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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1428/98

New Delhi, this the 29th day of September, 2000.

Hon'ble Mr. Kuldeep Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Sh. R.S. Tomar, S/O Sh. Mohar Singh
Tomar, F-2, Chanakyapuri Fire Station,
New Delhi.

...Applicant

(By Advocate: Sh. B.S. Charya)

VERSUS

1. Delhi Fire Service, Headquarters, Connaught Circus, New Delhi through its Chief Fire Officer.
2. Govt. of N.C.T. of Delhi, 5, Sham Nath Marg, Delhi through Chief Secretary.
3. The Secretary (Services), Govt. of N.C.T. of Delhi, 5, Sham Nath Marg, Delhi.
4. Shri Raj Mal Khokhar, Sub-Officer, Delhi Fire Service, Najafgarh Fire Station, Najafgarh, Delhi.

...Respondents

(By Advocates: Sh. Rajinder Pandita for Resps. 1 to 3 & Sh. S.K. Gupta for Respondent No. 4)

O R D E R

BY HON'BLE MR. S.A.T. RIZVI, M (A):-

The applicant, a Sub-Officer in the respondents' establishment impugns the seniority list of Sub-Officers dated 24.9.97 alongside the action of the respondents in placing the private respondent No. 4 above the applicant in the seniority list. The respondents have denied the claim of the applicant and, for this purpose, they have placed reliance on the judgement and order of the Hon'ble High Court in Raj Mal Khokhar Vs. M.C.D. & Another (CW-2215/90) decided on 25th October, 1990. The respondents' case is that by virtue of the aforesaid decision of the Hon'ble High Court, the applicant has to

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be treated as junior to the private respondent No.4 (Raj Mal Khokhar).

2. We have heard the learned counsel for both the parties and have perused the material placed on record.

3. The applicant's claim in the OA is that he was senior to the private respondent No.4 in the seniority list issued in July 1995 and also in the subsequent seniority list dated 2.3.97. The respondents have denied issuance of any seniority list in July, 1995. A perusal of the said seniority list of July, 1995 (Annexure P-2), shows that it is just a list of Sub-Officers not accompanied by any covering note/letter of the respondents. The other seniority list of 2.3.97 (Annexure P-3) also happens to be just a list of Sub-Officers not accompanied by any covering note/letter of the respondents. No doubt, both these lists give dates of appointment as Sub-Officers so that it is possible to infer that the applicant is senior to the private respondent No.4. However, the applicant has not disclosed the source from which he has received these lists. We are, therefore, unable to place any reliance on these lists for determining the inter-se-seniority of the applicant on the one hand and of the respondent No.4 on the other.

4. The applicant claims to have been appointed as Sub-Officer on 27.11.90 and this fact is not disputed by the respondents. What is disputed is the claim of the applicant that the private respondent No.4 was promoted as

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Sub-Officer w.e.f. 27.4.91. The private respondent No.4 joined as Fireman in 1978 to become leading fireman in 1989. Later, he applied for recruitment/appointment as Sub-Officer in terms of the notifications of the respondents issued in April, 1989 and thereafter again in June, 1990 but was not considered on the ground of being over-age. It seems that the said private respondent aggrieved by his non-selection as Sub-Officer, approached the High Court and succeeded in obtaining a decision in his favour. This same decision has been referred to in the beginning of this order in para 1. On the final date of hearing, the private respondent in question produced a copy of the said order dated 25.10.90 passed by the Hon'ble High Court in CW-2215/90 (placed on record) which shows, that the Court had directed the respondents to consider the petitioner (private respondent No.4 in this case) and interview him for the post of Sub-Officer irrespective of his being overage. The Court had further directed that the petitioner will be considered for the posts available in April, 1989 or in June, 1990 and the petitioner will be accommodated wherever he was found entitled. The private respondent No.4 has also produced a copy of the office order dated 19.9.2000 (placed on record) issued by the respondents enclosing therewith the final seniority list of Sub-Officers in the pay scale of Rs.5000-8000/- . The said order clearly provides that the seniority of the private respondent No.4 has been assigned as per the judicial pronouncement in Raj Mal Khokhar's case (supra). The aforesaid office order also states that the final seniority list enclosing therewith has been issued in continuation of the seniority list dated 16.1.91.

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and was subject to the final outcome of various litigations pending in the Courts. The final seniority list attached to the aforesaid office order places the private respondent at No.48 and the applicant at No.60 in order of seniority. We have noted that even this seniority has not been treated as final by the respondents themselves.

5. The learned counsel for the applicant argued before us that the respondents might have issued the final seniority list attached to the office order dated 19.9.2000 in compliance of the decision of the High Court referred to but they (respondents) have not clearly explained the manner in which they have complied with the order of the High Court and how exactly the respondents have gone about fixing the inter-se-seniority of all those listed in the above-mentioned 'final' seniority list. The applicant has filed an additional affidavit on 21.8.2000 enclosing therewith a tentative seniority list of Sub-Officers dated 24.4.2000. In this tentative seniority list, the applicant figures at S1.No.21 whereas the private respondent No.4 at S1.No.34. The respondents have no where talked about this particular tentative seniority list. They have also not denied the existence of the seniority lists dated 2.3.97 and 24.9.97 referred to above by the applicant. We thus find placed on record of this OA, a number of seniority lists which has not been denied by the respondents. In fact, the respondents have denied the existence of only one seniority list, namely, that of July,95. The respondents have in their office order dated 19.9.2000 referred to yet another seniority list of

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16.1.91. In the circumstances, we do not feel quite sure about the authenticity, the reliability and the correctness of any of the seniority lists placed on record by either side. The respondents may have prepared the final seniority list enclosed with their office order dated 19.9.2000 in accordance with the directions given by the High Court but we find it difficult to satisfy ourselves that the said list has actually been prepared in literal compliance of the orders of the High Court. In their covering letter dated 19.9.2000, the respondents have placed the matter in doubt again by stating that the final seniority list enclosed therewith would be subject to the final outcome of various litigations pending in the Courts. It is an unfortunate situation inasmuch as for want of the original relevant record of the respondent department, we were not able to assess the correct position for our own satisfaction.

6. In the circumstances, outlined in the proceeding paragraphs of this order, we would like to dispose of this OA by directing the respondents to pass a fresh order fixing the inter-se-seniority of the applicant and the private respondent No.4. The order to be passed should take into account the various seniority lists issued by the respondents from time to time and those mentioned by the applicant and also explain the manner in which the order of the High Court has been implemented. The order to be passed should be a speaking order in which the rules and regulations followed should also be quoted. The respondents shall give opportunity to the applicant as well as respondent No.4 before passing a fresh order as above.

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7. The respondents will pass the order aforesaid within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

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S.A.T.Rizvi

(S.A.T.Rizvi)
Member (A)

Kuldip

(Kuldip Singh)
Member (J)

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