

(2018) 09 CAT CK 0072

In the Central Administrative Tribunal

Case No : Original Application No. 3578 Of 2016, Miscellaneous Application No. 3116 Of 2016

Surender Kumar And Ors

APPELLANT

Vs

Delhi Jal Board And Ors

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0072

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

Bench : Single Bench

Advocate : M.K. Bhardwaj, Raj Kumar Bhartiya, K.M. Singh

Final Decision : Allowed

Judgement

1. Briefly stated, the facts of the current O.A. are that in response to an advertisement No. 01/2000, Post Code-103/2000 of Delhi Subordinate Service Selection Board, the applicants applied for the post of Lower Division Clerk in the year 2000. They participated in the selection process. The result of the said written examination was declared in 2002. The result of ST category was declared on 31.08.2003 subject to decision of LPA No. 625/2002 and various other similar petitions pending before Hon'ble High Court. Though there was no stay against appointment, the result of the applicants was not declared with their batch mates on the ground that the case related to the said recruitment was pending before the Hon'ble High Court of Delhi.

2. Result of some of the applicants was declared in December, 2004 and also in 2005, and they were declared selected. It was also mentioned in the said notice that the appointment of the said candidates including the applicants shall be subject to the outcome of decision in LPA No. 625/2002 pending before the Hon'ble High Court of Delhi and related cases regarding the benefit of reservation to SC & OBC candidates filed by the migrant SCs and OBCs. In terms of the offer of appointment, the applicants joined as Lower Division Clerks during April 2005 to April 2006.

3. The applicants submit that they were appointed from the date when identically placed persons got similar benefit since 2003.

Hon'ble High Court of Delhi decided LPA No. 625/2002 vide its order dated 13.05.2005 with directions to give appointments to the respondents in said LPA with consequential benefits of seniority and pay scale. In compliance of the said judgment, the applicants in the said case were given appointment with the benefit of seniority and pay etc. The respondents also allowed increments w.e.f. 2001 to identically placed persons inspite of the fact that the actual appointment was given in 2005 and 2006.

4. Thereafter, Govt. of NCT of Delhi vide order dated 19.07.2006 adopted the new Pension Scheme dated 22.12.2003 framed by the Government of India, Ministry of Finance and made it applicable to the employees of GNCT of Delhi, retrospectively, for those who entered the service on or after 01.01.2004. The employees, who joined GNCT of Delhi on or after 01.01.2004 were not allowed to be governed by Old Pension Scheme under CCS (Pension) Rules, 1972. The applicants were deprived of the benefit of Old Pension Scheme and their pay was also not fixed at par with their batchmates. The applicants represented to the respondents, who initiated the process to fix the seniority of the applicants as per merit, but nothing was done for pay fixation and for grant of benefits under Old Pension Scheme.

5. The applicants have relied upon decision of the Tribunal in OA Nos. 183/2009, 3719/2009, 1795/2011 & 2045/2010, and placed reliance on the decisions of Hon'ble Supreme Court in the case of Inder Pal Yadav Vs. Union of India & Ors., 1985(2)SLR 248 and K.C. Sharma Vs. Union of India, 1997(3), R.S.J. 606.

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

"(a) To declare the action of respondents in not fixing the pay of the applicants as Lower Division Clerk at par with their batchmates and juniors and denying benefits of Old Pension Scheme as illegal and issue directions for fixing the pay of applicants at par with their batch mates given appointment in 2002 & 2003 and regulate their Pension under Old Pension Scheme governed under CCS (Pension) Rules 1972 and not under New Pension Scheme made effective from 01.01.2004.

(b) To direct the respondents to grant the similar benefits to the applicants as given to applicants in OA filed by Yogesh Sharma & Ors. as well as other similarly placed persons/applicants in OA No. 924/2013 & other connected OAs.

(c) To allow the OA with cost."

7. In reply filed on behalf of respondents No. 1 to 3, it is stated that Delhi Jal Board had sent a requisition to respondent No.4(DSSSB) for filling up 166 posts (UR 82+24 SC+12 ST+44 OBC+4 PH=166) for appointment of Lower Division Clerks. In response, respondent No.4 (DSSSB) had recommended 82 candidates

of UR category during the year 2003 and all the candidates of UR category were appointed in the concerned department of the respondents in the year 2003. Reminder for filling up remaining posts i.e. SC/ST/OBC/PH was forwarded to respondent No.4 (DSSSB) on 29.03.2004 for sponsoring of suitable candidates. In response, the respondent No.4 recommended 12 candidates of SC category vide Office Order dated 10.12.2004 who were appointed on 07.04.2005. In response to the above requisition the DSSSB recommended 11 candidates (9SC+2ST) on 21.12.2005. and 12 candidates of SC category were appointed. It is further submitted that in response to the above requisition, the respondent No. 4 recommended 11 candidates vide Office Order dated 21.12.2005. They were also appointed in the concerned department of respondent No.1 vide Office Order No.116 (Min) dated 24.03.2006.

8. With regard to the averments of the applicants that they were deprived of the benefit of Old Pension Scheme, and their pay was not fixed along with their batchmates, selected pursuant to the same advertisement, the respondents contend that their names were sponsored by respondent No.4 after 01.01.2004 to the concerned department of respondent No.1, so the applicants could not be granted the benefit of Old Pension Scheme and nor could their pay be fixed at par with their batchmates.

9. During the course of hearing, the learned counsel for the applicants Sh. M.K. Bhardwaj emphasized the facts raised in the OA and relied upon a large number of judgments where the issue has been decided favourably in favour of other similarly situated persons. He submitted that the applicants are similarly situated like the applicants in OA-3719/2009 (Yogesh Kumar & Ors. Vs. MCD & Ors.) decided on 11.02.2011. The appointment of the applicants therein is the result of the same exam and that it was just a matter of chance that the issuance of appointment letters in favour of the applicant in OA were withheld on account of pendency of LPA-625/2002 filed by Government of Delhi against the decision in CWP No. 5061/2001 (Kunwar Pal & Ors. Vs. Govt. of NCT of Delhi). The applicants were disabled for appointment on account of the pendency of the LPA, and not because of any delay on their part. The learned counsel placed reliance on decision of the Tribunal in OA-1795/2011 (Lalit Kumar & Ors. Vs. MCD & Ors.) dated 01.08.2012 and OA-2045/2010 (Yogesh Kumar & Ors. Vs. Chief Secretary of NCT of Delhi & Ors.) dated 16.11.2011 coupled with the decision of the Tribunal in OA-924/2013 (Preeti Sharma Vs. DSSSB) dated 04.12.2014.

10. Per contra, during the course of hearing, the main thrust of the argument of the learned counsel for the respondents was that the applicants were appointed in the concerned departments of respondents after 01.01.2004 when the list of candidates was forwarded by DSSSB. Hence, they cannot be granted the benefit of Old Pension Scheme and their pay was rightly not fixed at par with their batchmates.

11. 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.