

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2108/96

New Delhi this the 24th day of January 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

1. The Association Fire Service
(Drivers) Delhi,
(Registered No. 15591), A Society
registered under the Societies
Registration Act, 1860 through its
General Secretary (Shri Dharam Singh),
Fire Station, Roop Nagar, Delhi-110 007.
2. Shri Moti Ram (DFS No. 455)
S/o late Shri Rizak Ram
Quarter No. A-6, Chanakyapuri
New Delhi-110 001.

...Applicants

(By Advocate: Shri N.R. Nath)

Versus

1. Municipal Corporation of delhi
through its Commissioner
Town Hall, Chandani Chowk
Delhi-110 006.
2. The Chief Fire Officer
Delhi Fire Service Headquarters
Connaught Place,
New Delhi-110 001.
3. Lt. Governor of Delhi
6-Raj Niwas,
Raj Niwas Marg,
Delhi-110 054.

...Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER (Oral)

By Mr. R.K. Ahooja, Member (A)

The applicant before us is an Association of Fire Service (Drivers) working in the Delhi Fire Service. Their grievance is that they do not have promotional opportunities available to them unlike the Firemen who can obtain promotion upto Chief Fire Officer.

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2. According to the applicants they are recruited as Drivers in the pay scale which is equal to that of a Leading Fireman i.e. 1320-2040 but thereafter no further promotions are available to them and they are not even considered for grant of Selection Grade. The applicants also state that they had first filed a Writ Petition before the Supreme Court under Article -32 in 1990. The same was dismissed granting them liberty to seek their relief before the High Court. However their Writ Petition before the High Court was dismissed in-limni on 1.2.91. Thereafter they had again filed a SLP in the Supreme Court. The Supreme Court thereafter ^{had} remanded the matter back to the High Court as the order of dismissal of the earlier Writ Petition was a non-speaking order. Thereafter the control of Delhi Fire Service was transferred from Municipal Corporation of Delhi to Government of NCT of Delhi. The said Writ Petition was, therefore, transferred by the Delhi High Court to this Tribunal in 1995. When the matter was heard by the Tribunal the applicants were advised to file a fresh OA. The present OA was thereafter filed and was numbered 2018/96.

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3. The respondents in the reply have stated that the drivers in the Delhi Fire Service have been, with a view to provide sufficient avenues of promotion, ~~be~~ placed in three categories viz; Fireman Drivers in the pay scale of Rs. 975-1600, Leading Fireman (Driver) in the pay scale of Rs. 1320-2040 and Sub Officer (Driver) in the pay scale of Rs. 1600-2660. They also say that where the drivers have

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to handle sophisticated and costly machines they are also granted special pay of Rs. 300/-. They also receive a risk pay, free electricity and water. As regards the promotional opportunities which are available to Fireman (General), respondents submit that the qualifications of the two categories cannot be equated as the applicants (Drivers) are non-matriculate. They also say that the Delhi Fire Service operates very costly, complex and sophisticated machinery. It cannot be entrusted to those who were not specifically trained for the same.

4. We have heard the counsel. Learned counsel for the applicants cites before us a number of judgements of the Supreme Court in Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar and others AIR 1988 SC 1033 and Council of Scientific & Industrial Research Vs. K.G.S. Bhatt and another to establish his case that for the efficiency in service, every employee must have sufficient avenues of promotion. He also submits that the applicants have a higher start than firemen at the initial stage of entry but thereafter all avenues of promotion are closed to them. It is because of this that since 1990 they have been agitating their case before the High Court of Delhi and the Apex Court. He also asserts that even though for the drivers Matriculation is not an essential qualifications at the time of entry, nevertheless the members of the applicants' association are matriculate and in some cases even have higher qualifications.

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5. During the course of the arguments the counsel was asked to examine whether the interest of the applicants is not served by the Scheme now formulated by the Govt. of India, consequent upon the acceptance of the certain recommendations of the 5th Pay Commission in regard to the assured promotion of the employees who are in isolated posts or in posts where, because of various reasons, normal promotional avenues are not available. Learned counsel submits that the applicants have gone through the scheme and though the same provides for two promotions on completion of 12 years and 24 years of regular service, it is not of substantial benefit to the applicants as in the final analysis they stand to gain only by one single ^{increment} ~~implement~~.

