

(2020) 12 CAT CK 0039

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 2004 Of 2020, Original Application No. 1947 Of 2019

SI (Exe.) Ashok Kumar

APPELLANT

Vs

GNCT Of Delhi & Others

RESPONDENT

Date of Decision : 09-12-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 20(2)(b)
Delhi Police (Promotion & Confirmation) Rules, 1980 — Rule 19(ii)

Citation : (2020) 12 CAT CK 0039

Hon'ble Judges : R.N. Singh, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Sourabh Ahuja, Amit Yadav

Final Decision : Disposed Of

Judgement

R.N. Singh, Member (J)

MA No.2004/2020

1. The present MA has been filed praying therein for disposal of the aforesaid OA in the same terms/directions as has been issued by this Tribunal in

OA No.1720/2019 vide order/judgment dated 30.05.2019 and/or to pass any other order as this Tribunal deems fit and appropriate in the facts and

circumstances of the case. With the consent of the learned counsels for the parties, the OA has been taken up for final hearing/disposal . Accordingly,

the present MA stands disposed of.

OA No.1947/2019

The brief facts leading to the present OA are that the applicant was appointed as Constable (Executive) in Delhi Police on 01.05.1982 and was

promoted to the post of Head Constable (Executive) in the year 1991. The applicant was further promoted to the rank of ASI (Executive) under Rule

19 (ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 on out of turn basis vide order dated 11.02.1998. The applicant was sent for

intermediate School Course Training by the respondents in the year 1999. The applicant was assigned seniority in the rank of ASI (Exe.)

w.e.f.28.04.2000.

2. Learned counsel for the applicant submits that the applicant is entitled to be accorded seniority in the rank of ASI vis-à-vis consequential benefits,

difference of pay, seniority etc. w.e.f. December, 1998 particularly in view of Full Bench judgment of this Tribunal in OA No.2047/2006 titled Abdul

Nazeer Kunju & Ors with batch of OA. He further submits that the said judgment of this Tribunal was affirmed by the Hon'ble High Court of Delhi

and the respondents have challenged the order of this Tribunal alongwith judgment of the Hon'ble High Court in Abdul Nazeer Kunju (supra) before

the Hon'ble Apex Court in SLP No. 11470/2014 etc. He submits that the respondents have given the benefit of judgment of this Tribunal in Abdul

Nazeer Kunju(supra) to the applicant therein in the said OA No.2047/2006 and other OA decided vide the common order/judgment subject to outcome

of the SLP. He also submits that for similar benefits the applicant has made representation, however, the respondents have not considered and

disposed of the applicant's aforesaid representation compelling the applicant to approach this Tribunal vide this OA. In the present OA, the applicant

has prayed for the following reliefs:-

â??8. (a) Declare and Hold that the action of the respondents is discriminatory, illegal, arbitrary and whimsical in as much as they have kept the

representation of the Applicant pending till the decision of Hon'ble Supreme Court of India in SLP (C) No.11470/2014 etc and

(b) Direct the respondents to extend the benefits of Judgment passed by this Hon'ble Tribunal in OA No.2996/2017, OA No.1055/2019, OA

No.1720/2019 and OA No.2047/2006 (Larger Bench Judgment of this Hon'ble Tribunal in Abdul Nazeer Kunju's case) to the Applicant by fixing/re-

fixing the seniority of the Applicant in the rank of ASI (Exe.) w.e.f. December, 1998, and accord all the consequential benefits to the Applicant arising

there from viz promotion, seniority, difference in pay etc. And

(c) Award cost in favour of the Applicant and against the respondents, And/or

(d) Pass any further order, which this Hon'ble Tribunal may deem fit, just equitable in the facts and circumstances of the case??

3. In response to the notice of this Tribunal the respondents have filed counter reply. The applicant has filed rejoinder. Shri Sourabh Ahuja, learned

counsel for the applicant submits that once the respondents have implemented the judgment of this Tribunal in Abdul Nazeer Kunju(supra) and have

extended the benefits of that judgment, of course, subject to outcome of the aforesaid SLP, to various similarly placed persons who have made

representation before the respondents and/or have approached this Tribunal, there is no reason or justification not to extend the same benefits to the

applicant.

4. Per contra, Shri Amit Yadav, learned counsel for respondents submits that the present OA is not maintainable in view of the provisions of Section

20 of the Administrative Tribunals Act, 1985. He invites our attention to Section 20 of the Administrative Tribunals Act, 1985 which reads as under :-

â??20. Applications not to be admitted unless other remedies exhausted â?

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the

relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules

as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules,

rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to

the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or

representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the

Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to

submit such memorial.â??

5. Shri Amit Yadav, learned counsel for the respondents submits that the applicant has preferred representation dated 13.06.2019 and he has filed the present OA on 19.06.2019 and thus the applicant has not awaited for the six months period as provided under Section 20 of the Administrative Tribunals Act, 1985.

