

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.491/2000
WITH
O.A.NO.635/2000

(9)

Thursday, this the 29th day of March, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

OA-491/2000

1. Rajender Singh Tomar,
S/O Shri Mohar Singh Tomar
R/O F-2, Chankypuri Fire Station,
Kautilya Marg, New Delhi-21
2. Satya Pal Singh Bhardwaj,
S/O Shri Hari Singh
R/O C-2, Nehru Place Fire Station,
New Delhi-19.
3. S.S. Yadav (Surender Singh Yadav)
S/O Sh. Laxman Singh
R/O H.No.31, E-Block, MCD Flats,
Kamla Nagar, Delhi-7.
4. Avtar Singh
S/O Sh. Pritam Singh
R/O 432, DDA Flats,
New Ranjit Nagar,
West Patel Nagar,
New Delhi-8.
5. Vijay Bahadur
S/O Shri Raj Pati
R/O A-2, Fire Station Bhikaji
Cama Place, New Delhi.
6. Dharampal Singh Khatri,
S/O Shri Prithvi Singh
R/O H.No.209, Vill. Bakner
Delhi-40.
7. K.K. Saxena,
S/O Shri Nathu Ram
R/O H.No.193, Vill. & PO Bakner,
Delhi-40.

..Applicants

(By Advocate: Shri S.K.Gupta)

VERSUS

1. Govt. of NCT of Delhi
Through Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Chief Fire Officer,
Delhi Fire Service
Fire Headquarters
Connaught Place
New Delhi.

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3. PR. Secretary (Home)
Govt. of NCT of Delhi
5, Sham Nath Marg,
Delhi.

4. Secretary,
Union Public Service Commission
Dhaulpur House, Shahjahan Road,
New Delhi.

... Respondents

(By Advocate: Shri Rajinder Pandita)

DA-635/2000

1. K.K. Saxena,
S/O Shri Nathu Ram
R/O H.No.193, Vill. & PO Bakner,
Delhi-40.

2. Vijay Bahadur
S/O Shri Raj Pati
R/O A-2, Fire Station Bhikaji
Cama Place, New Delhi.

3. Surender Singh Yadav
S/O Sh. Laxman Singh
R/O H.No.31, E-Block, MCD Flats,
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R/O 432, DDA Flats,
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... Applicants

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VERSUS

1. Govt. of NCT of Delhi
Through Chief Secretary,
5, Sham Nath Marg,
Delhi.

2. Chief Fire Officer,
Delhi Fire Service
Fire Headquarters
Connaught Place
New Delhi.

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

4. Secretary,
Union Public Service Commission
Dhaulpur House, Shahjahan Road,
New Delhi.

... Respondents

(By Advocate: Shri Rajinder Pandita)

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ORDER (ORAL)

By Hon'ble Shri S.A.I. Rizvi, Member (A):-

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Both these OAs deal with Delhi Fire Service earlier under the control of Municipal Corporation of Delhi (MCD) and presently under the Govt. of NCT of Delhi. Both deal with promotion of officers of Delhi Fire Service. The common ground in both is the same. In both the OAs, the applicants have questioned the propriety of application of amended recruitment rules for filling of vacancies that occurred prior to the amendment. In both cases, the applicants have relied on the same judgement of the Hon'ble Supreme Court. In view of this, both these OAs are taken up for passing this common order with the consent of the parties.

2. The applicants in OA-491/2000 are aspirants for the post of Station Officer (SO). In the other OA, being OA-635/2000, also all the four applicants are aspirants for the same post and these all figure in the earlier OA also. The additional ground taken in the latter OA is that adequate reservation for OBCs has not been provided in the advertisement issued by the respondents. 15 vacancies in the rank of SO were notified by the respondents in Employment News dated 11/17.3.2000. These vacancies relate to the period prior to 26.10.1998. On the aforesaid date, amended rules in respect of the aforesaid post were notified by the Govt. of N.C.T. of Delhi. Earlier to that, the SOs etc. were governed by 1983 rules. The contention raised is that since the vacancies notified as above relate to the period prior to 26.10.1998, the same should be filled in accordance with

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the recruitment rules in force prior to that date, i.e., in accordance with the recruitment rules of 1983. The respondents on the other hand proposed to follow the recruitment rules which came into force on 26.10.1998. Hence these OAs.

3. In support of their claim, the applicants rely on the judgement of the Hon'ble Supreme Court in the case of Y.V.Rangaiah & Ors. Vs. J.Sreenivasa Rao & Ors. reported as (1983) 3 SCC 284 which, according to them, lays down that vacancies occurring during the currency of old rules should be filled up by following the same rules and the rules brought into force afresh (as in this case) should not be applied for recruitment against old vacancies.

