

(2021) 03 CAT CK 0155

In the Central Administrative Tribunal

Case No : Original Application No. 585 Of 2021, Miscellaneous Application No. 736, 737 Of 2021

D.V. Sethi & Others

APPELLANT

Vs

New Delhi Municipal Council

RESPONDENT

Date of Decision : 30-03-2021

Acts Referred:

Citation : (2021) 03 CAT CK 0155

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Vikas Mahajan, Akash Verma, Sriparna Chatterjee

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. The applicants are all employees, who worked in Civil Engineering Department of NDMC. They all had superannuated on various dates prior to 31.3.1998.

The 3rd Central Pay Commission's report was accepted by the MCD as well as NDMC. Thereafter, the electrical staff of DESU under MCD, claimed higher pay scales. There was certain agitation also. A Shiv Shankaran Committee (SSC) was appointed to look into the question. It recommended in the year 1973, certain higher pay scales vis-à-vis 3rd CPC to the said electrical staff. This recommendation was accepted.

Subsequently, agitation was done by the Ministerial categories also and the benefits of such higher pay scales, as were extended to Electrical staff, were extended to other staff of both MCD and NDMC.

However, the employees working in Civil Engineering department could not get these benefits as their petition in this regard was rejected by the Hon'ble Apex Court.

2. Thereafter, the controversy was agitated before the Industrial Tribunal which

agreed to grant the higher pay scale w.e.f. 1.7.1991. However, the issue was eventually agitated before the Hon'ble High Court of Delhi wherein a Writ petition No.11841/2004 was filed in the year 2004. In this Writ Petition, the Hon'ble High Court gave certain directions. The operative para reads under:

"77. Many of the Respondents in the present batch of cases have been agitating their claims for a pretty long time now, at least for over a decade. (This is good enough reason, en passant, to reject the contention of learned counsel for the Petitioner that the claims are belated). Some approached the Supreme Court as far back as in 1992 (Laxmi) while this Court was approached the first time in 1997 (Digpal Singh) and then in 1998 (Jamaluddin). Most references were made to the Central Government Industrial Tribunal in 1998, while some were made as recently as between 2000 and 2003. If the benefit of SSC pay scales is given to the Respondents from the day they sought relief, they will get the benefits from different dates, although they are all entitled to the benefits from a common date the law being equally applicable to all from the same date. Therefore, I am of the view that all the employees should be benefited from the same date rather than from diverse dates because this will again lead to some differentiation and discrimination. But what should that common date be is the question? As mentioned above, since most references were made in 1998, it will have to be a date in 1998 and I think the date if 1st April would be appropriate being the start of the financial year and the date chosen by the Supreme Court in Babu Lal. I would, therefore, hold that the benefits of SSC pay scales be given to such of the Respondents as are entitled to it from 1st April, 1998."

3. However, the employees working in civil engineering department were still left out from extending these benefits. Finally, on 22.07.2009 NDMC decided to give benefits as per Shiv Shankaran Committee report and as per order by Hon'ble Apex Court dated 2.6.2014 in SLP No.13301/2005. The operative policy directives were issued by NDMC on 02.06.2014. The same reads as under :-

"New Delhi Municipal Council

PALIKA KENDRA, NEW DELHI

No.1/CDGIT/13/

H

2nd June, 2014

OFFICE ORDER

In pursuance of Council Resolution No.21 (H-03) dated 22.7.2009 followed by another resolution in Council Meeting No.15/2013-14 dated 26.02.2014, the Shiv Shankaran Pay Scale (as DTL pay scale) is granted to all the left out categories of employees of NDMC as under:

(I) All left out categories (employees of N.D.M.C. are granted SS Scale w.e.f. 1.4.1998 onwards subject to pending decision of the Hon'ble High Court of Delhi

in the stand taken to rationalize the pay scale of N.D.M.C. employees.

(II) The pay of employees will be fixed in SS Scale in the corresponding scale available in DTL. Further, some of the categories are not available in DTL and for fixation of pay of these categories in SS Scale, a Sub-Committee is constituted under the Chairmanship of Director (A/cs) comprising it, CAO(CBS), AO(Estt.), Consultant (P) and Jt. Director (CGIT Cell) as Members to decide the equivalent DTL scale and to avoid further anomaly in the scales. The said Committee will also consider all other pending cases where anomalies exists in fixation of pay in SS Scale.

