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**Central Administrative Tribunal
Principal Bench**

OA No. 25/2004

New Delhi, this the 9th day of May, 2007

**Hon'ble Mr. Justice V.K. Bali, Chairman
Hon'ble Mr. V.K. Agnihotri, Member (A)**

1. Rajender Kumar Sharma,
S/o Shri Ram Chander,
Leading Fireman No. 87,
S.P. Marg Fire Station,
New Delhi.
2. Shri Dharam Pal,
S/o Shri Swaroop Singh,
Leading Fireman No. 698,
Connaught Circus Fire Station,
New Delhi – 110 001.
3. Surinder Pal,
S/o Shri Ram Mehar,
Leading Fireman No. 80,
Safdarjung Fire Station,
New Delhi- 110 003.
4. Sehjad Singh,
S/o Shri Nand Lal,
Leading Fireman No. 91,
Rohini Fire Safety Management Academy,
New Delhi.
5. Ram Parkash,
S/o Shri Madan Singh,
Leading Fireman No. 76,
Janak Puri Fire Station,
New Delhi.
6. Mohan Lal,
S/o Shri Ram Kishan,
Leading Fireman No. 31,
Jawala Puri Fire Station,
New Delhi – 110 001.

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7. Pawan Singh,
Presently working as Leading Fireman No. 8,
Wazir Pur Fire Station,
New Delhi. ...Applicants

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. of NCT of Delhi,
Through Chief Secretary,
Delhi Secretariat,
Players Bhawan, I.P. Estate,
New Delhi – 110 002.
2. Principal Secretary (Home),
Govt. of NCT of Delhi,
Delhi Secretariat,
Players Bhawan, I.P. Estate,
New Delhi – 110 002.
3. Chief Fire Officer,
Delhi Fire Service Headquarters,
Connaught Circus,
New Delhi – 110 001. ...Respondents

(By Advocate: Shri Om Prakash)

ORDER (ORAL)

Justice V.K. Bali:

Rajender Kumar Sharma and six others have filed the instant application under Section 19 of the Administrative Tribunals Act, 1985 seeking to quash and set aside the action of the respondents in fixing the dates for grant of second financial upgradation, stating the same to be arbitrary. The applicants also seek a direction to the respondents to

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confer the benefit of second financial upgradation from the date when each of the applicants completes 24 years of service.

2. The brief facts, on which the reliefs, mentioned above, are sought to rest, reveal that applicant nos. 2 and 7 were recruited as Fireman and had completed 24 years of service in the year 1997 and, as per case set up by them, they are entitled to get the benefit of Assured Career Progression Scheme (hereinafter referred to as ACPS) w.e.f. 09.08.1999. Applicant nos. 1 and 3 to 6 had completed 24 years of service in 2000 and thus, in terms of the ACPS dated 09.08.1999, they are entitled to get the benefit in that year.

3. The case of the applicants is that if an incumbent has not got any promotion during 24 years of service, he is entitled to get two financial upgradations as per hierarchy of the post and in terms of the above, the next promotional post, which is available to the applicants, is Leading Fireman and then to the post of Sub-Officer. The post of Leading Fireman carries the scale of Rs. 4000-6000 whereas the post of Sub-Officer carries the scale of Rs. 5000-8000. In the year 2001, applicant no. 2 was promoted as Leading Fireman. The remaining applicants were promoted as Leading Fireman w.e.f. 17.10.2002. All the applicants have thus got one promotion and are currently working as Leading Fireman. When no action was being taken in the matter for grant of second financial upgradation under ACPS, Shri Rajender Kumar Sharma, applicant no. 1,

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made an application and submitted that since he had completed 24 years of service, he may be given the benefit of ACPS by granting the scale of the post of Sub-Officer w.e.f. 01.09.2000.

4. Applicant Nos. 3 to 6 were granted the second financial upgradation, but not from the date when each of the applicants completed 24 years of service or from 09.08.1999, whichever is later. Applicant no. 1 was granted the second financial upgradation, but not from the date when he completed 24 years of service or from 09.08.1999, whichever is later. Applicant nos. 2 and 7 were also granted second financial upgradation, but not from the dates from which they are entitled.

5. From the pleadings, as mentioned above, it is revealed that even though the applicants have been given second financial upgradation, but not from the dates when they became entitled to it, and, therefore, they seek reliefs as mentioned above.

