

PETITIONER:
D.T.C . WORKERS' UNION & ORS.

Vs.

RESPONDENT:
DELHI TRANSPORT CORPORATION

DATE OF JUDGMENT 02/04/1991

BENCH:
THOMMEN, T.K. (J)
BENCH:
THOMMEN, T.K. (J)
SAHAI, R.M. (J)

CITATION:
1991 SCR (1) 984 1991 SCC (2) 618
JT 1991 (2) 49 1991 SCALE (1) 536

ACT:
Pay Scales-D.T.C. employees-Implementation of
recommendations of Fourth Pay Commission-Office Order
No.DGM(IR)/84/90 dated 7.2.1984-Construction of.

HEADNOTE:

The D.T.C. Workers' Union and some of its members have filed this Writ Petition under Article 32 of the Constitution praying, as the main relief, for issue of a Writ of Mandamus or Direction to the respondent-Corporation to implement w.e.f. 1.1.86 the recommendations of the Fourth Pay Commission as approved by the Government of India to the Central Government employees as per the undertakings given to its employees vide Office Orders No.PLD-IX (465/83/10589 dated 15.9.1983 and DGM(IR)/84/90 dated 7.2.1984. Relying on the undertakings given in the said Office Orders it has been contended on behalf of the petitioners that the D.T.C. employees will be entitled not only to new pay-scales as recommended by the Fourth Pay Commission to the corresponding categories in the Central Government but more in the shape of interim reliefs which they have enjoyed during the period of interregnum between their original pay-scale and the new pay-scales.

On behalf of the Corporation it has been submitted that all the reliefs which its employees had earlier received, be it additional payment in the nature of interim relief in the sum of Rs.50 or Rs.70 as the case may be, or the revised interim pay-scale, pending adoption of the new scale recommended by the Fourth Pay Commission, would merge into the new scale and they would have no entitlement to any additional payment as any such differential treatment will be discriminatory and, therefore, unsustainable.

Disposing of the Writ Petition, this Court,

HELD: The overriding consideration behind the Order dated 7.2.1984 is that, as in the case of all Government employees, so in the case of the Corporation employees, the new scales recommended by the Fourth Pay Commission should be fully implemented. Whatever may be the amounts actually payable in terms to the interim reliefs, the

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employees of the Corporation should neither be paid less nor more than the Government employees in the corresponding

categories.[989C]

All employees, whether retained on the original pay-scale or placed on the revised interim pay-scale during the period preceding 1.1.86, will be placed on the pay-scale adopted as per the recommendations of the Fourth Pay Commission in such a way that will be fitted exactly in positions corresponding to their positions on the earlier pay-scales. But the corresponding positions in the new pay-scale will naturally carry better emoluments, so as to maintain parity with the Government employees in like categories. We have no doubt that the recommendations of the Fourth Pay Commission will be fully implemented in terms thereof. [989D-E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ petition No. 320 of 1987.

(Under Article 32 of the Constitution of India.)

Jitender Sharma for the Petitioners.

Kepil Sibal, Ms. Tamali Das Gupta, Ms. J. Wad and Mr. R.Venkataramani (NP) for the Respondent.

The Judgement of the Court was delivered by

THOMMEN, J. This petition has been filed by the D.T.C. Workers' Union and some its members. The main relief sought by them, as contained in prayer (a), reads:

"Issue a Writ of Mandamus or Direction to the respondent the Delhi Transport Corporation to implement w.e.f. 1.1.86 the recommendations of the Fourth Pay Commission as approved by the Government of India to the Central Government employees as per the undertakings gives to its employees vide Office Order NO.PLD-IX(465)/83/10589 dated 15.9.1983 and DGM(IR)/84/93 dated 7.2.1984."

