
(2018) 12 CAT CK 0096

In the Central Administrative Tribunal

Case No : Original Application No. 3224 Of 2016

Rajender Prasad And Ors

APPELLANT

Vs

Chairman

RESPONDENT

Date of Decision : 07-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0096

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : B.L. Wanchoo, Sriparna Chatterjee

Final Decision : Disposed Off

Judgement

1. The applicants are Enquiry Attendants in New Delhi Municipal Corporation [NDMC], who have joined the NDMC on various dates. By Resolution No. 18 dated 28.10.1986, a decision was taken that 5% quota fixed for promotion to the post of Junior Engineer (Civil) [JE (Civil)] would be reserved amongst Road Inspectors and Enquiry Attendants who have put in ten years service and who are matriculate. Subsequently, seeing the technical nature of the post of JE (Civil), this was modified vide Office Order No. Engg. Estt.-I/10718/GC-I dated 20.08.1998 to the effect that 5% quota from amongst Enquiry Attendants was abolished. On 20.08.1998, an Office Order was passed by NDMC by which Time Bound Promotional [TBP] Scale of Rs. 4000-6000 (Vth CPC) was to be granted to Road Inspectors & Enquiry Attendants on completion of 15 years of their service. This was applicable from 07.08.1998. After grant of this TBP, the post of Enquiry Attendant and Road Inspector was designated as Supervisor (Non-Tech.). Subsequently, this was partially modified on 09.12.1998 and Road Inspector/Work Assistant/Technical Assistant and Enquiry Attendant were granted promotion as Supervisor (Non-Technical) in the pay scale of Rs. 1320-2040 (IV CPC) revised to Rs. 4000-6000 (Vth CPC) on completion of 15 years of length of service instead of 07.08.1998. For Enquiry Attendant, the length of service was to be counted from the date of acquiring the post of Enquiry Attendant. Vide

order dated 23.06.2011, it was clarified that no benefits of promotion are to be given to these categories on the date of re-designation of their post as Supervisor (Non-Technical) and in case promotional benefits are given consequent upon re-designation of the post as Supervisor (Non-Technical), that would be withdrawn. This involves re-fixation w.e.f. 01.04.1998. Subsequently, an order was passed on 07.04.2014 by which promotional benefit given was withdrawn and the basic pay came down from Rs. 1320 to Rs. 1300 in the then pay scale of Rs. 1320-2040. Aggrieved by this order, the instant OA has been filed by the applicants.

2. It is the contention of the applicants that orders had been passed in their favour but not implemented and subsequently the benefits were taken away. Firstly, an order was passed reserving promotional post of JE (Civil) for them, which was never acted upon. Subsequently, a new promotional post of Supervisor (Non-Technical) in the pay scale of Rs. 1320-2040 was created. In 1998, NDMC decided to give TBP on completion of 15 years of service but as per the 5th CPC, w.e.f. 01.01.2006 TBP was decided to be given on completion of 10 years, 18 years and 26 years respectively. This was also not implemented. Ultimately, on 07.04.2014 all earlier orders were withdrawn. The applicants have prayed for the following reliefs:-

"(a). Call for the relevant official records/files pertaining to the grievance of the applicants regarding reduction of pay and wrong fixation of pay retrospectively.

(b) Direct the respondent to grant the applicants time bound promotion on completion of 10 years, 18 years and 26 years as decided by way of a resolution passed by the working committee of NDMC and duly approved by its Chairman.

(c) Direct the respondent to restore back the pay and allowances reduced from Rs.1320 to Rs.1300 and promotional benefits of Supervisor (Non-Tech) withdrawn respectively vide pay fixation order dt.21.7.2014 and may be further directed to re-fix their pensionary benefits after re-fixation of pay as well as monthly pension.

(d) Set aside and quash pay fixation orders dated 21.7.2014 and of respective dates in respect of each applicant in as much as basic pay has been reduced from Rs.1320 to 1300 while refixation of pay as well as withdrawing retrospectively the benefits of promotion to the post of Supervisor (Non-Tech.) already granted.

(e) Direct the respondent to grant the pay scale of 1400-2300 which was pay scale of JE (Civil)/Supervisor (Non-Tech.) and refix further on completion of 10 years, 18 years and 26 years in respective pay scale and refix the pay accordingly. Thereafter all pensionary benefits also.

(f) Direct the respondent to grant 12% interest after the refund of the recovered and reduced pay till actual payment is made.

(g) Grant any other relief as deemed fit and proper, in the facts and

circumstances of the case, to meet the ends of justice."

3. The respondents have opposed the Application and have stated that various orders have been issued from time to time in which some earlier orders have been modified due to various developments. Firstly, for the post of JE (Civil), 5% reservation was kept for promotion from amongst Enquiry Attendant/Road Inspector etc. but due to technical nature of the job, this was modified. Subsequently, a new post i.e. Supervisor (Non-Technical) was created. TBP scale as per 5th CPC was granted on completion of 15 years of service. However, at this time litigation was going on for several years regarding grant of DTL scale which were slightly higher than the government scales. The litigation, which had commenced in 2004, attained finality with the High Court's order of 2010. Thereafter, DTL scale was granted to these employees. DTL was adopted in NDMC w.e.f. 01.04.1998 and the ACPs were to be granted on completion of 10 years, 18 years and 26 years of service respectively, and hence, the enhancement given on completion of 15 years in line with ACP was accordingly taken away, as ACP on completion of 15 years did not figure in the DTL. Accordingly, order dated 07.04.2014 was passed reducing the basic pay from Rs.1320 to Rs.1300 by withdrawing promotional benefits which were given in the earlier ACP which was to be replaced by the DTL.

4. Heard Sh. B.L. Wanchoo, learned counsel for the applicant and Ms. Sriparna Chatterjee, learned counsel for the respondents. Both the learned counsels for the applicants and respondents have separately filed Calculation Sheets for what fixation was done and should have been done for a single employee as a test case, that of- Sh. Rajender Nath Mukherjee.

5. It is no doubt that orders have been modified from time to time, sometimes due to full implication of an order not being considered at the time of its passing e.g. 5% reservation of posts of JE (Civil), or by certain external developments such as litigation concerning DTL and adoption of DTL scales with back date. Though the calculations are rather complex, the basic principles must be understood.

6. Initially, the post of Supervisor (Non-Technical) was with TBP scale which was granted on completion of 15 years of service under ACP. Subsequently, when the DTL was adopted, it was clarified that no benefit of promotion was to be given to Enquiry Attendant etc. on the date of re-designation of the post as Supervisor (Non-Technical). However, the revised scales of DTL were made applicable. Accordingly, certain benefits of TBP granted on completion of 15 years of service were withdrawn and certain benefits under DTL for ACP on completion of 10 years, 18 years and 26 years respectively were given and fixation was accordingly done. The detailed calculation sheet given by the respondents with clarification at each stage is self-explanatory. Therefore, there is no defect in the fixation so done by the respondent. However, taking into consideration the decision of the Hon'ble Apex Court in case of State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc. [2014 (8) SCALE 613], we are of the view that no

further recoveries should be done by the respondents.

7. In terms of the above order, the instant Original Application stands disposed of. There shall be no order as to costs.