



2025:DHC:5060-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 24.04.2025
Pronounced on: 01.07.2025

+ W.P.(C) 9617/2018
+ W.P.(C) 10914/2018
+ W.P.(C) 13233/2018
+ W.P.(C) 13234/2018
+ W.P.(C) 13244/2018
+ W.P.(C) 13256/2018
+ W.P.(C) 911/2019
+ W.P.(C) 3876/2019
+ W.P.(C) 9762/2019
+ W.P.(C) 9782/2019
+ W.P.(C) 980/2020
+ W.P.(C) 12489/2022
+ W.P.(C) 8806/2024
+ W.P.(C) 9665/2024

LOKESH KUMAR AND ORS.
GOVIND LAKRA AND ORS.
SUMIT KUMAR & ORS.
MANJEET & ORS.
DEEPAK KUMAR & ORS.
PAWAN KUMAR
HEMANT RANA AND ORS.
RAJEEV KUMAR
PANKAJ KUMAR SINGH AND ORS.
PRADEEP KUMAR
VIKAS DESWAL AND ORS.
NEERAJ KUMAR
PRATOSH KUMAR
PRAVEEN

versus

GOVT. OF NCT OF DELHI AND ORS.

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.....Respondents



Present:

Petitioners:

Mr. Rajat Aneja, Ms. Jyoti Nambiar, Ms. Alka Dwivedi, Mr. Aditya Sharma, Mr. Abhinav Chauhan, Advs. in W.P.(C) 9617/2018.

Mr. J. S. Mann and Mr. Mayank Kumar, Adv. in W.P.(C) 911/2019, W.P.(C) 980/2020, W.P.(C) 12489/2022, W.P.(C) 8806/2024, W.P.(C) 9665/2024.

Mr. Puneet Rathi, Adv. in W.P.(C) 10914/2018.

Mr. M. K. Bhardwaj and Mr. Praveen Kumar Kaushik, Advs. in W.P.(C) 3876/2019

Respondents:

Mrs. Avnish Ahlawat, Standing Counsel for GNCTD with Mr. N.K. Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam, Mr. Mohnish Sehrawat and Mr. Amitoj Chadha, Advocates for Respondents-GNCTD.

Ms. Latika Chaudhary, Adv. in W.P.(C) 8806/2024, W.P.(C) 9665/2024.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

NAVIN CHAWLA, J.

1. These petitions have been filed by the petitioners, challenging the Orders dated 03.08.2018 in O.A. 2476/2016 and 05.09.2018 in R.A. 163/2018 both titled *Rajeev Kumar v. Govt of NCT of Delhi & Ors.* (in W.P.(C) 3876/2019); 04.09.2018 in O.A. 4149/2017 titled *Lokesh Kumar & Ors. v. Govt of NCT of Delhi & Ors.* (in W.P.(C) 9617/2018) and O.A. 4182/2017 titled *Govind Lakra & Ors. v. Govt of NCT of Delhi & Ors.* (in W.P.(C) 10914/2018 and W.P.(C) 8806/2024); 04.09.2018 in O.A. 4281/2017 titled *Pawan Kumar v.*



Govt of NCT of Delhi & Ors. (in W.P.(C) 13256/2018); 08.10.2018 in O.A. 3806/2018 titled **Sumit Kumar & Ors. v. Govt of NCT of Delhi & Ors.** (in W.P.(C) 13233/2018 and W.P.(C) 911/2019); 05.10.2018 in O.A. 116/2018 titled **Manjeet & Ors. v. Govt of NCT of Delhi & Ors.** (in W.P.(C) 13234/2018); 05.10.2018 in O.A. 1388/2018 titled **Deepak Kumar & Ors. v. Govt of NCT of Delhi & Ors.** (in W.P.(C) 13244/2018 and W.P.(C) 12489/2022); 17.05.2019 in O.A. 4534/2017 titled **Manoj Kumar & Ors. v. Govt of NCT of Delhi & Ors.** (in W.P.(C) 9762/2019); 11.04.2019 in O.A. 1089/2019 titled **Pradeep Kumar v. Govt of NCT of Delhi & Ors.** (in W.P.(C) 9782/2019); 13.12.2019 in O.A 830/2018 titled **Vikas Deswal & Ors. v. Govt of NCT of Delhi & Ors.** (in W.P.(C) 980/2020); and 10.05.2023 in O.A. 1373/2023 titled **Praveen v. Govt of NCT of Delhi & Ors.** (in W.P.(C) 9665/2024) of the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal'), dismissing the O.As. filed by the petitioners herein.

2. Since the petitions involve common questions of law and facts, and claim identical reliefs, they are being disposed of by this common judgment. For the sake of brevity, the facts in W.P.(C) 9617/2018 shall be referred to.

Factual Background

3. On 12.04.2013, the respondent no.2/Delhi Fire Service sent a requisition to the respondent no.3/Delhi Subordinate Services Selection Board for filling up 803 vacancies for the post of Fire Operator. The same was revised vide Letter dated 10.05.2013, and



was accompanied by a Draft Advertisement, which prescribed the procedure for recruitment as under:

“First Physical Test, followed by Driving Test, further followed by Written Test (100 marks each). Final merit list shall be prepared based on total marks obtained out of 300 (i.e. 100 marks each for Physical Endurance Test, Driving Test & Written Test)”

4. In 2014, the respondent no.3 issued an Advertisement No.01/14 for 803 vacancies for the post of Fire Operator in the Delhi Fire Service under Post Code 71/14. The opening date for the receipt of applications was 27.01.2014 and the cut-off date was 27.02.2014. The number of vacancies was revised to 841 by the *Addendum* dated 26.05.2015.

