

Central Administrative Tribunal
Principal Bench
OA No.1614/2016

Order Reserved on: 09.05.2018
Order Pronounced on: 30.05.2018

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

Sumesh Kumar Dua,
S/o Sh. Krishan Lal Dua,
R/o E-1, Fire Station Moti Nagar,
Moti Nagar, New Delhi-110015

Aged about 50 years
(Divisional Officer in Delhi Fire Service) - Applicant

(By Advocate: Mr. Ajesh Luthra)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
A-Wing, 5th Floor,
Delhi Secretariat, IP Estate,
New Delhi
2. Principal Secretary (Home)
GNCT of Delhi
5th Level C, Wing,
Delhi Secretariat, IP Estate,
New Delhi
3. Delhi Fire Service
Through its Director
(GNCT of Delhi)
DFS Hdqrs., Connaught Place,
New Delhi
4. Union Public Service Commission,
Through its Secretary,
Dholpur House, Shahajan Road,
New Delhi-110069
5. Sh. Sanjay Kumar Tomar,
Divisional Officer,
S/o not known
R/o not known
6. Sh. AK Malik,
Divisional Officer,
S/o not known
R/o not known

- Respondents

(By Advocates: Sh. Amit Anand for 1 to 3
 Sh. SM Arif for 4
 Sh. RN Singh with Sh. Amit Sinha and Sh. Vaibhav for 5
 Sh. Sudarshan Rajan with Shri Ramesh Rawat for 6)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A):

This Original Application (OA) has been filed by the applicant, claiming the following reliefs:-

- “a) Quash and set aside the impugned seniority list issued on 17/2/2016 and
- b) Quash and set aside the impugned orders of appointment of respondents No. 5 & 6 appointing them to the post of Divisional Officers
- c) Accord all consequential benefits.
- d) Award costs of the proceedings; and
- e) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicant.”

2. The brief facts of the case emanating from the OA are that the applicant was appointed in different capacities in Delhi Fire Service (DFS, for short) like Sub Officer w.e.f. 16.02.1991 and Station Officer as a direct recruit w.e.f. 01.01.1993. He was later promoted as Assistant Divisional Officer (Fire) w.e.f. 23.10.2006 and subsequently elevated to the post of Divisional Officer (Fire) w.e.f. 29.07.2013, whereas, the respondent no.5, i.e. Sh. Sanjay Kumar Tomar, and respondent no.6, Sh. A.K. Malik, were appointed as Sub Officer in DFS as direct recruits in May 1993 and December, 1993 respectively. Thereafter, they were appointed as Station Officer in DFS as direct recruits w.e.f. 11.01.2002 and were subsequently promoted as Assistant Divisional Officer in DFS vide an order dated 25.03.2013. However, these two respondents were appointed as Divisional Officer

by way of direct recruitment in the organization through UPSC vide order dated 02.09.2013.

3. It is further submitted that a tentative seniority list of Divisional Officers was issued on 26.11.2015 showing the applicant senior to respondent nos. 5 and 6. However, a final seniority list was issued on 17.02.2016 depressing the applicant's seniority and placing respondents 5 and 6 on higher seniority and above the applicant. Thereagainst, the applicant submitted a representation on 09.03.2016 but the respondents, without considering the same, are now considering the respondent nos. 5 and 6 along with others for assignment of current duty charge/Addl. Charge of next higher post, i.e. Deputy Chief Fire to his exclusion.

4. It is also contended by the applicant that respondent no.5, while working as Station Officer in DFS, was selected on deputation basis to DMRC in the year 2003 for which notice was issued by the department which provided that there was a requirement of services of incumbent at the level of Inspector/Station Officer (Fire Service). However, repatriation was effected in the year 2010, i.e. after seven years and consequently, he joined as Station Officer and later promoted as ADO on 25.03.2013. It clearly shows that the respondent no.5 did not meet the eligibility criteria of minimum five years experience at the level of ADO, hence not eligible for appointment as Divisional Officer by way of direct recruitment. Likewise, the respondent no.6 – Station Officer also went on deputation in the year 2010 to DMRC on a similar requirement of DMRC, as mentioned above and was promoted as ADO only on 25.03.2013. At the time of promotion, he was still on deputation with DMRC and he joined back at DFS as Divisional Officer vide impugned

appointment order dated 02.09.2013 (i.e. without a single day service as ADO).

