

14

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-2171/91

Date: 22.1.1993

Shri Prawin W. Desai & Ors. Applicants

Versus

Lt. Governor, Delhi & Ors. Respondents

For the Applicants Shri S.C. Gupta, Sr. Advocate
with Shri M.K. Gupta and L.R.
Goel, Advocates

For the Respondents 1-3 Shri B.R. Prashar, Advocate

For Respondent No.4 Shri Govind Mukhoty, Sr. Advocate
with Kanwar C.M. Khan and
Shri Aftab Rasheed, Advocates.

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

We have gone through the records of the case and have
heard the learned counsel for both the parties. The applicants,
who are working as Motor Vehicle Inspectors under the Delhi
Administration, filed this application under Section 19 of
the Administrative Tribunals Act, 1985, praying for the
following reliefs:-

- (i) to set aside and quash the impugned order dated
12/13.12.1990 issued by Deputy Secretary (Transport),
Delhi Administration, whereby he has authorised the

.....

.... 2 ...

Pollution Level Test Inspectors of the
Transport Department to exercise all the
powers of the Motor Vehicle Inspectors as
laid down under the Motor Vehicles Act, 1988
and the rules framed thereunder;

- (ii) to set aside and quash the impugned orders
dated 19.12.1990 and 27.6.1991 making inter-
transfers of Motor Vehicle Inspectors and
Pollution Level Test Inspectors; and
- (iii) to issue directions restraining the respondents
from any further or other orders of inter-transfers
between the two services concerned.

2. On 23.9.1991, the Tribunal passed an interim order
directing that the impugned orders dated 13.12.1990, 19.12.1990
and 27.6.1991, be not given effect to. The interim order has
thereafter been continued till the case was finally heard and
orders reserved on 13.1.1993.

3. According to the applicants, the Motor Vehicle
Inspectors (hereinafter referred to as 'MVIS') and Pollution
Level Test Inspectors (hereinafter referred to as 'PLTIs') have
separate recruitment rules and perform different types of duty.
They do not form a common cadre.

4. According to the recruitment rules for the MVIs which
were notified in 1968, the post is to be filled by promotion,

failing which, by direct recruitment. Driving Test Inspectors with two years' standing in the grade, are eligible for promotion. The scale of pay of the post is Rs. 1600-2660. The educational and other qualifications required for appointment as MVIs are:-

- (i) Degree of a recognised University;
- (ii) Five years' driving experience of all types of vehicles;
- (iii) sufficient knowledge of Motor Vehicles Law and Traffic Regulations; and
- (iv) Instructor's Licence issued by the Directorate of Transport, Delhi.

5. According to the recruitment rules for the posts of PLTI notified in 1987, the post is to be filled up by direct recruitment. The educational and other qualifications prescribed are:-

- (i) Diploma in Automobile Engineering or Diploma in Mechanical Engineering with Automobile as an elective subject; and
- (ii) two years' professional experience in an automobile workshop or automobile manufacturing organisation in their Production Service Centre.
Degree in Automobile Engineering or Mechanical Engineering
Engineering with Automobile as one of the subjects

from a recognised University or equivalent, has been prescribed as a desirable qualification.

6. The applicants have stated that broadly speaking, duties of the MVI's include the power of granting certificate of fitness and road-worthiness of the motor-vehicle. They exercise the powers of Registering and Licensing Officers under the provisions of the Motor Vehicles Act and the rules made thereunder. The duties of PLTI's are to check vehicles for pollution levels.

7. The applicants have stated that MVI's and PLTI's are borne on two separate seniority lists as they belong to two distinct cadres.

8. By the impugned order dated 13.12.1990, it has been decided that PLTI's are authorised to exercise all the powers of the MVI's as laid down under the Motor Vehicles Act, 1988 and rules framed thereunder.

