

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 4143/2010**

% **Date of Decision: 06.01.2011**

Govt. of NCT of Delhi & Ors. .... Petitioners

Through Mrs.Avnish Ahlawat and Ms.Latika  
Chaudhary, Advocates

Versus

Sh.Krishan Kumar & Ors. .... Respondents

Through Mr.S.K.Gupta, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MS. JUSTICE VEENA BIRBAL**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | NO  |
| 3. | Whether the judgment should be reported in the Digest?                | NO  |

**ANIL KUMAR, J.**

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The petitioner, Government of NCT of Delhi, has challenged the order dated 3<sup>rd</sup> July, 2009 in OA No.1505 of 2008 partly allowing the petition of the respondents and setting aside the order dated 17<sup>th</sup> April, 2008 directing the petitioners to reconsider the claim of the respondents for grant of promotion in the higher pay scale and the order dated 04<sup>th</sup> February, 2010 passed in CP No.613 of 2009 in OA No. 1505 of 2008 granting another opportunity to the petitioner to pass a fresh order within two months dealing with all the observations as

stated in the earlier order and that it ought to be a speaking order re-addressing the grievances of the respondents and discharging the contempt notice.

Brief facts to comprehend the controversies between the parties are that the Delhi Fire Service had advertised the post of Fireman/Driver in the pay scale of Rs.1320-2040. After the posts of Fireman/Driver were advertised, a trifurcation scheme was promulgated on 21<sup>st</sup> March, 1994 providing initial entry to the Fireman/Driver as a driver in Grade-III in the pay scale of Rs.975-1660 and on completion of 10 years of service, consideration of such Fireman/Driver to Grade-II as a Leading Fireman in the pay scale of Rs.1320-2040 and thereafter to the post of Grade-I of Driver/Sub Officer.

Before the posts which were advertised in 1994, could be filled up, the administrative control of Delhi Fire Service was taken over by the Govt. of NCT of Delhi from the Municipal Corporation of Delhi. In March, 1995 pursuant to the advertisement of the post prior to 1994 the respondents were offered the post of Fireman/Driver which was advertised in the scale of Rs.1320-2040 to that of a Fireman in the scale of Rs.975-1660 Grade III.

The respondents though agreed to join the post of Fireman/Driver, thereafter, challenged the scale given to them of

Rs.975-1660 as the post which was advertised was in the scale of Rs.1320-2040, by filing an original application being OA No.424 of 1996. The application of the respondents was however, dismissed by order dated 1<sup>st</sup> December, 1999.

The respondents challenged the order of the Tribunal dated 1<sup>st</sup> December, 1999 in OA No.424 of 1996 by filing a Civil Writ Petition No. 4178 of 2000 which was also dismissed on 1<sup>st</sup> August, 2000 holding that since the respondents had accepted the offer and joined the services on a pay-scale of Rs. 975-1600 and if the respondents were granted a higher pay-scale of Rs. 1300-2040 for the same post that would have amount to a promotion. Thereafter a Special Leave Petition No. 757 of 2001 was filed against the dismissal of the writ petition, which was also dismissed.

The tribunal had declined the scale of Rs.1320-2040 on the ground that the respondents had not joined the service and before their joining the service, a trifurcation scheme had accrued on 21<sup>st</sup> March, 1994 contemplating initial entry as a Driver in Grade-III in the scale of Rs.975-1660. The tribunal had held in order dated 1<sup>st</sup> December, 1999 in OA No.424 of 1996 that when the respondents had joined the service the changes in terms of trifurcation scheme had already been made and the changes were not made after they had joined the service. Also prior to their entry in the cadre, they were given a choice whether or not to accept the post of Fireman/Driver and they had consented to it. The

respondents, however, had denied that they had given their consent. However, the respondents were denied their claim for grant of higher pay scale of Rs.1320-2040 at the time of joining in Grade II. The tribunal had held that the scale of Rs.1320-2040 would be attained only by way of promotion of Fireman/Driver Grade-I to Leading Fireman/Driver Grade-II after ten years of service in accordance with the terms and conditions of the scheme.