5. It is alleged that the respondent nos. 5 and 6 were not only considered eligible but also declared selected and got appointed to the post of Divisional Officer upon recommendations made by UPSC despite not fulfilling the requisite criteria. It is also alleged that UPSC breached the recruitment rules by considering the grade pay/scale of pay drawn by them during their deputation period as experience of ADO which is highly illegal as gaining experience is one thing and drawing pay in a particular scale is different especially on deputation, a higher scale is given.

6. It is also contended that candidates, including one Sheetal Singhal have already lodged their complaints to various authorities regarding selection to the post of Divisional Officer where even before declaration of the results, it was known that only respondent nos. 5 and 6 would be selected. Hence, the applicant has filed the present OA praying that the same be allowed.

7. The applicant has relied judgment of the Hon'ble Supreme Court in the case of **Manjit Kumar & Ors. v. Salvation Army Macrobert Hospital**, (2005)12 SCC 495 and referred para 5 thereof which reads as under:-

“5.that no person other than those registered shall be competent to hold an appointment or be employed. In view of this absolute bar, the Hospital could not have confined the employment of the appellants. We find that the appellants had applied for registration under the Act and the prayer has been rejected. It provides a fresh cause of action to the appellants to avail such remedy as may be available in law questioning the correctness of the decision of the Council refusing to register the appellants. Therefore, we do not find any merit in these appeals which are accordingly dismissed without any order as to costs.”

8. The applicant has also relied upon **Bhupendra Nath Hazarika & Anr. V. State of Assam & Ors.** (2013)2 SCC 516 and referred to para 60 thereof which read as under:-

'60.there can be no scintilla of doubt that the selection of the special batch recruits was totally dehors the Rules; that there was a maladroit effort to go for a special drive when there was no need for the same by the State which is supposed to be a model employer; that neither the concept of relaxation nor the conception of benefit of Rule 18 would be attracted for grant on conferring any privilege to the special batch recruits; the Tribunal and the High Court in that regard are absolutely flawless..."

9. The applicant has further relied upon the judgment in the case of **Nitoli & ors. v. State of Nagaland & Ors.**, 2008(1)GLT769 wherein the petitioners were appointed as regular employees and the private respondents were appointed on ad hoc basis. Prior to appointment of the petitioner, the departmental authority prepared the seniority list showing private respondents as senior to the petitioner. Being aggrieved by that seniority list, the petitioner prayed for quashing the seniority list. Following the decisions of the Hon'ble Supreme Court in **Secretary, State of Karnataka and Ors. v. Umadevi (3)**, (2006)IILLJ722SC and **State of UP v. Raffiquddin**, (1988)1SCR 794, the Hon'ble Supreme Court, without interfering with the irregular appointment of the private respondents, directed the State respondent to treat the private respondents as junior to the petitioner in the cadre.

10. In the case of **M. Nakro v. State of Nagaland & Ors.** (2009)5GLR 162 relied upon the applicant, the Hon'ble High Court found the appointment of the petitioner as dehors the recruitment rules and hence unsustainable in law. Therefore, the Hon'ble High Court held that the question of giving him the additional benefit of seniority by taking into account the past service did not arise at all.

11. The respondent nos. 1 to 3 have filed their counter reply stating that the applicant's seniority in different posts like Sub Officer, Station Officer and Assistant Divisional Officer in DFS vis-a-vis respondent nos. 5 and 6 have no relation to the *inter se* seniority in the cadre of Divisional Officer (Fire) selected through two different methods of selection, i.e. direct recruitment and promotees. As far as seniority list of Divisional Officers of DFS is concerned, it is as per recruitment rules and the method of recruitment for the post of Divisional Officer is 66.66% by promotion and 33.33% by direct recruitment. Accordingly, *inter se* seniority has been fixed between direct recruits and promotees in light of guidelines on the subject and DoP&T OM dated 04.03.2014 which provides that "initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees, the date on which proposal, complete in all respects, is sent to UPSC/Chairman – DPC for convening of DPC to fill up the vacancies through promotion would be relevant date."

12. The respondent nos. 1 to 3 further submitted that the tentative seniority list for the post of Divisional Officer Fire was circulated vide letter dated 23.11.2015 and objections were received among others, including respondent nos. 5 and 6. Accordingly, their objections were considered as per OM dated 04.03.2014 issued by DoPT. Thereafter, a final seniority list was issued considering the provisions contained in the said OM dated 04.03.2014. It is also submitted that the representation of the applicant has been considered and a personal

hearing was also granted to him but the same has been rejected by a speaking order dated 29.06.2016.

