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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO.466/2004

NEW DELHI THIS THE 09TH DAY OF DECEMBER 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

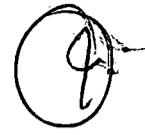
1. Mukesh Prakash Sharma
Radio Telephone Operator
S/o Late Sh.Ram Chander
R/o Village and P.O.Dhankot
Distt. Gurgaon
Haryana.
2. Harish Chander
Radio Operator
S/o Sh.M.Lal
R/o G-7, Jagat Puri,
Delhi 110047.
3. Subhash Chander
Store Keeper Wireless
S/o Sh.Kanwal Singh
R/o House No.47
Village & Post Office Singhu
Delhi 110040.
4. Brij Mohan Sharma
Radio Technician
S/o Late Sh.R.P.Sharma
Varun Apartments
Sector 9, Plot No.12
Flat No.A-2/52, Rohini,
Delhi.Applicants

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary
Delhi Secretariat
Players Building
New Delhi.
2. Principal Secretary (Home)
Delhi Secretariat
Players Building
New Delhi.
3. Chief Fire Officer
Delhi Fire Service
Fire Headquarter
Connaught Lane
New Delhi 110001.Respondents.

(By Advocate: Shri Ajesh Luthra)



ORDER (ORAL)

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicants are Radio Telephone Operators (RTOs) in the Delhi Fire Service and had earlier filed OA No.2765/2001 which has been disposed of with the following directions:

“With the agreement of both sides this OA is remanded to the competent authority (Principal Secretary (Home) Government of NCT of Delhi) to come to a conclusive finding in accordance with rules and instructions as to whether the applicants form a part of the ministerial or operational cadre of Delhi Fire Service”.

2. In compliance with the directions of the Tribunal the impugned order dated 2/12/2002 was passed by the Principal Secretary (Home) concluding that the RTOs are neither operational or Ministerial staff on the following lines:

“To conclude , it is hereby clarified that Radio Telephone Operators, and by implication, the present petitioners, are not ministerial staff. Also for the detailed reasons given in this order they cannot be categorized as operational staff. Chief Fire Officer and the four petitioners be informed accordingly.”

3. Aggrieved by this impugned order the applicants filed present OA seeking quashing of order dated 02.12.2002 and seeking direction for declaring the applicants as belonging to the operational staff / cadre of Delhi Fire Service with entitlement of all consequential benefits. The alternate relief sought is that the whole staff of Delhi Fire Service be taken to be one cadre i.e. non ministerial and there should be no discrimination in this respect.

4. The main ground of the OA is that the Chief Fire Officer on more than one occasion had taken a decision to treat the applicants as belonging to the operational cadre in Delhi Fire service. A detailed note dated 15.11.1984 had been submitted by the the then Chief Fire Officer to the Principal Secretary (Home) who had concurred with this view. Now the same authority i.e. Principal Secretary Home has no jurisdiction or



authority to over rule its earlier decision or to review the same and pass the impugned order dated 2.12.2002.

5. While passing this order the respondents have failed to take into consideration the important issue of the avenue of the promotion of Radio Telephone Operators. The next promotional posts are that of Asstt. Wireless Officer and further to wireless officer and both according to the Recruitment Rules had been categorized as operational. The highest post in avenue of promotion is that of communication officer. This is also considered as operational. Therefore the post of RTOs should have been considered as operational. In addition, the respondents have not taken into consideration that RTOs Bombay Fire Service in the Control Room Staff are operational staff. On similar lines staff belonging to Delhi Fire Service should also be considered as operational. Respondent No.2 has failed to take this into consideration while passing the impugned order. In the year 1982 MCD introduced washing allowances only for the operational staff. The applicants belonging to the communication staff protested and in the year 1995 the applicants (communication wing) were granted washing allowance prospectively. This is proof that communication wing of Delhi Fire Service is at par with operational staff. The applicants / communication staff have an important role to play in fire fighting because fire fighting staff cannot operate without the participation/assistance of the communication staff, hence their duties are operational in nature. The communication staff have to belong either to operational or ministerial staff as there are only two categories in Delhi fire Service. It is strange that respondents No. 2 has taken a view that they belong to neither Ministerial nor operational staff because there is no third category.

