

(2026) 02 DEL CK 1812

In the Delhi High Court

Case No : Writ Petition (C) No. 5620 Of 2019, Civil Miscellaneous Application No. 61438, 67327 Of 2025

Sumesh Kumar Dua

APPELLANT

Vs

Govt. Of Nct Of Delhi And Ors.

RESPONDENT

Date of Decision : 27-02-2026

Acts Referred:

Constitution of India, 1950 — Article 226
Administrative Tribunals Act, 1985 — Section 21, 21(1)(a)

Citation : (2026) 02 DEL CK 1812

Hon'ble Judges : Anil Kshetarpal, J; Shail Jain, J

Bench : Division Bench

Advocate : Gauri Puri, Meherunissa Anand, Abeer, Kashish Bhardwaj, Naushad Ahmed Khan, Preety Khare, R.V. Sinha, A.S. Singh, Harshit Aggarwal, Vidit Garg, Suresh K. Chopra, Sudarshan Rajan, Hitain Bajaj, Ramesh Rawat

Final Decision : Dismissed

Judgement

Anil Kshetarpal, J

1. Through the present Petition, the Petitioner seeks issuance of a writ in the nature of certiorari to quash the order dated 30.05.2018 [hereinafter referred to as 'Impugned Order'] passed by the learned Central Administrative Tribunal [hereinafter referred to as 'Tribunal'], whereby the Original Application being O.A. No.1614/2016 filed by the Petitioner was dismissed.

2. In the said O.A., the Petitioner had sought, inter alia, the following reliefs:

- i. Quashing of the final seniority list of Divisional Officers (Fire) dated 17.02.2016; and
- ii. Setting aside of the appointment orders of Respondent Nos. 5 and 6 appointing them as Divisional Officers (Fire) through direct recruitment.

3. The principal issues which arise for consideration in the present Petition are

whether the Tribunal erred in upholding the inter se seniority list dated 17.02.2016 prepared in respect of the cadre of Divisional Officers (Fire) in Delhi Fire Service; and whether the Tribunal committed any jurisdictional error in declining to interfere with the appointment of Respondent Nos. 5 and 6 on the ground that they allegedly did not fulfil the eligibility conditions prescribed under the applicable Recruitment Rules.

FACTUAL MATRIX

4. In order to appreciate the controversy involved in the present Petition, the relevant facts in brief are required to be noticed.

5. The Petitioner commenced his service in the Delhi Fire Service [hereinafter referred to as 'DFS'] as a Sub-Officer w.e.f. 16.02.1991. Subsequently, he was directly appointed as Station Officer on 01.01.1993. Thereafter, he was promoted to the post of Assistant Divisional Officer ['ADO'] w.e.f. 23.10.2006, and eventually elevated to the post of Divisional Officer (Fire) w.e.f. 29.07.2013.

6. Respondent No.5 joined DFS as a Sub-Officer in May 1993 whereas Respondent No.6 joined DFS as a Sub-Officer in December 1993. They were appointed as Station Officers on 11.01.2002, and then subsequently promoted as ADOs on 25.03.2013. Thereafter, they were appointed directly through the Union Public Service Commission [hereinafter referred to as 'UPSC'] as Divisional Officer (Fire) on 02.09.2013.

7. Initially, a tentative seniority list of Divisional Officers was circulated on 26.11.2015, wherein the Petitioner was shown senior to Respondent Nos.5 and 6. Subsequently, the final seniority list was issued on 17.02.2016, in which the Petitioner was placed below Respondent Nos.5 and 6. The Petitioner submitted a representation challenging the same, which was not considered. Consequently, he filed O.A. No.1614/2016 before the Tribunal on 05.05.2016, seeking to quash both the seniority list and the appointments of Respondent Nos.5 and 6.

8. The Respondents contended, before the Tribunal, that Respondent Nos.5 and 6 were directly recruited against the vacancies pertaining to recruitment year 2012-2013, and that the seniority had been fixed strictly in accordance with the Department of Personnel & Training ['DoPT'] Office Memorandum ['OM'] dated 04.03.2014, which lays down the method for determination of inter-se seniority between promotees and direct recruits.