13. The respondent no.4/UPSC has filed a short reply stating therein that Commission advertised two posts of Divisional Officer, which carry the Grade Pay of Rs.6600/- in the Pay Band (PB-3) Rs.15,600-39,100/- strictly in conformity with the notified Recruitment Rules framed under Article 309 of the Constitution of India. It is submitted that the shortlisting of candidates has been done on the basis of criteria fixed and following relevant modalities were adopted for scrutiny by the Commission:-

“(i) As per Recruitment Rules, the applicant should possess 7 years professional experience out of which 5 years experience should be in the capacity of Assistant Divisional Officer (Fire) or equivalent in a Fire Organisation.....

(ii) While the RRs and the advertisement details do not stipulate any grade pay or pay scale for the post of Assistant Divisional Officer (Fire) in a fire organisation, it has been stated in the instructions message to the candidates/post description and also in the Dynamic warning that 5 years experience should be in the grade pay of Rs.5400/- apparently on the ground that the post of ADO (Fire) in Delhi Fire Service carried the grade pay of Rs.5400/-. However, for the purpose of scrutiny this has not been insisted upon and only the provisions contained in notified RRs and the newspaper advertisement have been considered relevant. Accordingly, experience in the pay scale of Rs.6500-10500 [pre-revised] or experience as Station Officer/Fire Officer in organisations like Delhi Fire Service has been considered relevant.”

14. The respondent no.4 further submitted that applications of the respondent nos. 5 and 6 were considered following the above modalities uniformly in respect of all other candidate who were shortlisted to be called for interview by the Commission. As the respondent no.5 had an experience of nearly 11 years in the relevant fields and he had served in various capacities like Station Officer in

DFS and as Fire Officer/Senior Fire Officer in DMRC, he met the requirement of adequate experience under the provisions of Recruitment Rules and was, therefore, shortlisted to be called for interview. Similarly, respondent no.6 had an experience of nearly 11 years 3 months 27 days in the relevant fields and has served in various capacities like Fire Officer in DDA, as Station Officer in DFS and as Manager Fire in DMRC.

15. The respondent no.4 further submitted that the representations/complaints received from Sh. Sheetal Singhal and others were considered and rejected by the Commission as the complains were found baseless and not supported by facts on record. Thus, the shortlisting of candidates was done on the basis of the criteria fixed and modalities adopted for scrutiny as mentioned above.

16. The respondent no.5, in his reply, has admitted that he was appointed to the post of Divisional Officer (Fire) on direct recruitment basis vide order dated 02.09.2013 for the vacancy/recruitment year 2012-13, whereas the applicant was appointed to the post of Divisional Officer (Fire) by way of promotion for the vacancy/recruitment year 2013-14. It is, thus, clear that the applicant is junior to him. Merely joining of the applicant as Divisional Officer (Fire) on 20.07.2013 before respondent no.5, who had joined the post of Divisional Officer (Fire) on 02.09.2013 does not bestow any right on the applicant to claim seniority over the respondent no.5 in the light of the the DoPT OM dated 04.03.2014 issued in compliance of directions of Hon'ble Supreme Court in **N.R. Parmar v. Union of India & Ors.** (Civil Appeal No. 7514-7515/2005) decided on 27.11.2012.

17. The respondent no.5 has further submitted that the present OA is hopelessly barred by limitation, delay and laches and therefore, deserves to be dismissed in limine, as the applicant has challenged the appointment order dated 02.09.2013 after lapse of considerable period.

18. The respondent no.5 has also submitted that he has participated in the selection process as per his eligibility and after assessing the same, the UPSC, which is a constitutional body, has rightly recommended him for appointment to the post of Divisional Officer (Fire) for the vacancy year 2012-13 and accordingly, he has been appointed to the said post vide order dated 02.09.2013. It is also alleged that the applicant has not approached this Tribunal with clean hands inasmuch as he has deliberately concealed the fact that respondent no.5 has worked in DMRC in the capacity of Assistant Manager (fire) as an overall in charge of Fire Wing of DMRC in the pay scale of Rs.15600-39100 (Grade Pay of Rs.5400) (pre-revised) for more than 5 years and also as Manager (Fire) in the pay scale of Rs.15600-39100 (Grade Pay Rs.6600)(pre-revised) for 2 years. Thus, the respondent no.5 has experience of 7 years as against the experience of 5 years requirement in the advertisement. Moreover, the respondent no.5 has also worked as Station Officer in DFS in the pay scale of Rs.6500-10500 (pre-revised) for more than 03 years. Thus the total experience of the respondent no.5 comes around 11 years. Therefore, the applicant has no locus to challenge the appointment of respondent no.5 through the present OA.

