

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A.NO.1603 OF 2014

New Delhi, this the 21<sup>st</sup> day of April, 2016

**CORAM:**

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER  
AND  
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

Rajesh Gomes, aged 52 years,  
s/o Sh.Rizku Gomes,  
R/o G-13, Prithviraj Lane,  
Khan Market,  
New Delhi 110003

í í í Applicant

(By Advocate: Mr.Amit Kumar)

Vs.

New Delhi Municipal Council (NDMC) & Others through:

1. The Chairman,  
NDMC,  
Palika Kendra,  
Sansad Marg,  
New Delhi
2. The Secretary,  
NDMC,  
Palika Kendra, Sansad Marg,  
New Delhi
3. The Director (Personnel),  
NDMC,  
Palika Kendra, Sansad Marg, New Delhi

(By Advocate: Mr Rainish Vats)

1 ..

## **ORDER**

### **RAJ VIR SHARMA, MEMBER(J):**

The applicant has filed the present O.A. seeking the following reliefs:

- ña) Direct the respondent to regularize the service of the applicant from the date of initial appointment since he has been holding the Driving License of HMV at par with Rama Kant Rai.
- b) Direct the respondents to regularize the applicant as LMV Driver w.e.f. 22.02.1994 on the analogy of Om Prakash Dabas case with all consequential benefits, as recommended by the CRG vide its recommendation dt.03.01.2013 while disposing of the representation dated 01.03.2012 of the applicant and regularize/promote the applicant as HMV driver since 1997 with all consequential benefit i.e. with effect from the date when his similarly situated colleagues have been regularized as HMV Driver by the respondents on its own as well as on the directions of the Hon'ble High Court as the applicant has been driving HMV vehicle through the years since his initial appointment as TMR in the year 1986 till date, with all consequential benefit including arrears with interest 18% per annum with cost of litigation.
- c) Any other relief/reliefs which this Hon'ble Tribunal may deem fit and proper in the fact and circumstance of the case.ö

2. In their counter reply, the respondents have opposed the O.A.

The applicant has filed a rejoinder refuting the stand taken by the respondents.

3. The brief facts of the case, which are not disputed by either side, are as follows:

3.1 The respondent-NDMC initially engaged the applicant on Temporary Muster Roll (TMR) as Driver with effect from 3.9.1986, and extended his engagement up to 31.12.1989, vide order dated 1.11.1989. While the applicant was working on TMR as Driver, the respondent-NDMC, vide its letter dated 7.7.1994, called upon him to appear in the trade test for his engagement on Regular Muster Roll (RMR) as Driver. The applicant appeared and qualified in the said trade test. The respondent-NDMC, vide office order dated 25.8.1994 (Annexure A/6), engaged the applicant on RMR as Driver.

3.2 While the applicant was working on RMR as Driver, the respondent-NDMC, vide letter dated 12.7.1996 (Annexure A/7), called upon him and others to appear in the trade test on 18.7.1996 for appointment to the post of Driver (HMV) in the pay scale of Rs.1350-2660/- . But, subsequently, the respondent-NDMC did not allow the applicant and some others to appear in the said trade test on the grounds that they had not moved the Hon'ble High Court, and that the said trade test was conducted only in respect of the RMR Drivers who had moved the Hon'ble High Court for regularization of their services. While the matter stood thus, C.W.No.646 of 1994 and C.W.Nos.4125 and 4760 of 1995, which were filed by some TMR/RMR Drivers seeking regularization of their services, came to be disposed of by the Hon'ble High Court, vide order dated 8.10.1996, with a direction to the respondent-NDMC to conduct a trade test and to offer regular appointment to the successful candidates as HMV Drivers. In

compliance with the directions issued by the Hon'ble High Court, the respondent-NDMC conducted the trade test, and appointed 12 persons as HMV Drivers, vide posting slip dated 5.6.1997 (Annexure A/8).

