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

% **Date of Decision: 11.01.2019**

+ **W.P.(C) 182/2019**

MAHENDER PRATAP SINGH Petitioner

Through: Mr. Abhinav Tathagat, Advocate.

versus

GOVT OF NCT OF DELHI & ORS Respondents

Through: Mrs. Avinsh Ahlawat, Standing
Counsel for R-1 & 2.
Mr. Naresh Kaushik with Mr. Lakshya
Juneja, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A.K. CHAWLA

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

C.M. APPL. 886/2019

Allowed, subject to all just exceptions.

The application stands disposed of accordingly.

W.P.(C) 182/2019

1. The petitioner assails the order dated 16.08.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal') in

T.A. No. 73/2013. The Tribunal rejected the said Transfer Application preferred by the petitioner. The petitioner had preferred W.P.(C) No.4006/2013 before this Court, which was transferred to the Tribunal on 21.8.2013 and registered as T.A. No.73/2013. The same was initially dismissed on 15.05.2015 by the Tribunal. The petitioner approached this Court in W.P.(C) No.7720/2015, and vide order dated 14.08.2015, the same was remanded back to the Tribunal for re-consideration. On re-consideration, once again, the Tribunal has rejected the said Transfer Application.

2. The petitioner was a Schedule Caste candidate for the two posts of Divisional Officer (Fire), advertised vide Advertisement No.02/2013. Both the posts were shown as belonging to the Unreserved Category. The petitioner participated in the process and was called for an interview. At that stage, he preferred the aforesaid writ petition before this Court [W.P.(C) No.4006/2013], primarily raising the plea that as per the reservation roster, both the advertised posts could not be treated as unreserved. He claimed that, atleast, one of the posts should have been reserved for the SC category candidates. The respondents, including the respondent authorities, filed their replies and disclosed that out of the nine posts of Divisional Officer (Fire), six posts are to be filled by promotion and only three are meant for direct recruits. Thus, the reservation is required to be provided in terms of the OM dated 02.07.1997, which provides for the 13 point model roster. The respondents also disclosed that two posts were earlier advertised as reserved for SC category candidates, and were filled by SC category candidates. In fact, according to the respondents, only one post ought to

have been reserved for SC category candidates and that there is excess representation of the said category as on date. The L based 13 point roster disclosed by the respondents was as follows:-

	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th	8 th	9 th	10 th	11 th
UR											
UR											
UR	OBC	UR	UR	SC	OBC	UR	UR	UR	OBC	UR	ST

3. The posts which were advertised in the advertisement in question were the 6th and 7th replacement vacancies which, as per the 13 point roster, were unreserved posts. After examining the entire position in detail, the Tribunal has found no merit in the submissions of the petitioner.

4. In this regard, the submission of learned counsel for the petitioner is that the two SC category candidates earlier appointed to the post in question on 03.06.1988 and 11.12.1995, were not necessarily appointed on account of grant of reservation.

5. We cannot accept this submission for the reason that it has come on record that two posts, when advertised, were reserved specifically for the SC/ST category candidates and the said two Officers were appointed to the posts in question only on account of the fact that they belong to the SC category.

6. Further submission of learned counsel for the petitioner is that as per the office note dated 17.07.2013, made in a document titled “*Reservation roster for cadre strength up to 13 posts for direct recruitment on all India basis*”, it was observed that in the next recruitment process, one post would be reserved for the OBC category. Thus, the submission of the petitioner is that one of the two advertised posts should have been reserved for the OBC category candidate.

7. Once again, we find no merit in this submission. Firstly, it is not clear as to who has made the said office note and as to whether the same has been prepared by a Competent Authority or by some subordinate functionary. Secondly, the respondents demonstrated before the Tribunal, by reference to the 13 point roster that the 6th and 7th replacement vacancies were meant for the unreserved category candidates. That being the position, said office note fades into insignificance. Last but not the least, the petitioner is not an OBC category candidate and no OBC category candidate has raised any issue in this regard. We, therefore, find no merit in this submission.

8. Lastly, the petitioner has contended that the respondent No.4 and 5 did not meet the experience criteria set out in the Recruitment Rules. The experience criteria set out in the advertisement was:-

“B. EXPERIENCE: Seven years professional experience *out of which at least 5 years experience should be in the capacity of Assistant Division Officer (Fire) or equivalent in a Fire Organisation, preferably of a Metropolitan City*”

(emphasis supplied)

9. The petitioners submission is that two respondents did not have five years professional experience as Assistant Divisional Officer (Fire). This submission has been considered and rejected by the Tribunal by referring to an earlier order passed by the same Tribunal in the case of **Sumesh Kumar Dua vs. G.N.C.T. of Delhi & Ors.**, OA No.1614/2016 dated 30.05.2018. Pertinently, respondent No.4 and 5 in the present petition have also been arrayed as respondent No.5 and 6 in the said proceedings. The issue raised by the petitioner in that case was squarely raised and considered by the Tribunal in the said decision. The Tribunal answered the said issue by observing as follows:-

“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.”

10. The submission of the petitioner is that since he was not a party to the said proceedings in Sumesh Kumar Dua (supra), he is not bound by the said finding and he is entitled to assail the appointment of respondent No.4 and 5 on the ground that they did not have five years experience as Assistant Divisional Officer (Fire), or equivalent, in a Fire organisation.

11. Even if this statement of the petitioner were to be accepted, the observation made in Sumesh Kumar Dua (supra) shows that both the respondent No.4 and 5 herein, had nearly 11 years experience in the relevant field. The submission of the petitioner is that organisations, such as DMRC and DDA, cannot be considered to be “Fire Organisations”. We do not find any merit in this submission for the reason that the said expression “Fire Organisation” is not a defined term and has to be meaningfully construed. The typical Fire Organisation is, obviously, an organisation, such as the Delhi Fire Service. However, large establishments, such as the DDA, DMRC and other organisations such as large factories and refineries, do have their Fire Departments and, in our view, the expression “Fire Organisation” is wide enough to cover Fire Departments or Units of such large organisations. What is relevant is that the candidates should have experience in the relevant field on dealing with fire prevention, fire safety,

and fire fighting and the two respondents had more than enough experience in the said field. Thus, we find no merit in this submission of the petitioner.

12. For the above said reasons, we do not find any merit in this petition. The same is accordingly dismissed.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

JANUARY 11, 2019

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