9. The Tribunal, after examining the pleadings, submissions, and material on record, dismissed the O.A. filed by the Petitioner vide Impugned Order holding:

(i) the appointments of Respondent Nos.5 and 6 were in accordance with the Recruitment Rules and made through due process by the UPSC;

(ii) the final seniority list dated 17.02.2016 was issued in accordance with law and applicable DoPT instructions; and

(iii) there was no allegation or material to indicate mala fide or arbitrariness in

the selection or seniority fixation process.

10. Aggrieved thereby, the Petitioner approached this Court by filing the present Petition.

CONTENTIONS OF THE PARTIES

11. Contentions of the Petitioner

11.1. Learned counsel for the Petitioner assailed the Impugned Order primarily on two counts, first, the fixation of inter-se seniority of Divisional Officers (Fire) placing Respondent Nos.5 and 6 above him despite their later appointment; and second, the alleged non-compliance with the eligibility conditions prescribed under the Recruitment Rules in respect of the appointments of Respondent Nos.5 and 6.

11.2. With regard to seniority, it was contended that the seniority list issued by the Respondents on 17.02.2016 is arbitrary. It was submitted that while the Respondents claim that Respondent Nos.5 and 6 were assigned seniority in accordance with the DoPT OM dated 04.03.2014, effective from 27.11.2012, the said averments are factually incorrect. According to the Petitioner, the requisition for direct recruitment of Respondent Nos.5 and 6 was only complete in all respects on 15.01.2013, as confirmed by an RTI disclosure and the internal notings of UPSC. Therefore, the initiation of the recruitment process for Respondent Nos.5 and 6 must be reckoned from 15.01.2013, placing it in the same calendar year as the promotion of the Petitioner, whose promotion proposal was sent in May 2013.

11.3. It was further submitted that the fixation of seniority must be in accordance with the provisions of the DoPT OM dated 04.03.2014, read with the DoPT OM dated 07.02.1986 and DoPT OM dated 08.09.1998, which collectively lay down the methodology for determining inter-se seniority between direct recruits and promotees. It was asserted that, as per these OMs:

- (i) The "Recruitment Year" is the year of initiating the recruitment process against a vacancy;
- (ii) For promotion, the relevant date is when the complete proposal is sent to the Departmental Promotion Committee ['DPC'];
- (iii) For direct recruitment, the requisition is deemed valid only when it is complete in all respects during the vacancy year; and
- (iv) Rotation of quota between direct recruits and promotees is then applied on the basis of the respective recruitment years.

11.4 Applying the above principles, it was contended that the recruitment year of Respondent Nos.5 and 6 must be treated as 2013 (and not 2012 as claimed by the Respondents), which coincides with the Petitioner's promotion year. Therefore, it was asserted that, by operation of the rotation of quota under the

DoPT OMs, the Petitioner is entitled to rank senior to Respondent Nos.5 and 6 and to consequent promotions in the higher grade ahead of them.

11.5. As regards the eligibility of Respondent Nos.5 and 6 for appointment as Divisional Officers (Fire), it was submitted that the UPSC has acted contrary to the statutory Recruitment Rules. The Recruitment Rules prescribed a minimum of five years' experience in the capacity of ADO or equivalent in an organized Fire Organization with a Grade Pay of Rs.5400. It was submitted that:

(i) The experience of Respondent Nos.5 and 6 in the Delhi Metro Rail Corporation ['DMRC'] does not qualify as experience in an organized Fire Organization;

(ii) The pay scale in which Respondent Nos.5 and 6 had served (Rs.6500-10500, pre-revised) or their deputation scale cannot be considered equivalent to the statutory requirement of Grade Pay 5400 in the capacity of ADO; and

(iii) Consequently, the UPSC, by allowing such experience to be counted towards eligibility, violated the Recruitment Rules.