The petitioners as well as the respondent, the Delhi Transport Corporation, rely heavily upon the Office Order No. DGM(IR)/84/90 dated 7.2.1984 issued by the Deputy General Manager of the respondent-Corporation, although they differ in their construction of what it contains. We shall, therefore, read the whole Order;

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".....Before Interim Relief was announced by the Central Government for its employees to be paid w.e.f. 1.6.83, the Wage Group constituted by the Government of India for considering the demand regarding revision of pay-scales of the employees of the Delhi Transport Corporation gave its report recommending revision of pay-scales of all the Class III & IV employees as an interim measure pending receipt of Fourth Pay Commission report. Thus the revised scales themselves were in the shape of an interim relief. As interim relief was announced by the Government for its employees almost simultaneously some unions approached the Management opposing the introduction of new scales and asking for the interim relief as at the Government rates. It was explained to them that the revised scales have a greater in built advantage as the benefit in some cases go even over hundred rupees while interim relief for workers was fifty to seventy rupees. However, an option was given vide circular No.PLD-IX(465)/83/10589 dated 15.9.83 to the employees of the Corporation either to avail the benefit of interim relief and retain the old pay scales or to avail the benefit of the revised pay-scales. In reference to the clarification

sought by the Unions, it was made absolutely clear beyond any ambiguity to the employees that -(1) there is absolutely no intention to de-link the DTC from the Central Government pay-structure and DA pattern arbitrarily or unilaterally; (ii) if the Fourth Pay Commission granted any further interim relief or benefit before the final report, such benefit will be available to the DTC employees; (iii) the differential in the head start now given in the pay-scales will be maintained even while implementing the scales recommended by the Fourth Pay Commission and (iv) the payscales recommended by the Working Group would be enforceable for a period of four year or the receipt of report of the Commission whichever is earlier. It has already been made amply clear that differential in "head start" given in the revised pay scales will be maintained even while implementing the scales recommended by the Fourth Pay Commission. In fixation of pay in the scales to be recommended by the Fourth Pay Commission, the employees coming over to the revised scales of pay will be given due benefit of Central Government Interim Relief so as to ensure that they are not at any disadvantage because of having opted for the revised scales now. For instance, if the

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pay of an individual in the pay-scale of Rs.260-400 drawing a basic pay of Rs.260 per month who had opted for interim Relief at Central Government rates is fixed at Rs.310 p.m. by adding Rs.50 as Interim Relief a Basic Pay of Rs.260 whereas the pay of an employee who has opted for corresponding revised pay-scale of Rs.284-440 and is drawing Basic pay of Rs.284 p.m. will be fixed at Rs.334 p.m. by adding Rs.50 to his Basic Pay of Rs.284. In this connection our circular NoPLD-IX(465) 83 dated 20.9.93 referees.

It has been clearly shown in the above illustrations as to how the revised pay-scales will be beneficial to the employees. It is opted that the employees will not be misled now by any such interpretation which is being placed on the Ministry of Finance's O.M. of 28th November, 1983."

Referring to the concept of "head start" mentioned in the Order, Mr. Jitender Sharma, appearing for the petitioners, submits that it being the intention of the Corporation to protect the interim relief granted to the employees, notwithstanding the recommendations of the Fourth Pay Commission, the employees are entitled to the interim relief, referred to as the "head start", in addition to the pay-scale recommended by the Fourth Pay Commission. In other words, according to Mr. Sharma, the employees will be entitled not only to the new pay-scale recommended by the Fourth Pay Commission, but more in the shape of interim reliefs which they had enjoyed during the period of the interregnum between their original pay-scale and the new payscale.

Mr. Kapil Sibal, appearing for the respondent-Corporation, submits that all that the Order dated 7.2.1984 has intended to state is that the "head start" in the form of interim relief will not deprive the employees of the full benefits of either the revised interim pay-scale, i.e., the scale as revised during the interregnum, or the new pay-scale subsequently introduced as per the recommendations of

the Fourth Pay Commission. The employees had the option either to accept the additional payment in the nature of an interim relief in the sum of Rs.50 or Rs.70 as the case may be, or the revised interim pay-scale which was itself in the nature of an interim relief, pending adoption of the new scale recommended by the Fourth Pay Commission. But once the employees are placed on the scale recommended by the Fourth Pay Commission, all the reliefs which they had earlier received would merge into the new scale and they would have no entitlement to any

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additional payment. Any payment in addition to what the Fourth Pay Commission recommended would place the employees of the Corporation at an undue advantage in comparison to the employees of the Government in Corresponding grades. Any such deferential treatment, counsel points out, will be discriminatory and, therefore, unsustainable.

