(2010) 03 DEL CK 0228

In the Delhi High Court

Case No : Writ Petition (C.) No. 1691 of 2010

ITI Certificate Holders'' Association (Regd.) and Another APPELLANT

Vs

Delhi Transport Corporation and Others RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Citation : (2010) 03 DEL CK 0228

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

Bench : Division Bench

Advocate : Kartar Singh and K.S. Chauhan, for the Appellant; J.S. Bhasin, for Respondent No.1, Sana Ansari, for Zubeda Begum, for Respondent Nos. 2 and 3 and Manmeet Singh, for Jasbir Kaur, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—The petitioners herein are aggrieved by the orders dated 07.10.2009 and 20.11.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short "the Tribunal") in TA No. 1167/2009 and TA No. 1481/2009 respectively, whereby the learned Tribunal has dismissed both the transfer applications.

2. The petitioners herein prays for grant of pay scale of Rs. 4000-6000/- as recommended to their category as per Central Pay Commission Report/ Recommendation which was made effective by the Central Government and the State Government with respect to similar categories with effect from 1.1.1996 based upon the report given by a Sub-Committee constituted by the DTC Board as per Resolution No. 90 of 2000 regarding existence of anomalies in the pay scale of officers/officials of DTC on 26.09.2001 wherein it was recommended by the Sub-Committee that A/Elect, A/Fitter, A/Painter, A/Blacksmith, A/Body Fitter, A/Welder, A/Machinist, A/Tinsmith, Tyre-man and A/Bench fitter who have been extended the scale of unskilled should be given pay scale of Rs. 4000-6000/- without disturbing their present basic salary or involving any financial implication. The petitioners also want pay to be given to them as per the

recommendation of the 4th Pay Commission.

3. It is the case of the petitioners that despite such recommendations the pay scale recommended in their category by the 4th and 5th Pay Commission was not granted. It has also been submitted that similar pay scales have already been sanctioned to all similarly placed person in different department and that the administrative staff like the junior clerks are working in the pay scale of Rs. 3200-4900/- whereas the similarly placed persons working in Delhi Government/ Central Government are in the pay scale of Rs. 3050-4590/-, similarly UDC/ Senior Clerk are in the pay scale of Rs. 4500-7000/- and the similarly placed persons in the Central Government as well as in the Delhi Government are in the pay scale of Rs. 4000- 6000/-. It has also been submitted that they are also entitled to similar pay scales, as such benefits have already been extended by the Delhi Transport Corporation to the administrative staff and had there been any precarious financial position of the Corporation, they would not have done so. It has further been submitted that denial of similar benefits to the petitioners is without any reason.

4. The Tribunal while considering the prayers made by the petitioners have not granted the reliefs as prayed for, for the following amongst other reasons:

5. We note that it is not as if the recommendations of the Pay Commission had not been omitted to be noticed by the respondents. The DTC is under the administrative control of the Ministry of Surface Transport. When the report of the 4th Pay Commission had come, the Ministry had decided to implement the report, with reference to establishments like the DTC but they were also obliged to ensure that certain required changes were to be also adopted while granting the revision of pay. Resultantly, the instruction was that all the pay scales existing prior to 01.11.1986 were to be allowed correspondingly 4th Pay Commission scales. It is the case of the respondents that more or less the same criterion had been adopted while implementing the 5th Pay Commission Report. The pay scales corresponded to what had been prescribed and which were in operation. Mr. Bhasin submits that in fact a better pay scale has been made admissible to the category of the applicants and they could not have had any grouse on the above. Of course, the counsel submits that when an anomaly has been raised after the implementation of the 5th Pay Commission and its application, the matter had been placed before the Board which had in its turn constituted a sub-committee to look into the matter. The Committee''s report had been placed before the Board on 23.12.2004, and it had been resolved as following:

That the Board in view of this fact and precarious financial position of the Corporation found it difficult to accept the representation/demands of DTC Engineers Association and hence rejected the same. The report of Sub-Committee dated 26.9.2001 was again submitted to DTC Board on 30.3.2006 and 5.4.06 to reconsider the matter. The board vide resolution No. 19/2006 again discussed the issue threadbare and the recommendation of the Sub-

Committee in details. After consideration of the report of the Sub-Committee in the entirety, the Board observed as under:

i) Adoption of the report of the Subcommittee will unsettle the issues and create more grievances on the ground of parity from other categories of employees.

(ii) A.C.P. Scheme is applicable to DTC to take care of stagnation, if any.

