

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

% *Judgment Reserved on : February 06, 2013*

Judgment Pronounced on : March 13, 2013

+ **W.P.(C) 3318/2010**

GNCT OF DELHI, DELHI FIRE SERVICE Petitioner

Represented by: Ms.Anjana Gosain, Advocate

versus

BHOLLA DUTT SHARMA & ORS. Respondents

Represented by: Mr.V.K.Rao, Sr.Advocate with
Mr.Piyush Gaur and Mr.Arun
Bhardwaj, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. The instant matter relates to pay-scales of posts in the Wireless Section of the Communication Wing of the Delhi Fire Service, the hierarchical structure wherein was as under when the recommendations of the 4th Central Pay Commission were received by the Government and at the relevant time the Delhi Fire Service was under the administrative control of the Municipal Corporation of Delhi:-

Wireless Officer		
I		
I		
I	I	I
Assistant Wireless Officer (Operational)	Assistant Wireless Officer (Maintenance)	Assistant Wireless Officer (Store & Planning)
I	I	I
Asstt. Mobilizing Officer Gr-I/	Radio Technician	Store Keeper (Wireless)
Asstt. Mobilizing Officer Gr-II/	I	I
Radio Operator/Radio Telephone	I	I
Operator	I	I
I	I	I
Control Room Attendant	Workshop Assistant	Store Man
	I	I
	Battery Fitter	Store Coolie

2. Recognizing that personnel in Delhi Police including in the Wireless Section were performing dangerous and hazardous duties, while implementing the recommendations of the 4th Central Pay Commission the Ministry of Home Affairs granted one step higher pay scale for Delhi Police Personnel as per the letter dated December 23, 1988.

3. Since no specific recommendation was made by the 4th Central Pay Commission in respect of posts in the Delhi Fire Service, the Municipal Corporation of Delhi constituted a Sub-Committee to review the pay scales in Delhi Fire Service and the sub-Committee made a recommendation as under:-

“The sub-committee strongly felt that an important wing of the municipal services was MCD fire services. It was a disciplined force like the Police and was required to perform most hazardous and arduous nature of duties at all odd hours. It was observed that in the Cm’s proposals, the fire services had not been accorded their due place, neither in category A posts nor in posts other than category ‘A’. In the interest of developing and maintaining a satisfied force it is most essential that the proposals with regard to the entire personnel of the fire services are brought at par with comparable services like Delhi Police. The sub-committee felt that the Commissioner be asked to reframe the proposals and bring up on high priority.”

4. The Corporation accepted the proposal and accepted that even personnel of the Delhi Fire Service perform arduous duties and accordingly approval was sought from the Ministry of Home Affairs to grant one step higher pay scale(s) to the employees of the Delhi Fire Service. Responding favourably vide letter dated May 9, 1988, the Ministry of Home Affairs accorded approval to the Corporation as sought. Vide resolution dated June 27, 1988, the Corporation sanctioned one step higher pay scale(s) than those

recommended by the 4th Central Pay Commission to several posts in the Delhi Fire Service viz., (i) Fireman; (iii) Leading Fireman; (iv) Leading Fireman (Band); (v) Driver; (vi) Sub-Officer; (vii) Sub-Officer (Band); (viii) Station Officer (Band); (ix) Station Officer; (x) Asstt.Divisional Officer; (xi) Divisional Officer; (xii) Deputy Chief Fire Officer and (xiii) Chief Fire Officer. It is noteworthy that the Corporation did not grant one step higher pay-scale(s) to the posts in the Wireless Section of the Communication Wing of the Delhi Police. Subsequently, in the year 1991 the Corporation granted one step higher pay-scales to the highest post in the Wireless Section of Delhi Fire Service i.e. the post of Wireless Officer but not to other posts in the Wireless Section.

5. Thereafter several persons who were working in the Wireless Section of the Delhi Fire Service made representation(s) to the competent authority praying that even they were entitled to a higher pay scale since work performed by them was identical to the one which was performed by officers in the wireless section of the Delhi Police.

6. Receiving no satisfactory response to their representations, the said persons, working in the Wireless Section of the Delhi Fire Service filed a writ petition being CW No.460/1992 before this Court seeking parity of pay-scales with the personnel working in the Wireless Section of the Delhi Police, which petition got transferred to the Central Administrative Tribunal, Principal Bench, New Delhi and re-numbered as TA No.5/1998.

7. Before it could be decided, on November 10, 1994 the Delhi Fire Service came under the administrative control of the Government of National Capital Territory of Delhi.

8. Vide order dated December 2, 1998 the Tribunal disposed of TA No.5/1998 (CW No.460/1992) in the following terms:-

“We allow the applicants to make a more comprehensive representation in continuation of the representation already made to the Chief Secretary, N.C.T. of Delhi, Respondent No.3 and direct the Respondent No.3 to reconsider the demand of the applicants, taking into account the nature of duties and responsibilities of the applicants the recommendations made by the authorities of the Municipal Corporation of Delhi and other relevant materials and to take an appropriate decision in the matter and communicate the same to the applicants within a period of four months from the date of receipt of a copy of this order.”

9. Pursuant thereto, the persons working in the Wireless Section of the Delhi Fire Service submitted representations to the Chief Secretary, Govt. of NCT of Delhi.

