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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 04.10.2018

+ **W.P.(C) 340/2011 & CM APPL. 634/2011**

NDMC & ORS.

..... Petitioners

Through: Mr.Jagdeep Kr. Sharma, Standing
Counsel for Mr.Gyanendra Kumar,
Advocate.

versus

NDMC AUTO WORKSHOP EMPLOYEES ASSOCIATION

..... Respondent

Through: Mr.Ankur Chhibbar and Ms.Roshini
Chopra, Advocates.

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+ **W.P.(C) 2337/2013 & CM APPL. 4421/2013**

NDMC THR DIRECTOR

..... Petitioner

Through: Mr.Jagdeep Kr. Sharma, Standing
Counsel for Mr.Gyanendra Kumar,
Advocate.

versus

M.P.DWIVEDI & ORS

..... Respondents

Through: Mr.Ankur Chhibbar and Ms.Roshini
Chopra, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K.CHAWLA

S.RAVINDRA BHAT, J.(ORAL)

1. The New Delhi Municipal Council (NDMC) in its writ petitions challenges two orders of the Central Administrative Tribunal (CAT), which had for almost identical reasons, directed benefit of pay parity

to the applicants before it (who are the respondents before the Court) with the employees working in erstwhile DESU/DVB, in its Auto Workshop (in W.P.(C) No.340/2011) and draftsmen (in W.P.(C) No.2337/2013) in the Electrical Department.

2. The brief facts necessary to decide these writ petitions are that one Shiv Shankar Committee (S.S. Committee) was constituted to recommend the appropriate pay scales to A.C. Operators as well as other class of employees (in the cadre of draftsman etc.) having regard to the counterparts in erstwhile DESU/DVB. The recommendations led to resolution no.154, to extend the benefit of pay and allowances in terms of the report to the employees of DVB/DESU. Subsequent resolution of 07.01.1974 extended the benefit to the employees working in the electrical department *w.e.f* 01.04.1972. The pay scales of employees in erstwhile department of NDMC, which was merged with the NDMC establishment, were revised in the year 1986 *w.e.f* 1978 however they were not at par with their counterparts in DVB/DESU. By a resolution no.37, NDMC revised the pay scales applicable to the drivers of the electricity department on the pattern of DVB/DESU employees. By a resolution no.24 on 17.09.1982, NDMC adopted the report of S.S. Committee in respect of workers of Electricity and C & TO departments as well as ministerial staff. By subsequent resolution (No.15 dated 17.01.1989) revision of pay scales of Shift In-charge on the lines of DESU employees was also affected. Subsequently, the posts of A.C. Operators and Air Conditioning Mechanics were merged into Assistant A.C. Operator-cum-Mechanic

(Air Conditioning) *w.e.f* 11.05.1994. The applicants in W.P.(C) No.340/2011, who belonged to the Auto Workshop Division of NDMC, approached the CAT complaining that pay parity was not given and the applicants in WP(C) 2337/2013, who belonged to the cadre of draftsmen (Junior Draftsmen, Senior Draftsmen and Head Draftsmen) made identical complaints and approached the CAT.

3. Before the CAT, the applicants relied upon the previous resolutions of NDMC which accorded the pay parity with various classes of employees in other units/departments such as DVB/ DESU. It is argued that once the applicants were directed to accord pay scales recommended by S.S. Committee, which was with respect to DESU/DVB employees, they were at complete pay parity and that later disparity on account of denial of replacement of pay scales over to the implementation of 6th Pay Commission was unwarranted and arbitrary.

4. NDMC on the other hand, relied upon the directions in *Narendra Kumar & Anr. vs. Dharam Dutt & Anr.*, (1993) Supp. (3) SCC 205 and contended that it was only Auto Workshop employees of the DVB/DESU who are entitled to S.S. Committee's recommendations, which cannot be claimed by the other departments/wings. The Tribunal in its earlier decision (which is impugned by NDMC in W.P.(C) No.340/2011), allowed the applications, on the basis of following reasoning :

“8. We have carefully considered the rival contentions of the parties and perused the material on

record. In our considered view when the Apex Court in **Narender Kumar** (supra) has clearly ruled parity between the Auto Workshop staff of NDMC with their counterparts in Delhi Vidyut Board/DESU, it does not lie within the jurisdiction of the administrative authority to come to a conclusion different from it, by stating that they are pitted differently in functional requirements. It amounts to infiltrating into an area occupied by judicial dicta, which cannot be countenanced in law.

9. As we find that in an identical situation when in the case of Mr. Beg the respondents have admitted to have erroneously fixed his pay scale under the S.S. Committee at par with counterparts in DVB/DESU and what has been allowed is the revised pay scale, it holds good for all the categories, which were subject matter of the decision of the Apex Court and rather as a model employer the revised pay scales should have been suo motu granted by the respondents to the applicants. However, the same has been withheld leading to unnecessary litigation. In such view of the matter, this erroneous grant of pay scale holds good for the set of employees, i.e., applicants in the TAs and we have no hesitation to hold that the respondents have deprived applicants S.S. Committee's pay scales, as revised in case of their counterparts in DVB/DESU. The Apex Court in **Union of India v. Satyabarth Choudhry** (2010) 1 SCC (L&S) 475 held the differential treatment in the matter of pay scales amounts to an illegality.