6. The applicant also added that according to Recruitment Rules there is only one cadre in Delhi Fire Service which is non ministerial. The power to frame recruitment rules is a legislative process which cannot be altered through administrative order. On the basis of above the applicants have prayed that the impugned order should be quashed and they be declared as operational staff.



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7. The respondents strongly contested the case of the applicants stating that as per the Recruitment Rules Radio Telephone Operators are classified as Group 'C' (ex. Cadre non-Ministerial). Hence they cannot claim to be ministerial staff. Moreover all the contentions raised by the applicants in their present OA had been taken into consideration when passing the impugned order and that notings referred to by applicants cannot become basis for seeking reliefs. It is a well established that internal notings can not form a basis for a claim and hence the question that the decision cannot be changed by the Principal Secretary has no validity. The comparison with Bombay Fire Service is incorrect as in the Bombay Fire Service (BFS) every one is considered as operational including Control Room staff, because they are from fire fighting staff with same designation whereas in Delhi, the communication staff do not fight actual fires. They never claimed specially pay and risk allowances they only claimed washing allowances, which in itself does not make them operational staff.

8. Further, though the Asstt. Wireless Officer, Wireless Officers, Communication Officer are considered as Operational in the Recruitment Rules, Radio Telephone Operators are not considered as operational as they have limited risk exposure as compared to the Fire Fighting operational staff. Moreover, the right to amend the rules lies with the executive and it is not the function of judicial review to give direction in this regard. This has been clearly laid down in the following cases.

1990 (2) SCC 707 (Mallikarjuna Rao and Ors Vs State of Andhra Pradesh & Ors)

1989 (Sup) DO 364

2003 (2) SCC 632 (P U Joshi and Ors Vs AG Ahmedabad & Ors and UOI and Others Vs. Basu Dev Dor and Ors)

9. We have heard counsel for parties and perused the documents placed on record. The applicants have prayed that they be considered as operational staff mainly on the basis of the internal notings of the respondents pleading that the Chief Fire Officer had recommended to the Principal Secretary Home that the applicants should be considered as operational staff in his note dated 15.11.1984. The respondents have vehemently contested this argument stating that internal notings cannot become the basis of this

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prayer. We are in agreement with the respondents that internal notings are in the form of internal discussions for considering the pros and cons of a question so as to enable the competent authority to take a final decision. These notings cannot become a basis of claim.

10. Another ground of the applicant is that they are similarly placed as control room staff of Bombay Fire Service and in the Bombay Fire Service such staff are operational. We have gone through the communication of Bombay Fire Service and relevant portions reads as under:

"In our Brigade, one Divisional Officer is in-charge of and responsible on full time basis for the day-to-day functioning of the Control Room.

The emergency operations in the Control Room are handed by Operational Staff i.e. Sub. Officers, Leading Fireman and Firemen. These operational include receiving calls to emergencies, dispatching of fire and rescue appliances, received the messages from the teams of emergency and taking appropriate consequential actions. These jobs are hand led by one sub officer, two leading firemen and two firemen in each shift.

The non emergency work of the Control Room i.e. peace time mobilization of officers and staff, dispatching and controlling staff and transport vehicles, etc. is handled by one sub officer and one Fireman in each shift

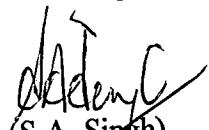
In all, there will be two Sub Officers, two Leading Firemen and three Firemen working in each shift in the Control Room." (emphasis supplied).

11. From the reading of this communication it is apparent that the emergency operations in the Control Room are handled by the Operational Staff i.e. Sub. Officers, Leading Fireman and Firemen and not by a separate cadre. Hence the organization of the Bombay Fire Service is distinguishable from that of Delhi Fire Service as the applicants are in separate cadre of RTOs. It is not for the Tribunal to direct the category into which the applicants should be placed. This has to be left in the domain of the respondents as per the law laid down in the case of Mallikarjuna Rao & Ors Vs State of Andhra Pradesh & Ors. And P U Joshi and Others Vs., AG Ahmedabad & Ors with UOI & Others Vs. Basudeb Dora and Ors.(supra) and cannot become part of

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judicial review. The applicants have not been able to show that there has been any perverse application of mind or hostile discrimination which compels ~~would have~~ the Tribunal to interfere and set right a wrong. Therefore we find no merit in the OA and accordingly it is dismissed. No costs.


(S.A. Singh)
Member (A)


(V S Aggarwal)
Chairman,

Patwal/