6. Learned counsel for the respondents in his arguments before us has raised certain preliminary objections. He firstly submits that the OA is time barred as the grievance of the applicants relates to 1990. Secondly, he submits that there is no specific order about which the applicants are aggrieved. Further the applicants have not according to the learned counsel exhausted their departmental avenues for redressal of their grievances. Lastly, the learned counsel submits that in view of the various judgements of the Supreme court, the present OA is not maintainable as no direction can be given by the Tribunal in regard to grant of higher pay scales to the applicants.

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7. We have carefully considered the above stated submissions on either side. We do not find any merit in the objection raised by the learned counsel for the respondents in regard to the maintainability of the present OA. The relief sought for by the applicants is in regard to the improvement of their pay scales and, therefore, it is a recurring cause of action. In regard to the objection that there is no specific order against which the applicant can have a grievance, Section-20 (2) (b) of the AT Act says that where no final order has been made by the Government or other authority or officer or the person competent to pass such order, an application can be made to the Tribunal. As regards the point that the applicants have not exhausted the departmental remedies, we have seen as noted above that the applicants have during the last 10 years taken their grievance before the High Court and Supreme Court and the matter before us was in fact remanded by the Supreme Court to the High Court. In regard the last objection that this Tribunal cannot ~~be~~ give any direction regarding the grant of higher pay scale to the applicants, we do agree with the learned counsel that in the normal course this would be the position; it does not however debar the Tribunal from giving suitable directions, where necessary, to the respondents to consider the case of the applicants for grant of higher pay scales.

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8. Nevertheless even if the OA is maintainable, we find that the relief sought for by the applicant has in-effect been provided by the respondents themselves interms of the reply filed by

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them. Respondents in the reply have stated that in order to improve the promotion prospects of the applicants, they have granted three pay scales to the Drivers in Delhi Fire Service. These three pay scales of Rs. 975-1660, 1320-2040 and Rs. 1600-2660 have already been mentioned by us above. In this situation it cannot be said that the applicants have no avenues of promotion inasmuch as there are three pay scales available for the applicants. Learned counsel for the applicant would submit that the applicants are at present ~~they are~~ only granted the pay scale of Rs. 1320-2040 which interms of 5th Pay Commission is equal to Rs. 4000-6000. In other words according to the learned counsel, the respondents have not as yet been granted the pay scale of Rs. 1600-2660 which equates to a pay scale of Rs. 5000-8000. In these circumstances, all that is required is that the respondents should implement the pay scales and grades which they themselves have decided to enforce in respect of the applicants.

9. Learned counsel for the applicant submits that the applicants even if granted higher pay scales would have still a grievance inasmuch as promotions will not be interms of higher status. He argues that the applicants having been recruited as Drivers are entitled at some stage in the service career to a higher status in the organisations interms of higher responsibility and higher position. Learned

counsel has fairly stated that they cannot specify or detail such high responsibility or higher position in the organisation but in order to satisfy the ^{aspirations &} ~~cooperation~~ of employees to rise in the organisation, the respondents atleast should consider what is possible and in what manner this could be achieved.

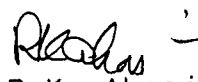
10. The Supreme Court has held in State of Rajasthan Vs. F.C. Soni 1996(1) SLR SC 1 that promotion can be either to a higher pay scale or to a higher position in the service or through appointment to a higher scale in the same post. The Supreme Court thus concluded that the promotion covers advancement both interms of position or rank or in terms of a higher grade. Therefore, if the respondents are granted a higher pay scale in the same post, grant of higher pay scale would constitute a promotion. An elevation to higher responsibilities or to higher posts in the organisation is dependent upon the needs of the organisation and lies mainly in the domain of executive policy. It is for the respondents to judge as to ^{the} most efficient manner in which the services of an employee can be utilised. The mere creation of supervisory positions which ~~are~~ not justified on operational basis could be counter productive to the efficient working of the organisation. Therefore, the Tribunal would ~~not~~ like to give any direction in regard to promotion in status which the learned counsel has been agitating for the applicants.

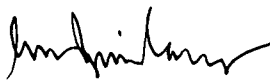
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11. In the result, we dispose of the OA with a direction that respondents will consider the case of the applicants in terms of their orders in regard to the granting of the pay scales enumerated above and also in terms of the scheme formulated by the Govt. of India is known as 'Assured Career Progression Scheme' vide their OM No. 35034/1/97-Estt.(D), dated 9.8.1999. This would be done within a period of six months. No costs.

AO


(R.K. Ahooja)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

cc.