

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 72/2013 and CM No. 1890/2013
SRIPAL Appellant
Through: Mr Anuj Agarwal, Adv.
versus

NORTH DELHI MUNICIPAL CORPORATION Respondent
Through: Ms Saroj Bidawat, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

ORDER
% **04.02.2013**

The appellant before us was appointed as Electric Beldar with the respondent No.1 on 4.3.1973 on muster roll/daily wage basis. It appears that for quite some time, the appellant was made to work as Electric Motor Driver. On 26.4.1988, the appellant was regularized in the post of Electric Beldar w.e.f. 1.4.1980. The case of the appellant is that at that time he was discharging functions of Electric Motor Driver. Being aggrieved on his not being regularized in the post of Electric Motor Driver, the appellant raised an industrial dispute, wherein an award was passed on 16.03.2001, holding that the appellant was entitled to be regularized as an Electric Motor Driver w.e.f. 15.05.1977 and was also entitled to be paid arrears in the post of Electric Motor Driver from the same date. The respondent filed a writ petitioner challenging the award of the Tribunal. Vide the impugned order

dated 29.02.2012, the learned Single Judge allowed the writ petition filed by the respondent. Feeling aggrieved, the appellant is before us by way of this appeal.

During the course of arguments, we specifically asked the learned counsel for the appellant as to whether any order appointing him to the post of Electric Motor Driver on daily wage basis or other wise was ever issued by the respondent. Learned counsel for the appellant admitted that no such order was issued, though he submitted that the appellant was made to perform the duties of Electric Motor Driver, w.e.f. 15.05.1977. In the absence of any order, appointing the appellant to the post of Electric Motor Driver even on daily wage basis, he had no legal right to be regularized in the said post and, therefore, the order passed by the learned Single Judge in this regard cannot be disputed.

During the course of arguments, learned counsel for the appellant drew our attention to a document which purports to be the final list of EMD Wireman Grade-I and EMD Wireman Grade-II and Miscellaneous Categories, wherein the name of the appellant appears at serial No. 22 on page 88 of the appeal file. This document does not indicate by whom this list was issued and under what authority. No reliance upon this list appears to

have been placed before the learned Single Judge, since it finds no reference in the impugned order. Therefore, we cannot say, on the basis of this document and in the absence of any order appointing/engaging the appellant as Electric Motor Driver, that he was actually appointed as Electric Motor Driver.

More importantly, a perusal of the Recruitment Rules for the post of Electric Motor Driver would show that the recruitment to the said post can be made only by way of direct appointment and there is no provision in the said Rules for promoting an Electric Beldar to the post of Electric Motor Driver. Another important aspect in this regard is that admittedly, the appellant was not even eligible for being appointed as an Electric Motor Driver on 15.05.1977, the date from which he seeks regularization as Electric Motor Driver. A person, who is not even eligible to be appointed to a post, can certainly not be regularized on that post.

For the reasons stated hereinabove, we find no merit in the appeal and the same is dismissed.

CHIEF JUSTICE

V.K. JAIN, J

FEBRUARY 04, 2013/ 'raj'