19. The respondent no.5 has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Ganapath Singh Gangaram Singh Rajput v. Gulbarga University represented by its Registrar &**

Ors.(2014)3 SCC 767 and referred paras 9,10.11, 16 and 17 thereof

which read as under:-

9. Ms. Kiran Suri, advocate appears on behalf of the appellant Ganpat whereas the University is represented by Mr. S.N. Bhat, advocate. They contend that Mathematics is a relevant subject for MCA course and, therefore, a person holding post-graduate degree in Mathematics is eligible for appointment as Lecturer in MCA. It is further pointed out that in Gulbarga University, different Mathematics subjects are taught in MCA and, therefore, it cannot be said that a person possessing Masters' degree in Mathematics is not eligible for appointment as Lecturer in MCA. It has also been pointed out that as to whether a particular qualification is relevant or not for holding a post is best decided by the experts concerned and, in the present case, Mathematics, having been recognized as a relevant subject for MCA course not only by the University but by the Board of appointment consisting of eminent academicians from various Universities, the Division Bench of the High Court ought not to have substituted their opinion

10. In support of the submission reliance has been placed on a decision of this Court in the case of [B.C. Mylarappa v. Dr. R. Venkatasubbaiah](#), (2008) 14 SCC 306 and our attention has been drawn to Paragraph 26 of the said judgment which reads as follows:

“26. Admittedly, there is nothing on record to show any mala fides attributed against the members of the expert body of the University. The University Authorities had also before the High Court in their objections to the writ petition taken a stand that the appellant had fully satisfied the requirement for appointment. In this view of the matter and in the absence of any mala fides either of the expert body of the University or of the University Authorities and in view of the discussions made hereinabove, it would be difficult to sustain the orders of the High Court as the opinion expressed by the Board and its recommendations cannot be said to be illegal, invalid and without jurisdiction.”

11. Yet another decision on which reliance is placed is the decision of this Court in the case of [Rajbir Singh Dalal \(Dr.\) v. Chaudhari Devi Lal University](#), (2008) 9 SCC 284 and our attention has been drawn to Paragraph 29 of the judgment which reads as follows:

“29. It may be mentioned that on a clarification sought from UGC whether a candidate who possesses a Masters degree in Public Administration is eligible for the post of Lecturer in Political Science and vice versa, UGC wrote a letter dated 5-3-1992 to the Registrar, M.D. University, Rohtak stating that the subjects of Political Science and Public Administration are interchangeable and interrelated, and a candidate who possesses Masters degree in Public Administration is eligible as Lecturer in Political Science

and vice versa. Thus, this is the view of UGC, which is an expert in academic matters, and the Court should not sit in appeal over this opinion and take a contrary view.”

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16. B.C. Mylarappa (supra) deals with the appointment to the post of Professor, in which one of the eligibility condition for appointment was '10 years' of experience of post-graduate teaching'. The Board of appointment considered the selected candidate eligible by taking into consideration his experience as Lecturer and Research Assistant and in the absence of any mala fide, this Court observed that its opinion is not fit to be rejected. This would be evident from Paragraph 24 of the judgment, which reads as follows:

“24. There is another aspect of this matter which is also relevant for proper decision of this appeal. We have already indicated earlier that the Board of Appointment was constituted with experts in this line by the University Authorities. They have considered not only the candidature of the appellant and his experience as a Lecturer and Research Assistant along with others came to hold that it was the appellant who was the candidate who could satisfy the conditions for appointment to the post of Professor. Such being the selection made by the expert body, it is difficult for us to accept the judgments of the High Court when we have failed to notice any mala fides attributed to the members of the expert body in selecting the appellant to the said post.”

However, this judgment cannot be read to mean that the courts are denuded of the power to scrutinize the experience in a given case and come to a contrary conclusion.

17. As stated earlier, when the view taken by the expert body is one of the possible views, the same is fit to be accepted. Further, the yardstick would be different when it concerns eligibility conditions pertaining to 'qualification' and 'experience'. In case of experience it is best known to the expert body in the field in regard to the actual work done and, therefore, its opinion is of higher degree deserving acceptance ordinarily. Hence, in our opinion, this judgment did not fetter the power of the High Court.”