10. While the aforesaid representations were pending consideration before the Government, on September 7, 1999, the Deputy Secretary (Home-III), Govt. of NCT of Delhi wrote a letter to the Joint Secretary (UT), Pay Anomaly Section, Ministry of Home Affairs, which reads as under:-

“As desired by the Chief Secretary, I am to state that the Wireless Section of the Delhi Fire Service was established in the year 1971 on the pattern of Delhi Police. This Section comprises of Radio Technicians, Radio Operators, Workshop Assistants, Battery fitters, Store Keeper (Wireless), Storeman and Store Cooli. The duties being performed by the wireless section of Delhi Fire Service are the same as being performed by Delhi Police Wireless Wing.

At the time of 3rd Pay Commission, the pay scales of wireless staff members of Delhi Fire Service were at par with Delhi Police. At the time of 4th Pay Commission, the staff members of the wireless wing of Delhi Police got enhanced pay scales than those recommended by 4th Pay Commission vide letter No.14011/12/87-UTP dated 23.12.88 issued by the Director (SP), Govt. of India, Ministry of

Home Affairs. On the same plea, the M.C.D. gave one step higher pay scales than those recommended by 4th Pay Commission to all the operational subordinate staff members and officers from the rank of Fireman to Chief Fire Officer including the Wireless Officer but the staff working in wireless section of Delhi Fire Service were left out inadvertently. These pay scales were made applicable w.e.f. 1.1.86. At the time of 5th Pay Commission, considerable variation has come up in their pay scales. The 5th Pay Commission was not approached because at that time the case in question was pending in the High Court who referred the same to CATS and now finally the CAT has passed orders to get the case examined. In view of what has been stated above and also as desired by the Chief Secretary and CATS, I request you to kindly examined the case and pass appropriate orders at an early date.” (Emphasis Supplied)

11. On September 11, 2000, the Principal Secretary (Home), Govt. of NCT of Delhi wrote another letter to the Ministry of Home Affairs regarding upgradation of pay scales of the posts in the Wireless Section of the Delhi Fire Service, the relevant portion whereof reads as under:-

“A Note containing para-wise comments on the representations made by some officials of Wireless Section of Delhi Fire Service is enclosed.

In the interest of equity and justice, it is felt that the benefit of grant of one step higher pay scale under the 4th CPC should also be allowed to the left-out categories of the Wireless Section of the Delhi Fire Service, more so because the incumbents of the posts of the Wireless Service and the Communication Officer have already been extended the same benefit by the Municipal Corporation of Delhi in August, 1991 prior to transfer of the Delhi Fire Service to the Delhi Government in November, 1994. As a perusal of the representations and our comments thereon will show, the subordinate staff of Wireless Section below the level of Communication Officer and Wireless Officer have apparently been discriminated against the Officers

Incharge of their Section have been given pay scales one step higher than those recommended by the 4th CPC whereas they have been deprived of the similar benefit. As a result of this, promotional avenues of the employees in the feeder cadre have also been affected, giving rise to frustration and resentment amongst the affected employees.

4. There can be no two opinions about the fact that the Wireless Section serves as the nerve centre of the entire Delhi Fire Service. It is the staff manning this section which receives fire and rescue calls from members of the public and transmits the same to the concerned fire stations and also to Delhi Police Control Room and Centralised Accident Trauma Services etc, depending upon the nature and gravity of the mishap. Again these very employees attend the wireless messages for reinforcements by way of additional manpower and equipments from the Officer Incharge handling fire fighting/rescue operations from the scene of incident. Obviously, the overall performance and efficiency of the fire fighting force depends heavily on the efficiency of Wireless Section. It is, therefore, of vital importance to redress the long standing grievance of these employees by the extending the same benefit of one step higher pay scale as was given to the twelve categories of officials including the Officer Incharge of their own Section.

5. In view of above, it is requested that the matter may kindly be reconsidered and approval of the Govt. of India, Ministry of Home Affairs in respect of the left out staff of Wireless Section may kindly be conveyed to this Government at an early date.”

12. Vide orders dated May 3, September 29 and November 27, 2000, the Central Government rejected the aforesaid representations for the reasons that:-

(i) there is no equation of posts in the Wireless Section of the Delhi Fire Service with any other post in the Delhi Fire Service;

- (ii) there is no equation of posts in the Wireless Section of Delhi Fire Service with any post in the Wireless Section of Delhi Police;
- (iii) by virtue of provisions of Section 2(m) of Delhi Police Act, 1978 every member of Delhi Police including the personnel working in Wireless Section of Delhi Police is a 'police officer' and required to perform hazardous and arduous duties relating to policing etc., which is not the case with the personnel working in Wireless Section of the Delhi Fire Service;
- (iv) the mode of recruitment, educational qualifications, hierarchy and charter of duties and responsibilities of the posts in the Wireless Section of Delhi Fire Service are not identical to the ranks/posts in the Wireless Section of the Delhi Fire Service; and
- (v) the personnel working in the Wireless Section of the Delhi Fire Service have not submitted any memorandum before 5th CPC for upgradation of their pay-scales.

13. Aggrieved by the orders dated May 3, September 29 and November 27, 2000, the respondents who are personnel working at various posts in the Wireless Section of the Delhi Fire Service (except the post of Wireless Officer) filed an application being OA No.2719/2001 before the Tribunal.