3.3 As the applicant and three others were not allowed to participate in the aforesaid trade test, W.P. (C) No. 4844 of 1999 was filed by them before the Hon'ble High Court of Delhi. The Hon'ble High Court disposed of the said writ petition, vide order dated 15.5.2008 (Annexure A/9), the relevant portion of which is reproduced below:

„..Respondent/NDMC will conduct trade test within 8 weeks and on the petitioners clearing the trade test and on approval by the Selection Committee they will be appointed on regular basis as LMV Drivers depending upon vacancy position and subject to their satisfying all conditions mentioned in the order passed in Writ Petition No.646/1994 and other cases.„

3.4 In compliance with the order dated 15.5.2008 passed by the Hon'ble High Court of Delhi, the respondent-NDMC conducted the trade test, and issued order dated 25.8.2008 (Annexure A/10) appointing the applicant and another as LMV Drivers-cum-Fitters with immediate effect on ad hoc basis on consolidated salary of Rs.6925/- (excluding HRA) in the pay scale of Rs.3050-4590 (CPC), subject to police verification. Thereafter, vide office order dated 17.3.2009 (Annexure A/10) issued by the respondent-NDMC, the services of the applicant and another were regularized as LMV Drivers-cum-Fitters in the pay scale of Rs.3050-4590/- with usual allowance, including HRA.

3.5 After the orders dated 25.8.2008 and 17.3.2009 (Annexure A/10 collectively) were issued by the respondent-NDMC appointing him and regularizing his services as LMV Driver-cum-Fitter, the applicant made a representation dated 1.3.2012 requesting the respondent-NDMC to appoint him and regularize his services as HMV Driver from 1997. Thereafter, the applicant also approached the Committee for Redressal of Grievances, NDMC, in the matter. Considering the case of the applicant, the said Committee, vide its proceedings dated 3.1.2013(Annexure A/13), recommended that the Personnel Department of the NDMC should consider his request in the light of the decision of the Tribunal in the case of Sh.Om Prakash Dabas, Driver.

3.6 Accordingly, the respondent-NDMC considered the applicant's claim, but rejected the same, vide its order dated 6.8.2013 (Annexure A/1), the relevant portion of which is reproduced below:

5. Further, Sh.Om Prakash Dabas has been regularized to the post of LMV Driver-Cum-Fitter w.e.f. 22.02.1994 vide Hon'ble CAT order dated 23.09.2010.
6. The representation of Sh.Rajesh Gomes for appointment to the post of HMV Driver-cum-Fitter from the back date, i.e., from 22.02.1994 has been examined and cannot be acceded as per the above judgment of the Hon'ble Court of Delhi vide writ petition No. WC (C ) 4844/1999 and order dated 15.05.2008. Sh.Rajesh Gomes cleared the trade test in the year 2008 pursuant to and in compliance of the directions of the Hon'ble High Court of Delhi consequently on passing the trade test services of Sh.Rajesh Gomes are regularized as a LMV Driver w.e.f. 25.08.2008. Moreover, the post of HMV Driver-cum-Fitter is feeder cadre post of LMV Driver-Cum-Fitter and hence, the representation of Sh.Rajesh Gomes for the post of HMV Driver-Cum-Fitter cannot be considered.ö

4. In the above backdrop, the applicant has contended, *inter alia*, that since the date of his initial engagement on TMR as Driver, he is having a valid HMV Driving License. He has been working against the sanctioned and vacant post of HMV Driver since the date of his initial engagement on TMR as Driver in the year 1986. The resolution passed by the respondent-NDMC in the year 1992 for formation of two categories of Drivers, namely, LMV Driver, and HMV Driver, is not applicable to his case, because he was initially engaged on TMR as Driver in the year 1986. The respondent-NDMC ought to have regularized his services as HMV Driver in the year 1997 when the services of his colleagues were regularized as HMV Drivers. He being similarly placed as S/Shri Rama Kant Rai, Caretaker, and Shri Om Prakash Dabas, Driver, whose services were regularized with effect from the dates of their initial engagement, the respondent-NDMC acted arbitrarily and illegally in denying regularization of his services with effect from the date of his initial engagement on TMR as Driver.