11.6. Lastly, it was submitted that the Respondents have intentionally concealed relevant facts regarding the date of submission of complete requisition for direct recruitment to the UPSC and thereby misled the Tribunal. Reliance was placed on CM 42053/2022 and RTI disclosures to substantiate the claim that the requisition was complete only on 15.01.2013, rendering the fixation of seniority in favour of Respondent Nos.5 and 6 unlawful.

12. Contentions of the Respondent Nos. 1 to 4

12.1. Learned counsel for the Respondent Nos. 1 to 4 submitted that the appointments of Respondent Nos.5 and 6 to the post of Divisional Officer (Fire) were made strictly in accordance with the applicable Recruitment Rules and upon recommendation by the UPSC. It was contended that the selection process was duly initiated against the vacancies of the recruitment year 2012-2013, and was conducted in accordance with the prescribed procedure.

12.2. It was further submitted that the fixation of inter-se seniority between the promotees and direct recruits was undertaken in accordance with the DoPT OM dated 04.03.2014, which came into effect from 27.11.2012, i.e., the date of the judgment of the Hon'ble Supreme Court in N.R. Parmar v. Union of India Civil Appeal No. 7514-7515/2005. It was contended that, as per the said OM, seniority is to be determined with reference to the recruitment year in which the recruitment process was initiated and not merely with reference to the date of appointment or joining.

12.3. It was submitted that Respondent Nos.5 and 6 were selected against vacancies pertaining to the recruitment year 2012-2013, whereas the Petitioner's promotion fell in the subsequent recruitment cycle. Therefore, by application of the rotation of quota between direct recruits and promotees, Respondent Nos.5 and 6 were rightly placed above the Petitioner in the final seniority list dated

17.02.2016.

12.4. It was further contended that the Petitioner's challenge to the appointments of Respondent Nos.5 and 6 was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 [hereinafter referred to as 'AT Act']. The appointments of Respondent Nos.5 and 6 were made in March and September 2013 respectively, whereas the Original Application was filed only on 05.05.2016, well beyond the prescribed period of one year. According to the Respondents, the cause of action to challenge the appointment, if any, arose on the date of appointment and not upon issuance of the seniority list in 2016.

12.5. In response to the allegations regarding concealment of facts concerning the date of requisition sent to UPSC, the Respondents denied any suppression and maintained that the recruitment process had been initiated in the vacancy year 2012-2013. It was submitted that the determination of recruitment year had been correctly undertaken in accordance with DoPT instructions and was duly considered by the Tribunal.

12.6. On the issue of eligibility, the Respondents contended that the determination of equivalence of experience and pay scale falls within the domain of the recruiting authority and UPSC. It was submitted that the experience of Respondent Nos.5 and 6 had been examined by UPSC at the stage of scrutiny of applications, and upon being found eligible, they were selected and recommended for appointment.

13. Contentions of Respondent No.5 & 6

13.1. Learned counsel appearing on behalf of Respondent Nos.5 and 6 supported the Impugned Order and opposed the present Petition.

13.2. Preliminary Objections

(i) Plurality of Reliefs- It was submitted that in the Original Application, the Petitioner had sought two distinct and independent reliefs, as reiterated in paragraph 2 of this judgment. Such plurality of reliefs was barred under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. It was contended that the Tribunal has, inter alia, noticed this procedural defect while dismissing the Original Application.

(ii) Limitation- It was contended that Respondent Nos.5 and 6 were appointed to the post of Divisional Officer (Fire) on 02.09.2013. The challenge to their appointments was raised only on 05.05.2016, i.e., after more than two and a half years. It was submitted that under Section 21 of the AT Act, the limitation prescribed for challenging such action is one year. The Petitioner, having not questioned the appointments within the prescribed period, is barred from assailing the same at a belated stage.

(iii) Non-participation in Selection- It was further argued that the Petitioner did not participate in the process of direct recruitment conducted through the UPSC,

therefore, the Petitioner cannot subsequently seek quashing of the appointments made pursuant thereto.

