

**Central Administrative Tribunal
Principal Bench**

O.A.No.2765/2014

New Delhi, this the 4th day of September, 2017

**Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Somvir Singh, Aged 41 years,
S/o Shri Uday Vir Singh,
Assistant Divisional Officer,
Delhi Fire Service,
R/o Flat No.A-9,
C.C. Fire Station,
C.P., New Delhi.

...Applicant

(By Advocate: Shri Yashish Chandra)

Versus

1. Delhi Fire Service,
Through Director, Delhi Fire Service,
Delhi Fire Service Hqrs.,
Connaught Place,
New Delhi-110001.
2. Govt. of NCT of Delhi,
Through Chief Secretary,
5th Floor, Delhi Secretariat,
New Delhi.
3. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110069.
4. Shri Manish Kumar,
Assistant Divisional Officer,
Delhi Fire Service,
R/o J.R. Road Fire Station,
Near Filmistan Cinema,
Rani Jhansi Road,
New Delhi.

5. Shri Rajesh Kumar,
 Assistant Divisional Officer,
 Delhi Fire Service,
 R/o Flat No.F-4, Headquarters,
 Delhi Fire Service,
 Connaught Place,
 New Delhi.

6. Shri Francis Brown,
 Assistant Divisional Officer,
 Delhi Fire Service,
 R/o Mandawali Fire Station, Mandawali,
 I.P. Estate,
 New Delhi.

...Respondents

(By Advocate : Shri B.N.P. Pathak for R-1&2
 Shri Ravinder Aggarwal for R-3)

ORDER (ORAL)

Mr. V. Ajay Kumar, Member (J) :

Heard Shri Yashish Chandra, learned counsel for applicant and Shri B.N.P. Pathak, learned counsel for respondents No.1&2 and Shri Ravinder Aggarwal appearing for respondent No.3 UPSC.

2. The applicant, an Assistant Divisional Officer (Fire) under the respondents has filed this OA seeking the following reliefs :-

“(i) set aside the application of OM dt. 02.07.1997 bearing no.36012/02/96-Estt. (Res) and OM dt. 21.01.2002 bearing no.20011/1/2001-Estt.(D) issued by DOPT, Government of India, and any other OM/circular/order granting reservation in promotion and consequential seniority, in respondent no.1&2 department; the application of the same being unconstitutional, illegal, arbitrary, null and void;

- (ii) set aside any promotion for the post of Assistant Divisional Officer (Fire) to the extent it is made on the basis of reservation in promotion, under DPCs held for the year 2012-13 and 2013-14, particularly under promotion order dt. 25.03.2013, promotion order dt. 14.06.2013; and promotion order dt. 04.03.14; and direct the promotions to be given effect and fresh seniority list to be drawn without making any provisions for any reservation in promotion for the said post;
- (iii) set aside the promotion of respondent no.4&5 against reserved seats and blocking of one set for respondent no.6, and consequently grant the Applicant promotion from 25.03.2013 i.e. the date when promotions were made under original DPC, with seniority over respondent nos.4&5;

or in the alternative

- (iv) set aside the promotion of respondent no.6 Francis Brown under general category and consequently direct the respondent no.1 and 2 to promote Applicant from 01.05.2013 i.e. the date when appropriate vacancy was created for promotion of applicant due to retirement of Rajmal Khokkar on 30.04.2013; with seniority over Respondent no.5.

Or in the alternative

- (v) antedate the seniority of Applicant in the post of Assistant Divisional Officer (Fire) from the date vacancy was created against which Applicant has been promoted;
- (vi) Pass any other orders that this Hon'ble Tribunal may deem fit in the facts and the circumstances of the case."

3. It is the case of the applicant that the respondents while granting promotions to the post of Assistant Divisional Officer (Fire), held DPCs for the years 2012-13 and 2013-14, and promoted private respondents No.4 to 6, who belonged to reserved category by following the rule of reservation. As a result, the applicant who belongs to general category was promoted belatedly, subsequent to the promotion of respondents No.4to6, though they were junior to him in the category of Station Officer.

4. Learned counsel appearing for the applicant submits that the action of the respondents in following the rule of reservation in promotion to the post of Assistant Divisional Officer (Fire) is illegal and arbitrary and against the law as laid down by the Hon'ble Apex Court in ***M. Nagraj & Ors. Vs. Union of India*** 2006 (8) SCC 212, and the subsequent decisions and hence the OA deserves to be allowed, as prayed for.

5. *Per contra*, Shri Ravinder Aggarwal, learned counsel for UPSC while not disputing the law as laid down in ***M. Nagraj*** (supra), however, submits that in view of the DOP&T OM No.36012/4/2005-Estt(Res) dated 07.01.2014 (Annexure-R-3/1), pending constitutional amendment, the Government has decided to continue reservation in promotion. Accordingly, they have followed the same in the instant case also and hence, there is no illegality in the action of the respondents.

6. No authority can ignore law of the land once the Hon'ble Apex Court declared the same in a particular manner and everybody has to follow the same in its true spirit. On the ground of pendency of certain proceedings, the respondents cannot ignore the law of the land, as declared in ***M. Nagraj*** (supra).

7. In the circumstances, the OA is allowed. The respondents are directed to apply the law as declared by the Hon'ble Apex Court in ***M. Nagraj*** (supra) to the facts of the present case and accordingly pass fresh orders i.e., without the element of rule of reservations, for granting the promotion to the applicant from due date i.e., w.e.f. the date of his junior's promotion to the post of Assistant Divisional Officer (Fire) within 60 days from the date of receipt of a certified copy of this order. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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