20. The respondent no.5 has further relied upon the judgment of Hon'ble Supreme Court in **Trivedi Himanshu Ghanshyambhai v. Ahmedabad Municipal Corpn. & Ors.** (2007)8 SCC 644 and referred to paras 14, 15 and 18 thereof which read as under:-

“14. It may be mentioned, as noted herein earlier, that the oral

interview was conducted by a Five Member Interview Committee consisting of (i) Municipal Commissioner, Ahmedabad; (ii) Prof. Pestonjee, Indian Institute of Management, Ahmedabad; (iii) Dr. N.R. Dixit, Director, Som Lalit Institute and visiting faculty of Indian Institute of Management, Ahmedabad; (iv) Deputy Municipal Commissioner [Finance]; and (v) Chief Auditor, Municipal Corporation, Ahmedabad who are all respected persons of the society. The five member interview committee, which consisted of eminent persons of the society, would not have allowed the appellant, who is a technical hand, to appear before them without first satisfying themselves that the appellant had possessed ten years administrative experience. If the administrative experience shown in the application form could not be treated as a sufficient compliance with the requirement as to ten years experience on the administrative side, the interview committee, being an expert committee, could have rejected the candidature of the appellant on the ground that he did not possess the requisite administrative experience for appointment to the post of Assistant Manager in the corporation. That apart, on the question of administrative experience of the appellant, who was working as an X-ray technician, no objection was raised either by the Examination Committee which conducted the written examination or by the Interview Board which conducted the oral interview. Even the candidates namely, the writ petitioners-respondents 2 and 3 herein did not raise any objection, by making a prayer, either before the examination committee or before the interview board, that the appellant lacked the requisite administrative experience for selection to the post in question. After scrutinizing and considering the application forms of all the candidates, they were directed to appear in the written test and thereafter, those who were found to have passed the written examination were directed to appear before the Interview Board for an oral interview.

15. From the record, it also appears that in the past, many persons, who were holding technical posts were promoted to administrative posts and subsequently have been further promoted. That apart, the corporation, at the time of inviting applications for appointment to the post in question, had never stated that the persons of technical cadre should not apply. On the contrary, the circular dated 13th of November 1997 clearly stated that candidates of all the departments were qualified to apply, on fulfilling the requirements laid down in the circular. The writ petitioners-respondents 2 and 3 herein cannot be permitted to raise the objection that the appellant could not have been considered for appointment, he being a technical hand without any administrative experience, after the appellant was selected along with the other selected candidates. It was open to the respondents 2 and 3 to raise such an objection at the initial stage, either in the written examination or at the time of the oral interview. Such objection was raised, for the first time, by the respondents 2 and 3, after the appellant successfully completed four months in his capacity as an Assistant Manager (his promoted post in the corporation). That apart, it appears from the judgment of the High Court that the High Court has quashed the appointment of the appellant only, although, the corporation had

appointed seven other candidates, holding such technical posts. Therefore, we are unable to agree with the High Court that the administrative experience enlisted by the appellant in his application form, duly endorsed by the Medical Officer, could not be considered as an administrative experience of over ten years and therefore, the appointment of the appellant should be cancelled. In any view of the matter, it is not for the courts to find out whether a candidate, from the technical side, was having administrative experience of ten years when he applied for the post of Assistant Manager as we find that the manual of the Corporation clearly states that it was the sole discretion of the Municipal Commissioner to consider as to which post was technical or administrative. In our view, the High Court had failed to appreciate that the corporation, being the employer, is the best judge to decide whether the appellant had discharged the responsibilities on the administrative side and once the corporation came to a finding that the appellant had discharged not only the duties of an X-ray technician but also performed clerical/administrative work, particularly in view of the admitted fact that since 1984, no post of clerks was created in the Beherampura Referral Hospital, the High Court was not justified in concluding that the appellant did not possess the administrative experience of more than ten years.

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18. Accordingly, we are of the view that the High Court was neither justified in interfering with the appointment of the appellant by holding that he did not possess the requisite administrative experience of ten years while working as an X-ray Technician nor was it open to the High Court to entertain the writ petition challenging the appointment of the appellant and other selected candidates at the instance of the unsuccessful candidates.”