5. The advertisement prescribed the essential qualifications as per the Recruitment Rules for the said post and further prescribed a ‘One Tier Examination’ comprising of a Written Test of 200 marks (five subjects, each carrying 40 marks). The maximum or minimum qualifying marks for the Written Test, the Physical Endurance Test (PET) and the Driving Skill Test (DST) were not prescribed in the advertisement.

6. The Written Test/One Tier Examination of 200 marks was conducted by the respondent no.3 on 31.08.2014. The mark list of the same was uploaded by respondent no.3 on its website on 24.02.2015, which also prescribed the cut-off marks.

7. On the basis of the mark list of the Written Test, the respondent no.3 issued Notice No.370 on 29.04.2015, shortlisting the candidates for the PET.



8. Thereafter, the respondent no.3 issued a notice of the PET to the shortlisted candidates on 01.06.2016, prescribing that the PET would be conducted from 17.06.2016 to 29.06.2016.

9. On 01.06.2016, the respondent no.3 also issued instructions for the PET, which prescribed that the marks would be granted as per the provisions in the Recruitment Rules and that the PET would consist of long jump, high jump, and 800 meters run; the maximum marks assigned to each event would be 10; a candidate would have to qualify in all of the three events individually with minimum 33% marks to be declared as having passed.

10. After the PET had been conducted, the respondent no.3, in its meeting dated 03.03.2017, considered the Agenda related to the procedure to be followed for conducting the DST, and decided as under:

“... it is proposed that DSSSB may recommend names of candidates, to the Fire department, on the basis of combined score of written Exam and Physical Endurance Test, considering them eligible, from point of view of driving skills, if they hold a driving license as per the RRs and the Fire department may conduct the Driving Test at their end, if they feel the need for doing so.”

11. Thereafter, on 24.03.2017, the Chairman of the respondent no.3, taking into consideration the requisition dated 12.04.2013, the Recruitment Rules for the post of Fire Operator read with the selection procedure prescribed by the Fire Department, recommended as under:

“Conversion of marks of candidates out of 100 marks instead of 200 marks in Written Test and out of 100 marks instead of 30 marks in



PET for preparing merit list on the basis of combined marks secured in written test + PET.”

12. Thereafter, an Agenda dated 01.05.2017 was submitted to the respondent no.3, proposing that candidates having HMV driving license, as prescribed in the Recruitment Rules, be awarded 100 marks each and the final merit list be prepared/worked out on the basis of combined score of the Written Test and the PET, and 100 marks for possession of a valid HMV license. The said Agenda was approved on 17.05.2017 in a Board meeting of the respondent no.3.

13. Thereafter, the matter was again placed before the Board of the respondent no.3, who in its meeting dated 02.06.2017, accepted the decision taken on 24.03.2017, regarding scaling down/scaling up of the marks of the Written Test and the PET. It also held that a list of 1185 candidates be forwarded to the respondent no.2 with directions to obtain and verify the driving licenses for driving heavy duty vehicles of each candidate (issued before the cut-off date) and to conduct the driving test as per the Recruitment Rules for various driving skills and thereafter, the respondent no.3 would prepare the result on the basis of combined merit of the Written Test, the PET and the DST.

14. On 06.06.2017, the respondent no.3 issued Notice No.548 for shortlisting candidates for the DST on the basis of Written Test and the PET. The said notice further prescribed that upon taking into consideration the selection criteria and the Recruitment Rules for the post, the Board had taken the decision that marks of the Written Test and the PET will be converted to 100 marks each instead of 200 and



30 marks by proportionately scaling down or scaling up the marks originally scored by the candidates in the Written Test and the PET respectively. The notice further stated that marks for different components of the DST may be prescribed and awarded and that post the DST, the respondent no.3 will prepare the result based on the combined merit of the Written Test, the PET and the DST.

15. The DST was conducted by the respondent no.2 from 01.09.2017 to 22.09.2017.

16. On the basis of marks of the Written Test (scaled down from original 200 marks to 100 marks), the PET (scaled up from original 30 marks to 100 marks) and the DST (100 marks = 20 theory + 80 practical), the result was processed and declared by the respondent no.3 *vide* Order No. 606 dated 16.11.2017.

17. Aggrieved, the petitioners filed the O.A.(s) before the learned Tribunal challenging the notices dated 06.06.2017 (whereby selection criteria were changed) and 16.11.2017 (result issued by respondent no.3) and praying for the final merit list to be re-drawn in accordance with the original selection criteria.

18. The learned Tribunal dismissed the OA filed by the petitioners with the following observations:

“From the perusal of the records, we are convinced that the candidates were well aware that the final merit list will be prepared on the basis of the total marks scored in the three tests, viz. Written test, PET and driving skill test. We would also like to observe that possession of heavy duty vehicle driving licence was an eligibility criterion for the candidates to participate in the selection process for the post of Fire Operator and that



it was not the selection criteria. Since erroneously/inadvertently, it was mentioned in thereby of the official respondents that it was to be a selection criterion, the Tribunal directed the official respondents to file an additional affidavit in which they have clearly explained the selection criteria, as noticed hereinabove.”

19. Aggrieved thereof, the petitioners have filed the present petitions.

Submissions of the learned counsels for the petitioners

20. The learned counsels for the petitioners submit that in terms of the advertisement dated 27.01.2014, the PET and the DST were merely qualifying in nature, and the selection was to be made on the basis of a One Tier Test, which was a Written Test on the subjects mentioned in the advertisement. They submit that the respondents, however, changed the selection process in the middle, by first prescribing that the marks for the Written Test shall be scaled down to 100 and those for the PET, which as per the advertisement was to be only qualifying in nature, would also be scaled up from 30 marks to 100 marks, that is, equivalent to the Written Test. This was done after the Written Test and the PET had already been conducted. They submit that even for the DST, which was also supposed to be only qualifying in nature as per the advertisement, the respondents later prescribed 100 marks for the same, being 20 marks for theory and 80 marks for practical.