By March, 2006 all the respondents had completed ten years of their services and had become eligible for consideration for Grade-II as Leading Driver/Fireman in the scale of Rs.1320-2040 based upon the standing committee decision dated 21<sup>st</sup> March, 1994 approving the trifurcation scheme. The claim of the respondents was, however, rejected by the petitioners by order dated 18<sup>th</sup> August, 2006 on the ground that the claim of the respondents had already been rejected by the tribunal, the High Court and the Supreme Court, though according to the respondents their claim for consideration to Grade-II, as Leading Driver/Fireman on completion of 10 years was not the subject matter of OA No.424 of 1996 but it was whether at the time of joining they could be given Grade II and pay scale of Rs.1320-2040.

The respondents, therefore, filed OA No.1988 of 2006 and OA No.2283 of 2006 and claimed promotion to the post of Leading Fireman (Driver) on completion of 10 years of service. The said original applications of the respondents were allowed by the Tribunal in

January, 2008 and the petitioners were directed to pass a fresh reasoned order and the respondents were also given liberty to approach the Tribunal.

The petitioners, thereafter passed the order dated 17<sup>th</sup> April, 2008 rejecting the claim of the respondents for promotion to Grade-II as Leading Driver/Fireman in the scale of Rs.1320-2040 based upon the standing committee decision dated 21<sup>st</sup> March, 1994. While passing the order dated 17<sup>th</sup> April, 2008, the petitioners held that after the transfer of Delhi Fire Service from Municipal Corporation Delhi to the Govt. of NCT of Delhi in 1994, new recruitment rules for the post of Fire Operators, Leading Fireman and Sub Officers had been made on 19<sup>th</sup> February, 1999 & 28<sup>th</sup> September, 1998 respectively. It was also contended that seniority of the respondents had been prepared and circulated to other Fireman/Fire Operators and that they would be considered for promotion to the post of Leading Fireman along with other Fire Operators as per seniority and till then they would be entitled to financial benefits under ACP scheme which had been adopted in the Delhi Fire Service for all the employees under its control. The ACP scheme based on the guidelines of the Govt. of India provides avenues of financial benefits to the Fireman (Driver) of Delhi Fire Service and upon its adoption. It was also reasoned by the petitioners that no other time bound scheme could run concurrently with the ACP scheme. It

was also held that since the rules have been framed by the Govt. of India, the resolution of MCD has become infructuous.

The said order was challenged by the petitioners by filing an OA No.1505 of 2008 which has been disposed of by the Principal Bench, Central Administrative Tribunal by order dated 3<sup>rd</sup> July 2009 holding that from 1994 till 1999 when ACP was not available, what has been applied is the resolution of MCD dated 21<sup>st</sup> March, 1994. Relying on the judgment of the Division Bench in W.P.(C) No.6194 of 2001 which petition was filed by the drivers who were appointed prior to 1994, it has been held that the reasoning of the same will apply mutatis mutandis to the drivers appointed after 1994 specially in case no promotional avenues in recruitment rules were invoked before promulgation of the scheme for ACP in 1999. In the circumstances, it has been held that there has to be reconsideration by the petitioners about the trifurcation scheme promulgated vide resolution dated 21<sup>st</sup> March, 1994 and thus, the petitioners have been directed to reconsider the claim of the respondents for grant of promotion in the higher pay scale in the light of the observations made by the tribunal and by the High Court in W.P.(C) No.6194 of 2001 and to pass a detailed and speaking order within three months of 3<sup>rd</sup> July, 2009 which time was further extended by two months by order dated 4<sup>th</sup> February, 2010 in CP No.613 of 2009.

The learned counsel for the petitioners, Mrs. Avnish Ahlawat has vehemently argued that trifurcation scheme was applicable to existing employees who were in the higher Grade and not to the respondents who were appointed in grade III at the time of joining. It is urged that the tribunal has not considered the ACP scheme, which is on the guidelines of the Govt. of India and provides for avenues for financial benefit to the Fire Operators/Fireman and upon its adoption, no other time bound scheme could run concurrently with the trifurcation scheme. It is also contended that since the rules have been framed by the petitioners for promotion of Fireman (Driver) now the Fire Operators, the resolution had become infructuous and it is not applicable to the respondents and others who had joined the services as Drivers in the scale of Rs.975-1660 as the ACP scheme is applicable.