13.3. Seniority Issue Already Attained Finality- It was submitted that before this Court, two issues were originally raised by the Petitioner: (i) challenge to the seniority list; and (ii) challenge to the eligibility of Respondent Nos.5 and 6. Attention was drawn to the order dated 22.05.2019 passed by this Court, wherein it was recorded that the first issue relating to seniority was squarely covered by the judgment of the Hon'ble Supreme Court in N. R. Parmar v. Union of India & Ors., and that, on instructions, the Petitioner did not press the said issue. Notice was issued only on the limited question concerning eligibility. It was, therefore, submitted that the issue of seniority has attained finality and cannot now be reopened directly or indirectly in the present proceedings.

13.4. Vacancy Year vis-à-vis Recruitment Year- It was submitted that at the relevant time, DFS was following the financial year system (1st April to 31st March) as the vacancy year. It was contended that the vacancies earmarked for direct recruitment pertained to the vacancy year 2012-2013. The requisition for filling up the said vacancies was sent to the UPSC on 11.12.2012. Even if certain clarifications were exchanged subsequently, the initiation of recruitment process was within the financial year 2012-2013.

In contrast, the proposal for convening the DPC for promotees, including the Petitioner, was initiated on 24.05.2013, which fell in the subsequent financial year 2013-2014. Accordingly, it was submitted that the Petitioner and Respondent Nos.5 and 6 belonged to different vacancy years and were rightly assigned seniority on that basis.

Reliance was placed upon the DoPT OM dated 04.03.2014, which clarifies that the recruitment year of direct recruits is determined with reference to the date of sending requisition to the recruiting agency, and in the case of promotees, the date on which a complete proposal is sent for convening the DPC. It was argued that the Tribunal correctly applied the said OM while rejecting the claim of the Petitioner for seniority over Respondent Nos.5 and 6.

13.5. Allegation of Re-agitation of Dropped Issue- It was further submitted that by filing subsequent applications and relying upon developments after the order dated 22.05.2019, the Petitioner is attempting to indirectly re-agitate the issue of seniority which had already been given up before this Court. Such an attempt is impermissible in law, particularly when the scope of the present proceedings stood confined to the issue of eligibility.

13.6. Eligibility and Judicial Review- On the question of eligibility, it was submitted that Respondent Nos.5 and 6 possessed the requisite qualifications and experience prescribed under the Recruitment Rules for the post of Divisional Officer (Fire). It was submitted that their eligibility was examined by the UPSC, a constitutional body entrusted with conducting selections in accordance with law. After due scrutiny, UPSC recommended their names for appointment.

It was contended that it is well settled that courts and tribunals, in exercise of judicial review, do not sit in appeal over the assessment made by expert bodies with regard to technical eligibility and suitability, unless there is a clear violation of statutory provisions or mala fides, which is not the case here.

ANALYSIS & FINDINGS

14. This Court has considered the submissions advanced on behalf of the parties and, with their able assistance, carefully perused the material on record.

15. At the outset, it would be apposite to note that the present writ petition was first taken up for consideration on 22.05.2019, when a Coordinate Bench of this Court passed the following order:

"CM No.24648/2019

Exemption allowed, subject to all just exceptions.

W.P.(C) 5620/2019

The petitioner assails the order dated 30.05.2018 passed by the Central Administrative Tribunal, New Delhi in OA No.1614/2016. Primarily, two issues were raised by the petitioner to assail the seniority list issued by the respondents wherein respondent nos.5 and 6 were shown senior to the petitioner as Divisional Officer (Fire). The first issue raised by the petitioner is squarely covered by the decision of the Supreme Court in N.R. Parmar vs. Union of India & Ors., Civil Appeal No.7514-7515/2005 decided on 27.11.2012 and subsequent decisions. To that extent, Mr.Raju, on instructions, states that the petitioner has not challenged the findings returned by the Tribunal. The second issue raised by the petitioner related to the respondent nos.5 and 6 not meeting the eligibility criteria with regard to their past experience as per the recruitment rules. On that aspect, issue notice. Counsel for respondent nos.1 to 4 accept notice.

