

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 384 of 1998

New Delhi, this the 11th day of November, 1999

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HON'BLE MR. S. P. BISWAS, MEMBER (ADMN)  
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Ashok Kumar Mishra  
S/o Shri Upendra Mishra,  
Central Secretariat Fire Service,  
North Block, New Delhi-110001

....Applicant

(By Advocate: Mrs. P. K. Gupta)

Versus

1. The Director General (Works)  
C.P.W.D., Nirman Bhawan,  
New Delhi.
2. The Chief Engineer,  
NDZ-I, C.P.W.D.,  
Nirman Bhawan, New Delhi
3. The Superintending Engineer,  
President Estate Circle,  
C.P.W.D., Rashtrapati Bhawan,  
New Delhi
4. The Executive Engineer,  
Central Secretariat Division  
C.P.W.D., Gate No. 11,  
South Block, New Delhi.
5. The Supt. Engineer  
Coordination Circle (Civil)  
C.P.W.D., I.P. Estate,  
New Delhi

....Respondents

(By Advocate: Shri K. C. D. Gangwani)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

In this OA, the applicant is seeking a direction from the Tribunal to the respondents directing them to regularise him on the post of Fire Superintendent since August, 1992 as the applicant is alleged to be discharging the duties of that post since 1992 and also possesses the requisite qualification for the said post. The applicant has further prayed that O.M. dated 29.1.98 issued by the respondents rejecting the representation of the applicant dated 31.12.96 be also quashed.

2. Facts of the case in brief are that the applicant was appointed as a Beldar/Fireman in the Office of the respondents and subsequently he was regularised as Fireman on 26.5.90. From the same day, he was recalled to his present place of work as he was well trained to carry out the work at the Fire Station. Thereafter the applicant also proceeded to pursue the course of Sub-Officer from National Fire Service College (in short 'NFSC'), Nagpur and had completed the same successfully. After he had completed the said course of Sub-Officer, he was asked to conduct fire fighting training to Central Government Employees, carry out inspection of fire protection arrangements in various Government buildings and other day to day work meaning thereby that he was asked to do the supervisory work. It is further stated that the applicant has acquired the qualification of graduateship from Institution of Fire Engineers in 1995.

3. The respondents have got two sanctioned posts of Fire Superintendent in the year 1976. One of these two posts was upgraded to the post of Fire Officer but the second post remained as Fire Superintendent and since 1982, the post of Fire Superintendent had been lying vacant.

4. It is further stated that the applicant had been discharging the duties of Fire Superintendent since August, 1992 without any extra remuneration and he had been continuously representing to the respondents to appoint him to the said post as the same was lying vacant since 1982. Though his Fire Officer had also recommended him for promotion to the post of Fire Superintendent but no action

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had been taken in that regard. It is also pleaded by the applicant that there was a necessity for appointing the Fire Superintendent for discharging the duties of inspection of multi-storeyed buildings and VIP Offices etc., still no action had been taken. It is further pleaded that the action of the respondents in paying the salary of the Fireman though he is discharging the functions of Fire Superintendent is arbitrary and violative of Articles 14, 15 and 21 of the Constitution. The main claim of the applicant is that since he had been asked to function as Fire Superintendent, he should be paid accordingly.

5. The respondents have contested the petition. In their reply, they have stated that the applicant has been discharging the duties of Fireman only since his date of appointment and was never asked to discharge the functions of Fire Superintendent nor he was discharging the duties of Fire Superintendent and he has also been paid his lawful dues in terms of salary/wages. They have further pleaded that there are so many other Firemen who have also completed the course of Sub-Fire Officer but are still performing the same duties of Fireman as the applicant is performing. It is further stated that the channel of promotion for Fireman is to the post of leading Fireman and no Fireman can be appointed as Fire Superintendent by way of promotion as the post of Fire Superintendent is to be filled up 100% by direct recruitment and it is not a promotional post. Since it is denied that the respondents had ever asked the applicant to work as Fire

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Superintendent, he is not entitled to any salary/wages as admissible to Fire Superintendent and the O.A. deserves to be dismissed.