5. *Per contra*, the respondents have contended, *inter alia*, that the applicant was not initially engaged on TMR as Driver against any sanctioned and vacant post of Driver. The matter relating to regularization of services of the applicant has already been decided by the Hon'ble High Court of Delhi. As per the direction issued by the Hon'ble High Court, the trade test was conducted, and on the basis of the result of the applicant in the trade test, his services were regularized as LMV Driver with effect from 25.8.2008. His claim for regularization of services as LMV Driver from 22.2.1994, when

the services of Sh.Om Prakash Dabas were regularized as LMV Driver-cum-Fitter, was rejected, because he did not pass the trade test for the post of LMV Driver by 22.2.1994, whereas Sh. Dabas had passed the said trade test by that date. The applicant is also not similarly placed as Shri Rama Kant Rai, Caretaker, and, therefore, his claim for regularization of his services as LMV/HMV Driver with effect from the date of his initial engagement on TMR as Driver is untenable.

6. We have given our anxious consideration to the facts and circumstances of the case, and the rival contentions of the parties.

7. In the present O.A., by citing the case of Shri Rama Kant Rai, Caretaker, the applicant has claimed regularization of his services with effect from the date of his initial engagement on TMR as Driver. The applicant has filed copies of the posting slip dated 2.5.1994 issued by the respondent-NDMC in favour of Mr.Rama Kant Rai and another; the award dated 28.2.2004 passed by the Industrial Tribunal-II, Karkardooma Courts, Delhi, in I.D. No.12 of 2000 (M/s NDMC Vs. Its Workmen Sh.Rama Kant Rai & another); the judgment dated 6.3.2009 passed by the Hon'ble High Court of Delhi in W.P.(C) No. 2273 of 2005 (N.D.M.C. Vs. Shri Rama Kant Rai); the office order dated 21.5.2009 issued by the respondent-NDMC regularizing the services of Mr.Rama Kant Rai as Caretaker with effect from 2.5.1994; the order dated 22.8.2006 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 18559 of 2004; and the office order dated 16.12.2009 issued by the NDMC regularizing the services of Mr.Shakeel Ahmed as Caretaker

with effect from 6.5.1994, i.e., the date of his initial appointment. On a careful perusal of these documents, we have found that prior to their initial appointment as Caretaker on ad hoc basis, S/Shri Rama Kant Rai and Mohd.Shakeel Ahmed were working as Peons with the respondent-NDMC. The dispute between the NDMC and S/Shri Rama Kant Rai and Mohd. Shakeel Ahmed was referred by the Government of NCT to the Industrial Tribunal for adjudication. The term of reference was as to whether Sh.Rama Kant Rai and Sh. Shakeel Ahmed, Caretakers, were entitled to the pay scale of Rs.4000-7100/- as was being provided to their regular counterparts and if so, what directions were necessary in that respect. The award was passed by the Industrial Tribunal declaring that Shri Rama Kant Rai (the contesting workman) was entitled to the pay scale of Rs.950-1500/- from 2.5.1994 till 31.12.1995 and pay scale of Rs.4000-7100/- w.e.f. 1.1.1996 onward till he worked as Caretaker on ad hoc basis. Though the writ petition was filed by the NDMC challenging the Industrial Tribunal's award, yet a compromise was entered into by and between the NDMC and Mr.Rama Kant Rai, as a consequence of which it was agreed by the NDMC to regularize the services of Sh.Rama Kant Rai as Caretaker Grade II from the date of his initial appointment as Caretaker on ad hoc basis w.e.f. 2.5.1994 in the pay scale of Rs.950-1500/- which stood revised to Rs.4000-7000/- with effect from 1.1.1996. An affidavit to that effect was filed by the NDMC before the Hon'ble High Court. In this affidavit it was stated that the said settlement might not be treated as a precedent. In the light of the aforesaid affidavit,

the Hon'ble High Court disposed of the writ petition. Accordingly, the NDMC issued office order dated 21.5.2009 regularizing the services of Sh.Rama Kant Rai as Caretaker with effect from 2.5.1994, i.e., the date of his initial appointment as Caretaker on ad hoc basis. The Hon'ble High Court also granted the same relief to Mohd. Shakeel Ahmed in the writ petition filed by him. Consequently, the NDMC issued office order dated 16.12.2009 regularizing the services of Mohd Shakeel Ahmed as Caretaker with effect from 6.5.1994, i.e., the date of his initial engagement as Caretaker on ad hoc basis.

