

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 879
T.A. No.

1989

DATE OF DECISION 3rd Aug. 89

Manohar Lal & Ors. Applicant (s)

Shri K.L. Bhatia Advocate for the Applicant (s)

Union of India & Ors. Respondent (s)

Shri M.L. Verma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A)

The Hon'ble Mr. T.S. Oberoi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? } No
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(delivered by Shri T.S. Oberoi, Member).

The applicants before us, in this application, are Miscellaneous Drivers, serving in the Delhi Milk Scheme, New Delhi.

2. Their case, briefly, is that both in the matter of scale of pay and the nature of duties, the Heavy Vehicle Drivers (H.V. Drivers, in short) enjoy the higher scale and greater responsibilities, and hence, they cannot be called upon to perform the latter's duties, involving receipt of milk containers from Central Dairy, have them loaded in vehicles, supplying them at Delivery Points; and after delivery, depositing the empty containers, giving proper account of milk distributed.

and empty containers, etc. They are also responsible for shortages, if any, and for these duties, involving higher responsibility, the H.V. Drivers are paid Rs. 50/- as special pay, besides higher scale of Rs. 320-400 (pre-revised) and Rs. 1150-1500 (revised scale), as against that of Rs. 260-350 (pre-revised) and Rs. 950-1500 (revised), in case of applicants

3. In the matter of educational qualifications also, while the requirement in case of applicants is only primary standard, in case of H.V. Drivers, it is Middle School. Thus, the post of H.V. Drivers is a promotion post for Misc. Drivers, and only those amongst the latter possessing three years' experience and passing departmental test in driving, are considered. The applicants have thus sought for the cancellation or setting aside of the notice dated 10.4.1989, issued by the Transport Officer under Respondent No. 2, and restraining the respondents from posting them on milk distribution duty, which is performed by the H.V. Drivers. They have also sought for directions to the respondents to allow them to perform their normal duties as Misc. drivers, punch their duty cards daily and to pay them their salary regularly.

4. They had also applied under Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987 to join more than one person in a single application, which was allowed.

5. The respondents, in their reply, opposed the application on various counts. Their first objection was that the application was not maintainable, as the applicants had not exhausted the departmental remedy. By referring to certain earlier decisions, the respondents pleaded that the applicants should have first proceeded under the

Industrial Disputes Act, 1947. They also pointed out that supply of milk comes within the essential services, and therefore, in the interest of work and to carry out the duties in the exigencies of work, to ensure supply of milk to Hospitals, military units, citizens at large, deployment of Misc. Drivers to the duties of H.V. Drivers, becomes necessary, for which they are paid extra Rs. 5/- per duty, as against Rs. 50/- per month, in case of H.V. Drivers, and thus, the applicants are adequately compensated by being paid Rs. 150/- per month, i.e. three times the special pay in case of H.V. Drivers. It is only as a temporary measure, to meet the occasional shortage of staff, that the Misc. Drivers are deployed on the milk distribution duties. It was also contended on behalf of the respondents that some of Misc. Drivers, including the applicants, in another O.A. No. 1712/87 filed on 4.12.1987, pending before another Bench of the Tribunal, have claimed parity of pay scale with H.V. Drivers, plus their special pay, and thus, on that account also, the present application is not maintainable.

6. The applicants have also filed rejoinder, reasserting their contentions as per their original application.

7. We have heard the learned counsel for the parties and have given our careful consideration to various points urged by them.

8. As regards the plea regarding non-maintainability of the application, on account of the applicants having not exhausted the remedy available under the Industrial Disputes Act, out of the various decisions of various Benches of this Tribunal, cited by the learned counsel for the Respondents, one of the decisions is in the case of Ram Sarup & Ors. Vs. Union of India & Ors., decided

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by the Principal Bench at New Delhi, on 1.2.1989, wherein some of the other decisions of other Benches, including the Jabalpur Bench, have also been discussed, and wherein it has been held that there is concurrent jurisdiction of this Tribunal to entertain matters covered under the provisions of the Industrial Disputes Act, and that, certain matters which are within the purview of an individual grievance, can also be taken up for individual redress. In fact, this objection was also raised by the learned counsel for the respondents at the time of admission of this application, and after considering various decisions, it was held that this Tribunal has the concurrent jurisdiction alongwith the Industrial Tribunal to hear the matter, besides having writ jurisdiction, as enjoyed by the High Courts. The application was accordingly admitted, vide order dated 17.5.1989, and the objection was over-ruled.

(ii) As regards the plea relating to deputing the applicants in case of emergent duties, when confronted with the proposition, the learned counsel for the applicants readily conceded the right of the respondents to deploy the applicants, on temporary basis, as a short-term measure, to meet some emergency, but not as long-standing arrangement. We hold accordingly that subject to the right of the respondents to detail the applicants once for a while, to meet some emergency, they shall not detail them as such, as a long standing arrangement, without selecting those who may be willing to be appointed as H.V. Drivers, against higher scale of pay, meant for H.V. Drivers.

(iii) In one of the judgments of a Bench of this Tribunal in O.P. No. 1273/88 - Kishan Chand Sharma Vs. Union of India & Ors., rendered on 10.10.1988, it was held that no one can be compelled to accept a

promotion, if one voluntarily chooses to forego. In the present case, the post of H.V. Driver is a promotion post for the Misc. Drivers, as discernible from the scale of pay, educational qualification, training etc. and if the applicants, of their own, do not want to avail of the same, they cannot be compelled to accept the same.

As regards the point that the applicants, besides some others, have already come to seek the same scales as H.V. Drivers, in another O.A., we do not think it necessary to go into that aspect, in the present application before us.

9. As a result of our findings at (i) to (iii) above, we allow the application and direct the respondents not to normally detail the applicants for milk distribution duty as H.V. Drivers. We also direct them to put the applicants on their duties as Misc. Drivers, for which they should be allowed to mark their attendance and punch their cards. The applicants would also be entitled to their salary as Misc. Drivers, for the days for which they might have attended duty but not allowed to mark their attendance, since the filing of this application.

10. The application is disposed of in the above terms, without any order as to costs.

T.S. Oberoi
(T.S. Oberoi)
Member (J)

B.C. Mathur
(B.C. Mathur)
Vice-Chairman (A)