9. The applicants have argued that respondent No. 3 (Deputy Secretary, Delhi Administration) had no authority to issue the aforesaid order. Apart from this, the same is outside the purview of the provisions of the Motor Vehicles Act and the rules framed thereunder. In this context, the applicants have relied upon the letter dated 11.7.1991 from the Development Commissioner-cum-Secretary, Delhi Administration, addressed to the Commissioner (Transport), Delhi Administration, in which it has been stated as follows:-

".....the pollution control inspectors appointed

ꝝ

18

under the scheme namely 'Control of Vehicular Air Pollution from exhaust of motor vehicles' should be directed to put concerted efforts in this direction. To the contrary, it has been observed that the services of Pollution Control Inspectors, appointed especially for checking the vehicular exhaust, are not being utilised for the assigned purpose. Most of the Pollution Control Inspectors have been posted in the various Units of Directorate of Transport who are issuing learning/permanent licences, passing of vehicles, registration of vehicles etc..... I will appreciate if all the Pollution Control Inspectors posted in the various cells are withdrawn and are posted in Pollution Control Cell so that their services can be utilised in an effective way to facilitate the objectives of the scheme."

10. The applicants have also relied upon a letter dated 29.8.1991 from the Joint Secretary, Ministry of Surface Transport, Government of India, addressed to the Delhi Administration objecting to their action and policy embodied in the aforesaid order dated 13.12.1990.

11. The applicants have submitted that the impugned order dated 13.12.1990 adversely affects the members of the cadre to which they belong in two ways - (i) by bringing outsiders into their cadre without authority, and (ii) by transferring them out of their own cadre against their will. They have stated that knowledge of driving has not been prescribed

..... 5.

19

as a qualification for PLTIs. MVIs are not only required to know driving themselves but are also required to issue driving licences. After possessing driving licences, MVIs have to specially pass another driving licence for driving all categories of vehicles before they can be given appointment, while no such requirement is prescribed for PLTIs. MVIs are required to have five years' driving experience for their appointment, while this qualification has not been prescribed for PLTIs.

12. The applicants have referred to Writ Petition No. 2186/91 filed by PLTIs in the Delhi High Court through their Association called 'Technical Executive (Anti-Pollution) Welfare Association. They had sought for an interim order to direct the respondents not to give promotion to the MVIs till the decision of the writ petition. When the applicants came to know about the filing of the writ petition, they moved an application in the Delhi High Court for being impleaded as parties. On 29.8.91, the Delhi High Court dismissed the petition on the ground of want of jurisdiction as service matters of the employees of the Delhi Administration come within the exclusive jurisdiction of this Tribunal.

13. The applicants apprehend that the intention of the respondents, including the Delhi Administration and the Association of the PLTIs is to block the promotions of the applicants to further higher posts by getting PLTIs posted

in the cadre of MVI's and the MVI's posted out of their own cadres.

14. The Delhi Administration has stated in its counter-affidavit that Deputy Secretary (Transport) is fully empowered to issue the orders after prior approval by the Commissioner (Transport), who is the Head of the Department and the appointing authority for MVI's and PLTI's. According to them, Acts or the Rules framed thereunder or the recruitment rules do not debar the Commissioner to issue any such orders in public interest to bring about more efficiency in the department and in order to reduce accidents, etc. No attempt has been made to mix up the cadres of MVI's and PLTI's. Their cadres are still separate.

15. The Delhi Administration has also stated that the functions of PLTI's and MVI's are assigned by the Commissioner (Transport) from time to time. There is no clear demarcation of functions between the two and their duties can be changed at any time, according to the extent of work. They have stated that only those PLTI's will be put on driving test duties who themselves have got the driving licences. They have denied the allegation that there is any attempt to block the promotions of the applicants. What has been done by the respondents is to streamline the functioning of the Department. According to them, assigning different duties to different

Inspectors does not amount to transfer from one cadre to another.