14. During the pendency of aforesaid application, the respondents filed an application being MA No.465/2003 before the Tribunal for placing on record a comparative statement/chart showing the qualification, method of recruitment and duties and responsibilities of the personnel working in the Wireless Section(s) of the Delhi Fire Service and Delhi Police, which chart was stated to have been prepared by the higher authorities in Delhi Fire Service and accepted by a 3-member Committee constituted by the Govt. of NCT of Delhi for consideration of upgradation of pay-scales of the personnel working in the Delhi Fire Service.

15. Vide order dated November 21, 2003 the Tribunal allowed OA No.2719/2001 filed by the respondents and held that the competent authority has not dealt with the claim of the respondents fairly and thus should reconsider the same in a proper perspective. The operative portion of the order dated November 21, 2003 reads as under:-

“16. In that view of the matter, we allow the present application and pass the following order:-

(a) keeping in view the advice of the Supreme Court in the case of Haryana Civil Secretariat Personal Staff Association (supra), we direct that the order dated 29.9.2000 whereby the claim of the applicants had been rejected is quashed; and

(b) the applicants are entitled to be considered and it is directed that the respondents should re-consider their claim in the light of our findings above.” (Emphasis Supplied)

16. In so concluding, it was held by the Tribunal that:-

(i) the comparative statement/chart filed by the respondents along with MA No.465/2003 demonstrates that the qualification, method of recruitment and posts and responsibilities of the personnel working in the Wireless Section of the Delhi Fire Service and Delhi Police are by and large identical and the same has not been shown to be incorrect by the petitioner;

(ii) the fact that save and except the posts in the Wireless Section all other posts in the Delhi Fire Service have been granted one step higher pay scales than those recommended by the 4th Central Pay Commission when, coupled with the circumstance that the duties of the personnel working in Wireless Section are as important as any other post in the Delhi Fire Service, shows that the posts in the Wireless Section have been discriminated vis-à-vis other posts in the Delhi Fire Service; and

(iii) the fact that vide letter dated September 7, 1999 the Govt. of NCT of

Delhi has itself admitted that the Municipal Corporation of Delhi inadvertently omitted to grant one step higher pay scales than those recommended by the 4th Central Pay Commission to the posts in the Wireless Section at the time of granting similar pay scales to other posts in the Delhi Fire Service leaves no room for any doubt that the posts in the Wireless Section have been discriminated vis-à-vis other posts in the Delhi Fire Service. But, no positive direction was issued by the Tribunal inasmuch as the Government was to reconsider the matter keeping in view the directions issued.

17. On August 11, 2004, the Chief Fire Officer in the Delhi Fire Service wrote a letter to the Deputy Secretary (Home), Govt. of NCT of Delhi on the lines of the letter dated September 7, 1999, reference whereof has been made by us in para 10 above written by the Deputy Secretary (Home-III), Govt. of NCT of Delhi to the Joint Secretary (UT), Pay Anomaly Section, Ministry of Home Affairs. The relevant portion of the letter dated August 11, 2004 reads as under:-

“4. In the back-drop of the foregoing elucidation, it is requested that the matter may be forwarded to the Ministry of Home Affairs for de novo consideration, in the light of order of the Hon’ble CAT, seeking clearance of the said Ministry for removal of anomaly in respect of left out few subordinate posts in the wireless section of the Delhi Fire Service so as to remove the simmering discontentment and frustration amongst the said staff. Since the instant case is an extension of the decision taken in the past by the Ministry of Home Affairs in the case of other bulk categories of posts in the Delhi Fire Service, it would perhaps suffice if finality in the matter is arrived at the level of the said Ministry itself so that this long pending matter could be expedited without any further loss of time.”

18. In the month of November 2004, the respondents filed a contempt

petition being C.P. No.467/2004 before the Tribunal alleging disobedience of the order dated November 21, 2003 passed by the Tribunal in OA No.2719/2001.

19. While aforesaid contempt petition was pending adjudication, on January 19, 2005, the Deputy Secretary (Home), Govt. of NCT of Delhi passed an order in compliance with the directions contained in the order dated November 21, 2003 passed by the Tribunal in OA No.2719/2001, the relevant portion whereof reads as under:-

“3. On carefully examining the circumstances concerning the duties of the applicants, primarily the members of the communication wing of the Delhi Fire Service, and those of the Delhi Fire Service involved in the operational functions of actual fire fighting on the one hand, as also the duties of the communication staff of the Delhi Police on the other, major differences have been noticed. These are discussed below.

First of all, there is comparison between the duties of the applicants, particularly those of the communication wing of the Delhi Fire Service with those on operational duties of actual fire fighting. In this context it would be relevant to point out that the Hon Central Administrative Tribunal (Principal Bench) had by its order dated 18.4.2002 in OA No.2765/2001 directed as follows:

“With the agreement of both sides this OA is remanded to the competent authority (Principal Secretary (Home), Govt. 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”.

In that case the applicants were radio operators, an important representative level of the communication wing of the Delhi Fire Service, with whose duties we are concerned in the present case as well. The substance of the findings of the Principal Secretary (Home) which were conveyed through a speaking order dated 2.12.2002 after hearing those radio

operator – applicants to the effect as follows:-

(i) That the radio operators coordinated with other services like Delhi Police, ambulance/CATs services, hospitals and with senior officers apart from servicing the media and the press inquiring about fire incidents. But they worked in the control room on an eight hour shift arrangement for five days a week only.