The learned counsel for the petitioners has also contended that the judgment of the High Court in W.P.(C) No.6194 of 2001 is not applicable as it was applied only to those drivers who were in service in the year 1994 when the trifurcation took place and thereafter, after 1999 the rules which were framed in 1998 and 1999 are applicable.

Per contra, the learned counsel for the respondents has contended that though the petitioners have framed a tentative seniority list for Fireman/Fire Operators/Drivers to which objections were filed however, no final seniority list had been issued. Reliance has also been placed on the judgment of the High Court dated 13<sup>th</sup> May, 2008 in

W.P.(C) No.6194 of 2001 upholding the resolution dated 21<sup>st</sup> March, 1994 directing the petitioners to grant the benefits on the basis of the trifurcation scheme which was approved by resolution dated 21<sup>st</sup> March, 1994. According to the respondents, if the benefits have been given to the drivers recruited prior to 21<sup>st</sup> March, 1994, the benefits under the same trifurcation scheme is to be given to those drivers who had been employed after 1994 including the respondents as all the respondents were recruited as Fireman/Drivers and were directed to accept the scale of Rs.975-1660 which were accepted by them and under the scheme and after expiry of 10 years they are entitled to the scale of Rs.1320-2040. Learned counsel also contended that the Govt. of India scheme dated 9<sup>th</sup> August, 1999 has not superseded the earlier scheme of promotion. It is also contended that if the trifurcation scheme granting next higher grade after completion of ten years could be applied after 1999 to such drivers who had completed ten years after 1999 when allegedly ACP scheme was adopted. By same analogy the same scheme should be applied to the respondents on their completion of ten years of service after 1999.

We have heard the learned counsel for the parties in detail. This is not disputed that pursuant to the scheme of trifurcation the respondents were recruited to the Grade-III in the pay scale of Rs.975-1660 though the posts were advertised prior to 1994 in the pay scale of Rs.1320-2040.

The Tribunal, in the case of the drivers, who were employed prior to 1994, had directed the petitioners to consider their representation for promotion to the higher post after 10 years of service in a particular grade after taking into account the acceptance or otherwise of ACP Schemes for the drivers of DFS and also taking into account new recruitment rules, if any, for the purpose of drivers in DFS. Against the order of the Tribunal, in OA 1988/2006 filed by the drivers recruited prior to 1994, a writ petition being Civil Writ Petition No. 6194/2001 was filed. The High Court had held that the drivers, who were in the pay scale of Rs. 1320-2040 were to be placed in Grade-I on their fulfilling the conditions as stipulated in the trifurcation scheme which included promotion to the next higher grade after rendering 10 years of service as a driver. It was thus held that all the existing drivers, who were appointed in the pay scale of Rs. 1320-2040, were to be given the pay scale of Rs. 1600-2660 after ten years of service, on satisfying the conditions mentioned at Serial No. 1 to 4 of the order, namely, passing of prescribed test and achieving the bench mark in their ACRs. The High Court in the Civil Writ Petition No. 6194/2001 had held as under:-

“ The appropriate exercise therefore would have been in the following sequence:-

- (a) The existing drivers on completion of 10 years of service should have first been considered for promotion to Grade-I, i.e., in the pay scale of Rs. 1600-2660 and those who qualify for the said promotion should have been given the pay scale of

Rs. 1600-2660 (revised pay scale of Rs. 5,000-8,000)

- (b) Those who would be able to get promotion in the aforesaid manner would be entitled to upgradation of their pay scale after 12 years of service from the date of promotion and in the pay scale of Rs.6,500-10,500/-. It is obvious that after those who get promotion would not be entitled to the benefit of both the ACPs Scheme but would get only upgradation to next higher scale.
- (c) Those existing drivers who are not able to get the promotion to the pay scale of Rs. 1600-2660 would continue in the pay scale of Rs. 1320-2040. In their cases, the upgradation as given by the office order dated 5<sup>th</sup> July, 2000 would be just and proper. We may note from the impugned judgment of the learned tribunal that even the Tribunal has not discuss the matter in the aforesaid perspective and has simply directed that the first upgradation be given from Rs. 4000-6000 to 5000-8000 and second upgradation to 6500-10500. The order of the Tribunal is modified and substituted by our aforesaid directions. Proper exercise shall be undertaken by the petitioners in this behalf and appropriate orders be passed within six months from today. We may clarify that we have discussed the issue of only those drivers who were in service in the year 1994 when the trifurcation took place. Those drivers who were appointed thereafter had to be placed in the pay scale of Rs. 975-1660. This has been so held by the Tribunal in its judgment rendered in another case, i.e., the judgment dated 1<sup>st</sup> December, 1999 in OA No. 424/1996, the writ petition thereagainst was dismissed by this court and the judgment of this court was upheld by the Supreme Court. ”