6. In response to the notice issued by this Tribunal, respondents have entered appearance and by filing the counter reply contested the cause of the applicants. It has, *inter alia*, been pleaded in the counter reply that applicant nos. 2 and 7 were not entitled to the benefit of ACPS w.e.f. 09.08.1999 because on that date they were not eligible for grant of

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financial upgradation under ACPS as per the Recruitment Rules. The guidelines of ACPS, as mentioned in the written statement, are as follows:

"As per the guidelines of the A.C.P. Scheme issued vide Letter No. F.14 (2)/99-Fin. (B) dt. 27.8.99, Govt. of NCT of Delhi, Finance (Budget) Department "Fulfillment of normal promotion norms (bench-mark, Departmental examination, seniority-cum-fitness in the case of Group-'D' employees, etc.) for grant of financial upgradation, performance of such duties as are entrusted to the employees together with retention of Old designations, financial upgradation as personal to the incumbent for the stated purposes and restriction of the ACP scheme for financial and certain other benefits (Housing Building Advance, allotment of Government accommodation, advances etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme."

7. It is the case of the respondents that in view of the Guidelines, reproduced above, and Recruitment Rules for the post of Sub-Officer, applicants are entitled to the second financial upgradation under the ACPS on the date when they fulfil the normal promotional norms by passing Sub-Officer course, apart from holding the post of Leading Fireman for a period of 5 years. The applicants, as made out from the averments in the OA itself, had passed the Sub-Officer Course on 01.04.2002 insofar as applicant nos. 3 to 6 are concerned; applicant no.

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1 on 01.08.2002 and with regard to others, it is stated during the course of arguments, that they had passed the said Course in 2002.

8. It is a conceded position, as mentioned in the pleadings, that the applicants had passed the Sub-Officer Course on the dates mentioned above and if that be so, the Second financial upgradation under the ACPS has been rightly given to them from those dates. Confronted with this situation, it is urged, for the first time, in the rejoinder that the applicants had been making requests for sending them to the concerned Course but because of no fault of theirs, they could not attend and pass the said Course earlier. The reference in that connection is made to a representation filed by one of the applicants on 19.12.2000, annexed with the rejoinder, which reads thus:

"Respectfully, it is submitted that I have applied for the Sub-Officer course which is conducted by N.F.S.C., Nagpur. But I was not sent for medical due to availability of number of Senior Staff than me. Further it is submitted that undermentioned three officials were sent for medical but they have not report to the Government hospital for medical till date.

<u>Sl. No.</u>	<u>Name & Designation</u>
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|----|--------------------------|
| 1. | Sh. Duli Chand, LF-587 |
| 2. | " Vijay Singh, LF-631 |
| 3. | " Chauhad Singh, F/M-141 |

So, it is requested that my name may please be consider for medical and send me for Sub-Officer Course in place of above mentioned officials. I

stand at Sr. No. 2 in the remaining staff. I will be remain grateful for this act of kindness."

9. We have heard the learned counsel for the parties and perused the material on record.


10. In view of the facts and circumstances of the case as mentioned above, we are of the view that the applicants are not entitled to the relief asked for by them. The applicants were conscious of the fact when they filed the present Application that they were not entitled to the desired relief unless they had passed the Sub-Officer course, and further that they had rightly been given the second financial upgradation with effect from the date they passed the said course. Despite these patent facts, they would endeavour and thus seek second financial upgradation from earlier dates. It is only when confronted with the situation as mentioned above, they lamented for the first time in the rejoinder filed by them that they were not sent for the course earlier to when they were actually sent. If that was the only complaint of the applicants, they ought to have come up with the said claim in the very first instance and developed their case on the said point. In fact, their only complaint ought to have been that they were not sent for the course as per seniority and entitlement at right time. That apart, what transpires from reading of representation is that they wanted to be sent for the Sub-Officer course because some of their seniors had not appeared for medical examination up to the date when they made the representation. It is not even now the case of the





applicants that their seniors never appeared for medical and actually did not go to the Sub-Officer course. No case has been made out even at this stage that they ought to have been sponsored for the concerned course early in point of time, or for that matter, their juniors were preferred over them.

11. The O.A. is devoid of merit and accordingly dismissed, leaving, however, the parties to bear their own costs.



(V.K. Agnihotri)
Member (A)



(V.K. Bali)
Chairman

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