21. They submit that the selection process having been changed in the middle of the same, is violative of Article 14 of the Constitution of



India and, therefore, the entire selection process is liable to be struck down. In support, they place reliance on the judgements of the Supreme Court in *Hemani Malhotra v. High Court of Delhi*, (2008) 7 SCC 11; *Sanjay K. Dixit & Ors. v. State of Uttar Pradesh & Ors.*, (2019) 17 SCC 373; *Bedanga Talukdar v. Saifudaullah Khan & Ors.*, (2011) 12 SCC 85; *K. Manjusree v. State of Andhra Pradesh & Anr.*, (2008) 3 SCC 512 and *Tej Prakash Pathak v. High Court of Rajasthan*, (2025) 2 SCC 1.

22. They further submit that the delay in filing of the petitions, as far as W.P.(C) 8806/2024 and W.P.(C) 9665/2024 are concerned, is not fatal as solely on the ground of delay and laches, illegality cannot be allowed to sustain. They submit that even otherwise, the other petitioners have been diligently pursuing their challenge.

23. They further submit that merely by participating in the selection process, the petitioners cannot be said to have acquiesced to the illegality of the selection process. They submit that the selection process was changed by the respondents after the same had been completed and, therefore, the petitioners had no choice but to keep participating in the same and await the result thereof. In support, they place reliance on the judgement of the Supreme Court in *Krishna Rai v. Banaras Hindu University*, (2022) 8 SCC 713.

Submissions of the learned counsels for the respondents

24. On the other hand, the learned counsels for the respondents submit that the Recruitment Rules for the post of Fire Operator in the Delhi Fire Service, clearly prescribed that the candidate should *inter*



alia qualify the Written Test, the PET and the DST. Therefore, all the three components were qualifying in nature. They submit that as the marks for the PET and the DST had not been prescribed in the advertisement, they were later declared by way of corrigendum notices and the candidates were fully aware of the weightage placed upon them. They submit that the selection process being in conformity with the Recruitment Rules, therefore, cannot be faulted. In support, they place reliance on the judgment of the Supreme Court in ***Vijendra Kumar Verma v. Public Service Commission***, (2011) 1 SCC 150.

25. They further submit that keeping in view the requirements of the Recruitment Rules for the post of Fire Operator, a requisition dated 12.04.2013 had been sent to the respondent no.3, stating that the final merit list is to be prepared based on total marks obtained out of 300, with the Written Test, the PET and the DST, each having equal weightage of 100 marks. They submit that as the respondent no.3 conducted the One Tier Examination/Written Test for 200 marks, the marks of the PET, which were earlier assigned as 30, were later proportionately scaled up to 100, while the marks of the Written Test were proportionately scaled down to 100. They submit that the DST was conducted from 01.09.2017 to 22.09.2017, and 100 marks were assigned to it.

26. They further submit that based on the combined result of the Written Test, the PET and the DST, the final result was declared by the respondent no.3 *vide* Order No. 606 dated 16.11.2017. They submit that, therefore, no fault can be found in the selection process.



27. They submit that the selection being in accordance with the Recruitment Rules, and the petitioners having participated in the same without demur, are now estopped from challenging the same.

28. They further submit that W.P.(C) 8806/2024 and W.P.(C) 9665/2024 have been filed belatedly and are liable to be dismissed on this ground itself.

Analysis and Findings

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

30. The respondent no.3 issued the advertisement dated 27.01.2014 *inter alia* inviting applications for the post of Fire Operator (Post Code - 71/14), prescribing the following qualifications:

“Qualification Essential: 1-.Matric pass from a recognized Institute /Board or equivalent.
2. Should possess valid license for driving heavy duty vehicles. 3. Should qualify Physical endurance test driving test, driving test and written test as prescribed by the Chief Fire Officer.

Note:- Candidate selected for appointment to the post shall have to undergo a pre-service-training of 6 months as prescribed by Chief Fire Officer and shall have to pass the prescribed test. The training shall be terminated if the work and conduct of the candidates is not found satisfactory. During training affixed amount of stipend shall only be paid.

Desirable:- Technical qualification in profession.

Experience Desirable:- Experience in-playing band.

Physical Standards Essential:- Minimum Height: 165 cms. (relaxable of 5cms for hilly area people)



Minimum-Weight: 50 kgs. Chest (normal): 81 cms. Chest (expanded): 86,5 cms. Eye Sight: 6/6

Disqualification (1) Wearing glasses/ squint eyes/colour blindness (2) Flat Feet (3) Knock Knee. (4) Deformity of any limb/extra limb. Desirable: Swimming/diving.

Pay Scale:- Rs 5200-20200 + Grade Pay Rs.2000/- plus Special Allowance, Risk Pay, Washing Allowance).

Age Limit:- 27 years (Relaxation for SC/ST-05 years, OBC-03 years. Departmental Candidates with 03 years continuous service upto 10 years (upto 43 years for OBC, upto 45 years for SC/ST).

This-post is identified hot suitable for PH persons as per the Requisition of the User Department.”