8. From the foregoing, it is clear that the applicant in the present case is not similarly placed as Mr.Rama Kant Rai. While the applicant was initially engaged on TMR as Driver, Shri Rama Kant Rai was appointed as Caretaker on ad hoc basis with effect from 2.5.1994. Furthermore, before his ad hoc appointment as Caretaker on ad hoc basis, Shri Rama Kant Rai was working as a Peon with the respondent-NDMC. The NDMC regularized the services of Shri Rama Kant Rai as Caretaker with effect from 2.5.1994, i.e., the date of his initial appointment as Caretaker on ad hoc basis, in compliance with the award passed by the Industrial Tribunal, and the judgment passed by the Hon'ble High Court of Delhi. Therefore, in the present case, the applicant cannot be allowed to claim to be treated at par with Shri Rama Kant Rai.

9. In support of his claim for regularization of his services as LMV Driver w.e.f. 22.2.1994, the applicant has cited the case of Shri Om

Prakash Dabas. It is the admitted position between the parties that the services of Shri Om Prakash Dabas were regularized as LMV Driver-cum-Fitter with effect from 22.2.1994 on the basis of the order dated 23.9.2010 passed by the Tribunal in T.A.No.5 of 2010 (New Delhi Municipal Council Vs. Om Prakash Dabas). It transpires from the order dated 23.9.2010, *ibid*, that Shri Om Prakash Dabas was taken on RMR as HMV Driver with effect from 5.2.1987. In compliance with the direction of the Hon'ble High Court of Delhi, his services were regularized as LMV Driver-cum-Fitter with effect from 16.6.1997. Subsequently, he filed a civil suit for regularization of his services from 1994. The grievance of Shri Om Prakash Dabas was that despite his passing the trade test in the year 1994, the NDMC denied regularization of his services, whereas the services of his juniors were regularized in the year 1994. The learned Senior Civil Judge held that Shri Om Prakash Dabas was entitled to regularization of his services as LMV Driver from 1994, in which year he had passed the trade test. Accordingly, the civil suit filed by Shri Om Prakash Dabas was decreed by the learned Senior Civil Judge. The appeal, against the judgment and decree passed by the learned Senior Civil Judge, preferred by the NDMC was transferred to the Tribunal and registered as TA No.5 of 2010. Dismissing the T.A., the Tribunal, vide order dated 23.9.2010, held, *inter alia*, that there was no valid reason for the NDMC to have denied regularization to Shri Om Prakash Dabas from the year 1994, as he had passed the prescribed trade test in the year 1994. Accordingly, in compliance with the judgment and

decree passed by the learned Senior Civil Judge, as upheld by the Tribunal, the NDMC regularized the services of Shri Om Prakash Dabas as LMV Driver-cum-Fitter with effect from 22.2.1994. It is, thus, clear that the applicant is not similarly placed as Shri Om Prakash Dabas. The services of Shri Om Prakash Dabas were regularized as LMV Driver-cum-Fitter with effect from 22.2.1994, as he had passed the prescribed trade test in the year 1994, whereas the applicant passed the prescribed trade test only in the year 2008 and his services were regularized as LMV Driver with effect from 25.5.2008. It is pertinent to mention here that in compliance with the direction issued by the Hon'ble High Court of Delhi, the respondent-NDMC conducted the prescribed trade test for the applicant and others in the year 2008. The applicant appeared in the said trade test. As he passed the said trade test, the respondent-NDMC regularized his services in the post of LMV Driver-cum-Fitter with effect from 25.8.2008. In the above view of the matter, we do not find any merit in the claim of the applicant for regularization of his services with effect from 22.2.1994 when the services of Sh. Om Prakash Dabas were regularized as LMV Driver-cum-Fitter. The applicant has not placed before this Tribunal any rule, or orders issued by the respondent-NDMC, showing that services of any RMR Driver could be regularized as LMV Driver-cum-Fitter with effect from a date by which he did not pass the prescribed trade test.

10. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SUDHIR KUMAR)**  
**ADMINISTRATIVE MEMBER**

AN