(ii) That the radio operators of the Delhi Fire Service are not ‘ministerial’ staff.

(iii) On the other hand fire fighting or operational staff of the Delhi Fire Service work continuously for 24 hours followed by a day’s rest, and work as much as 84 hours a week. Besides they are exposed to the hazards of fire and calamities on a daily basis. Inhalation of smoke, toxic fumes, injury from falling debris and rubble, operating at great heights, and around the clock duty, are part of their job. Even when they are off duty, most of them stay in dormitories in the fire station premises itself and can be mobilized for duty at any time depending on the gravity of the contingency. It is for these arduous duties that they are paid Special Pay, and to cater to the enormous risk involved that they get Risk Allowance. Those having staff quarters are also given rent free accommodation, and for the above reasons of around the clock readiness and need for close proximity residence to the fire station.

(iv) Without any prejudice to the undoubtedly important functions discharged by the radio telephone operators, it would be difficult to accept that their duties are as arduous or risky as the fire fighting staff with whom they seek parity through a declaration as being “operational”. It was his speaking order that for these reasons the radio operators were also not operational staff.

4. From the above observations it is clear that there are significant differences in the duties of the communication wing of the Delhi Fire Service and their fire fighting and operational wing, and in particular, in respect of their

relative arduousness. It is for these reasons that the fire fighting/operational staff get additional emoluments like Special Pay and Risk Allowance, while the communication wing staff of the Delhi Fire Service do not.

5. *Now, we come to the duties of the communication wing of the Delhi Fire Service and those of the communication wing of the Delhi Police. Over and above the duties mentioned in respect of the radio operators at para 5 of this order, the following comparisons with the communication staff of the Delhi Police would be relevant.*

<i>S. No.</i>	<i>Delhi Fire Service</i>	<i>Delhi Police</i>
<i>1.</i>	<i>Present total staff strength is 120</i>	<i>Present total staff strength is 2320</i>
<i>2.</i>	<i>The staff of the Delhi Fire Service Communication Wing work in the Central Control Room at Headquarters and the control rooms of the other fire stations numbering about 40</i>	<i>The staff of the Delhi Police communication unit is responsible for operating static wireless stations, mobiles and police exchanges</i>
<i>3.</i>	<i>They are deployed in the control room to receive fire/rescue calls from the public at 15 lines of Tel. No.101, which is an emergency number, and on hotlines from police control room, other departments such as PCR, airport, hospitals etc. and transmit the same to the concerned fire stations for ensuring response by fire fighting or rescue vehicles accordingly. The record of the event is maintained by them at the control room as well as at fire station watch room</i>	<i>They perform around the clock duties in the district/unit control rooms in 3 shifts to provide uninterrupted communication in the jurisdictions of NCT of Delhi.</i>
<i>4.</i>	<i>The control room staff (RTOs) perform duty as per an eight</i>	<i>Mobile Wireless operators are deployed with the officers of</i>

	<i>hour shift system in rotation having one day rest after 3 days of 8 hours per day shift duty</i>	<i>and above the rank of DCPs and select senior officers in the Govt. of NCT of Delhi on a day long continuous attachment followed by a day off. They function also as Personal Security Officers carrying weapons.</i>
5.		<i>The Delhi Police communication unit cater to the communication requirements of 124 police stations, 102 police posts, 201 pickets, 27 check posts, 29 wireless integrated public addresses, 125 broadcast receivers installed in districts/units, 106 beat net installed in police stations, 929 mobile stations including PCR vans and PP vans, 419 motor vehicles and 4601 hand held sets.</i>
6.		<i>Beat constables in the 9 districts have also been provided communication facility in addition to the PCR police emergency 100. They are also working in VVIP route arrangements, Police Control Room, Rashtrapati Bhawan Control Room, Traffic control room, security control room etc.</i>
7.		<i>They are also required to perform field duty as PSOs, on VVIP route, PCR etc. As such they perform dual duties of wireless operator and bodyguard and also carry weapons for which they</i>

		<i>undergo training for 3 months. These are staff on 24 hours' duty as per requirement.</i>
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6. *From the above comparison it is noteworthy that the Delhi Fire Service communication staff are largely and almost invariably on static duties with no mobile communication responsibilities. In contrast the communication staff of Delhi Police are also on security duties requiring them to undergo firearm training and carry weapons as personal security officers. Functioning as bodyguards obviously entails a risk. Delhi Police communication staff handles communication functions on the fleet of nearly 350 PCR vans on patrol duty throughout the Union Territory of Delhi. Personnel including communications staff on PCR vans discharge a variety of functions such as crime prevention, interdiction of criminals escaping from crime with attendant personal risk, as also casualty evacuation. All this goes to show that the duty content, duty hours, risk factor and exposure to a variety of mobile communications functions of the Delhi Police are considerably variant from those of communication wing of the Delhi Fire Service, without prejudice to the important role of the latter.*

7. *From the above discussion at paras 3-6 it emerges that the duties, duty conditions including working hours and risk factor of the communications wing of the Delhi Fire Service are variant from those of the fire fighting and operational staff of the Delhi Fire Service on one hand, and those of the communications staff of the Delhi Police on the other. In respect of the latter it may further be mentioned that under Section 2(m) of the Delhi Police Act, 1978, it has been stated "the police officer" means "any member of the Delhi Police". This includes the communications staff of the Delhi Police as well. This may be seen in conjunction with the executive duties and powers of police officers prescribed under Chapter VI of the Delhi Police Act 1978, particularly under Sections 59-65 which vest in them a wide range of powers and duties. This is not the case with the communication staff of the Delhi Fire Service. Thus there*

are important distinctions both within the Delhi Fire Service itself (between their communication wing, and their fire fighting/operational staff) and between the communications wing of the Delhi Fire Service and the communications staff of the Delhi Police.