31. The advertisement further stated that the mode of selection shall be through the ‘One Tier Examination’ scheme. The One Tier Examination was explained in the advertisement itself, as a written examination of 200 marks consisting of the following subjects, with each subject having 40 marks:

“1 General Awareness 2. General Intelligence & Reasoning Ability 3. Arithmetical & Numerical Ability 4. Test of Hindi language & Comprehension 5. Test of English Language & Comprehension.

(40 Marks each)”

32. A combined reading of the above clauses of the advertisement would clearly show that the merit list was to be prepared only on the basis of the marks assigned to the One Tier Examination/Written Test; the PET and the DST were not assigned any marks but were only qualifying in nature.



33. Even the Recruitment Rules for the post of Fire Operator, published in the Delhi Gazette: Extraordinary on 19.02.1999 prescribed the essential and the other qualifications required for direct recruits, do not give any marks weightage to the written/PET/DST components. The same read as under:

“ESSENTIAL:-

- (1) *Matric pass from a recognized Institute/Board or equivalent.*
- (2). *Should possess valid license for driving heavy duty vehicles.*
- (3). *Should qualify Physical endurance test driving test, driving test and written test as prescribed by the Chief Fire Officer.*

Physical Standards:-

Min. Height: 165 cms. (relaxable of 5cms for hilly area people)

Min.Weight: 50 kgs.

Chest (Normal): 81 cms.

Chest (Expanded): 86.5 cms.

Eye sight: 6/6

Disqualification:-

- (1) *Wearing glasses/squint eyes/colour blindness*
- (2) *Flat feet*
- (3) *Knock knee.*
- (4) *Deformity of any limb/extra limb.*

Desirable:-

- (1) *Technical qualification in profession.*
- (2) *Swimming/diving.*
- (3) *Experience in playing band.*

Note:- *Candidate selected for appointment to this post shall have to undergo a pre-service training of 6 months as prescribed by Chief Fire Officer and shall have to pass the prescribed test. The training shall be terminated if the work and conduct of the candidate is not found satisfactory. During training a fixed amount of stipend shall only be paid.”*



34. A reading of the above Recruitment Rules would also show that there are no marks that are prescribed for the Written Test, the PET, or the DST; the only prescription is that the candidate should qualify these tests.

35. Later, however, by an Office Order dated 12.04.2013, which was an internal communication containing a draft advertisement that was never disclosed to candidates, the PET was prescribed to carry 30 marks, and for a candidate to qualify in the PET, they had to qualify in the three events, being long jump, high jump and 800 meters run, with minimum 33 per cent marks in aggregate to be declared pass. It was further stipulated that the marks obtained out of total of 30 marks, were to be converted into 100 marks while preparing the final merit list. It was further prescribed that the final merit list shall be prepared based on the total marks obtained by the candidates in the three criteria set forth for the selection, that is, the PET, the DST and the Written Test. Interestingly, for DST, there was no prescription of the nature or component(s), or the division of marks for the said component(s). We must further, here itself, also emphasize that the Advertisement No.01/14 for Post Code 71/14 was not in conformity with this Office Order and nor were the candidates informed of the same.

36. The Written Test for the post of Fire Operator was held on 31.08.2014, and the result thereof was declared by the respondent no.3 on its website on 24.02.2015.

37. On 29.04.2015, that is, post the declaration of the result for the Written Test, the shortlisted candidates were informed that they will



now be called for the PET. Importantly, they were also informed as under:

“The number of qualifying candidates for appearing in physical endurance test (PET) has been done in the ratio 1:4 of the advertised vacancies with taking all the candidates who have scored marks equal to the cut off marks for each category for shortlisting even if it results in increasing the candidates beyond the ratio 1:4. Final selection against advertised vacancies shall made in accordance with the merit list drawn as per result of the written examination subject to availability of vacancies and the candidates qualifying the PET and also fulfilling of all conditions prescribed by the RRs and terms and conditions of advertisement.”

(Emphasis supplied)

38. Therefore, even in this notice, there was no mention of the marks for the PET or the DST; on the other hand, it was instead mentioned that the final selection against the advertised vacancies shall be made in accordance with the merit list drawn as per the result of the Written Test and subject to the candidates qualifying the PET and fulfilling the other prescribed conditions of the Recruitment Rules and the advertisement.

39. Later, however, on 01.06.2016, the respondent no.3 issued instructions for the PET, which was prescribed to carry 30 marks; 10 marks each for long jump, high jump, and 800 meters run. It was mentioned that a candidate would have to qualify in all of the three events individually with minimum 33% marks to be declared as having passed.



40. The PET of the shortlisted candidates was conducted from 17.06.2016 to 29.06.2016.

41. The respondent no.2, in its Board meeting dated 03.03.2017, decided that the DST shall be conducted by the User Department itself that is, the respondent no.2. Interestingly, in the Agenda, though it was mentioned that in terms of the letter dated 12.04.2013 of the Administrative Officer, Delhi Fire Service, it had been conveyed that the PET was to be followed by the DST, which was to be further followed by the Written Test (100 marks each) and the merit list was to be prepared based on the total marks obtained out of 300, it had also been highlighted that in case the number of candidates available after the PET and the DST are less than the vacancies, the Written Test will be dispensed with and the merit list will be prepared on the basis of the combined score of the PET and the DST (out of 200 marks). Therefore, the recruitment process recommended by the respondent no.2 was completely different from the one advertised and followed by the respondent no.3.