Mr. Sharma, however, refers to the scales of pay relating to the category of conductors, tailors,compositors etc. Their scale of pay prior to June, 1983 was Rs.260-6-290-EB-6-326-EB-8-390-10-400. A revised interim scale was introduced on 1.6.1983. This scale was Rs.284-8-340-10-440. On 1.1.86, a new scale was introduced on the basis of the recommendations of the Fourth Pay Commission. That scale is Rs.950-20-1150-EB-25-1500. This shows that, prior to 1.1.1986, an employee on the scale of Rs.260-400 as on 31.5.1983 had the option either to remain on that scale and draw an additional allowance or be placed on the revised interim scale of Rs.284-440 . On 1.1.1986 all employees in the category of conductors etc., came on the scale of Rs.950-1500 whether or not, prior to that date, they had, in exercise of their option, remained on the original scale or Rs.260-400 with the additional allowances or been placed on the revised interim scale Rs.284-440. According to Mr. Sharma, the "head start" promised by the Corporation means the additional allowances or revised scales recieved by the employees during the interregnum, and such benefits have to be super imposed over the new scale of Rs.950-1500. He further submits, insofar as none of the employees of the Corporation had opted to remain on the original scale with the additional allowances, but had come on the revised interim pay-scale, all the employees brought on the new pay-scales on 1.1.86 are entitled to be fitted with reference to the total emoluments drawn on the revised interim scale.

A careful reading of the Order dated 7.2.1984 shows that certain interim benefits were granted to the employees preceding the introduction of the new pay-scale on the basis of the recommendations of the Fourth Pay commission. These benefits which were either in the nature of an additional payment or a revised interim pay-scale were intended to cover the period preceding the introduction of the regular pay-scale which came into effect on 1.1.86. The Order further shows that the Corporation was to carry the same pay structure and DA pattern as in the case of the Government employees in the corresponding categories. All benefits granted by the Fourth Pay Commission in the nature of interim reliefs were also to be made available to the

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Corporation employees. The interim reliefs granted by the Corporation in the nature of what is imprecisely referred to as "head start" were to be maintained in implementing the scales recommended by the Fourth Pay Commission. The figures worked out in the penultimate paragraph of the Report indicate that whether the employees were retained on the

original pay-scale with the additional emoluments by way of interim relief or they had, as in the instant case, opted for the revised interim scale, they should suffer no loss by reason of the option they had exercised. But the overriding consideration behind the Order dated 7.2.1984 is that, as in the case of all Government employees, so in the case of the Corporation employees, the new scale recommended by the Fourth Pay Commission should be fully implemented. What ever may be the amounts actually payable in terms of the interim reliefs, the employees of the Corporation should neither be paid less nor more than the Government employees in the corresponding categories.

This means that all employees, whether retained on the original pay-scale or placed on the revised interim pay-scale during the period preceding 1.1.86 will be placed on the pay-scale adopted as per the recommendations of the Fourth Pay Commission in such a way that they will be fitted exactly in positions corresponding to their positions on the earlier pay-scales. But the corresponding positions in the new pay-scales will naturally carry better emoluments, so as to maintain parity with the Government employees in like categories.

In the circumstances, we have no doubt that the recommendations of the Fourth Pay Commission will be fully implemented in terms thereof. Mr. Kapil Sibal, appearing for the Corporation, assures us that it will be so done. Mr. Sibal's submission is recorded. In the circumstances, no further order is required. The writ petition is accordingly disposed of. No costs.

R.N.J.

Petition disposed of.
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