

(2022) 12 CAT CK 0001
In the Central Administrative Tribunal
Case No : Original Application No. 848 Of 2017

Narendra Kumar, Electric Motor Driver & Ors	APPELLANT
Vs	
North Delhi Municipal Corporation Through Its Commissioner & Ors	RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2022) 12 CAT CK 0001

Hon'ble Judges : Anand Mathur, Member (A); Manish Garg, Member (J)

Bench : Division Bench

Advocate : M.K. Bhardwaj, Anupma Bansal

Final Decision : Dismissed

Judgement

Anand Mathur, Member (A):

1. Learned counsel for the applicants stated as under:-

1.1 All the applicants were initially appointed as Electric Motor Driver [EMD] on daily wage basis between 01.01.1979 and 31.03.1986. After rendering long years of continuous service, the applicants as well as similarly placed persons including one Sh. Jhaman Lal were regularized as EMD, vide order dated 11.03.1994. However, they were granted lesser pay scale of Rs.775-1025 instead of the pay scale of Rs.950-1500 meant for EMDs. Accordingly, the dispute was raised before the Labour Court, which was pleased to pass an Award granting the pay scale of Rs.950-1500/3050-4590 to the EMDs working in MCD.

1.2 In compliance of the Award of Labour Court, the respondents, vide order dated 30.12.2006, fixed the pay of only one person, namely, Mr. Jhaman Lal in the pay scale of Rs.950-1500/3050-4590 w.e.f. 01.04.1990 ignoring the claim of the applicants.

1.3 Aggrieved, the applicants and other similarly placed persons requested the

respondents to grant them pay scale of Rs.950-1500/3050-4590 from due date as per the Award of the Labour Court. Though the respondents issued order dated 18.09.2009 granting pay scale of Rs.950-1400/3050-4590 to all the EMDs, but did not grant the pay scale of Rs.950-1400 to the applicants from 01.04.1990 and Rs.3050-4590 w.e.f. 01.01.1996, as had been granted to one of the similarly placed EMDs namely Mr. Jhaman Lal.

1.4 Being aggrieved, the applicants earlier approached this Tribunal by way of OA No.112/2015, which was disposed of, vide order dated 12.01.2015, directing the respondents to examine the claim of the applicants and decide the same within a period of 90 days.

1.5 It is further stated that when the aforesaid directions of the Tribunal had not been complied with by the respondents, the applicants preferred CP No.562/2015. Since, during the pendency of the CP, the respondents rejected their claim by passing a non-speaking order dated 03.05.2016, the aforesaid CP was closed. Hence, the applicants have preferred the instant Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“(i) To quash and set aside the impugned order dated 03.05.2016 and direct the respondents to fix the pay of applicants in the pay scale of Rs.95-1400 from 01.04.1990 and at appropriate stage in the scale of Rs.3050-4590 w.e.f. 01.01.1996, with all arrears of pay and interest @ 18%.

(ii) To direct the respondents to grant the scale of Rs.950-1400 from 01.04.1990 with all consequential benefits including restoration of salary at par with similarly placed persons from due date with all arrears of pay.

(iii) To allow the OA with exemplary costs.

(iv) To pass any such other order as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. Per contra, learned counsel for the respondents stated as under:-

2.1 According to the Recruitment Regulations for the post of EMD in MCD, the post carried the pay scale of Rs.200-250, which was subsequently revised to Rs.775-1150 and Rs.2650-4000, whereas the EMDs in DDA/CPWD were getting the pay scale of Rs.260-350 (revised to Rs.950-1400). They were transferred from DDA/CPWD to the Horticulture and other Departments of MCD and continued to draw higher pay scales as per the special provision in the Schedule of the Corporation, exclusively for them, that they would get the same pay scale, which they were drawing in DDA/CPWD.