42. In the Agenda, it was further noted that the respondent no.2, on a query being raised by the respondent no.3 regarding the requirement and utility of conducting a Driving Test for holders of a valid driving license (Heavy Motor Vehicle) issued by the Competent Authority as per the Motor Vehicles Act, stated that no special driving skills were required for the post of Fire Operator and only a driving license issued by the Competent Authority was required. It was further clarified that there was no specific marking scheme attributed to the prescribed 100 marks for the DST, unlike the PET. Therefore, even till that stage,



there was complete uncertainty and confusion, even in the respondent no.2 and the respondent no.3, as to the composition of the DST. We quote from the Agenda, as under:-

“3. Recruitment Rules for the said post prescribe the qualification as Matric pass (from a recognised institute/Board or equivalent) for the candidates and to possess valid license for driving heavy duty vehicles. Apart from this, qualifying PET, driving test and written test as prescribed by the Chief Fire Officer are also required as per RRs. A copy of RRs is enclosed as Annexure ‘A’.

4. Administrative Officer, Delhi Fire Service, vide letter dated 12.04.2013 conveyed the procedure to be adopted for recruitment of Fire Operators, according to which, PET was to be followed by Driving Test, which was to be further followed by Written Test (100 marks each) and merit list was to be prepared based on total marks obtained out of 300. It was also highlighted by Delhi Fire Service that in case the number of candidates available after PET and Driving Test are less than the vacancies, Written Test will be dispensed with and merit will be prepared on the basis of combined score of PET and Driving Test (Out of 200 marks). A copy of the said letter along with a clarification enclosed as Annexure ‘B’ and Annexure ‘C’.

5. Discussions with the Delhi Fire Service were held, at the level of Controller of Examinations, on the requirement and utility of conducting Driving Test for holders of valid driving license (heavy vehicle) issued by the Competent Authority as per the Motor Vehicles Act, which requires a renewal every three years. Representative of Delhi Fire Service was asked to put their department’s views specifically on —



a) whether any special driving skills were required to be possessed by candidates as per rules and regulations of Fire department, which were over and above the requirements of the Motor Vehicle Act and Rules for a person to acquire a valid license (in the context of prescribing a driving test for valid license holders) and whether their department has ever examined the legality of the issue

b) how their department viewed the prescription of 100 marks for the driving test and whether they had any specific scheme for awarding of these marks vis-a-vis the driving skills of the candidates similar to the under-mentioned marking scheme prescribed for the PET, which specified the marks to be granted for various PET activities on a scale of 10 points.

Test Items	Minimum qualifying standard	PERFORMANCE SCORE POINTS (1 TO 10 POINTS)									
		1	2	3	4	5	6	7	8	9	10
Long Jump (Mts)	2.80	2.80 & above	3.10	3.40	3.70	4.0	4.30	4.60	4.90	5.20	5.50 & above
High Jump (Mts)	0.80	0.80 & above	0.90	1.00	1.10	1.20	1.30	1.40	1.50	1.60	1.70 & above
800 (Mts) Run (Sec)	200	200 & above	200	195	190	185	180	175	170	165	160 & above

6. It was informed by the User department's representative that—

a) no special driving skills were required for Fire Operators and that the driving skills required for getting a driving license from the competent authority were the only skills required for a Fire Operator; and

b) there was no specific marking scheme attributed to prescribing of 100 marks for the driving test on the pattern of the marking scheme prescribed for the PET of Fire Operator.

**Constraints:**

7. In the given circumstances DSSSB is face to face with a situation where no procedure / methodology has been prescribed by the Chief Fire Officer as per the RRs for the said post, for the Driving Test mentioned in the RRs and as each Driving Test can not be conducted by DSSSB. Also DSSSB does not have any in-house expertise specifically for conducting the Driving Test and the same, if had to be conducted by DSSSB, would have to be conducted through some private outside agency authorised / recommended by Transport department, as the Transport Department, GNCTD does not conduct such tests in-house but get it conducted through a private agency. For the purpose of issuing heavy vehicle driving license, the Transport department itself gets the necessary driving test conducted through a private agency.

Basis of the proposal:

8. Since there is no procedure / methodology prescribed by the Chief Fire Officer for the Driving Test in accordance with the RRs for the said post, possessing a valid driving license by a candidate for driving heavy duty vehicles can be considered to be sufficient qualification for the purpose of eligibility as per the RRs. Also the issuance of driving license by Transport Department and conducting the driving test of the candidates possessing this license are similar exercises as in both the cases the requisite driving test will have to be conducted by an outside private agency, which could very much be the same agency. Also these driving licenses are renewed every three years. As such, the Delhi Fire Services would be more comfortably placed for conducting the said driving test, if it is at all required, given the illogical provision in their RRs.



The Proposal:

9. In view of the situation explained above, it is proposed that DSSSB may recommend names of candidates, to the Fire department, on the basis of combined score of written Exam and Physical Endurance Test, considering them eligible, from point of view of driving skills, if they hold a valid driving license as per the RRs and the Fire department may conduct the Driving Test at their end, if they feel the need for doing so.”

43. Interestingly, in a proposal submitted to the Chairman of the respondent no.3 for scaling up of the marks for PET, it was admitted that the candidates had, in fact, been marked and declared only as ‘qualified’, ‘disqualified’ and ‘absent’. Therefore, it was clearly admitted that the candidates and the evaluators did not know that the marks of the PET were to be considered as a determinative criterion in the final merit list. We quote from the proposal submitted to the Chairman of the respondent no.3, as under:

“86. The Exam Branch conducted the PET of the shortlisted candidates w.e.f. 17/6/2016 to 29/06/2016 at Chhatrasal Stadium, The Exam Branch provided the evaluation sheet of PET in which candidates were marked as QUALIFIED, DISQUALIFIED and ABSENT. The total marks in PET was 30. The Exam branch has not mentioned category of the candidates on the evaluation sheets. The CC-I Branch, on the basis of QUALIFIED candidates from the evaluator sheets, shortlisted 1185 candidates for Driving Test (please see page 88/N to 117/N) and prepared draft notice for Driving Test (page 97/C).