(III) Their pay will be fix within one month of issuance of Office Order for grant of SS Scale to left out categories and all Joint/Deputy Directors of respective establishments are directed to complete the work in time bound manner.

(IV) The arrears would be paid w.e.f.1.4.1998 in two equal instalments i.e.

- 1st instalment 31st August, 2014
- 2nd instalment 31st December, 2014.

This issues with the approval of the Chairman,N.D.M.C.

(DIRECTOR(P)

Copy to:

1. All HODs.
2. Directors (A/Cs)
3. Director (Cash)
4. Director(IT) with the request to upload the above office order on the website of N.D.M.C."
4. There are 6 applicants in the instant OA. They were all in Civil Engg Deptt and had superannuated during the period from 31.10.1992 to 01.08.1997. They have been seeking benefits of the higher pay scale in respect of revision of their pension w.e.f. 01.04.1998.
5. Since this was not agreed to, the matter was taken to Public Grievance Commission. During the hearing the respondents communicated that the case is under consideration. Eventually, respondents have submitted that since the applicants had retired prior to the cut off date on 1.4.1998, the same benefits were not applicable to them and the Public Grievance Commission closed the case by giving liberty to the applicants to approach a judicial forum for redressal of their grievances. Hence, the instant OA is preferred.
6. The applicants submitted that there is a recurring cause of action in that they are getting lesser pension every month, and they have been pleading for grant of benefits from 01.04.1998, however, the same has not been agreed to so far.

7. The applicants also pleaded that the cut off date of 01.04.1998 as decided by Hon'ble High Court is for grant of actual benefits only and it does not talk about eligibility of those who superannuated earlier and accordingly it does not deny the benefits of pay scale to the employees retired prior to 01.04.1998. Since the applicants were working in the Civil Engineering Department to whom the benefit was extended from 1st April, 1998, the applicants are also eligible of such benefits even though they superannuated prior to 01.4.1998.

8. Per contra, the respondents opposed the OA. It was brought out that it is the order of NDMC dated 2.06.2014 wherein the cut off date was specified as 01.4.1998 which is in terms of the orders by Hon'ble High Court (supra). The challenge to the instructions dated 2.6.2014 is enacted in the year 2021 only. Thus, the instant OA is highly time barred.

It was further pleaded by the respondents that the instant controversy was eventually dealt with in a writ of 2004 before the Hon'ble High Court of Delhi which was disposed off wherein cut off date was given as 01.04.1998. Accordingly, in case, the applicants have any grievance about the same, the appropriate forum for redressal of the same is Hon'ble High Court of Delhi and the Tribunal cannot act as an appellate body to interpret those particular orders.

It was further pleaded by the respondents that this order of 2.6.2014, when read in full and specially para (iii) and (iv) as is reproduced above, indicates very clearly that the benefits are to be granted w.e.f. 01.4.1998 and since the applicants had superannuated prior to that, they were not eligible for the same benefits.

It was finally pleaded that there is no merit in the OA and the same is required to be dismissed.

9. The matter has been heard in detail at admission stage. Shri Vikash Mahajan, learned counsel with Shri Akash Verma, learned counsel represented the applicants. Ms. Sriparna Chatterjee, learned counsel represented the respondents.

10. The Shiv Shankaran Committee's recommendations, to start with, were not applicable in respect of certain categories of the employees including the instant applicants. It was only the subsequent resolution by NDMC that the same were extended and an office order was issued on 2.6.2014. This office order indicates that the cut off date for entitlement of benefits is 01.04.1998 which in turn is in terms of the orders of Hon'ble High Court of Delhi (supra). Thus this cannot be faulted.

11. The Applicants had superannuated prior to 1.4.1998 and accordingly, there is no question of extending those pay scales to the applicants. The pleas put forth by the applicants are misplaced and accordingly, the OA is liable to be dismissed.

12. The Tribunal accordingly dismisses the instant OA. No costs.

13. All the pending MAs also stand disposed off.