16. Respondent No.4 has filed a separate counter-affidavit in which it has been contended that PLTIs have been appointed as per the provisions of the Motor Vehicles Act, 1988 and Rule 116 of the Central Motor Vehicles Rules, 1989 and they are Inspectors of Motor Vehicles who are empowered to check the pollution levels as Inspectors of the Industries Department. The duties of the vehicles inspection, including pollution checking, driving tests and other jobs were assigned to them by office order dated 26.4.1988. The applicants did not make any representation against the aforesaid office order. They have stated that as per Rule 116 of the Central Motor Vehicles Rules, any officer not below the rank of Sub-Inspector of Police, or Inspector of Motor Vehicle, may direct the Driver or any person incharge of the vehicle, to submit the vehicle for undergoing a test to measure the standard of black smoke or the standard of any other pollution. The members of the Association (Respondent No.4) claim that they fulfil all the qualifications laid down by the Government of India under Section 213 of the Motor Vehicles Act, 1988 and notification issued thereunder in respect of Inspectors of Motor Vehicles. They have also drawn out attention to the judgement dated 24.4.92

in OA-2193/91 (Technical Executive (Anti-Pollution) Welfare Association Vs. Department of Transport and Another) in which the Association had prayed for a direction to the respondents to open a channel of promotion in the existing technical cadre/posts in the department and to create additional posts in the technical cadre in the higher scale in proportion to the posts of PLTIs. They had stated in their application that the members of the Association are discharging the following duties/functions:-

- (i) Driving Test;
- (ii) Inspection/Verification of vehicles;
- (iii) Fitness of vehicles; and
- (iv) Pollution level test of vehicles under the provisions of Section 213 of the Motor Vehicles Act, 1988 and Rule 116 of the Central Motor Vehicles Rules, 1989.

They had claimed that they were performing similar duties/responsibilities as other Motor Vehicle Inspectors though they were having higher qualifications and higher scale of pay. While the Motor Vehicle Inspectors are in the pay-scale of Rs.1600-2660, the PLTIs are in the pay-scale of Rs.1640-2900. The Tribunal disposed of the application with the direction to the respondents to frame a set of appropriate rules, inter alia, providing suitable promotional avenues to PLTIs. The Tribunal further directed that additional posts be created in the existing

technical cadre in the higher scale in proportion to the posts of PLTI.

17. Shri Govind Mukhoty, the learned counsel for respondent No.4, argued that by an executive order, cadres can be merged or split if a policy decision in this regard is taken by the Government. He also relied upon the relevant decisions of the Supreme Court in this regard.

18. In the instant case, there is nothing on record to indicate that there had been a merger of the cadres of MVIs and PLTIs. The respondents have stated so in their counter-affidavit. The only question arising for consideration is whether, in addition to MVIs, PLTIs could also be assigned the duties which are normally assigned to the former category. The learned counsel for respondent No.4 stated that the impugned orders have been passed by the Delhi Administration in public interest as sufficient number of Inspectors are not available in the Union Territory of Delhi, where the number of cars has been on the increase, year by year. In our opinion, as there is no merger of cadres, the mere fact that the Delhi Administration has given the duties of MVIs to PLTIs in public interest, can be called in question only in case the PLTIs are not properly equipped to perform those duties. Similarly, assigning other duties to MVIs can be called in question only if they are not properly equipped to perform those duties.

We are of the opinion that there is no justification for the apprehension of the applicants that their promotional prospects will adversely be affected by the impugned orders as separate seniority lists of MVIs and PLTIs have been maintained by the Delhi Administration.

19. In view of the above, the application is disposed of with a direction to the respondents that while assigning duties to MVIs and PLTIs, it should be ensured that the persons concerned are properly equipped for performing the duties assigned to them. The respondents should further ensure that the seniority and promotional prospects of the persons belonging to each category will remain unaffected by the assignment of such duties. - The application is disposed of accordingly. The interim order passed on 23.9.1991, and continued thereafter, is hereby vacated with the aforesaid observations. There will be no order as to costs.

B.N. Dholi
(B.N. Dholi)
Administrative Member

22/11/93
(P.K. Kartha)
Vice-Chairman (Judl.)