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90. Vide the requisition sent by Delhi Fire Service vide letter No. F,2(59)/Adrrn/DFS/HQ/2012/2604 dated



12/4/2013, besides the other relevant point, procedure to be adopted regarding recruitment of Fire Operator has been mentioned as follows :—

91. “First Physical Endurance Test, followed by Driving Test, further followed by Written Test (100 marks each). Final merit list shall be prepared based on total marks obtained out of 300 (i.e., 100 marks each for Physical Endurance Test, Driving Test & Written Test).

92. NB. In case number of candidates available after Physical & Driving Test are less than vacancies, Written Test will be dispensed with and merit will be prepared on combined Physical Endurance Test & Driving Test (Out of 200 marks).

93. However, the written test conducted by the Board was for 200 marks and the PET was for 30 marks. Therefore, taking into consideration the RRs for the post of Fire Operator read with the selection procedure prescribed by the Fire Deptt., we may convert proportionately the marks of written test as well as PET to 100 marks each instead of 200 marks and 30 marks respectively. Therefore, the merit list may be prepared on the basis of combined merits obtained by the candidates in written Exam and PET i.e. (100+100 =200 marks) and same maybe sent User Deptt.

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95. The Competent Authority may like to accord the approval for the following:-

1. Conversion of marks of candidates out of 100 marks instead of 200 marks in Written Test and out of 100 marks instead of 30 marks in PET for preparing merit list on the basis of combined marks secured in written test + PET.”



44. The confusion regarding how the marks for the DST are to be awarded continued even thereafter, and the respondent no.3 in its Board Meeting dated 17.05.2017, in fact, approved a proposal that the 100 marks for the DST be given only for the possession of a valid HMV Driving License.

45. It was only in the Board Meeting dated 02.06.2017 of the respondent no.3, that it finally approved the scaling down of the marks of the Written Test from 200 to 100, and the scaling up the marks of the PET from 30 to 100. It was further decided that the list of shortlisted candidates on basis of the written test and the PET, be forwarded to the respondent no.2 with the direction to obtain and verify the driving licenses of each candidate, issued prior to the cut-off date of the advertisement, for driving heavy duty vehicles and to conduct the driving test as per the Recruitment Rules for various driving skills including maintenance and repair of HMV of all makes at the Department Vehicle Workshop or other suitable places. We quote the decision taken, as under:

“AGENDA 01: Conducting of Driving Test for the post of Fire Operator (Post Code-71114) in Delhi fire Service by the User Department themselves.

RESOLUTION No.: CC-I/2017/15:-

The above agenda for the post of Fire Operator (Post Code--71/14) in Delhi Fire Service was discussed in detail and the following proposal was approved:

(A) DSSSB may forward the list of all 1185 candidates to Delhi Fire Service with the direction to obtain and verify the Driving



License (issued before cut off date i.e 27/02/2014) for driving heavy duty vehicle of each candidate and to conduct the Driving Test as per RRs for various driving skills including maintenance & repair of HMV of all makes at the department vehicle workshop or any other suitable place. Marks for different components of driving skills may be prescribed and awarded in a structured manner in order to ensure as much objectivity as possible in assessing the driving skills. The validity, correctness and genuineness of the Driving License as mentioned above may also be checked from the issuing authority at their end. The marks so awarded to each candidate in the driving test may be forwarded by Delhi Fire Service to DSSSB, thereupon the DSSSB will prepare the result on the basis of combined merit of Written Test+Physical Endurance Test+ Driving Test:

(B) Decision taken by Competent Authority on 24/03/2017 for conversion of marks of candidates from 200 marks to 100 marks for Written Test and conversion of 30 marks to 100 marks for PET is also ratified by the Board.”

46. Therefore, the respondent no.3, realizing its mistake, where the candidates were tested by way of a Written Test of 200 marks and were declared qualified or disqualified based on a PET of 30 marks, now wanted to change the pattern of examination, with 100 marks each being awarded for the Written Test and the PET. Since the Written Test and the PET were already over, it decided to proportionately scale up/scale down the marks for the PET and the Written Test.

47. It is only thereafter that the respondent no.3 issued a Notice dated 06.06.2017, declaring the shortlisted candidates on the basis of



the Written Test and the PET, and also for the first time disclosing that the marks of the Written Test and the PET had been proportionately scaled down and scaled up, respectively, and the PET was now no longer only qualifying in nature but also affected the merit position of the candidates. The said notice stated as under:

“Taking into consideration the selection criteria & RRs for the post as per Board decision, marks of Written Test as well as PET have been converted to 100 marks each instead of 200 & 30 marks by proportionately scaling down or scaling up the marks originally scored by the candidate in Written Test and PET respectively.

xxxxx

Delhi Fire Service is directed to obtain and verify the Driving Licence (issued before cutoff date i.e. 27/02/2014) for driving heavy duty vehicles in r/o each candidate and to conduct the Driving Test as per RRs for various driving skills including maintenance & repair of HMV of all makes at the department vehicle work shop or any other suitable place. Marks for different components of driving skills may be prescribed and awarded in a structured manner in order to ensure as much objectivity as possible in assessing the driving skills. The validity, correctness and genuineness of the Driving Licence mentioned above may also be checked from the issuing authority by DFS. The marks so awarded to each candidate in the driving test may be forwarded by Delhi Fire Service to DSSSB. Thereupon the DSSSB will prepare the result on the basis of combined merit of Written Test + Physical Endurance Test + Driving Test.”