2.2 The MCD notified Recruitment Regulations in the year 1982 which were in existence at the time of regularization of the applicants as EMDs. It is further stated that the Recruitment Rules and the duties & responsibilities for EMDs working in DDA/CPWD are totally different from those working in MCD. So the

pay scale of EMDs of DDA/CPWD cannot be equated with those of MCD as the post of EMD in MCD is unskilled post whereas it is a semi-skilled in DDA/CPWD.

2.3 It is stated that as per Office Order dated 11.03.1994, the applicants were regularized under phased manner policy of the MCD, and they also accepted the pay scale of Rs.775-1150 (Rs.2650-4000 revised from time to time under CPC).

2.4 As per recommendation of 6th CPC, the corresponding scales of Rs.2610-3540, Rs.2650-4000 and Rs.3050-4590 have been given as Rs.4440-7440 (GP-1400), Rs.4440-7400 (GP-1650) and Rs.5200-20200 (GP-1900) respectively, whereas in Establishment Schedule of 2009-10 of MCD, the uniform pay scale of Rs.5200-20200 (GP-1900) has been printed against all these three pay scales. However, it has been recommended in 6th CPC report to place all Group 'D' employees in pay band of Rs.5200-20200 (GP-1900), who possess minimum qualification of Matric or undergoes re-training. This fact should have been specified in Establishment Schedule of 2009-10.

2.5 In the Establishment Schedule prior to 2009-10, aforesaid pre-revised three scales have been printed against the post of EMD, whereas the pay scale of Rs.3050-4590 was meant for EMDs transferred from DDA and the other two scales were meant for EMDs of MCD. This fact was not mentioned in the Establishment Schedule due to which the employees of MCD have been drawing advantage by producing the copy of Establishment Schedule in courts and getting Award for grant of pay scale of Rs.3050-4590 from their date of appointment till 2005-06.

2.6 There is no limitation for approaching the Labour Court and Sh. Jhaman Lal raised an industrial dispute in the year 2005 (ID No.135/2005) seeking pay scale of Rs.950-1400 from 01.01.1990 and succeeded in getting the Award in his favour. The said Award was somehow not challenged at the relevant time before the Hon'ble High Court because of dereliction of duty and, therefore, the then Additional Commissioner (Engg.), vide Office Order dated 28.11.2006, directed the Executive Engineer concerned to fix the responsibility of the officer who failed to challenge the said Award in time.

2.7 As the applicants had accepted their regularization as EMDs in pay scale of Rs.775-1025 applicable at that time in the year 1994, now they cannot be permitted to re-agitate the issue.

3. We have heard Mr. M.K. Bhardwaj, learned counsel for the applicants, Mrs. Anupma Bansal, learned counsel for the respondents, and have perused the material on record.

4. It transpires from the above that in compliance of the Award of the Labour Court, the respondents vide order dated 30.12.2006 fixed the pay of Sh. Jhaman Lal in the pay scale of Rs.950-1500 w.e.f. 01.04.1990. The applicants are claiming the same benefit from the same date whereas the respondents have clarified that the Award of the Labour Court was not in conformity with the rules

and should have been challenged in the higher court. However, the office did not take any action and for this dereliction of duties, the then Additional Commissioner (Engg.), vide Office Order dated 28.11.2006, directed the Executive Engineer to fix the responsibility of the officer who had failed to challenge the said Award in time. As has been brought out above, the EMDs, who had been transferred from DDA/CPWD to the Horticulture and other Departments of MCD, continued to draw higher pay scales as per the special provision in the Schedule of the Corporation. Further, the Recruitment Rules and the duties & responsibilities for EMDs working in DDA/CPWD are totally different from those working in MCD. So the pay scale of EMDs of DDA/CPWD cannot be equated with those of MCD as the post of EMD in MCD is unskilled post whereas it is a semi-skilled in DDA/CPWD. Moreover, the applicants had accepted their regularization as EMDs in pay scale of Rs.775-1025 applicable in the year 1994 and, therefore, they are not similarly placed as Sh. Jhaman Lal.

5. In view of the above, we do not find any merit in the instant OA and the same is accordingly dismissed.

6. No order as to costs.