4. Heard the learned counsel on either side and perused the material placed on record.

5. We have perused the recruitment rules notified in 1987 placed at Annexure A-3. The same provide for filling of vacancies 50% by promotion and 50% by direct recruitment. The rules further provide that to the extent of deficiency in filling the posts by promotion, the respondents can have recourse to direct recruitment. The post of SO has been shown as Group 'C' post in the aforesaid rules. The new rules notified on 26.10.1998, however, categorise the post of SO as a Group 'B' post. The method of recruitment, however, remains the same. Thus under the new rules also 50% vacancies are required to be filled by promotion and the remaining 50% by direct

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recruitment with the additional stipulation that to the extent of deficiency in filling the posts by way of promotion, a recourse can be had to direct recruitment. The aforesaid notification of 26.10.1998 also provides that the recruitment rules for the same post earlier notified on 27.3.1987 stood cancelled (Annexure A-4).

6. In their reply, the respondents have submitted that the administrative control of Delhi Fire Service has been taken over by the Govt. of N.C.T. of Delhi from the Municipal Corporation of Delhi (MCD) w.e.f. 10.11.1994. Accordingly, the Govt. of NCT of Delhi has notified fresh recruitment rules for the post of Asstt. Divisional Officers (ADO) (Fire) on 10.9.1998. Vide the same notification, the Govt. of NCT of Delhi has cancelled the recruitment rules for the said post earlier in force under the MCD from 28.12.1990. According to them, the very question of invoking old recruitment rules in the present case should not arise inasmuch as vide notification dated 31.5.1995, 14 posts of ADOs stood absorbed in the Govt. of NCT of Delhi w.e.f. 10.11.1994 on which date the administrative control over the Delhi Fire Service was assumed by the Govt. of NCT of Delhi. We have gone through the aforesaid notification of 31.5.1995. We find that vide notification dated 10.11.1994, the services of the officers and the employees of Delhi Fire Service stood transferred from the MCD to the Govt. of NCT of Delhi on terms and conditions, inter alia, providing that the aforesaid employees shall be absorbed permanently in the Govt. of NCT of Delhi w.e.f. 10.11.1994 and the aforesaid

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absorption shall be subject to the rules/regulations applicable to the employees of the Govt. of NCT of Delhi. On the question of promotion of SOs to the post of ADO being referred to the UPSC, the latter asked the respondents to seek DOPT's advice. The DOPT's advice was accordingly obtained. It will be seen that Department has also supported the contention of the respondents that there could be no question of invoking the old recruitment rules and the promotion aforesaid is to be made in accordance with the amended rules notified on 10.9.1998. According to the respondents, the important thing to note is that while the MCD is a local body, the new employer is the Govt. of NCT of Delhi. The two employers are, therefore, different from and independent of each other and are entitled to frame recruitment rules consistently with their own respective requirements and independently of each other. The post of SO also stand permanently absorbed in the Govt. of NCT of Delhi by the same notification dated 31.5.1995, and by the same reasoning in their case also, the new rules notified by the Govt. of NCT of Delhi on 26.10.1998 would apply. These posts also, as stated, like those of the ADOs and the others, stand absorbed permanently w.e.f 10.11.1994.

7. 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

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new/amended rules. In the 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.

8. In OA-635/2000, the applicants had taken the additional ground that the vacancies notified in the aforesaid advertisement do not provide for sufficient OBC reservation in accordance with the notification dated 20.1.1995 issued by the Govt. of NCT of Delhi. The same provides for 27% reservation for OBCs in vacancies meant for direct recruitment. For filling up reserved vacancies, the detailed instructions issued vide DOPT's OM dated 2.7.1997 are required to be followed, and a copy of the same has been placed on record at Annexure A-9. We have noted the aforesaid plea advanced by the applicants in this OA. The applicants have not placed before us sufficient details to enable us to reach a conclusion that the respondents are not likely to provide for sufficient vacancies for the OBCs in accordance with

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the aforesaid notification. We are confident that the Govt. of NCT of Delhi, the new employers, will adhere to the detailed instructions issued by the DOPT vide OM dated 2.7.1997 and fill up the vacancies giving due reservation to the OBCs. Since the applicants have raised this issue, we find it proper to part with this order with a direction to the respondents to make sure that OBCs are adequately represented in the service in line with the policies in vogue.

(2b)

9. For all the reasons mentioned in the preceding paragraphs, OA-491/2000 fails and is dismissed without any order as to costs. Insofar as the other OA, being OA No.635/2000, is concerned, the same is disposed of subject to the observations contained in the preceding paragraphs on the question of applicability of the Recruitment Rules framed by the Govt. of NCT of Delhi though with the directions referred to in para 8 above.

S.A.T.Rizvi
(S.A.T.RIZVI)
MEMBER (A)

/sunil/

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN

Attested

Ashok Agarwal
CO-CT