

**Central Administrative Tribunal
Principal Bench**

OA No.1385/2013

New Delhi, this the 14th day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

1. Tej Pal
S/o Shri Chand Roop Singh
O/o Shashtri Park Fire Station,
Delhi.
2. Narender Kumar
S/o Shri Khushi Ram
O/o Fire Station,
Chanakya Puri,
Delhi.
3. Nandu Dahiya
S/o Shri Mahender Singh
O/o Fire Station,
Keshav Puram,
Delhi.
4. Ranbir Khatari
S/o Shri Bhim Singh Khatari
O/o Wazir Pur Fire Station,
Delhi.
5. Kaptan Singh
S/o Shri Chandan Singh
O/o Bhikaji Kama Ji Fire Station
Delhi.
6. Kartar Singh
S/o Shri Suraj Bhan Sharma
O/o F.A.S.M.A. (Rohini)
Fire Station, Delhi.
7. Ajmer Singh
S/o Shri Balbir Singh
O/o Jawala Hadrii,
Fire Station,
Delhi.

8. Satender Kumar Tyagi
S/o Shri Mahesh Chand Tyagi
O/o Laxmi Nagar,
Fire Station,
Delhi.
9. Rajender
S/o Shri Hari Singh
O/o Janak Puri,
Fire Station, Delhi.
10. Om Prakash
S/o Shri Chokhey Lal
O/o Connaught Circus
Fire Station, Delhi.
11. Rajesh Kumar
S/o Shri Bohat Ram
O/o Mathura Road Fire Station,
Delhi.
12. Rajveer Singh
S/o Shri Kawal Singh
O/o Sec-5, Rohini Fire Station,
Delhi.
13. Jai Bhagwan
S/o Shri Dalel Singh
O/o J. R. Road Fire Station,
Delhi. ... Applicants.

(By Advocate : Shri R. K. Jain)

Vs.

1. Government of NCT of Delhi
Through Chief Secretary
Delhi Secretariat, Players Building,
Behind I. G. Stadium, New Delhi.
2. Director
Delhi Fire Service, Barakhamba Road,
Connaught Place, New Delhi.
3. Asst. Commissioner of Fire,
Delhi Fire Service, Barakhamba Road,
Connaught Place, New Delhi.
4. Administrative Officer
Delhi Fire Service, Barakhamba Road,
Connaught Place, New Delhi.

5. Dharmender Singh [FM-1/50]
6. Arvind Kumar [FM-2/50]
7. Vinod Kumar [FM-3/50]
8. Rishipal Singh [FM-4/50]
9. Virender Singh [FM-6/50]
10. Tej Singh [FM-8/50]
11. Harvinder Singh [FM-9/50]
12. Veerpal Singh [FM-10/50]
13. Sohan Lal [FM-11/50]
14. Triyogi Narain Rai [FM-12/50]
15. Dinesh Kumar [FM-15/50]
16. Bhim Singh [FM-17/50]
17. Suresh Kumar [FM-18/50]
18. Ramesh Pal Rana [FM-21/50]
19. Jitender Kumar [FM-23/50]
20. Yogender Singh [FM-25/50]
21. Devender Kumar [FM-26/50]
22. Anup Singh [FM-27/50]
23. Dinesh Kumar Rai [FM-31/50]
24. Dhayan Singh [FM-32/50]
25. Narender Singh [FM-34/50]
26. Karamveer [FM-39/50]
27. Jaswant Singh [FM-40/50]
28. Yogender Singh [FM-43/50]

29. Rakesh Kumar [FM-47/50]
30. Anirudh Sharma [FM-50/50]
31. Virender Kumar [FM-51/50]
32. Parveen Kumar [FM-53/50]
33. Surender Kumar [FM-56/50]
34. Sunder Rai [FM-63/50]
35. Vijay Kumar [FM-66/50]
36. Surender Kumar [FM-75/50]
37. Bhupender Sharma [FM-79/50]
38. Desh Pal [FM-82/50]
39. Rajbir Singh [FM-83/50]
40. Om Prakash [FM-14/50]
41. Ranbir Singh [FM-29/50]
42. Dina Nath Rai [FM-33/50]
43. Hawa Singh [FM-38/50]
44. Sunil Dutt Sharma [FM-55/50]
45. Ram Karan Singh [FM-57/50]
46. Satinder Kumar [FM-58/50]
47. Sushil Kumar Sharma [FM-65/50]
48. Rakesh Kumar [FM-22/50]
49. Ashok Kumar [FM-37/50]
50. Naresh Kumar [FM-52/50]. ... Respondents.
[Respondents No.5-50 to be served through respondent no.4]
(By Advocates : Shri Amit Anand for respondent Nos.1 to 4 and Shri S. K. Gupta for respondent No.7)

: O R D E R (ORAL) :**Justice L. Narasimha Reddy, Chairman:**

The applicants herein and respondents 5 to 50 were selected and appointed as Firemen in Delhi Fire Service by way of direct recruitment in the year 1990. 18 years thereafter, a final seniority list was published on 02.09.2008. All the applicants herein were placed above respondents 5 to 50. However, within one year thereafter, a revised seniority list was issued on 29.12.2009. The applicants herein were shown below respondents 5 to 50. The seniority list dated 29.12.2009 is challenged in this OA.

2. The applicants contend that there was absolutely no factual or legal basis for the respondents to revise the final seniority list dated 02.09.2008. It is stated that neither any reasons were mentioned, nor any notice was issued to the affected persons. It is also stated that once the final seniority list is prepared on 02.09.2008, it was not liable to be changed, except when it is set aside by a competent court of law.

