CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(16)

O.A.No 562/2001, OA 1726/2001
OA 2989/2001

Date of Decision 25.9.2002

1.Sh.I.S.Sharma ... Applicants
& Ors.(OA 562/2001)
2.Sh.I.S.Sharma
and Ors.(OA 1726/2001)
3.Delhi Fire Service Staff
Association & Ors.(OA 2989/2001)

1. Sh.S.K.Gupta,learned ... Advocate for the Petitioner(s)
counsel for the
applicants in all
the aforesaid OAs)

VERSUS

Govt.of NCT of Delhi ... Respondent
through Chief Secretary
and Ors.

Shri Vijay Pandita, ... Advocate for the Respondents
learned counsel for
respondents in OA 562/2001
and OA 1726/2001.

Smt.Jasmine Ahmed,learned
counsel for respondents in
OA 2989/2001

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K.Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes

2. Whether it needs to be circulated to other
Benches of the Tribunal? No

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(17)

OA 562/2001, OA 1726/2001 and
OA 2989/2001

New Delhi, this the 25th day of September, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Sh. V.K.Majotra, Member (A)

OA 562/2001

1. I.S.Sharma
   S/o Sh. M.R.Sharma
   R/o E-2, Fire Station
   Moti Nagar, New Delhi - 15.

2. Sh. Radhey Shyam
   S/o Sh. S.N.Singh
   R/o F-3, Nehru Place
   Fire Station, New Delhi.

3. S.M.Rishi
   S/o Sh. M.B.Rishi
   R/o A-4, Fire Station
   Laxmi Nagar, Nr. Radhu Palace
   Delhi.

4. Vijay Bahadur
   S/o Late Sh. Raj Bahadur
   R/o F-4, Fire Station, Janakpuri
   New Delhi - 58.

...Applicants

(By Advocate Sh. S.K.Gupta)

V E R S U S

1. Govt. of NCT of Delhi
   Through Chief Secretary
   I.G.Stadium, I.P.Estate
   New Delhi.

2. Principal Secretary (Home)
   Govt. of NCT of Delhi
   5, Sham Nath Marg
   Delhi.

3. Chief Fire Officer
   Fire Headquarter
   Connaught Place
   New Delhi.

4. Secretary
   UPSC, Dhaulpur House,
   Shahjahan Road, New Delhi.

...Respondents

(By Advocate Sh. Vijay Pandita)

OA 1726/2001

1. I.S.Sharma
   S/o Sh. M.R.Sharma
   R/o E-2, Fire Station
   Moti Nagar, New Delhi - 15.

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2. Sh. Radhey Shyam
S/o Sh. S.N.Singh
R/o F-3, Nehru Place
Fire Station, New Delhi.

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3. S.M.Rishi
S/o Sh. M.B.Rishi
R/o A-4, Fire Station
Laxmi Nagar, Nr. Radhu Palace
Delhi.

4. Vijay Bahadur
S/o Late Sh. Raj Bahadur
R/o F-4, Fire Station, Janakpuri
New Delhi - 58.

5. Sh. Hari Kishan
S/o Sh. Pyare Lal
R/o Flat No.3, Fire Station
Prasad Nagar, Delhi.

6. Sh. Anil Kumar Bhatnagar
S/o late Sh. M.L.Bhatnagar
R/o Flat No. A-9, Connaught Circus
Fire Station, New Delhi - 1.

7. Sh. Vipen Kental
S/o late Sh. M.L.Kental
R/o Flat No.2, Bhikaji Cama Place
Fire Station, New Delhi.

8. Sh. Harbans Lal Aneja
S/o Sh. Sher Singh Aneja
R/o F-2, Jor Bagh Fire Station
New Delhi.

9. Shri Dal Singh
S/o late Sh. Pushan Singh
R/o F-1, Roop Nagar Fire Station
Delhi - 110 007.

10. Sh. Dharamvir Singh Yadav
S/o Sh. Ami Lal
R/o Quarter No.2, Shahdara
Fire Station, Delhi - 110 032.

11. Sh. Dharam Pal
S/o Sh. Ram Phal Sharma
R/o Wazir Pur Fire Station
New Delhi.

12. Sh. Ajab Singh Bhati
S/o Sh. Mehar Chand Singh Bhati
R/o F-1, Rani Jhansi Road Fire Station
New Delhi.

...Applicants

(By Advocate Sh. S.K.Gupta)

V E R S U S

1. Union of India through
Secretary
Ministry of Finance
North Block, New Delhi.

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2. The Secretary
UPSC, Dhoulpur House,
Shahjahan Road, New Delhi.