(Emphasis Supplied)

48. Interestingly, even in the above notice, there was no mention of marks being awarded separately for the theory and the practical



aspects of the DST. Though the Notice stated that marks for different components of driving skill may be prescribed and awarded in a structured manner in order to ensure as much objectivity as possible in assessing the driving skill, it is not mentioned by the respondents if it was at all done, leave alone communicated to the candidates.

49. The DST was conducted between 01.09.2017 to 22.09.2017, and the candidates were evaluated on 100 marks, with 20 marks for theory and 80 marks for practical.

50. The final result was declared by the respondent no.3 on 16.11.2017.

51. In the above sequence of events, it would be apparent that as per the advertisement, the PET and the DST were only qualifying in nature, while the merit list was to be prepared on the basis of the marks obtained in the Written Test alone. The entire scheme was changed from time to time. The candidates were not informed before the different stages but only thereafter.

52. It is pertinent to note that while the Recruitment Rules prescribed that candidates should 'qualify' the Written Test, the PET and the DST; they do not specify any marking scheme or relative weightage. The respondent no.3, being the implementing/recruiting agency, had to translate these requirements into a specific selection process through the advertisement. Once the advertisement was issued specifying the 'One Tier Examination' scheme with 200 marks for written test and qualifying nature for the PET/DST, this became the binding selection criteria. It is only after the PET had been conducted, that the respondent no.3 made the PET a criterion for placement on the



merit list, with marks obtained in the PET having equal weightage to the marks obtained in the Written Test. This was the first change in the selection criteria.

53. The second change in the selection criteria came later when the respondent no.3 decided to convert the DST from being merely qualifying in nature to again being determinative of the merit position of the candidate in the selection list. Again, the candidates were still not informed that the same would carry separate marks for theory and practical, and the syllabus for the theory aspect.

54. There were, therefore, repeated changes made by the respondents in the selection process and criteria in the middle of the said selection process, thereby vitiating the entire selection process.

55. Notably, with regard to the respondents' reliance on the requisition dated 12.04.2013, which mentioned equal weightage of 100 marks each for the Written Test, the PET and the DST, while it contemplated equal weightage for the three components, this internal communication containing a draft advertisement was never disclosed to the candidates in the public advertisement. The advertisement dated 27.01.2014 clearly prescribed only a 'One Tier Examination' of 200 marks for merit determination, with the PET/DST being qualifying tests, and this formed the basis on which candidates applied. The respondents cannot therefore, be permitted to rely upon the communications exchanged between them prior to the issuance of the advertisement. It is the advertisement which is the public information to the prospective candidates for the post, about the selection criteria and process. If the respondent no. 2 thought that the advertisement



was not in conformity with its Recruitment Rules and/or Office Order dated 12.04.2013, it should have asked the respondent no. 3 to either issue a corrigendum thereto or withdraw the same. It cannot, having allowed the selection process to start, mid-way make changes in the same.

56. In *Tej Prakash Pathak* (supra), the Supreme Court has explained that the process of recruitment begins with the issuance of the advertisement and ends with the filling up of the notified vacancies. The doctrine proscribing change of rules midway through the game, or after the game is played, is predicated on the rule against arbitrariness enshrined in Article 14 of the Constitution of India. Candidates participating in a recruitment process have legitimate expectation that the process of selection will be fair and non-arbitrary, and while the Courts are generally cautious in interfering with a *bona fide* decision of a public authority that denies legitimate expectations, such decision must be shown to have been taken in larger public interest. The Court further held that though the appointing authority, in the absence of rules to the contrary, can device a procedure for selection of candidates suitable to the post and while doing so, it may also set benchmarks for different stages of the recruitment process, including the written examination and the interview, however, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. It is only where the rules or the advertisement inviting applications empower the competent authority to set bench marks at different stages of recruitment process, that such benchmarks may be set, however, the same are to be set at a



time before that stage is reached so that neither the candidate nor the evaluator is taken by surprise. Such benchmark cannot be set after the stage is over, in other words, after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services. We quote from the judgment as under:

“51. What is clear from above is that the object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, a degree of discretion is necessary to be left to the employer to devise its method/procedure to select a candidate most suitable for the post albeit subject to the overarching principles enshrined in Articles 14 and 16 of the Constitution as also the rules/statute governing service and reservation.

52. Thus, in our view, the appointing authority/recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the



evaluator/examiner/interviewer is taken by surprise.

53. The decision in K. Manjusree (supra) does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates mal practices in preparation of select list.”

57. We also quote the conclusion of the Supreme Court, as under:

“65. We, therefore, answer the reference in the following terms:

65.1 Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

65.2 Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

65.3 The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra). Subash Chander Marwaha (supra) deals with the right to be appointed from the Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two



cases therefore deal with altogether different issues;

65.4 *Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non-arbitrary and has a rational nexus to the object sought to be achieved.*

65.5 *Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;*

65.6 *Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies.*

However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.”

58. We need not multiply the authorities on the above proposition of law.

59. What, therefore, is evident from the above is that the rules of the game, that is, the rules governing the selection process, must be notified by the competent authority/recruiting agency at the time of the commencement of the recruitment process. While the competent authority has the discretion to ensure that a person more suitable for the post is selected, and for the said purpose, device a procedure for selection that is suitable to the post and may, in doing so, also set benchmarks for different stages of the recruitment process, such benchmarks should be stipulated before the commencement of the recruitment process.



60. In the present case, the above principle of law has been violated by the respondents, as has been highlighted by us hereinabove.