8. Another important point to be seen is the issue of similarity in recruitment rules and qualifications, but difference in duties. We have come to the conclusion that it is the difference in duties and conditions of work which determine the level of responsibilities and as a corollary, the pay scales.....

9. Now, it has been the endeavour of the respondents in the preceding paragraphs to carefully examine whether there has been any cause to conclude that the important concept of “equal pay for equal work” had been overlooked, and further whether there had been any hostile discrimination meted out to the applicants. In this regard, as the detailed reasoning given by the respondent – Govt. of NCT of Delhi clearly shows this has not been the case.

10. After going through all the facts as well as records, the Govt. of NCT of Delhi have come to the conclusion that the service conditions of Delhi Police and Delhi Fire Service are quite distinguishable and cannot be considered to stand on the same footings. Accordingly, the claim of the applicants is hereby rejected.”

20. Vide order dated June 2, 2005 the Tribunal disposed of CP No.467/2004 filed by the respondents in the following terms:-

“4. The learned counsel for the respondents could not deny turning around of the respondents in their orders dated 19.1.2005 in contravention to the judicial findings of the Tribunal contained in orders dated 21.11.2003 whereby OA No.2719/2001 was allowed.

5. The Tribunal’s orders having not been challenged before any judicial forum and having not been set aside, have become final and binding on respondents.

Implementation of Tribunal's direction in their true spirit cannot be escaped. In this backdrop, to a suggestion whether respondents would be agreeable to reconsider the matter and pass fresh orders in compliance with the Tribunal's directions contained in order dated 21.11.2003 in OA No.2719/2001, the learned counsel for the respondents consented that the respondents would do so. As such, this contempt petition is disposed of and notices to respondents are discharged, with a direction to respondent No.6, Principal Secretary (Home), Government of NCT of Delhi, to pass fresh orders in compliance of Tribunal's directions dated 21.11.2003 in their true spirit and in right earnestness within a period of thirty days from the date of communication of these orders."

21. Aggrieved by the aforesaid, the petitioner filed a writ petition being W.P.(C) No.13297/2005 before a Division Bench of this Court, which petition was disposed of in following terms vide order dated August 22, 2005:-

"Counsel for the petitioner seeks permission to withdraw this petition in order to enable the petitioner to approach the learned Tribunal seeking for a modification/review of the order dated 2nd June, 2005 passed in CP No.467/2004 on the ground that there was no concession of the counsel for the petitioner before the learned Tribunal in the manner it is so recorded in the said order. Permission is granted for moving such an application, which, when filed, shall be considered in accordance with law and shall be disposed of with a speaking order."

22. Thereafter, the petitioner filed a review application being RA No.181/2006 in CP No.467/2004 before the Tribunal, which application was dismissed vide order dated October 19, 2005.

23. Aggrieved by the orders dated June 2 and October 19, 2005, the petitioner again filed a writ petition being W.P. (C) No.468/2007 before a Division Bench of this Court, which petition was disposed of in following

terms vide order dated August 22, 2007:-

“With the consent of the parties, we quash the orders passed in the contempt petition and the review application. However, the respondents are permitted to challenge the orders dated 19.1.2005, for which an application under Section 19 of the Administrative Tribunal Act shall be filed within four weeks from today. If the application is filed within this period, the petitioner shall not take an objection regarding limitation. Even otherwise, in view of the subsequent orders passed, and pendency of this petition, there is sufficient ground to condone the delay, if any.”

24. Pursuant thereto, the respondents filed OA No.1798-A/2007 before the Tribunal assailing the legality of the order dated January 19, 2005 passed by the Govt. of NCT of Delhi contending therein that:-

- (i) there is no difference between the duties and responsibilities of the personnel working in the Wireless Section of the Delhi Police and Delhi Fire Service;
- (ii) having not challenged the finding returned by the Tribunal in the order dated November 21, 2003 passed in OA No.2719/2001 that there is no difference between the duties and responsibilities of the personnel working in the Wireless Section of the Delhi Fire Service and Delhi Police it is not open to the Govt. of NCT of Delhi to say to the contrary;
- (iii) when all the remaining posts in the Delhi Fire Service as also the highest post in the Wireless Section i.e. the post of Wireless Officer have been granted one step higher pay scales than those recommended by the 4th Pay Commission there is no justifiable reason to not to grant similar pay scales to the posts in the Wireless Section particularly when in several correspondences the Govt. of NCT of Delhi has admitted the fact that the MCD inadvertently omitted to grant one step higher pay scales than those recommended by the 4th CPC to the posts in the Wireless Section at the time

of granting similar pay scales to other posts in the Delhi Fire Service; and
(iv) Chief Fire Officer has also recommended grant of one step higher pay scales than those granted by the 4th Pay Commission to the posts in the Wireless Section.