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3. Chief Secretary
Govt. of NCT of Delhi
Delhi Secretariat
I.G.Stadium, I.P.Estate
New Delhi - 110 002.

4. The Principal Secretary (Home)
Govt. of NCT of Delhi
5, Shamnath Marg
New Delhi - 110 054.

5. The Secretary (Finance)
Govt. of NCT of Delhi
5, Shamnath Marg
Delhi - 110 054.

6. Chief Fire Officer
Delhi Fire Service
Fire Headquarters, Connaught Circus
New Delhi - 110 001.

7. Sh. K.K.Dahiya
Assistant Commissioner (Hqrs)
Delhi Fire Service
Fire Headquarters
Connaught Circus
New Delhi - 110 001.

...Respondents

(By Advocate Sh. Vijay Pandita)

OA 2989/2001

1. The Delhi Fire Service Staff Association
through its General Secretary
Sh. Mukesh Prakash
R/o J-64, Laxmi Nagar
Shahdara, Delhi.

2. Sh. Harish Chandra
S/o Sh. Maiku Lal
working as Asstt. Wireless Officer
Delhi Fire Service
Connaught Place
New Delhi - 1.

3. Sh. Gurbaksh Singh
S/o Sh. Kehar Singh
working as Wireless Officer
Delhi Fire Service
Connaught Place, New Delhi - 1.

...Applicants

(By Advocate Sh. S.K.Gupta)

V E R S U S

1. Union of India through
Secretary
Ministry of Finance
North Block, New Delhi.

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2. The Secretary
UPSC, Dhoulpur House,
Shahjahan Road, New Delhi.

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3. Chief Secretary
Govt. of NCT of Delhi
Delhi Secretariat
I.G.Stadium, I.P.Estate
New Delhi - 110 002.

4. The Principal Secretary (Home)
Delhi Secretariat
I.G.Stadium, I.P.Estate
New Delhi - 110 002.

5. The Secretary (Finance)
Delhi Secretariat
I.G.Stadium, I.P.Estate
New Delhi - 110 002.

6. Chief Fire Officer
Delhi Fire Service
Fire Headquarters, Connaught Circus
New Delhi - 110 001.

7. Sh. K.K.Dahiya
Assistant Commissioner (Hqrs)
Delhi Fire Service
Fire Headquarters
Connaught Circus
New Delhi - 110 001.

...Respondents

(By Advocate Ms. Jasmine Ahmed)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, VC (J)

The aforesaid three OAs have been taken up together for arguments as ld. counsel for the parties have submitted that they raise similar issues for consideration. Accordingly unless otherwise specified, the three OAs are being disposed of by a common order. We take up the aforesaid three applications in the order the ld. counsel for the applicant has argued the applications, namely, firstly OA 562/2001, secondly OA 1726/2001 and thirdly OA 2989/2001.

2. In OA 562/2001, the applicants, four in number were aggrieved at the time when they had filed this application that the respondents were not holding

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the DPC for promotion to the post of Assistant Divisional Officers (Fire) (ADO- Fire) and also to the higher post of the Divisional Officers (Fire) (DO -Fire). Ld. counsel for the applicants has submitted that prior to the taking over of the Fire Services Department by the respondents/GNCTD from the local body i.e. Municipal Corporation of Delhi (MCD) w.e.f. 10-11-1994, the local body had issued office orders dated 29-3-90 and 25-8-93 entrusting current duty charge of the post of ADO (Fire) to the four applicants. Apparently this arrangement continued, namely, that they continued to hold current duty charge of the post of ADOs (Fire) even after the Govt. of NCT of Delhi took over the Fire Service Department within their control and jurisdiction. Between November 1994 and September 1998, the respondents have submitted that they were in the process of framing the recruitment rules concerning offices of the Fire Service Department and their service conditions, including promotions etc. These rules have been notified on 9-9-98 in respect of DO (Fire) and on 10-9-98 in respect of ADO (Fire) posts.

3. Ld. counsel for the respondents has submitted an order issued by the respondents dt. 1-4-2002, copy placed on record. In this order, it has been stated, inter alia, that on the recommendations of the UPSC and with the approval of the competent authority, 17 Station Officers, Group B gazetted have been appointed/promoted to the post of ADOs in Delhi Fire Service on officiating basis. List of 17 includes the 4 applicants in the present application. In this view of the matter, Sh. Vijay

Pandita, ld. counsel has submitted that reliefs prayed for by the applicants have become infructuous as the DPC in question has been held in March 2002 and consequently promotion orders have been also issued on 1-4-2002. He has submitted that promotions can only be made with prospective effect as provided in paragraph 6.4.4 of the Swamy's Manual and FR 49.

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4. The above contention of the ld. counsel for the respondents has been controverted by Sh. S.K.Gupta, ld. counsel for the applicants. According to him, the DPCs ought to have been held on the basis of yearwise vacancies which have arisen for the post of ADOs (Fire) and in the circumstances, the aforesaid order dt. 1-4-2002 promoting 17 persons, including the 4 applicants from the same date, is not in accordance with law. He also relies on the judgement of Y.V.Rangaiah & Ors. Vs. J.S.Sreenivasa Rao & Ors. (1983 (3) SCC 284). In this connection, Sh. Vijay Pandita, ld. counsel has relied on the judgement of the Tribunal in Rajender Singh Tomar & Ors. Vs. Govt. of NCT of Delhi (OA491/2000 with connected case [CAT, PB] decided on 29-3-2001 (Annexure R-3). In this judgement, wherein reliance had also been placed on Y.V.Rangaiah's case (supra), it has been observed as follows :-

> "Since the applicant has placed reliance on Y.V.Rangaiah's case (supra), we have glanced through the said judgement of the Supreme Court and find that the same will find application only in those cases in which the employer remains the same, i.e., the same employer cannot change the recruitment rules prescribed for the promotion of officers against older vacancies by applying new/amended rules. In the

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present case, the previous employers was a local body whereas the new employer is the Govt. of NCT of Delhi. The two employers are different from and are independent of each other. As already stated, the new employer, namely, Govt. of NCT of Delhi is, according to us, competent to frame new recruitment rules in respect of employees of Delhi Fire Service and, having done so, the new employer will be entitled to promote officers in accordance with the rules framed by it. While we say so, we are conscious of the fact that the new employer is also entitled to restructure the Fire Services according to its own needs simultaneously creating new posts and abolishing old posts. Their competence to do so cannot be found fault with".

It is not disputed by the parties that the above judgement has become final and binding as no appeal had been preferred against the same and the same is, therefore, binding on the similar issues raised in the present applications. However, after the Govt. of NCT of Delhi had taken over the Fire Servics Department w.e.f. 10-11-1994 and also framed the recruitment rules in September 1998, we see no reason why the DPC which has been held for promotion of the eligible officers to the post of ADO/DO (fire) should not be held in accordance with law and the principles, namely, that yearwise vacancies have to be taken into account by the DPCs of eligible officers at the relevant time. This is so after giving effect to the relevant recruitment rules. Nothing has been placed on record by the respondents, apart from the aforesaid order of promotion dt. 1-4-2002, that such consideration has been done by the DPC in the present case regarding the eligible officers who have been considered for promotion to the post of ADO (Fire). It is also not denied that vacancies in the concerned

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post have arisen earlier to 1-4-2002 when the promotion order has taken effect. The contention of Sh. S.K.Gupta, ld. counsel that during all this period from 1990-93, the applicants have been holding current duty charge of the higher post of ADOs, ~~which~~ has also not been denied by the respondents.

5. Therefore, ~~the~~ OA 562/2001 succeeds and is accordingly allowed in part. Respondents are directed to hold review DPCs of the concerned eligible officers for promotion to the post of ADOs (Fire) in continuation of the aforesaid order issued by them dt. 1-4-2002 for vacancies arising yearwise, in accordance with relevant rules and instructions. This shall be done within four months from the date of receipt of a copy of this order with intimation to the applicants. Accordingly, in the facts and circumstances of the case, all the eligible officers who are found fit for promotion to the post of ADOs by the review DPC shall be entitled to all consequential benefits, including differences of pay and allowances in the higher post from the due dates, in accordance with law.

OA 1726/2001

We have heard both the ld. counsel for the parties in OA 1726/2001

2. In the facts and circumstances of the case, we agree with the contention of Sh. Vijay Pandita, ld. counsel for the respondents that this OA has become infructuous in view of the subsequent orders issued by the respondents dt. 19-10-2001 and

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promotion order dt. 1-4-2002. This OA is accordingly disposed of as infructuous subject to the observations made in the order of even date in OA 562/2001.

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OA 2989/2001

We have heard Sh. S.K.Gupta, ld. counsel for the applicant and Ms. Jasmine Ahmed, ld. counsel for the respondents.

2. In this application, the applicants who belong to Communication Wing of the Delhi Fire Service are aggrieved by the letter issued by the respondents dt. 28-6-2001 abolishing certain posts in that cadre. Sh. S.K.Gupta, ld. counsel has relied on subsequent letters dt. 3-7-2001 and 19-9-2000, copies placed on record, issued by the Delhi Fire Service Department to the concerned Ministries/Department of the respondents in which they have tried to reverse this decision i.e. abolition of the posts. He has submitted that the decision to abolish these posts had been taken because the same have been lying vacant for over three years although, according to him, some of the posts had been held by the applicants on "current duty charge" basis. The main contention of Mrs. Jasmine Ahmed, ld. counsel for the respondets is that the question of abolishing/revival of posts is a matter of policy. She has submitted that the impugned order dated 28-6-2001, has been issued mainly because the posts were lying vacant for more than 3 years and there is nothing wrong in the same. She has submitted that the question of revival is under active

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consideration of the respondents in which a decision will be taken by them in the course of time say six months. By Tribunal's order dt. 1-11-2001, interim order has been granted, staying the operation of the impugned order dt. 28-6-2001 which status-quo order has been continued till date.

3. While we do agree that creation and abolition of posts in a particular Department is primarily a matter of policy which is within the realm of the administrative authorities to consider, taking into account the relevant parameters, however, in the present case, it appears that the earlier decision taken by the respondents dt. 28-6-2001 is under re-consideration by them. It is also noticed that even though the interim order had been granted as far back as 1-11-2001 to maintain status-quo of the applicants who are working in the higher posts on "current duty charge" basis, the same has not been either modified or vacated till date and neither there is any prayer even at this stage to do so.

4. In the above facts and circumstances of the case and having regard also to the fact that it is stated by the ld. counsel that the matter is under active consideration of the respondents, regarding the impugned order dt. 28-6-2001 abolishing certain posts in the Fire Service Department, we dispose of this OA with the following directions :-

(i) Respondents shall take an appropriate decision in the matter keeping in view the relevant facts and observations, including the aforesaid letters written by the Fire Service Department as

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early as possible and in any case within four months from the date of receipt of a copy of this order, with intimation to the applicants ;

(ii) In the facts and circumstances of the case, we consider it appropriate to continue the aforesaid interim order dt. 1-11-2001 till such a decision as above is taken by the respondents. No order as to costs.

5. Let a copy of this order be placed in the other two OAs (OA 1726/2001 and OA 2989/2001).

(V.K.MAJOTRA)
MEMBER (A)

(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)

/vksn/

Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
Copernicus Marg,
New Delhi 110001