

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 239 OF 2009

Monday....., this the 23rd day of November, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. R. Sugathan,
Retired Motor Lorry Driver,
Trivandrum Central Division Electrical,
CPWD, CGO Complex,
Poonkulam, Vellayani P.O.,
Thiruvananthapuram.
2. R. Vasudevan Nair,
Retired Motor Lorry Driver,
Trivandrum Central Division Electrical,
CPWD, CGO Complex,
Poonkulam, Vellayani P.O.,
Thiruvananthapuram.

... Applicants

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

versus

1. The Executive Engineer,
Central Electrical Division, CPWD,
CGO Complex, Vellayani P.O.,
Thiruvananthapuram.
2. The Executive Engineer (Civil),
CPWD, CGO Complex, Vellayani P.O.,
Thiruvananthapuram.
3. The Chief Engineer (Electrical),
CPWD, Rajaji Bhavan,
Chennai.
4. The Chief Engineer (Civil),
CPWD, Koramangalam,
Bangalore.
5. The Director General of Works,
Central Public Works Department,
Nirman Bhavan, New Delhi - 11.

... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 18.11.2009, the Tribunal
on23-11-09..... delivered the following:

ORDER**HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER**

The Principal Bench of the Tribunal had, in its order dated 22nd October 2002 in O.A. No. 8/2002 (Annexure A-7 to this OA) dealt with the case of revision of pay of Motor Lorry Drivers (MLD for short) of CPWD. The MLDs sought pay parity with Staff Car Drivers whose pay scales were as under :-

| <u>Sl. No.</u> | <u>Grade</u> | <u>Pay Scale</u> |
|----------------|----------------|------------------|
| 1. | Ordinary Grade | Rs. 3050 – 4590 |
| 2. | Grade II | Rs. 4000 – 6000 |
| 3. | Grade I | Rs. 4500 – 7000 |
| 4. | Special Grade | Rs. 5000 – 8000 |

2. The Tribunal, after due consideration held in that case as under :-

"6. The decision of the Supreme Court in the case of Randhir Singh Vs. Union of India & Ors. (1982) 3 SCR 298 provides the necessary guidelines. Almost similar question came up for consideration before the Apex Court. The applicant therein was a Driver in Delhi Police Force. He was seeking parity of pay scale with the Drivers in Delhi Administration. The Supreme Court allowed his request. Identical is the position herein. In the absence of any other circumstance being pointed, we allow the present petition and direct that the applicants would be entitled to the same scale of pay as SCDs."

3. On implementing the afore said order, vide (Annexure A-8) Office Memorandum dated 26-02-2003, the respondents had made the order effective from 01-12-2001, which coincided with the filing of the afore said O.A., vide the order of the Tribunal *ibid*. Later on, the respondents have made a minor amendment, vide Annexure A-1 order dated 21-03-2003, which *inter alia* reads as under :-

"In this connection, it is clarified that the eligible Motor Lorry Drivers are entitled to get their pay scales fixed notionally w.e.f. 01-01-1996 and cash benefits w.e.f. 01-12-2001 as per the above quoted orders of the Hon'ble CAT.

However, the Motor Lorry Drivers to whom the benefit of Assured Career Progression Scheme introduced by the DoPT w.e.f. 09-08-99 has been passed on and who have availed the cash benefit also, in their case, adjustments may be made while passing on the benefits of Staff Car Drivers Scheme to them as per the orders of the Hon'ble Tribunal quoted above as while introducing the Staff Car Drivers Scheme to the Motor Lorry Drivers of CPWD, the benefits of ACP Scheme have been withdrawn by the competent authority."

4. The two applicants in this O.A. were functioning as Motor Lorry Drivers and retired from services, respectively from 30-06-2001 and 30-11-1999. The first applicant had put in 25 years of service from May 1976 while the second applicant had at his credit service of 27 years, he having commenced his service career on 06-11-1972. According the pay revision as applicable to the Staff Car Drivers, which has been extended to the Motor Lorry Drivers as above, the ordinary Grade Motor Lorry Driver was treated as the basic grade. Those with 9 years regular service in the ordinary grade were eligible for Grade II MLD; those with 6 years service as MLD Grade II would be eligible for MLD Gr. I and those with three years service as MLD Gr. I were eligible as MLD Special Grade. As all the above posts were to be filled up by promotion from the basic grade onwards, with the new hierarchy, those with 15 years of service as MLD were eligible to be considered for fixation of pay in the pay scale attached to Grade I, subject to availability of vacancy and found fit by DPC and passing of trade Test.



5. The applicants were afforded only ACP benefits as available as on 9th August, 1999 and when they represented for revision of pay scale w.e.f. 01-01-1996, their claim, after their first round of litigation whereby, in O.A. No.290/08, respondents were directed to take decision on the pending representation, was rejected by the respondents, vide Annexure A-6 impugned order, which reads as under:-

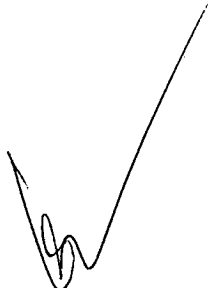
"1. Whereas, the case has arisen consequent on the implementation of the CAT's judgment dated 22.10.2002 in O.A. No.8/2002 filed by CPWD Mazdoor Union, as per which promotion scheme for Staff Car Driver was to be adopted for the Motor Lorry Drivers also in lieu of ACP Scheme.

2. Whereas, you have filed O.A. No.290/08 contending that the promotion Scheme for staff Car Driver adopted for the Motor Lorry Drivers was not extended to you for which you are eligible and therefore the scheme shall be implemented in your case and that your pensionary benefits shall also be revised accordingly.

