(2007) 12 DEL CK 0046

In the Delhi High Court

Case No : LPA No. 995 of 2006

DTC Mazdoor Sangharsh Samiti	APPELLANT
Vs	
Delhi Transport Corporation	RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:
Constitution of India, 1950 — Article 32

Citation : (2007) 12 DEL CK 0046

Hon'ble Judges : Dr. M.K. Sharma, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : A.K. Bajpai, B.K. Prasad and Vikram Singh, for the Appellant; A. Sharan, ASG and J.S. Bhasin, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This writ appeal is filed challenging the order dated 25th November, 2005 passed by the learned Single Judge in Writ Petition (Civil) No. 4586/1994 whereby the learned Single Judge set aside the order of the Industrial Tribunal and allowed the writ petition holding in favor of the management.

2. The Central Government constituted 4th Pay Commission for revision / rationalisation of the pay scales of the Central Government employees. The said Commission submitted its report, which was accepted by the Government effective from 1st of January, 1986. Once the said recommendations were accepted, there was a spurt in activity in the statutory bodies for implementation of the said recommendations, which actually were meant only for the Central Government employees and their establishments.

3. A similar demand was made by the employees of the Delhi Transport Corporation, although they were employees of a statutory body and not Central Government employees. Since their demand was not conceded, the employees of the Delhi Transport Corporation raised an industrial dispute, which was referred

to on the following terms:

Whether the workmen are entitled to the benefit of Fourth Pay Commission and if so, from which date and what directions are necessary in this respect''

4. The aforesaid reference was, however, challenged by the respondent herein by filing a writ petition, which was registered as CWP No. 1001/1988. In the meantime, some workers'' unions approached the Supreme Court directly and filed writ petition under Article 32 of the Constitution of India claiming that revised pay scales as per the recommendations of the 4th Pay Commission be extended to them as well. On the initiative taken by the Supreme Court, the Central Government ultimately decided to extend the benefit of the 4th Pay Commission pay scales to the employees of the DTC. Pursuant to the said decision, a circular was issued on 25th February, 1991 by the Central Government approving the proposal. The following circular was issued:

i) All the pay scales, existing prior to 1.6.83 will be allowed corresponding Fourth Pay Commission pay-scales;

ii) The fixation will be related to the notional pay which would have been drawn on 1.1.1986 if the pre-June 1983 Third Pay Commission scales had continued to operate. The fixation will be as per the procedure adopted for Central Government employees. In other words, the benefits in emoluments already allowed to DTC employees w.e.f. 1.6.1983 will have to be ignored.

iii) However, there will be no recovery from the employees consequent on the comparatively higher benefits of fixation having been enjoyed by them w.e.f. 1.6.1983 till the date of decision regarding the implementation of the IV Pay Commission pay-scales and allowance.

iv) The other allowances such as DA, HRA, CCA, Washing Allowance, Conveyance Allowances etc. will be regulated as applicable to Central Government.

In view of the above approval granted by the Govt. it has been decided to extend the benefits of the IV Pay Commission scales of pay and allowances and fixation formula to DTC employees w.e.f. 1.1.1986 subject to the conditions as mentioned above and further subject to the orders of the Hon''ble Supreme Court of India in the writ petitions No. 320 of 1987 and 396 of 1987 pending before it. The above orders would apply to all DTC employees who were in service as on 1.1.86 or joined services on any date thereafter.

5. The Supreme Court ultimately disposed of the writ petition filed under Article 32 of the Constitution of India by passing an order on 2nd April, 1991 observing that whatever may be the amounts actually payable in terms of interim reliefs, which was given to the DTC employees vide office order dated 7th February, 1984, the employees of the DTC should neither be paid less nor more than the Government employees in the corresponding categories. The Supreme Court issued the following directions:

7. This means that all employees, whether retained on the original pay- scales or placed on the revised interim pay-scale during the period preceding 1.1.86, will be placed on the pay scale adopted as per the recommendations of the Fourth Pay Commission in such a way that they will be fitted exactly in position corresponding to their positions on the earlier pay scales. But the corresponding positions in the new pay scales will naturally carry better emoluments, so as to maintain parity with the Government employees in the like categories.