3. On behalf of respondents 1 to 4, a detailed counter affidavit is filed. It is stated that though the seniority of the Firemen was finalized on 02.09.2008 after inviting

objections to the draft seniority list, some aggrieved parties have approached the Central Information Commissioner (CIC), Delhi, and after hearing the parties concerned, the CIC passed an order dated 03.11.2009 directing the corrective steps to be taken in this behalf; and accordingly the impugned seniority list was issued. An objection is also raised as to limitation.

4. Respondents 5 to 50 got themselves impleaded in the OA at a later stage. They have filed separate counter affidavits almost on the same lines, as of respondents 1 to

4. It is also stated that the final seniority list dated 02.09.2008 was prepared without following the relevant provisions of law, and accordingly corrective steps were taken in the year 2009.

5. We heard Shri R. K. Jain, learned counsel for the applicants, Shri Amit Anand, learned counsel for respondent Nos.1 to 4 and Shri S. K. Gupta, learned counsel for respondent No.7.

6. At the outset, the plea as to limitation needs to be taken note of. The seniority list which is challenged in this OA is dated 29.12.2009, and the OA is filed in the year 2013. At the first blush, the OA may appear to have been filed beyond the stipulated period of limitation. The record,

however, discloses that (a) the applicants were not informed of any proposal to change the final seniority list dated 02.09.2008; (b) the copies of the impugned orders were not served upon them and (c) soon after the applicants came to know about the impugned seniority list, they went on making representations, the latest being the one, dated 11.01.2013. To none of the representations, the 2nd respondent has given any reply. Therefore, the plea of limitation raised by the respondents does not hold any water, and accordingly it is rejected.

7. It is not in dispute that the applicants, on the one hand, and respondents 5 to 50 on the other hand, were selected and appointed in the year 1990. Naturally, the Selection Committee arranged the candidates in the order of merit; and the selected candidates have joined the service at different points of time. It took as many as 18 years for the respondents to finalize the seniority list for the post of Firemen. A draft seniority list was prepared and after calling for objections, the final seniority list was published on 02.09.2008. It is a matter of record that all the applicants herein figured above the respondents 5 to 50.

8. Had respondents 5 to 50, or any other Firemen, felt aggrieved by the seniority list dated 02.09.2008, it was always open to them to assail it before the competent forum. Some of respondents 5 to 50 sought information pertaining to seniority list from the office of 2nd respondent, and complaining that there is some inaccuracy in it, they approached the CIC. The CIC, in turn, passed an order dated 03.11.2009, which reads as under:-

“First Appeal:

Unsatisfactory information provided by the PIO.

Order of the FAA:

Not closed.

Ground of the Second Appeal:

Unsatisfactory information provided by the PIO and unfair disposal of the case by the FAA.

Relevant facts emerging during Hearing:

The following were present:

Appellant: Mr. Vinod Kumar

Respondent: Mr. Tariq Salam, Administrative Officer on behalf of Mr. R. K. Bhiyan, PIO & AC;

The Appellant had sought the seniority list and he is showing that the seniority list given to him is at variance with other seniority lists which he had obtained from the department. In the seniority list provided by the PIO people who were junior to him have been shown as higher in seniority than his position. He is therefore alleging that the information provided to him is false. The PIO states that he had provided the information as per the records available. The appellant is giving the photocopies of the list

which he is relying to the PIO. The Commission directs the Director Fire Services to look into this variance and give the final seniority list to the Appellant and the Commission before 30 November 2009.

Decision:

The Appeal is allowed.

The Commission directs the Director Fire Services to look into this variance and give the final seniority list to the Appellant and the Commission before 30 November, 2009.”

9. It must be said to the credit of the CIC that he acknowledged his limits in the context of interference with the seniority list, and in a guarded manner directed the 2nd respondent just to look into all “variances” and give a final seniority list to the appellant therein. Nowhere, he expressed any opinion as to the correctness or otherwise of the seniority list. The only thing expected from the respondents was to make available, the copy of the final seniority list. However, the opportunity was availed to bring out an altogether different seniority list on 29.12.2009. The preamble of the seniority list reads as under:-

“In compliance with the order of the Hon’ble Central Information Commissioner, Delhi decision No.CIC/SG/A/2009/002273/5351 dated 03.11.2009 the seniority No. from 515 to 573 in the seniority list of Fireman/Fireman Driver/Fire Operator has been revised in order to rectify the variance in the final seniority list circulated vide letter of even No. dated 02.09.2008.”

It is rather misleading to state that the CIC has issued directions which warranted the change of seniority list.

10. It is axiomatic that once the final seniority list was published, the appointing authority, for all practical purposes becomes *functus officio* in that limited context. It is only a Court of Law, that can interfere with the seniority list. The occasion for the appointing authority to deal with the final seniority list arises if only it was tainted with any factors, akin to fraud or misrepresentation. There is no mention about these factors. Secondly, even if, there existed any basis for changing the final seniority list, the minimum which is expected in law from the authority is to put the affected parties on notice. There is not even a semblance of compliance with such an important requirement in law. On the sole ground that the final seniority list was altered without putting the affected parties on notice, the impugned order is liable to be set aside. Added to that, the concerned authority did not have the power to change the final seniority list.

11. The OA is accordingly allowed. The impugned order is set aside.

12. It is brought to our notice that ever since the impugned seniority list was issued, promotions at several

stages have taken place. We, however, leave it open to the 2nd respondent to take a decision whether or not to revise the final seniority list dated 02.09.2008, and if it is decided to do so, the 2nd respondent shall not only indicate the reasons but also issue show cause notice to the affected parties. Since we declare the impugned seniority list dated 29.12.2009 as *non est*, if the rearrangement warrants any reversion, the same shall be deferred for a period of three months or till the exercise by the 2nd respondent, as indicated above, is completed, whichever is later in accordance with law.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/