3. (a) Whereas, Director General (Works), CPWD, New Delhi has issued orders vide No.19/4/2002-EC-X dated 26-02-2003 and 05-01-2007 (Copies enclosed) as per which promotion scheme for Motor Lorry Drivers in lieu of ACP Scheme, shall come into force with effect from 1.12.2001 and is therefore applicable only to those Motor Lorry Drivers who were in service as on 1.12.2001.

(b) Whereas, the retrospective fixation of pay with effect from 1.1.1996 is applicable to only those Motor Lorry Drivers who were in service as on 1.12.2001.

4. Whereas, you have retired as M.L.D. on 30.11.1999.



5. Whereas, you were not in service as on 01.12.2001 and therefore, the said scheme is not applicable in your case.

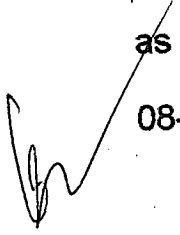
6. Whereas, your representation has been considered in accordance with the rules on the subject as explained above and it is found that you are not eligible for benefits under new promotion scheme for Motor Lorry Drivers introduced in 2003.

7. And, on reasons explained in the preceding prayers, your request for extending the benefits under the new promotion scheme for Motor Drivers, introduced in 2003, cannot be acceded to."

6. The applicants have challenged the afore said Annexure A-6 rejection order .

7. Respondents have contested the O.A. According to them, since the applicants stood retired from service as on the crucial date 01-12-2001, they are not entitled to any benefit, including the notional fixation of pay at par with the pay scale of the Staff Car Drivers. Again, it has been contended that since the O.A. before the Principal Bench had been filed by the CPWD Union, obviously it would be espousing the cause only of its then existing members and since the applicants stood retired before the filing of the O.A. by the Union before the Principal Bench, no benefits could be available to the applicants. The applicants are not eligible motor lorry drivers.

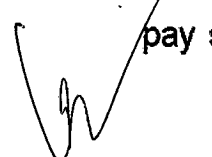
8. The applicants have filed their rejoinder, reiterating their contentions as in the O.A. and also annexing copy of order No. 10(1) TCD/08/1421 dated 08-08-2008 addressed to the second applicant.



9. Counsel for the applicants argued that there is no justification in denying the benefit of revised scale of pay on the ground that the applicants were not in service on the date of 01-12-2001. The said date is the date of filing of the O.A. before the Principal Bench and the same has nothing to do with the initial notional fixation of pay. Thus, the applicants may not be the 'eligible drivers' as on 01-12-2001 to reap the actual revised pay whereas, as of 01-01-1996, they cannot but be held to be the eligible drivers to enjoy the notional fixation of the revised pay scale. As such, the applicants are declared to be entitled to the higher pay scale which is universally applicable to all in the cadre, without exception.

10. Counsel for the respondents invited to para 8 of the counter, which relates to the technical objection that the applicants cannot be said to be members of the Union applicant.

11. Arguments were heard and documents perused. The technical objection has to be marginalized as the judgment passed by the Principal Bench has been implemented in respect of all the Motor Lorry Drivers and the same is thus a judgment in rem. Thus, the pay scale for all the M.L.Ds had been revised from 01-01-1996. Those were the only pay scales available on and from 01-01-1996 and the earlier pay scales were withdrawn. As such, there cannot be a pay scale other than the one as per revised pay scale which is admissible to all the MLDs in the roll call as on 01-01-1996. Since the applicants were entitled to higher pay scale, denial of the said scale to them cannot but be held to be illegal. Had the applicants continued on and after 01-12-2001, their entitlement would have been, (a) Notional pay in the revised pay scale w.e.f. 01-01-1996 and (b) actual pay in the revised pay scale w.e.f.




01-12-2001. However, since the applicants superannuated anterior to 01-12-2001, the benefit at (b) above could not be made available. The same cannot, however, entail denial of the benefit available vide (a) above, as the applicants were very much in service as on 01-01-1996. Thus, the applicants are entitled to notional pay w.e.f. 01-01-1996 at the appropriate grade on the basis of their services rendered as on 01-01-1996 and this notional pay would form the basis for working out their pension. As none of the serving employees was afforded actual pay prior to 01-12-2001, the applicants also cannot be made entitled to actual pension on the basis of their notional pay for the period anterior to 01-12-2001. Pension on the basis of their revised pay would, therefore, be worked out only from 01-12-2001.

12. In view of the above, this O.A. is allowed to the extent as under:-

(a) It is declared that the applicants are entitled to the pay scale of 4500 – 700/5000 – 8000 as the case may be on the basis of the total services rendered as Motor Lorry Drivers, w.e.f. 01-01-1996;

(b) Their pay in the said scale shall only be notional.

(c) The average ten months pay of the applicant prior to their superannuation/ pay on the date of superannuation, as the case may be, shall be calculated as above, adding the usual annual increments as per the rules, which shall form the basis for working their pension (and not gratuity or other lump sum amount paid as a part of terminal benefits).



(d) Such a pension shall also be notional till 30th November, 2001.

(e) Actual pension on the basis of revised pay shall be payable from the month of December, 2001. Necessary PPO and endorsement of Family Pension shall be issued on the basis of the revised pension.

(f) Revision of pension as per the latest orders on pension shall be worked out keeping in view the revised pay scale available to them w.e.f. 01-01-1996.

(g) Arrears of pension shall be worked out and paid w.e.f. Pension for December, 2001. ACP Benefits if any, already afforded may be adjusted against the arrears payable to the applicants

(h) The entire drill shall be completed within a period of six months from the date of communication of this orders.

13. No cost.

(Dated, the 23rd November, 2009.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN
JUDICIAL MEMBER