25. In its reply, the petitioner primarily contended that there is considerable difference between the duties and responsibilities of the personnel working in the Wireless Section of the Delhi Fire Service and Delhi Police and thus there cannot be parity of pay scales between the said 2 sections.

26. Vide impugned judgment dated May 28, 2009 the Tribunal allowed the OA No.1798-A/2007 filed by the respondents, the relevant portion whereof reads as under:-

“16. With the above position of law, the background facts of this case clearly transpire that earlier the Govt. of NCT of Delhi has taken a stand on preparation of a comparative chart, which is considered by a three-member committee that the wireless staff of DFS perform not only identical but also arduous functions than what have been performed by their counterparts in Delhi Police with all functional requirements are identical and from the background facts it is clear that in 1988 Government of India allowed parity with other staff of DFS except the communication staff with their respective counterparts in Delhi Police. It is admitted on record that this being an inadvertent mistake on constitution of an anomaly committee, recommendation to correct it has been made but has not been acted upon. It is trite that when in a judicial Fora if for want of any distinguishing and contradictory features a finding is recorded as to performance of duties on all functional requirements by communication staff of DFS with their counterparts in Delhi Police, merely because the Tribunal has recorded that there is nothing on record to indicate that the facts are incorrect, there was a full-fledged opportunity with the respondents to highlight this aspect of the matter earlier. Now in compliance of the directions of the Tribunal

*taking a somersault and a contrary view amounts to approbating and reprobating simultaneously. In these background facts, which have made basis of the comparative chart were also available with the respondents and a conscious decision to recommend anomaly to be removed in parity of the pay scales of applicants with their counterparts in communication wing of Delhi Police, this factum of applicants being identically situated with those counterparts in Delhi Police is no more res integra and a specific finding to this effect has been recorded by the Tribunal. Now, in guise of reconsideration, instead of meticulously considering in its true letter and spirit all relevant factors with due diligence, including the findings arrived at by the Tribunal, the findings have been kept at bay and other factors have been considered to declare applicants dissimilar to their counterparts in Delhi Police amounts to acting beyond jurisdiction and scope of the administrative authorities and in a manner they have contradicted the findings of the Tribunal by overriding it amounts to infiltrating into an arena occupied by judicial verdict, which cannot be permitted in law, as per the decision of the Apex Court in **Anil Rattan Sarkar v. State of West Bengal**, 2001 (5) SCC 327.*

17. In the above view of the matter, though the case has a chequered past history and multiple litigation, yet in the jurisdiction of pay scale when we are satisfied that the examination has not been done in a proper and legal manner, we have no option but to correct the administrative process of decision-making.

18. Resultantly, for the foregoing reasons, impugned order is set aside. Respondents are directed now to consider the findings recorded by the Tribunal earlier on OA-2719/2001 (supra) regarding applicants' being similarly circumstanced with those of their counterparts in communication wing of Delhi Police and in turn consider claim of parity and left over class as per GOI letter dated 9.5.1988 for revising their pay scale to bring them at par with the Delhi Police personnel, within a period of 3 months from the date of receipt of a copy of this order."

27. Aggrieved by the impugned judgment dated May 28, 2009 passed by the Tribunal, the petitioner has filed the above captioned petition under Article 226 of the Constitution of India.

28. In support of the present petition, it was mainly contended by the learned counsel appearing for the petitioner that:-

(i) it is settled legal position that matters pertaining to fixation of pay scales are purely administrative functions and that the Courts must not interfere in the same;

(ii) there cannot be parity of pay scales between the posts in the Wireless Section(s) of the Delhi Fire Service and Delhi Police for the reason there is considerable difference in the duties and responsibilities of the personnel working in the said 2 sections as recorded in the order dated January 19, 2005 issued by the Govt. of NCT of Delhi.

29. Per contra, learned senior counsel appearing for the respondents supported the impugned judgment dated May 28, 2009 passed by the Tribunal and reiterated the contentions advanced by the respondents before the Tribunal. In addition thereto, the learned counsel pointed out that after the pronouncement of the impugned judgment on May 28, 2009 the same was examined by Director, Delhi Fire Service and following remarks were made by him in respect thereof:-

“In view of fact of this case recorded above and orders of Tribunal after it was remanded back by Hon’ble High Court, there appears no other way except to consider implementing this judgment. The case may be refer to Law deptt. and also finance deptt. for further orders.”

30. Before proceeding to decide upon the claims, we discuss the law on the principle of ‘equal pay for equal work’.

31. The principle of 'equal pay for equal work' means persons doing identical work under the same employer are not to be treated differently in relation to their pay. The principle of equal pay for equal work flows out of Article 14 of the Constitution of India which prohibits discrimination.

32. The legal position pertaining to placement of posts in pay scales: It is within the domain of the executive to determine as to in what scale of pay a post has to be placed and since it is a matter of expert opinion, courts intervention has to be slow and that the court cannot assign to itself the role of an expert. But, where it is apparently manifest that two posts are identical, it would be denial of Article 14 to those who are placed in the lower pay scale. In said eventuality, it would be within the domain of the Court to issue appropriate directions.