(iii) Financial implication cannot be borne by an organization which is having operational loss of more than Rs. 20 Crores per month.

(iv) Any revision of pay scales has to be a holistic exercise by keeping in mind the horizontal and vertical comparison ratio and parity between different categories of employees of the organization. Such an opportunity for holistic review may become available after the report of the next Pay-Commission.

6. According to us, the enquiry must end here. It is a case where a conscious decision has been taken by the Board. It was a policy decision, not to accept the recommendations of the Sub-Committee. The effort of the applicants appears to be to indicate that the Subcommittee was correct in its perspective and the respondents erred in overlooking the suggestions made by the Sub-Committee and the Court should interfere in such matters.

7. It may not be necessary for us to go to the minute details, including the pay scales that were prevailing and the parameters which were adopted on different occasions by the DTC while dealing with its workshop staff. The position cannot be disputed that the recommendations of Pay Commissions were not binding either on the Government or statutory bodies. Government had the freedom to accept the recommendation with such modifications it deemed fit. In respect of statutory Corporations, it was in their discretion to accept the recommendations even as accepted by the Government and they were also bound by the administrative instructions issued by the Government. In other words, even if the Pay Commission might have made recommendations, on scientific basis and for streamlining the pay scales, considering the materials that had been collected by them in the course of inquiries, it would not have been possible for the applicants to contend that there was legal obligation for the DTC, to adopt Pay Commissions report in its entirety or that there was no jurisdictional power for the DTC to prescribe changes before its acceptance.

8. In matters of fixation of pay scales the jurisdiction rests exclusively with executive authority. The staff structure and pay scales are decided on the basis of actual situations that might be there, which might be different from organizations to organizations. The assessment of skilled categories, the volume of work, the pay packet that has to be given, recognition of qualifications, paying capacity, etc. are some of the parameters which are essentially to be looked into in the matter of pay fixation. In other words, there is no straight jacket formula that recommendations of the Pay Commission have to be bodily lifted to an organization. To contend that there is no discretion left with the organization

while coming up with the pay scales is unacceptable. In such matters there is also no possibility to highlight a contention that there is discrimination practiced. The concept has no relevance in such matters.

9. It is not disputed that the grievances and anomalies have been placed before Sub Committee and the Board of the DTC had further opportunity to examine the report. After mature consideration they have come up with the orders whereby the pay structure has been ultimately finalized. As contended by Mr. Bhasin, the only circumstance the applicants are trained by ITI, does not necessarily require the employer to recognize them as skilled workers from the date of their engagement. We feel that sufficient expertise may not be there in the Tribunal to hold that qualifications possessed by the applicants ipso facto is circumstance, reason or justification for grant of the pay scales as suggested in the application. Further, when it is noted that the applicants are only a microscopic section of the employment force of the DTC to direct that the pay scales that have been prescribed for them require alteration would be inviting disharmony by unsettling of settled matters.

10. What the applicants demand is a revision, as operative from 01.01.1996, i.e., the implementation date of the 5th Pay Commission. Mr. Chauhan had strongly urged that the delay cannot be a cause for rejection of the application since in earlier proceedings liberty had been granted to raise the issue by appropriate means as late as in the year 2007. But we do not find any such rights have been reserved for them to unsettle matters. What has been conferred is only agitation of legally enforceable rights. We have to take judicial notice that organizations work on projected income and expenditure on year to year basis. To suggest that settled matters are to be reopened, and additional financial burden is to be imposed on an organization is likely to jeopardize its very functioning. Definitely it will not be in public interest. What the applicants attempt to enforce is not a statutory right and we are not impressed by the submissions that their fundamental rights have been violated. Resultantly, we dismiss the Transfer Applications. There is no order as to costs.

5. The issue raised before us by way of the present writ petition has already been decided by this Court in another matter i.e. WP(C) No. 1134/2010 entitled as DTC Engineers Association (Regd.) v. DTC and Ors. vide order dated 23.02.2010, wherein the reasoning given by the Tribunal has been accepted by this Court. By the aforesaid order this Court has already dismissed the writ petition filed on behalf of a section of employees of the Delhi Transport Corporation for the reasons given by the Tribunal in this case also. The case of the petitioners is no different. Therefore this Court find no reason to take a different view in the present matter. Thus, the petition is dismissed.

CM No. 3371/2010 (stay)

In view of the orders passed above, the application has become infructuous and is accordingly disposed of.