While dealing with the cases of the drivers, who were appointed after 1994, they were placed in Grade-III in the pay scale of Rs.975-1660, i.e from 1994 till 1999, when the ACP was not available, and

what had been applied was the resolution of the MCD dated 21<sup>st</sup> March, 1994. Therefore, the same *mutatis mutandis* extends to the drivers appointed after 1994 specially in whose cases, no promotional avenues in the form of recruitment rules were in vogue before promulgation of the Scheme for ACP in 1999. The Tribunal by the impugned order dated 3<sup>rd</sup> July, 2009 in OA No. 1505 has held that in such an event, there has to be a reconsideration by the respondents to apply trifurcation scheme promulgated vide resolution dated 21<sup>st</sup> March, 1994, which despite a specific plea taken before the High Court in Civil Writ petition No. 6194/2001 had repelled the plea that the resolution dated 21<sup>st</sup> March, 1994 had become infructuous and was superseded.

The learned counsel for the petitioner has not been able to counter that all the drivers, who were recruited till 1994 had completed 10 years of service by 1999, when the trifurcation scheme by MCD Resolution dated 21<sup>st</sup> March, 1994 was allegedly repelled and superseded. From the decision of this Court in Civil Writ Petition 6194/2001, it is apparent that the plea of supersession of the resolution dated 21<sup>st</sup> March, 1994 having become infructuous, had been repelled and consequently, the drivers, who were recruited prior to 1994, though had not completed 10 years of service by 1999, they had been promoted to the next higher grade under the Resolution dated 21<sup>st</sup> March, 1994 even after 1999 on completion of ten years of service. If the drivers who were recruited prior to 1994 have been promoted to the

next higher grade after the completion of 10 years and subject to the conditions stipulated in the scheme after 1999, *a fortiori*, the drivers, who were employed after 1994, though in the lower Grade-III of Rs.975-1660, shall be entitled for promotion to the next higher grade after completion of 10 years of service subject to other conditions stipulated in the resolution dated 21<sup>st</sup> March, 1994 even after 1999.

The Tribunal, by the order dated 3<sup>rd</sup> July, 2009, which is impugned before us, has directed the petitioner to consider the claim of the respondents for grant of promotion in the higher pay scale by passing a detailed and speaking order. If the drivers recruited prior to 1994 after completion of 10 years of service even after 1999 were directed to be considered for promotion to the next higher grade, no tangible reason or ground has been shown as to why the drivers who were appointed after 1994, though in the Grade of Rs.975-1660, shall not be entitled for consideration to the next higher grade subject to the conditions stipulated in the trifurcation scheme dated 21<sup>st</sup> March, 1994 even after 1999.

This is not the case of the petitioners that only those drivers, who were employed till 1989, and who had completed 10 years of service by 1999 were promoted to the next higher grade. The drivers employed from 1989 to 1994 would have completed 10 years of service after 1999 till 2004 and in terms of the judgment of the High Court in CWP No. 6194/2001 if such drivers were entitled for consideration for promotion

to the next higher grade on completion of 10 years, on the same reasoning, the drivers who had been employed in a lower Grade-III after 1994 pursuant to the trifurcation scheme, shall also be entitled for consideration to promotion to the next higher grade on completion of 10 years of service even after 1999.

In the circumstances, the direction by the Tribunal to the petitioners to re-consider the claim of the respondents for grant of promotion in the higher pay scale on completion of 10 years of service, cannot be termed to be illegal or unsustainable or having any such illegality, which is liable to be corrected in exercise of jurisdiction by this Court under Article-226 of the Constitution of India.

The writ petition, in the circumstances, is without any merit and it is, therefore, dismissed.

**ANIL KUMAR, J.**

**JANUARY 06, 2011**

‘rs’

**VEENA BIRBAL, J.**