33. In the decision reported as 2009 (13) SCC 635 State of M.P. & Ors. Vs. Ramesh Chandra Bajpai, the Supreme court has dealt with the jurisprudence relating to the concept of the "equal pay for equal work" and citing various precedents on the said propositions has laid down the following principles:-

(i) the principle of 'equal pay for equal work' can be invoked only when the employees are similarly situated. The designation or nature or quantum of work is not determinative of equality in the matter of pay scales. In other words the equality clause can be invoked in the matter of pay scales only when there is 'wholesome identity' between the holders of two posts;

(ii) in determining whether two posts are similarly placed or there is 'wholesome identity' between the two, the Court has to consider the factors like the source and mode of recruitment/appointment to the posts,

qualifications required, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality and functional need, etc;

(iii) 'equal pay for equal work' carries with it a positive concept of equality and cannot be invoked for perpetuating illegality i.e. an illegal or wrong order passed in one case cannot be made the basis for compelling a public authority to pass similar order in other cases; and

(iv) the principle of 'equal pay for equal' work does not contemplate that only because the nature of work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations, the said principle would be automatically applied.

34. As observed by the Supreme Court, in the decision reported as 2003 (6) SCC 123, State of Haryana & Anr. Vs. Tilak Raj & Ors & Ors equivalence of posts has to be judged not merely with reference to volume of work. The touch stone on which equivalence has to be determined would to consider the source of recruitment, educational and other qualifications required, as also the qualitative and quantitative nature of jobs.

35. In yet another decision passed by the Supreme Court, reported as 2009 (9) SCC 514 State of Punjab & Anr. Vs. Surjit Singh & Ors. as many as 31 precedents have been summarized. The principles culled out in the said decision are in consonance with the law laid down in Ramesh Chandra Bajpai's case (Supra) and are noted as under:-

(I) Further clarifying the law and re-iterating the concept of wholesome identity, it was held that the principle of 'equal pay for equal work' is not

always easy to apply. There are inherent difficulties in comparing and evaluating the work of different persons in different organizations or even in the same organization. This is a concept which requires for its applicability, complete and wholesome identity between a group of employees claiming identical pay-scales and the other group of employees who have already earned such pay-scales. It has been held that the problem about equal pay cannot be translated into a 'mathematical formula'.

(II) To claim a relief on basis of equality, it is for the claimant to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights at par with the other group vis-à-vis an alleged discrimination.

(III) A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body.

36. It is apparent that on what principles equality has to be determined

cannot be put in a water tight compartment. But some of the factors to be noted are enumerated as under:

- a) Source and mode of recruitment/appointment.
- b) Educational and other qualifications required.
- c) Nature of work.
- d) Value of work.
- e) Responsibilities involved.
- f) Reliability.
- g) Prior experience and expertise.
- h) Confidentiality and functional needs.

37. It can thus safely be said that the aforesaid 8 guiding principles need to be kept in mind, and any other, which may be relevant on the facts and circumstances of each case has also to be taken note of.

38. In the backdrop of above legal position, we proceed to examine the present case.

39. As evident from the aforesaid conspectus of facts, it is evident that the respondents have claimed parity of pay scales with the personnel working in the Wireless Section of the Delhi Police on the ground that the mode of recruitment, educational qualifications required for appointment and duties and responsibilities attached to the posts in the Wireless Section(s) of Delhi Fire Service and Delhi Police are near identical. On the other hand, the stand of the petitioner is that there is considerable difference between the duties and responsibilities attached to the posts in said two departments i.e. the Police Department and the Fire Department.

40. It has been contended by the respondents that the petitioner is estopped from contending that there is considerable difference between the duties and responsibilities attached to the posts in Wireless Section(s) of the Delhi Fire Service and Delhi Police for the reason a specific finding returned by the Tribunal in the order dated November 21, 2003 passed in OA No.2719/2001; that the duties and responsibilities attached to the posts in the Wireless Section of the Delhi Fire Service and Delhi Police are near identical, has not been challenged by the petitioner in the higher judicial forum.

41. In order to appreciate the rival claim of the parties, it would be first apposite to note the order dated November 21, 2003 passed by the Tribunal in OA No.2197/2001.

42. A careful reading of the order dated November 21, 2003 would show that nowhere in the said order has the Tribunal returned the finding that the duties and responsibilities attached to the posts in the Wireless Section of the Delhi Fire Service and Delhi Police are near identical. All that has been stated by the Tribunal in the order dated November 21, 2003 is that the comparative statement/chart filed by the respondents along with MA No.465/2003 demonstrates that the duties and responsibilities attached to the posts in the Wireless Section of the Delhi Fire Service and Delhi Police are near identical, has not been shown to be incorrect by the petitioner and that the competent authority should reconsider the claim of the respondents for upgradation of their pay scales in the light of said comparative statement/chart. Thus, while reconsidering the claim of the respondents, it was certainly open for the competent authority to see whether the aforesaid comparative statement/chart is indeed correct or not.

43. We thus find no merit in the contention urged by the respondents that the petitioner is estopped from contending that there is considerable difference between the duties and responsibilities attached to the posts in Wireless Section(s) of the Delhi Fire Service and Delhi Police.

44. We now proceed to deal with the next argument advanced by the respondents, predicated upon letters written by the officials of the Govt. of NCT of Delhi and Delhi Fire Service recommending grant of one step higher pay scales than those recommended by the 4th Central Pay Commission to the personnel working in the Wireless Section of the Delhi Fire Service.