21. The respondent no.5 has also alleged that the applicant has developed some personal grudge against him inasmuch as he has filed Civil Suit No.684/2002 titled “Shri Sumesh Kumar Dua Vs. UOI & Ors.” and impleaded the respondent no.5 therein which was dismissed by the Civil Court. Thereafter, the applicant filed OA No. 21/2010 titled “Shri Sumesh Kumar Dua Vs. GNCTD & Ors.” before this Tribunal alleging therein that he has not been called for interview for the post of Divisional Officer (Fire) scheduled on 08.01.2010, which was also dismissed as having become infructuous vide order dated 03.08.2010. The applicant has also made complaint to the Principal Secretary (Home), Govt. of NCT of Delhi when the respondent no.5 was

selected as Deputy Manager (Fire Services) in India Trade Promotion Organisation (ITPO) in the year 2001.

22. The respondent no.5 has submitted that as regards complaints/representations of Sh. Sheetal Singhal, the respondent no.4, i.e. UPSC has already clarified that after consideration of the said complaints, it was found by the UPSC that the same were baseless and were not supported by facts on record. Therefore, the applicant is trying to mislead this Tribunal by making these averments.

23. The respondent no.6 has filed the reply wherein he has raised the following preliminary objections:-

A. Limitation: The applicant has filed the OA challenging the appointment order of the answering respondent dated 02.09.2013 to the post of Divisional Officer (Fire). It is an admitted position that the respondent no.6 was appointed on the said post as direct recruit. The seniority list dated 17.02.2016 has been issued on the basis of the judgment in case of N.R. Parmar (supra) which laid down the guidelines for fixing the inter se seniority between the direct recruits and promotees. Right from 02.09.2013, the applicant remained silent and did not challenge the appointment of respondent no.6 to the post of Divisional Officer (Fire). Thus, admittedly, when the OA was filed in March, 2016, the period of limitation had already expired for challenge of the appointment order dated 02.09.2013. Thus, the OA being hopelessly barred by the limitation is liable to be dismissed on this sole ground.

B. Plural remedies impermissible: As one prayer made by the applicant challenges the appointment of the respondent no.6 as a direct recruit and the other one challenges the seniority list. The plural remedies claimed by the applicant are impermissible in law.

C. Claim for quashing of seniority contrary to the mandate in the case of N.R. Parmar: The claim of the applicant for claim of seniority is contrary to the law laid down in the case of N.R. Parmar (supra) and hence OA is liable to be dismissed.

D. Cannot unsettle the settled position: The endeavour of the applicant to unsettle the settled position of appointment as well as seniority is impermissible in law at this belated stage.

E. Limited scope of judicial review: It is now settled law that the power of judicial review is limited in cases where an expert Selection Committee has analyzed the experience of the candidate and come to a conclusion that they are eligible for appointment. It is also settled that the court would normally not interfere in writ jurisdiction against such decision unless mala fide is shown.

F. Locus standii: The applicant and the respondent no.6 belong to two different employment channel. The respondent no.6 belongs to category of direct recruit while the applicant belongs to the category of promotees. The applicant has not even participated in selection process for

direct appointment and is precluded from making a challenge against the appointment of the respondent no.6.

24. The respondent no.6, in support of his contention, has relied upon the judgment of the Hon'ble Supreme Court in the case of **Jagat Bandhu Chakraborti v. G.C. Roy & Ors.**, (2000)9 SCC 739.

25. It is submitted by respondent no.6 that he has met the requisite eligibility criteria and the same has been duly scrutinised by the UPSC and he has been selected by following a due process of law which was universally applicable to all the candidates. It is also submitted that the respondent no.6 to possess 7 years of professional experience out of which 5 years was to be in the capacity of Assistant Divisional Officer (Fire) or equivalent in a Fire organisation. All establishment of State/Central/Public Sector Undertakings like IOC, GAIL, IGPC, DMRC, Banks where an exclusive Fire Wing was set up to take care of Fire safety and control operations in an organised manner were treated as Fire Organisation for this purpose. Pertinently, the recruitment rules did not provide or stipulate any grade pay or pay scale for the post of ADO (Fire) in the Fire Organisation, it was stated in the instructions message to the respondent no.6 that post description should be in the Grade Pay of Rs.5400 apparently on the ground that the post of ADO in DFS carried the grade pay of Rs.5400. However, for the purpose of scrutiny, this was not insisted upon and only the provisions contained in notified RRs and newspapers were considered relevant. Accordingly, the experience in the pay scale of Rs.6500-10,500 (pre revised) or experience as Station Officer/Fire Officer in organisation like DFS was considered relevant and on the basis of the same, the respondent no.6 was found to have served in the requisite

capacity in the relevant field for 11 years, 3 months and 27 days. Once the expert committee found the respondent no.6 as eligible, then there can be no challenge to the same on grounds of malafide. Thus, the OA is liable to be dismissed.