61. As far as the submission of the learned counsel for the respondents that the petitioners having participated in the recruitment process, are now deemed to have acquiesced to the same, or are estopped from challenging the same, we may only note that the first change in the criteria, that is, the conversion of the PET from being merely qualifying in nature to one being determinative of the merit position, was made after the PET had already been conducted. Therefore, the mere participation of the candidates in the PET, cannot be an act of their acquiescence or act as an estoppel against challenging the same. Further, regarding the DST, the candidates were informed that marks may be prescribed for different components of the DST, yet they were even then not informed that there will also be a separate theoretical test, which will carry 20 marks. This fact saw the light of the day only post the merit list being prepared and declared.

62. Even otherwise, during the selection process, a candidate is hardly left with any choice even where it finds that the selection process is being arbitrarily changed midway. The candidate can either rush to the Courts in the middle of the selection process, thereby missing out on even a minimal chance of selection in the event of failure of such challenge, or to continue participating in the same in a hope and to challenge it at a later stage. Once the selection process is found to be violative of the rights of a candidate under Article 14 of the Constitution of India, such violation cannot be allowed to stand



only on the ground that the candidate chose the second option of challenging the violation on the culmination of the selection process.

63. In ***Krishna Rai*** (supra), the Supreme Court disapproved the Division Bench applying the principle of estoppel only on the ground that the candidate appeared in the interview and challenged the same only after being unsuccessful in the same. The Supreme Court held that the principle of estoppel would not be above the law and cannot overwrite the law, and if the law requires something to be done in a particular manner, then it must be done in that manner, and if it is not done in that manner, then it would have no existence in law.

64. The judgment in ***Vijendra Kumar Verma*** (supra) also cannot come to the aid of the respondents inasmuch as the Recruitment Rules therein required the candidate to have basic knowledge of computer operation. In the *viva voce* examination, an expert in the field of computers had been associated for determining and assessing the knowledge of computer operation of the candidate. The challenge was that no syllabus was prescribed by the respondents therein for judging and ascertaining the basic knowledge of the candidate in computer operation, and in the absence of any benchmark provided for judging the suitability of persons in computer operation, failing the appellant therein only on the ground that he did not have sufficient knowledge in basic computer operation, was uncalled for and unjustified. The Supreme Court negated such challenge, holding that since possession of knowledge of computer operation was one of the eligibility criteria for the post, and the candidates at the time when the written examination result was published were informed that the basic



knowledge of computer operation would be tested at the time of interview, for which knowledge of Microsoft Operating System and Microsoft Office Operation would be essential, it cannot be said that a minimum benchmark or a new procedure had been introduced during the midstream of the selection process. The candidates knew the selection criteria, appeared in the interview with such knowledge and faced the questions from the expert of computer operation. Having taken a chance without any protest at any stage, they could not now turn back to state that the procedure adopted was wrong or without jurisdiction. The said judgment, therefore, found that there was no change in the selection process midstream the selection process. This cannot be said in the present case.

65. We may herein also note that the advertisement was not in derogation nor was contrary to the Recruitment Rules. It may at best be said to be contrary to the Office Order dated 12.04.2013, which is at best an administrative order. The same should have been incorporated into the advertisement or at least before the different stages of the selection process. The same was admittedly not done in the present case.

66. As far as the delay in the filing of two writ petitions, being W.P.(C) 8806/2024 and W.P.(C) 9665/2024, is concerned, as the selection process stood challenged by others and was also pending adjudication before us, and the fact that these petitioners approached this Court during the pendency of the other petitions, the petitioners cannot be non-suited only on ground of delay and laches. Delay and laches in filing a writ petition is not a bar but a rule for exercise of



discretion adopted by the Courts to entertain a writ petition. As the challenge to the recruitment process was pending before this Court and is being decided in favour of the petitioners, we do not deem it appropriate to not extend the same relief to the two petitioners only on the ground of delay and laches.

67. This now bring us to the relief that is to be granted to the petitioners. The selection process started in the year 2014 and culminated with the final result being declared on 16.11.2017. The selected candidates have therefore, being holding their posts for almost 8 years now. To undo their appointment in their absence would, therefore, not be just and proper.

68. At the same time, the petitioners who have been rigorously following their legal remedy to challenge the arbitrary selection process, can also not be denied the fruits of their success.

69. Keeping in view the above, we direct that the respondent no.3/DSSSB, in consultation with the respondent no.1/Government of NCT of Delhi and the respondent no.2/Delhi Fire Service Department, shall re-draw the result of the recruitment process strictly in accordance with the criteria laid down in the Advertisement No.01/14 dated 27.01.2014, that is, with a weightage of 200 marks for the Written Test and by treating the PET and the DST as only qualifying in nature. For the PET, the minimum qualifying marks would be considered as 33% in the three tests as mentioned in the Office Order dated 01.06.2016. In case any of the petitioners is found to be eligible for appointment on the basis of this review merit list, they shall be



appointed to the said post of Fire Operator with notional seniority to be placed below the already selected candidates.

70. Such selected petitioners would also be entitled to notional fixation of their pay, however, they will not be entitled to payment of actual pay or allowances till the date of their appointment. The entire exercise must be completed by the respondent no.3 within a period of eight weeks from today.

71. Taking into account that the selection process had culminated in the year 2017, we, however, restrict the relief only to the petitioners in the present set of petitions or any other petitions / OA challenging the impugned selection process that may be pending as on today.

72. With the above directions, the present petitions are disposed of. There shall be no order as to costs.

NAVIN CHAWLA, J.

RENU BHATNAGAR, J.

JULY 01, 2025/RN/SJ

Click here to check corrigendum, if any