



2025:DHC:4319-DB



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

Date of decision: 23.05.2025

+ W.P.(C) 6371/2023 & CM APPL. 25007/2023, CM APPL. 51083/2023

GOVT OF NCT OF DELHI AND ORSPetitioners

Through: Ms. Avnish Ahlawat, SC
GNCTD (Services) with Mr.
Nitesh Kr. Singh, Adv. & Dr.
Archana Bhatia, Legal Advisor,
DFS.

versus

AMIT KUMAR AND ORSRespondents

Through: Mr. M.K. Bhardwaj, Ms.
Priyanka Bhardwaj & Mr.
Himashu Bhardwaj, Adv.
Mr. S.K. Gupta, Adv. & Mr.
Ankur Chhibber, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed challenging the Order dated 16.12.2022 passed by the learned Central Administrative Tribunal (PB), New Delhi (hereinafter referred to as 'Tribunal') in O.A. No.1644/2021, titled *Sh. Amit Kumar & Ors. v. Govt, of NCT of Delhi & Ors.* filed by the respondent Nos.1 to 5, with the following directions:

“14. In view of the aforesaid the present OAs are allowed with the following directions:

(i) The order dated 03.09.2021, impugned in OA No. 2480/2021 is set aside;



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5 reiterates that the existing posts had to be filled in accordance with the existing Rules, which were prevailing at the time. He further submits that the vacancies existing as on the date are to be filled in accordance with the then prevailing Rules, and merely on an anticipation that the Rules will be amended, promotion cannot be denied to the respondents.

5. We have considered the submissions made by the learned counsels for the parties.

6. In the present case, it is not denied that the petitioners had decided not to fill the vacant positions towards the 20% quota, only for the reason that after receiving certain complaints, they were contemplating amending the Recruitment Rules in order to do away with this 20% quota. This was specifically pleaded by the petitioners in their counter-affidavit filed before learned Tribunal in paragraph 4.10, which is reproduced herein below:

“4.10 That in reply to this Para, it is submitted that the submission of the applicants with regard to 100 vacancies are wrong and has been made only to mislead this Hon’ble Tribunal because as on date only 45 vacancies are available. However, it is pertinent to mention that all the applicants are having Grade-I qualification except Sh. Naresh Kumar and the matter of recognition of Grade-I qualification is sub-judice before the Hon’ble High Court of Delhi in WP NO. 6226/2013 and the decision is still awaited. Moreover, the department is in receipt of various complaints against the Grade-I qualification with the conclusion that the Grade-I qualification may not be considered for promotion and because of that the



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recruitment rules are under amendment in order to remove 20% quota from the existing recruitment rules for the post of leading fireman in Delhi Fire Service. The amendment of requirement rules are at final stage, whenever the issue of Grade-I qualification will be resolved, the promotion may be carried out without any delay to the vacant post.

(emphasis supplied)

7. In fact, it has also not disputed that almost immediately after the passing of the Impugned Order, the petitioners did indeed amend the Rules to do away with this quota.

8. Though the vacancies should be filled in accordance with the prevailing Rules, it is settled principle of service jurisprudence that no person has a right to promotion, but only has a right to a fair consideration for the same. It is also settled principle of law that a Court generally does not issue direction to the authorities to fill up the vacant posts; that is the prerogative of the authority, which must decide the same keeping in view the service exigency. Once a conscious decision had been taken up by the petitioners not to fill these posts as the Recruitment Rules were under process of amendment, and the process was in the final stages, the only direction that the learned Tribunal could have passed was to direct the petitioners to expedite this process, rather than to consider the respondent Nos.1 to 5 for appointment to the said posts.

9. In the *State of Himachal Pradesh* (supra), the Supreme Court has clarified this position as under:

“ 82. A review of the fifteen cases that have distinguished Rangaiah would demonstrate

