules, 1972, which was valid up till 31st December, 2003 was declined by order dated 14th June, 2007 as they were appointed after 1.1.2004. The petitioners had also claimed relaxation so as to be covered under the old pension scheme under CCS (Pension) Rules, 1972.

3. Learned counsel for the petitioners had referred to communication dated 22nd October, 2003 offering the appointment to the post of Airworthiness officers in Civil Aviation Department. The offer for appointment to the post of Airworthiness Officers which was a temporary post was subject to completion of necessary formalities such as verification of character and antecedents by authorities, medical examination by medical board etc.

4. It is admitted that the petitioners were appointed after 1st January, 2004 as completion of formalities etc. took time and therefore, they could be appointed only in January, 2004 and some of the petitioners were appointed in February, and April, 2004.

5. Though the petitioners had been appointed after 1st January, 2004, however, they have sought pre-ponement of their appointment so as to be covered under the old pension scheme under CCS(Pension) Rules, 1972 on the ground that delay in appointing the applicants for which offers were extended in October, 2003 is not attributable to them.

6. The time taken in appointment of the petitioners after offering them the post of Airworthiness officer was stated to be attributable to completion of various formalities and not on account of any undue delay on the part of the respondents.

7. It was contended that by the time formalities were completed a new scheme known as CPF Scheme had come into being w.e.f. 1st January, 2004 and therefore, they cannot claim the benefit of old scheme.

8. The Tribunal noted that the petitioners did not challenge the scheme effected from 1st January, 2004 and the cut off date of policy decision is 1st January, 2004. It was also noticed that the decision cannot be termed to be irrational and could not be assailed by the petitioners and relied on the decision of the Supreme Court in Council of Scientific and Industrial Research Vs. Ramesh Chandra Agrawal, (2009) 1 SCC (L&S) 547. The Tribunal also relied on State of Uttaranchal Vs. Dinesh Kumar Sharma, (2007) 1 SCC (L&S) 594 holding that a selectee has no indefeasible right to appointment in Government service on substantive basis and his appointment commences only when he joins service.

9. The learned counsel for the petitioner cannot dispute that besides completing the formalities for appointment, they had to be relieved by their respective parent department and consequently, none of them could be appointed prior to 1st January, 2004. This also cannot be disputed by the petitioner that Mr. Mukhopadhyay was relieved and was appointed prior to 1st January, 2004 and therefore, they cannot seek parity with the case of Mr. Mukhopadhyay.

10. Learned counsel for the petitioner is also unable to show that there is any provision for relaxation under the old scheme or exception carved out under the new scheme. In any case, the petitioners do not have right to get the relaxation to be covered under the old scheme nor the decision of the respondents not to give any relaxation to the petitioners can be faulted as neither there is any

irrationality in not granting any relaxation nor the petitioners have alleged any discrimination.

11. The Supreme Court in (2007) 1 SCC (L&S) 594, State of Uttaranchal & Another Vs. Dinesh Kumar Sharma had held that even if a candidate is eligible for promotion when promotion post fell vacant at an earlier date, his seniority should be reckoned only from the date of his substantive appointment to the said vacant post under the Rules and not retrospectively from the date of occurrence of vacancy.

12. In case of the petitioners though the offer of appointment was made by letter dated 22nd October, 2003, however that was subject to fulfillment of various formalities including verification of character and antecedents by authorities and medical examination by the medical board. In the circumstances, the appointment of the petitioners after 1st January, 2004 cannot be attributed on account of any unintentional delay or any other act imputable to the respondents. Since the petitioners were appointed after 1st January, 2004, they cannot claim to be covered up under the old pension scheme nor they are entitled for any relaxation.

13. In the circumstances, the petitioners have failed to make out any ground to impugn the order of the Tribunal dated 14th October, 2009, nor any such illegality and irregularity in the order has been pointed out, which will require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition, in the circumstances, is without any merit and is therefore dismissed.