10. In the above view of the matter, we hold that the applicants are entitled in both the TAs to the revised pay scales, as recommended by the S.S. Committee, and revised in the case of their counterparts in DVB/DESU, with arrears from the date the scales have been allowed to the applicants in the form of only pay scale in pursuance of the decision of the Apex Court in **Narender Kumar's** case (supra). The same shall be

disbursed, on implementation, to the applicants, within a period of three months from the date of receipt of a copy of this order. No costs.”

5. The subsequent application (TA No.30/2011 filed by the employees of the draftsmen cadre) with identical grievance, was allowed by an order dated 23.08.2012. Besides noting previous decision in the case of the Auto Mechanics cadre, the Tribunal also took note of the 2nd CPC and DESU scales pattern as applicable to individual working in the draftsmen cadre. The CAT also took note of DESU's contention that the pay scales of the several posts in DESU are on the higher side and that NDMC was not bound to follow those pay scales. The other anomaly or difference sought to be highlighted before the CAT was that the draftsman cadre had only single post and consequently pay parity cannot be directed.

6. The basic reasoning of the Tribunal in its latter decision – which is the subject matter of W.P.(C) No.2337/2013, is extracted below :

“9. In our considered view, such objections raised by the Respondents are absolutely unacceptable particularly in view of the fact that once the Council of NDMC, vide its Resolution dated 07.01.1974 had already resolved to extend the benefits of pay scales to all the categories of its employees at par with the pay scales of the counterparts in DESU and the NDMC itself has implemented in the case of all other categories of Draftsmen working in their own department, namely, Mechanical (Auto) Department, the Respondents can not permitted to take a different view in the case of the Applicants. It has also been seen

that the issue of parity in pay scale with the Junior/Senior/Head Draftsmen with their counter parts in DESU has already been examined by the Finance and Law Division of the respondent-NDMC and agreed to grant the same but the Respondents did not implement it. In our considered view, once the ultimate Authority of the Respondent-NDMC, namely, the Council has decided to extend the benefit to the Applicants, the same cannot be rejected at a lower level.

10. In the above facts and circumstances of the case, we allow this TA with the direction to the Respondents to grant pay scale to the various categories of the Draftsmen working with them in their Electrical Department at par with the corresponding categories of draftsman working in DESU w.e.f. 01.04.1972 in terms of resolution No.1 dated 07.01.1974 passed by the Council of the Respondent NDMC, within a period of three months from the date of receipt of a copy of this order, under intimation to the Applicants with all consequential benefits. The Respondents shall also re-fix the pay of the Applicants from the aforesaid date and accordingly and pay upto-date arrears within the aforesaid period. There shall be no order as to costs.”

7. Learned counsel for NDMC argued that the CAT fell into error in both the decisions. He firstly contended that NDMC as an autonomous statutory corporation was independent to prescribe its own pay scales, having regard to uniqueness of its functioning and the relevant cadre, strength, and terms and conditions etc. The mere superficial parity of the description of work was not sufficient for CAT to conclude that the discretion needs to be corrected, with respect to alleged disparity of pay scales *vis-a-vis* DESU/DVB employees. It was argued further that the NDMC employees had

approached the Court with a grievance much after the implementation of the 6th Pay Commission which meant that the question of S.S. Committee report had no relevance. Learned counsel argued that S.S. Committee was constituted way back in early 1970 and had submitted its report *vis-a-vis* revision of pay scales of DESU/DVB employees. At that point of time, question of any parity between the concerned employees i.e. individuals working in the Auto Workshop of NDMC or the predecessors or draftsmen cadre, had never arisen. Therefore, the directions issued by the CAT, cannot be sustained.

8. It is apparent from the factual narrative that S.S. Committee was constituted undoubtedly to address the pay scales concern and the anomalies which then existed in the erstwhile DESU/DVB; to that extent, the NDMC has a point. But the matter does not stop here. The pay scales which the DESU/DVB granted to its employees on various dates in the years 1974, 1986 etc. fueled unrest in other organisations. One such is erstwhile New Delhi Municipal Committee, the employment to which the present respondents and other class belong. Their grievance led NDMC i.e. the petitioners before the court adopting SS Committee's recommendations with respect to various cadres. Thus, parity was something that the NDMC itself recognized and gave effect to entirely on the basis of SS Committee. Having done that at the time of fitment and fixation in the later pay scales, which were prescribed for various classes of posts in implementation of pay Commission's recommendation arose, the NDMC could not have – consistent that its past conduct, ignore the

previous parity and refuse to accord the replacement scales. Both the orders of the CAT – though they deal with the different cadre in the NDMC, are premised upon the logic i.e. parity once established, cannot be ignored except for good and valid reasons. No reasons were forthcoming in either of the proceedings which the respondent/applicants initiated before the CAT, to justify disparity which had ensued on account of erroneous implementation of 6th Pay Commission's recommendations. Consequent directions by the CAT were therefore reasonable and justified. The conclusions in the impugned order are sound and therefore, do not call for any interference by this Court. The petitioners are therefore directed to give effect to CAT's orders within ten weeks from today and pass individual pay fixation and fitment orders.

9. For the above reasons, the writ petitions along with the pending applications are dismissed in above terms. No order as to costs.

10. *Dasti.*

S. RAVINDRA BHAT
(JUDGE)

A.K.CHAWLA
(JUDGE)

OCTOBER 04, 2018

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