45. A view or an opinion by a person cannot be equated as a verdict on the point in issue. Besides, our experience shows that with an intention to placate the employee, employers do tend to take decisions favourable to the employee but so long the financial pinch is faced by somebody else. Knowing fully well that it is the Ministry of Finance which controls the purse, it is not uncommon to find that even the Cadre Controlling Ministries make positive recommendations. But when the matter is viewed from the telescope of law, a different conclusion is arrived at.

46. Section 2(m) of the Delhi Police Act, 1978 defines '*police officer*' to mean every member of the Delhi Police. Chapter VI of the Delhi Police Act, 1978 prescribes the executive duties and powers of the police officers. By virtue of provisions of Section 2(m), every member of the Delhi Police is required to perform functions of policing, maintenance of law and order etc. laid down under Chapter VI of the Delhi Police Act, 1978. Thus, as far as Delhi Police Act, 1978 is concerned, every person working in the Delhi Police including the persons working in the Wireless Section are required to

perform functions of policing, maintenance of law and order etc. if the situation so requires. This is the reason why, even the ministerial staff in the Armed Forces which would include the Central Para-Military forces and the State Constabulary are trained in the maintenance of law and order.

47. Vide letter dated December 23, 1988, the Ministry of Home Affairs granted one step higher pay-scale(s) than those recommended by the 4th Central Pay Commission to all the personnel working in the Delhi Police including the personnel working in Wireless Section of the Communication Wing of the Delhi Police with effect from January 1, 1986 on account of dangerous and hazardous duties which is required to be performed by every person working in the Delhi Police.

48. Now, let us see the position under the Delhi Fire Act, 2007. Section 2(x) of the Delhi Fire Act defines 'operational member' of the Fire Service to mean any member of the Fire Service who is required to drive or operate a fire fighting vehicle, fire fighting equipment and appliance at the site of fire and participate in the actual extinction of fire. Thus, as far as Delhi Fire Act is concerned, the personnel working in the Delhi Fire Service are categorized into '*operational personnel*' and '*non-operational personnel*'. It is apparent that whereas the '*operational personnel*' of the Delhi Fire Service are required to perform dangerous and hazardous duties same is not the case with '*non-operational personnel*'.

49. As already noted above, the posts in the Delhi Fire Service which have been granted one step higher pay scales than those recommended by the 4th CPC on the analogy of Delhi Police are as follows: - (i) Fireman; (iii) Leading Fireman; (iv) Leading Fireman (Band); (v) Driver; (vi) Sub-Officer; (vii) Sub-Officer (Band); (viii) Station Officer (Band); (ix) Station Officer; (x) Asstt. Divisional Officer; (xi) Divisional Officer; (xii) Deputy Chief Fire

Officer and (xiii) Chief Fire Officer. It is significant to note that the personnel working on the aforesaid 13 posts are '*operational personnel*' within the meaning of Section 2(x) of the Delhi Fire Act, 2007. What is further significant to note is the fact that the personnel working in the wireless section of the Delhi Fire Service are not '*operational personnel*' within the meaning of Section 2(x) of the Delhi Fire Act, 2007.

50. In view of the aforesaid, a conscious decision was taken by the Municipal Corporation of Delhi to grant one step higher pay scales than those recommended by the 4th Central Pay Commission to the '*operating personnel*' of the Delhi Fire Service and not to the personnel working in the Wireless Section as they were not '*operational personnel*'.

51. The afore-noted letters written by the officials of the Govt. of NCT of Delhi and Delhi Fire Service recommending upgradation of pay scales to the personnel working in the Wireless Section is of no help to the respondents for said letters do not note aforesaid subtle, but vital distinction, between the personnel working in the Wireless Section and other personnel in the Delhi Fire Service who have been granted one step higher pay scales than those recommended by the 4th Central Pay Commission.

52. Nothing much turns on the fact that the highest post in the Wireless Section in the Delhi Fire Service i.e. the post of Wireless Officer has been granted higher pay scales than those recommended by the 4th Central Pay Commission. In order to succeed in their claim for grant of similar pay scales to the posts in the Wireless Section of the Delhi Fire Service as granted to the posts in the Wireless Section of Delhi Police, the respondents have to stand on their own legs and establish wholesome and complete identity between all the posts in the Wireless Section(s) of Delhi Fire Service and Delhi Police. Merely because the highest post in the Wireless

Section in the Delhi Fire Service i.e. the post of Wireless Officer was granted similar pay scales as granted to the posts in the Wireless Section of the Delhi Police does not imply that there is complete and wholesome identity between all the posts in the Wireless Section(s) in the Delhi Fire Service and Delhi Police.

53. The order dated January 19, 2005 passed by the Govt. of NCT of Delhi brings out considerable differences between the duties and responsibilities attached to the posts in the Wireless Section(s) of the Delhi Fire Service and Delhi Police. Except for bald denial, nothing of substance has been brought on record by the respondents to show that the differences between the duties and responsibilities attached to the posts in the Wireless Section of the Delhi Fire Service and Delhi Police recorded in the order dated January 19, 2005 are incorrect. The Court is not competent to determine differences or similarities in the nature of duties in order to ascertain parity as such an assessment can be done more accurately by an expert body as was held by the Supreme Court in Surjit Singh's case (supra).

54. In view of above discussion, the present petition is allowed and the impugned judgments dated May 28, 2009 passed by the Tribunal is set aside. Ordered accordingly.

55. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

MARCH 13, 2013/mm