26. We have heard learned counsel for the parties and perused the pleading and judgments produced by the parties.

27. The following issues that are germane to decide the OA are as under:-

(i) Whether *inter se* seniority list dated 17.02.2016 of Divisional Officers in Delhi Fire Service has been issued in the light of the provisions contained in DOPT OM dated 04.03.2014 or not.

(ii) Whether the UPSC has recommended the name of respondent nos. 5 and 6 for appointment to the post of Divisional Officer in contravention of the Recruitment Rules.

28. Insofar as first issue is concerned, we have to examine the OM dated 04.03.2014 which provides manner of determination of *inter se* seniority of direct recruits and promotees as under :-

“a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as non-existent/withdrawn *ab initio*;

b) The rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DOPT OM dated 7.2.1986/3.07.1986, would continue to operate for determination of *inter se* seniority between direct recruits and promotees;

c) The available direct recruits and promotees, for assignment of *inter se* seniority, would refer to the direct recruits and promotees who are appointed against the vacancies of a Recruitment Year;

- d) Recruitment Year would be the year of initiating the recruitment process against a vacancy year;
- e) Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees the date on which proposal complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be relevant date.
- f) The initiation of recruitment process for any of the modes viz. direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other mode as well;
- g) Carry forward of vacancies against direct recruitment or promotion quota would be determined from the appointments made against the first attempt for filling up of the vacancies for a Recruitment Year;
- h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court Judgment in Civil Appeal No.7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Ors.
- i) The cases of seniority already settled which reference to the applicable interpretation of the term availability, as contained in DoPT OM dated 7.2.86/3.7.86 may not be reopened.”

It is undisputed position that the applicant was promoted as Divisional Officer against vacancy year/recruitment year 2013-14 and the date of initiation of promotion was 24.05.2013, whereas respondent nos. 5 and 6 were direct recruits against the vacancy year/recruitment year 2012-13 and the date of initiation of direct recruitments was 11.12.2012. Thus, the official respondents have rightly placed the respondent nos. 5 and 6 above the applicant in the final seniority list dated 17.02.2016 in the light of the aforesaid provisions contained in the DoPT OM dated 04.03.2014.

29. Before deciding the 2nd issue, we have to go through the recruitment rules meant for the post of Divisional Officer. The relevant

extract of Recruitment Rules for appointment to the said post is as under:-

“(ii) 7 years professional experience, out of which at least 5 years experience should be in the capacity of Assistant Divisional Officer (Fire) or equivalent in a Fire organisation, preferably of a Metropolitan City.”

It is undisputed fact that the respondent no.5 had an experience of nearly 11 years in the relevant fields and had served in various capacities like Station Officer in DFS and as Fire Officer/Senior Fire Officer in DMRC. Likewise the respondent no.6 had an experience of nearly 11 years 3 months and 27 days in the relevant fields and has served in various capacities like Fire Officer in Delhi Development Authority, as Station Officer in Delhi Fire Service and as Manager Fire in Delhi Metro Rail Corporation. Thus the respondent no. 5 and 6 met the requirement of adequate experience under the provisions of the Recruitment Rules and, therefore, were shortlisted to be called for interview. Moreover, this Tribunal cannot interfere in the matter of eligibility of respondents, once the expert Committee, i.e. UPSC found them eligible, unless malafide is shown. In the present case, no malafide has been alleged.

30. We do not find that any of the judgments in **Manjit Kumar's** (supra), **Bhupendra Nath Hazarika's** case (supra), **Nitoli's** case (supra) and **M. Nakro's** case (supra) relied upon by the applicant are relevant to the facts of this OA.

31. Furthermore, we also find that this OA is also hit by Rule 10 dealing with Plural remedies under the Central Administrative Tribunal (Procedure) Rules, 1987, as one prayer made by the applicant

challenges the final seniority list and other one challenges the appointment of the respondent nos. 5 and 6. Thus, the plural remedies claimed by the applicant are impermissible in law.

32. In view of the above, we do not find any merit in the OA and the same is accordingly dismissed. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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