6. We have heard the learned counsel for the parties and gone through the records.

7. At the outset, we may mention that in the Original Application, the applicant had pleaded that respondents be directed to regularise his services as Fire Superintendent from 1992 and to declare that the action of the respondents in not regularising the services of the applicant is arbitrary but the same plea had been given up and was deleted. So we are not to discuss about the same while deciding the petition at this stage. The only relief which is being prayed for is that the respondents be directed to pay the salary and allowances attached to the post of Fire Superintendent. The other prayer is for a direction to the respondents to initiate the selection for the post of Fire Superintendent and consider the appointment of the applicant for the same.

8. As far as direction to the respondents to initiate the selection for the post of Fire Superintendent is concerned, learned counsel appearing for the respondents made a statement at the Bar that the services of the Firemen working with the respondents are under the process of being transferred to Delhi Fire Service and major exercise has already been completed. Only a formal notification is awaited. He pleaded that the respondents should not be directed to initiate the action for selection to the post of Fire Superintendent. Besides that he

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✓ submitted that since under the existing rules, the post of Fire Superintendent is to be filled up 100% by way of direct recruitment, the rules cannot be changed and the applicant has no claim to seek such a direction to the respondents to initiate the selection process for the post of Fire Superintendent and consider the applicant for the same. Even otherwise the channel for promotion in Fire Unit is from fireman to leading fireman and the post of Fire Superintendent is still higher in the hierarchy than the post of leading fireman. The applicant could have first pursued his case for the post of leading fireman, if he was eligible for that. We find ourselves helpless to direct the respondents to consider the applicant for the post of Fire Superintendent as the rules do not permit for the same.

9. As regards the claim of the applicant that the respondents be directed to pay the salary and allowances attached to the post of Fire Superintendent, the respondents in this regard have submitted that by no order, the applicant had ever been directed to officiate in the post of Fire Superintendent at any stage. All the firemen in their day to day work had been assisting their superiors in imparting training and in inspection of fire protection arrangements in various Govt. buildings but that does not mean that they are asked to officiate in the post of Fire Superintendent and there is no specific order at all vide which the applicant had ever been asked to officiate as Fire Superintendent. So the respondents are not liable to pay any salary/wages to the applicant for the post of Fire Superintendent.

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10. Further, learned counsel for the applicant had referred to an order dated 22.8.92 whereby the Fire Officer had issued an office order in consultation with the Executive Engineer and granted permission to the applicant to conduct fire fighting training to Central Govt. employees and to carry out the inspection in various Govt. buildings and in that order, it is also made clear that the applicant was to work under the supervision of Fire Officer and he was not entitled to any extra remuneration.

11. This order which is heavily relied upon by the learned counsel for the applicant does not show that these are the duties of the Fire Superintendent and the applicant had been working as Fire Superintendent. Rather the tenor of the order shows that the applicant was simply to assist the fire officer and was to work under his supervision to carry out inspections and to impart fire fighting training to Central Govt. employees. This order does not show at all that the applicant was to officiate as Fire Superintendent. We find that this order is of no avail to the applicant for claiming salary/wages attached to the post of Fire Superintendent.

12. Learned counsel for the applicant has also relied upon on Annual Administrative Report of Central Secretariat Fire Service Hqrs., North Block, New Delhi. In the said report, the applicant's work has been appreciated for discharging the duties and protecting the life and property of Central Govt. buildings but that also does not show that the applicant had been ever asked to work as Fire Superintendent. That was merely an appreciation of the


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work done by the applicant but it does not prove at all that the applicant had ever been asked to officiate as Fire Superintendent.

13. Since there is no specific order directing the applicant to be posted as Fire Superintendent or even asking the applicant to officiate as Fire Superintendent so it is not proved that he has ever worked as Fire Superintendent. Applicant has even failed to prove the duties of Fire Superintendent in normal course which he may also have performed. Merely assisting the Fire Officer does not mean that he has performed the duties of Fire Superintendent. So we are of the considered opinion that claim of applicant for pay and allowances for performing duties as Fire Superintendent is not maintainable.

14. In view of the above discussion, we are of the considered view that this O.A. has no merit and it deserves to be dismissed. We order accordingly. No costs.

  
( KULDIP SINGH )  
MEMBER(JUDL)

  
( S.P. BISWAS )  
MEMBER(ADMNV)

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