Let notice be issued to respondent nos.5 and 6, returnable on 20.08.2019, before the Registrar (Appellate).

In the meantime, respondent nos.1 to 4 may file their counter affidavits within six weeks. Rejoinder, if any, be filed before the next date.

List before the Court on 10.12.2019"

16. A plain reading of the aforesaid order makes it abundantly clear that two distinct issues had been urged by the Petitioner while assailing the Impugned Order passed by the Tribunal. The first issue pertained to the correctness of the seniority list in which Respondent Nos.5 and 6 were placed above the Petitioner in the cadre of Divisional Officer (Fire). The second issue related to the alleged ineligibility of Respondent Nos.5 and 6 on the ground that they did not fulfil the requisite past experience prescribed under the applicable Recruitment Rules.

17. It is significant that, insofar as the first issue concerning seniority was concerned, learned counsel for the Petitioner, on instructions, made a categorical

statement before the Coordinate Bench that the findings returned by the Tribunal on that aspect were not being challenged. In view of the said statement, notice was directed to be issued only on the second issue, namely, the question of eligibility of Respondent Nos.5 and 6.

18. The consequence of the statement recorded on 22.05.2019 cannot be understated. The scope of the present Writ Petition stood expressly narrowed by virtue of the said statement. Once the Petitioner chose not to assail the findings of the Tribunal with respect to the seniority list, and the Court proceeded to issue notice limited to the issue of eligibility, the Petitioner cannot now be permitted to widen the ambit of challenge beyond what was expressly preserved.

19. At this stage, it is also necessary to advert to the objection raised by Respondent Nos.5 and 6 regarding limitation. It was contended that the Original Application filed by the Petitioner before the Tribunal was barred under Section 21 of the AT Act. Though this objection was raised before the Tribunal, the Impugned Order does not reflect any specific consideration or finding on the said issue.

20. For convenience, Section 21 of the AT Act is reproduced as under:

21. Limitation.—(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a)

or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

A perusal of the above Section reveals that the same mandates that a Tribunal shall not admit an application unless it is made within one year from the date on which the final order impugned therein has been made. Sub-section (3) carves out a limited discretion enabling the Tribunal to admit an application beyond the prescribed period upon sufficient cause being shown.

21. In the present case, Respondent Nos.5 and 6 were directly recruited and appointed to the post of Divisional Officer (Fire) with effect from 02.09.2013. The Original Application challenging, inter alia, their appointment on the ground of alleged ineligibility came to be filed on 05.05.2016. If the grievance of the Petitioner was with respect to the very appointment of Respondent Nos.5 and 6, the cause of action, in the ordinary course, would arise on the date of such appointment. The filing of the Original Application nearly three years thereafter was ex facie beyond the period prescribed under Section 21(1)(a) of the AT Act.

22. Learned counsel for the Petitioner sought to contend that the cause of action accrued only upon issuance of the seniority list dated 17.02.2016. However, this contention does not advance the Petitioner's case. Firstly, the challenge to the seniority list itself was expressly given up before the Coordinate Bench on 22.05.2019. Secondly, a challenge to the appointment of Respondent Nos. 5 and 6 on the ground of ineligibility cannot be deferred or postponed merely because a consequential seniority list was issued subsequently. The limitation for questioning the foundational act of appointment cannot be extended by reference to a later consequential administrative action.

23. It was also submitted that representations against the selection of Respondent Nos.5 and 6 were pending. Mere pendency of representations, however, does not arrest the running of limitation unless the statute so provides. Section 21 does not contemplate indefinite extension of time on account of pending representations.

24. In light of the above, this Court is of the considered view that:

- i. the challenge to the seniority list stands foreclosed in view of the statement recorded before the Coordinate Bench on 22.05.2019; and
- ii. the challenge to the appointment of Respondent Nos.5 and 6 on the ground of alleged ineligibility was, in any event, beyond the prescribed period of limitation under Section 21 of the AT Act.

25. No ground is thus made out for interference with the Impugned Order in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

26. The Writ Petition, along with all pending applications, is accordingly

dismissed.