

(2009) 12 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (C.) No. 13552 of 2009

Rameshwar Dayal and Others

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 12 DEL CK 0007

Hon'ble Judges : Vipin Sanghi, J; Anil Kumar, J

Bench : Division Bench

Advocate : Anil Mittal, for the Appellant; Avnish Ahlawat, for the Respondent

Judgement

Anil Kumar, J.—The petitioners have impugned the order dated 23rd November, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. No. 613 of 2009 declining the prayers of the petitioners to designate them as Console Operators from the date they were transferred in the Computer Section, Data Centre of the respondent and also declining the prayer of the petitioners to pay them pay and allowances as applicable to the post of Console Operator and not to send them to work as Conductors.

2. The petitioners were recruited as Conductors in the pay scale of Rs. 3,050-4,590/- (pre revised), however, according to the petitioners they have been rendering services as Console/Terminal operators since 1998. The petitioners claim that they are entitled to pay scale of Rs. 5,500-9,000/- which is payable to Console/Terminal Operator.

3. The petitioners relied on the resolution of the Board of Directors of the respondent of 1998 approving the working of Conductors as Console/Terminal Operators.

4. The petitions were opposed by Delhi Transport Corporation/respondent contending, inter alia, that Conductors were surplus and, therefore, instead of considering alternative actions, the petitioners and other Conductors were

assigned the duty of Console/Terminal Operators.

5. Pursuant to interim directions dated 24th May, 2006 by the High Court, it was also revealed that the petitioners were not given the work of computer operators being surplus conductors but they had been doing the job of preparation of bills. It was contended that they were not involved in interpretation of any data or feeding the same on the computers.

6. The proposal of the respondent to have a separate cadre for absorption was not accepted by Government of NCT of Delhi for the IT cadre. The Government of NCT of Delhi was rather of the view that it should be a specialized cadre which should be manned by the persons who should be selected made through an open competitive examination. For the employees of DTC in order to be enrolled in the IT cadre, onetime age relaxation was contemplated and was approved by resolution No. 133 of 2007.

7. Later on the policy to have a separate IT cadre, on account of the recession, was shelved, which was challenged by the petitioner. The Tribunal after considering the reasons given by the respondent for shelving the proposal to have a separate IT cadre has held that matters of policy and creation of posts etc. are exclusively in the administrative domain of the respondent and interference by the Tribunal is neither warranted nor desirable. The Tribunal noted that it can interfere only if the decision is contrary to statutory provisions or is patently arbitrary or vitiated by malafides. Relying on *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , it was also held that merely because the petitioners, who are the surplus Conductors, are also doing some of the work of Console/Terminal Operators, it will not entitle them to be absorbed in the regular cadre of Console/Terminal Operators. Reliance was also placed on the decision of the respondent that assigning Conductors, whose overall pay is about Rs. 25,000/- per month, to continue to do data entry work, is not commercially viable, as the said work can be got done by outsourcing it for about at Rs. 8,000/-per month.

8. Learned Counsel for the petitioners has also not been able to make out that the petitioners, who are surplus Conductors, are performing the full duties of the Console/Terminal Operators. The documents relied on by the petitioners only indicates the deployment of some surplus Conductors and Drivers in the pilot project of "pay roll project" in Computer Section which fact cannot be refuted by the petitioners in the facts and circumstances.

9. The Tribunal has noted that grant of pay scale etc. should not be interfered with, as it is purely Executive function which should be left to the Executive or to an expert body relying on *S.C. Chandra and Others Vs. State of Jharkhand and Others*, .

10. The petitioners have also failed to make out a case that after working for a number of years as Console/Terminal Operators, they get a vested right to work only in that capacity or that they cannot be asked to work as Conductors. The

petitioners are not entitled for absorption on the regular basis as Console/Terminal Operators, in the facts and circumstances.

11. Considering the facts and circumstances, the petitioners have failed to make out the case of any illegality or such irregularity in the order of the Tribunal dated 23rd November, 2009 which shall entail interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

12. The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed.