

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2833/1999
M.A. NO. 3022/2000

This the 3rd day of October, 2001.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Darshan Singh S/O Dumma Singh,
R/O A-4, fire Station, Moti Nagar,
New Delhi-110015.

... Applicant

(By Shri A.P.Singh, Advocate)

-versus-

1. Chief Secretary,
Govt. of NCT of Delhi.
2. Chief Fire Officer,
Delhi Fire Service,
Connaught Lane,
New Delhi-110001.
3. Secretary (Expenditure),
Ministry of Finance, govt. of India,
Anomalies Commission —
North Block, New Delhi.
4. Union of India through
Secretary, Ministry of Home Affairs,
New Delhi. ... Respondents

(By Shri Vijay Pandita, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant joined Delhi Fire Service in September, 1990 as Station Officer (Band) {SO (Band)} in the pay scale of Rs.1640-2900. It is claimed that the duties and responsibilities of SO (Band) are the same as those of Station Officer (Fire) {SO (Fire)}, and whereas there is parity of pay scales at the subordinate levels of the applicant in Delhi Fire Service, the pay scales of SO(Band) are lower in comparison to the pay scale of SO(Fire). It is stated that whereas the pay scale of

SO(Fire) prior to the Fourth Pay Commission was Rs.500-20-700-EB-25-900 + Rs.110 special pay, the pay scale of SO(Band) was Rs.550-20-650-25-800 + Rs.130 special pay + electricity allowance of Rs.10/-. Thus, the starting pay of the SO(Band) was stated to be higher than that of SO(Fire). It is further contended that the category of service of SO(Band) was 'B' while SO(Fire) was put under category 'C'. Whereas the Fourth Pay Commission recommended pay scale of Rs.1640-2900 for SO(Fire) and the scale of Rs.1600-2660 for SO(Band), Municipal Corporation of Delhi vide resolution No.310 of 1988 enhanced the pay scales to one level up to the employees of Delhi Fire Service. Consequently, the pay scale of SO(Band) was fixed at Rs.1640-2900 while that of SO(Fire) was upscaled to Rs.2000-3200 + Rs.400 special pay. On the recommendations of the Fifth Pay Commission, the pay scale of SO(Band) was fixed at Rs.5500-175-9000 while that of SO(Fire) was fixed at Rs.6500-200-10500. In this way the disparity between the pay scales of SO(Fire) and SO(Band) increased further, though, it is claimed, the duties and job responsibilities of both categories have continued to be the same as were prior to the Fourth Pay Commission. The applicant has sought directions to the respondents to accord parity of pay scale to the applicant vis-a-vis the pay scale of SO(Fire), i.e., Rs.6500-10500 and also that the respondents should be directed to pay arrears after deducting the difference between the pay already paid and the pay in the scale of Rs.6500-10500.

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2. In their counter reply respondents 1 to 3 have stated that the qualifications for the post of SO(Band) and SO(Fire) are entirely different (Annexure R-2). It is also stated that duties of SO(Band) and SO(Fire) are also different (Annexure R-1). It is maintained that the Central Pay Commission is an expert body to recommend appropriate pay scales for different categories of posts. The Fifth Pay Commission had considered issues relating to these posts and made recommendations vide paragraph 104.11 of their report. The respondents have also pointed out that in view of the observations made by the Supreme Court in 1997 JT (3) SC 569: Union of India v. P.V. Hariharan, the Tribunal should not interfere with the pay scales which are a serious matter decided by the government on the recommendations of expert body like the Pay Commission.

3. We have heard the learned counsel on both sides and considered the material on record. The learned counsel for the applicant contended that not only that the applicant performs the duties of SO(Band), in addition, he has been performing all duties of SO(Fire), right from his initial appointment. He further stated that all his subordinate ranks in the Band division have been enjoying parity with their colleagues on the Fire side in matter of pay. Even the applicant as SO(Band) has had parity of pay scale with SO(Fire) prior to the Fourth Pay Commission, whereafter the anomaly in matter of pay scale of SO(Band) has crept in. The learned counsel stated that the headquartrs of Delhi Fire Service referred this anomaly to Home Department of Government of

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NCT vide letter dated 12.9.1995 and recommended that different posts of Band division should be equated with posts of Fire side in matters of pay scales. The learned counsel relied on AIR 1991 SC 1367 : Employees of Tannery & Footwear Corporation of India Ltd. v. Union of India, and AIR 1990 SC 371 : Bhagwati Prasad v. Delhi State Mineral Development Corporation. He contended that in the former case as there were no changes in duties and functions of employees in two corporations, revision of pay scales in one corporation and not in the other, was wrong. Government authorities were directed to revise pay scales of the other corporation at par with pay scales enjoyed by the employees of the corporation whose pay scales were revised upward. In the latter case, again, the principle of "equal pay for equal work" was recommended. Daily rated workers who did not possess initial minimum prescribed educational qualifications at the time of appointment were held to have gained sufficient experience after many years of service and also entitled to pay equal to persons appointed on regular basis even though they did not possess requisite qualifications.

4. On the other hand, the learned counsel for the respondents contended that the main duties of SO(Band) were not the same as those of SO(Fire); he occasionally performs duties assigned to SO(Fire), therefore, he cannot be said to be having the same duties and functions as SO(Fire). He further contended that the qualifications of SO(Fire) were much different and higher than those of SO(Band), therefore, as the qualifications,

duties and responsibilities of SO(Band) were inferior to those of SO(Fire), SO(Band) is not entitled to the same pay scale as SO(Fire).

5. As per Annexure R-1, duties of SO(Band) have been enumerated as follows :

- "1. To look after the operation and administration of Band Staff.
- 2. He will be overall incharge of Band Staff.
- 3. To lead and supervise the playing and and performance of band.
- 4. To train the Band Staff in regard to band performance.
- 5. To ensure the attendance of band staff at the place of band booking.
- 6. To maintain the band and musical instruments.
- 7. To attend fire & rescue calls.
- 8. To conduct the routine station programme."

Whereas the main duties of SO(Band) relate to band performance and supervision of the band staff, one of the duties has been mentioned as "To attend fire & rescue calls". On the other hand, the general duties of SO(Fire) as detailed in annexure R-1 are described in 27 paragraphs. Obviously, they are more detailed, more arduous and entirely different in nature than those of the duties of SO(Band). An addition in duties of SO(Band) as to attend fire and rescue calls on an occasional basis, in our view, will not change the essential nature of the duties and functions of SO(Band).

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6. True, the post of SO(Band) has been categorised as 'B' vis-a-vis the post of SO(Fire) as category 'C' and both these posts are selection posts, The educational qualifications required for direct recruits for both the posts are entirely different. Such qualifications for the post of SO(Band) are - (1) matric pass from a recognised school/board/university, or equivalent; (2) five years experience in training and conducting bands in recognised organisation. As respects SO(Fire), the essential qualifications are (1) degree of recognised university or equivalent; (2) Station Officer's course of National Fire Services College, Nagpur or equivalent; and (3) two years experience in fire fighting in a reputed organisation. It has also been added that the candidates have to qualify in physical and medical tests as prescribed from time to time. Clearly, the educational and other qualifications required for SO(Fire) are of a much higher level than those required for SO(Band).

7. In the matter of Bhagwati Prasad (supra) confirmation on the basis of the principle of "equal pay for equal work" and experience after many years of service in the matter of daily rated workers who did not possess the initial minimum prescribed educational qualifications at the time of appointment, was adjudicated upon. It was observed that practical experience would aid a person to effectively discharge his duties and is guide to assess the suitability. The initial minimum educational qualification prescribed for different posts was reckoned as a factor at the time of

initial entry into the service, but once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it was observed that it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lacked the prescribed educational qualifications. In our view, the ratio of this case is not applicable to the facts and circumstances of the instant case. Whereas the cited case related to entry, confirmation and parity of daily rated workers, we are faced here with the question of parity between two technical posts which have specific ~~and~~ prescribed essential qualifications as also specific duties and functions. We have already held above that the essential educational and other qualifications of SO(Fire) are much superior to those of SO(Band) and also that the duties and functions of SO(Fire) are more varied and more arduous than those of SO(Band). Occasional attendance to fire and rescue calls by SO(Band) cannot put SO(Band) ~~on~~ ⁱⁿ the same pedestal as SO(Fire). ~~The nature of training~~ and experience for both posts are also entirely different.

8. The pay scales of Fire staff in Delhi and Andaman & Nicobar Islands have not been recommended for any change in their position vide para 104.11 of the Fifth Pay Commission's Report. Normal replacement scales of Revised Pay Rules have been provided to the personnel in Delhi Fire Service, and SO(Band) has been allowed the pay scale of Rs.5500-9000 in replacement of the pre-revised scale of Rs.1640-2900. SO(Fire) has also been allowed the revised scale of Rs.6500-10500 in

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replacement of the pre-revised scale of Rs.2000-3200. Whereas vide letter dated 12.9.1995 Assistant Commissioner of Delhi Fire Service has recognised anomaly in the pay scale of SO(Band) and recommended that SO(Band) and his subordinate staff should be accorded the same pay scales as SO(Fire) and his subordinate staff, however, no further recommendation has been made by the Home Department of Government of NCT of Delhi to the Union of India, nor any proof has been furnished regarding recognition of disparity in the pay scales of SO(Fire) and SO(Band) nor the anomaly referred to the anomalies committee of the Union of India.

9. We would like to go alongwith the respondents that in the light of the ratio of P.V.Hariharan (supra), Tribunals should not interfere with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the government which normally act on the recommendations of a Pay Commission. Interfering with the prescribed pay scales is a serious matter. The Pay Commission which goes into the problem ~~in~~ greater depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Unless a clear case of hostile discrimination is made out there would be no justification for interfering with the fixation of pay scales. In the present matter, we have found that the qualifications, duties and functions of SO(Fire) are certainly superior to those of SO(Band). Moreover, Governments both at the State and the Union levels have not made any recommendations to the Pay

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Commission in respect of the alleged disparity between the scales of the two categories of posts.

10. Having regard to the reasons recorded and discussion made above, we do not find merit in the present OA which is dismissed accordingly. No costs.

S. Raju
(Shanker Raju)

Member (J)

V.K. Majotra
(V. K. Majotra)

Member (A)

/as/