8. In the circumstances, we have no doubt that the recommendations of the Fourth Pay Commission will be fully implemented in terms thereof. Mr. Kapil Sibal, appearing for the corporation assures that it will be so done. Mr. Sibbal''s submissions is on record. In the circumstances, no further order is required. The writ petition is accordingly disposed of. No costs.

6. After the aforesaid order was passed by the Supreme Court, DTC filed an application on 16th November, 1991 before the Industrial Tribunal bringing to its notice the order of the Supreme Court and contending that in view of the orders passed by the Supreme Court and implementation of the benefits of the 4th Pay Commission to the DTC employees, reference had become infructuous.

7. In view of the aforesaid position, the writ petition No. 1001/1988 was disposed of by holding that the writ petition had become infructuous with a direction to the Tribunal to dispose of the matter expeditiously in ID No. 17/88.

8. The Industrial Tribunal, after hearing the matter, returned its award on 5th August, 1994. A perusal of the aforesaid award would show that all other categories of the employees of the DTC were satisfied with the implementation of the Pay Commission, but the category of Drivers continued to have their grievance, as according to them, the pay scales of the 4th Pay Commission were not properly implemented in their case. Consequently, the Industrial Tribunal confined its adjudication only qua the drivers working in the DTC. The Tribunal passed the impugned award by accepting the plea of the drivers of DTC and consequently issuing a direction that the Drivers of the DTC be placed in the pay scale of Rs. 1200-2040 effective from 1st of January, 1986. This was allowed in view of the pay scales applicable and fixed for the drivers of MCD who ply heavy vehicles.

9. As against the aforesaid award passed by the Tribunal, a writ petition was filed in this Court in which the award dated 5th August, 1984 was under challenge. The writ petition has been allowed by the learned Single Judge by his detailed judgment dated 25th November, 2005. Learned Single Judge examined the orders passed by the Supreme Court, recommendations of the 4th Pay Commission and the effect and purport thereof to hold that the impugned award passed by the Tribunal cannot be sustained. He also held that the Industrial Adjudicator had exceeded scope and ambit of his jurisdiction that was circumscribed by the reference order.

10. The 4th Pay Commission had given the following recommendations, which

were accepted by the Central Government in respect of the motor vehicles drivers:

XI MOTOR VEHICLE DRIVER.

11.64 At present staff car drivers in central secretariat are in the pay scale of Rs. 260-400. In other offices, the drivers of light motor vehicles are in the scale of Rs. 260-350 and drivers of heavy vehicles are in the pay scale of Rs. 320-400. In Organisations where there is a composite fleet comprising both light and heavy vehicles, the drivers are in the pay scale of Rs. 260-400. The Central Government staff car drivers association has represented that the disparity in the pay scales of drivers in ministries and other offices should be removed. We agree and recommend that drivers of motor vehicles including staff cars in the existing scales of Rs. 260-350 and 260-400 in all offices of government may be placed in the scale of Rs. 950-1500.

11. A bare perusal of the aforesaid recommendation would indicate that pre revised pay scale of the drivers of heavy vehicles was Rs. 320-400, whereas drivers of light motor vehicles were drawing a pay scale of Rs. 260-350, where as staff car drivers were in the pay scale of Rs. 260-400. In an organisation, however, where there is a composite fleet comprising both light and heavy vehicles, the drivers were in the pay scale of Rs. 260-400.

12. Considering that there is great disparity in the pay scales of the drivers of Ministries and other offices, it was recommended that the drivers of the motor vehicles including staff cars in the existing scales of Rs. 260-350 or 260-400 and 320-400 should be placed in the revised pay scale of Rs. 950-1500, which proposal was approved by the Central Government. Therefore, the employees of the DTC were required to be placed in the pay scales as per the recommendation of the 4th Pay Commission in such a way that they would be fitted exactly in positions corresponding to their position in the earlier pay scales.