6. We have heard the submissions made by the learned counsels for the parties.

7. It is not in dispute that in view of provisions under Section 20 (2)(b), the person who preferred representations is expected to await for the decision

of the competent authority for a period of six months. However, at the same time we can not ignore the fact that once a judgment has been passed by

the competent court of law and the government had accepted the same and implemented not only to the parties to such petition but also to other

similarly persons, there is no justification to compel other similarly placed person/individual to approach Tribunal for identical reliefs. In the present

case it is not disputed that the respondents have extended the benefit of judgment to the applicant(s) in Abdul Nazeer Kunju(supra) and to the

applicants in other OAs decided alongwith the case of Abdul Nazeer Kunju(supra).

8. Learned counsel for the applicant submits that the benefits of the judgment of Abdul Nazeer Kunju(supra) has been extended to the applicant in all

the OAs decided by the Full Bench of this Tribunal by a common order /judgment alongwith the case of Abdul Nazeer Kunju(supra). The OA has

been filed in the year 2019 and there has been no restrain order of this Tribunal against the respondents to consider the applicant's representations

even during the pendency of the OA. Besides the learned counsel for the applicant also refers to order/judgment dated 30.05.2019 passed by this

Tribunal in OA No.1720/2019 (Annexure MA-2) wherein with the consent of learned counsels for the parties the OA was disposed of at the

admission stage itself :-

â??6. Learned counsel appearing for the respondents submits that, in fact, vide impugned order dated 14.05.2019 Annexure A-1 (colly), the

respondents have not refused to extend the benefit, rather they have informed the applicant that his representation has been kept pending till the

decision of the Hon?ble Supreme Court of India in the SLP filed by the department against the order/judgment dated 24.03.2011 of this Tribunal

affirmed by the Hon?ble High Court of Delhi vide order/judgment dated 06.05.2013, referred to above.

7. In rejoinder, learned counsel for the applicant submits that following the aforesaid judgment of the Hon?ble High Court, this Tribunal has allowed

the OA No.2996/2017 with batch of OAs vide order/judgment dated 06.02.2019 Annexure A-10 (colly). The operative portion of the said

order/judgment read as under :-

â??12. In view of the aforesaid detailed judgements of the Larger Bench of this Tribunal and of the Hon?ble High Court of Delhi, and also in view of

the compliance of the said decisions by the respondents, though subject to the result of the SLP, we are of the considered view that the present O.As.

are also liable to be allowed, for parity of reasons. Accordingly, all the O.As. are allowed and the impugned orders are set aside, and consequently, the

respondents are directed to extend the benefit of the Larger Bench Judgment in Abdul Nazeer Kunju?s case to the applicants, with all 16 OA

2996/2017 with 15 connected OAs consequential benefits, if they are identically placed, however, subject to the result of the SLP pending before the

Hon?ble Apex Court. This exercise shall be completed within three months from the date of receipt of a certified copy of this order. No order as to

costs.

Let a copy of this order be placed in all the files.â??

8. Ordinarily, we would have granted time to the respondents to file reply, however, keeping in view the fact that in the impugned order it is not

disputed by the respondents that the applicant is similarly placed and the respondents have not disposed of the applicant?s representation for extension

of benefit of Full Bench judgment of this Tribunal in Abdul Nazeer Kunju (supra), affirmed by the Hon?ble High Court of Delhi, for the only 5 reason

that a SLP has been filed against the said order of Hon?ble High Court is pending before the Hon?ble Supreme Court of India, we are of the opinion

that in view of the subsequent order/judgment dated 06.02.2019 of this Tribunal referred to above, the OA can be disposed of with a direction to the

respondents that they shall consider the representation of the applicant dated 22.04.2019 and if he is found similarly placed as the applicants in OA

No.2047/2006 - Abdul Nazeer Kunju (supra), the respondents shall pass orders granting similar benefits as given to the applicants in the said case,

within eight weeks from the date of receipt of a certified copy of this order. Ordered accordingly. No costs.

9. We are also of the considered view that the representations for seeking extension of benefits of judgment to the respondents is not statutory representation and therefore, that merely for the reasons that the applicant has not awaited for six months after making the representation, the OA cannot be declared to be not maintainable.

10. In view of the facts and circumstances and particularly to maintain parity we are of the considered view that the present OA can also be disposed

of with directions to the respondents as contained in the order/judgment dated 30.05.2019 in OA No.1720/2019 (Annexure MA-2) (supra) .

11. Accordingly, the present OA is disposed of with direction to the respondents that the respondents shall consider the aforesaid representation of the

applicant and if he is found similarly placed as the applicant in OA No.2047/2006 titled Abdul Nazeer Kunju(supra), the respondents shall pass order

granting similar benefits as given to the applicant in the case of Abdul Nazeer Kunju(supra) within eight weeks from the date of receipt of a copy of

this order. It is made clear that said benefits are of course subject to the outcome of the aforesaid SLP. No costs.