13. Consequent thereafter employees of the DTC were to be fitted in the pay scale as recommended by the 4th Pay Commission in respect of the drivers and where the pre-revised scales of the DTC were lesser than the pre-revised scales of their counterparts in the Government, they were to be given fitment in such a way that parity is maintained with the Government employees in the like categories. The intention was to bring the drivers of the DTC at par with the Government employees in the latter categories meaning thereby that they should also get the same pay scales with effect from 1st January, 1986 which the Government employees working as Drivers enjoyed after the implementation of 4th Pay Commission.

14. The aforesaid recommendations of the 4th Pay Commission, which were accepted by the Central Government and made applicable to the employees of the DTC under the aforesaid order, have been implemented by giving fitment of Rs. 975-1660 to the drivers of the DTC. The said pay scale is not only equivalent but a little higher than the pay scale granted to the corresponding category. That

being the position, order of the Supreme Court was fully complied with and there could have been no further grievance of the said drivers.

15. It is also to be noted that if the said drivers still wanted higher pay scale or their contention was that they should be given same pay scale as given to the heavy vehicle drivers in MCD, it was incumbent for them to raise fresh industrial dispute in that behalf. The Industrial Tribunal, which passed the award in favor of the workmen, could not have enlarged the scope of reference on the pretext of implementing the order of the Supreme Court, which in our opinion, stood already implemented when pay scale of Rs. 975-1660 was awarded to the drivers of DTC. In this connection reference may be made to the decision of the Supreme Court in Mukand Ltd. Vs. Mukand Staff and Officers'' Association, . In that case, the Supreme Court held that the Industrial Tribunal being a creature of the Statute cannot adjudicate matters beyond the purview and scope of the dispute referred to it. According to us after allowing the aforesaid benefit, there should not have been any further grievance of the appellant. So far the pay scale of Rs. 1200-2040 is concerned, the sole consideration was that the DTC drivers were driving heavy vehicles and they were supposed to have heavy vehicles driving license. Likewise, the MCD employees, who were driving heavy vehicles, were given the pay scale of Rs. 1200- 2040 by the Industrial Tribunal in its award dated 26th September, 1987 applying the principles of ''equal pay for equal work''. The said award in any case was passed in relation to employees of MCD. However, one glance on the recommendation of the 4th Pay Commission and the decision taken thereon by the Central Government would indicate that the 4th Pay Commission had not classified any different yardstick for two different categories. The aforesaid aspect was clearly ignored while passing the award and the learned Single Judge was justified in setting aside the said award on the aforesaid grounds.

16. But what we would like to emphasise here is the fact that the Tribunal equated the drivers of the DTC with that of the drivers of MCD and thereby allowed a higher pay scale which was being enjoyed by the employees of the MCD. The aforesaid part of the award was passed beyond the terms of reference by enlarging its scope. The employees, particularly the drivers of MCD are governed by different Rules and Regulations and their service conditions are formulated by MCD, which is a separate legal entity from that of DTC. The drivers of DTC cannot claim as a matter of right the same privileges and benefits enjoyed by the drivers of the MCD. Such claim has to be properly raised through a fresh reference and to be adjudicated upon considering various facets like nature and duties, the hours of working etc. Because drivers of one statutory authority are getting a higher pay scale, it would not automatically entitle the drivers of DTC to get such a benefit to receive a higher pay scale.

17. During the course of arguments, it was also brought to our notice that pursuant to 5th Pay Commission report, the pay scales have been revised effective from 1st January, 1996 in which the drivers of DTC are being given a

higher pay scale as compared to the drivers of MCD.

18. In view of the aforesaid position and particularly in view of the fact that the drivers of DTC having been given the benefit as per the Pay Commission, we find no merit in this appeal, which is dismissed.