
(2018) 12 CAT CK 0108

In the Central Administrative Tribunal

Case No : Original Application No. 4355 Of 2018, Miscellaneous Application No. 4927, 4928, 5001 Of 2018

Vijay Singh And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 07-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0108

Hon'ble Judges : V. Ajay Kumar, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Anil Singal, R.K. Sharma, Ajesh Luthra, Somesh Jha

Final Decision : Allowed

Judgement

V. Ajay Kumar, J

1. Heard Shri Anil Singal, the learned counsel for the applicants, Shri R.K. Sharma, the learned counsel for respondents No.1 and 2, Shri Ajesh Luthra, the learned counsel for petitioners in MA No. 5001/2018 filed for impleadment in the OA as respondents.

2. MA No.4927/2018 filed for joining together is allowed.

3. MA No. 4928/2018 filing for seeking exemption is also allowed.

4. It is submitted that the applicants, who had been originally appointed as JEs (Civil) in the All India Radio during 1989 to 1992 later came on deputation as JEs (Civil) to the respondents-Department of Posts with effect from 01.04.1999. Thereafter, they were permanently absorbed as JEs (Civil) in the respondent-Department of Posts during the year 2006. As per the terms of absorption, they are entitled for counting of their past services. Accordingly, the respondents issued the Final Seniority List of Junior Engineers (Civil) in Department of Posts, vide Annexure A-3 dated 01.07.2009, wherein the applicants were placed at the appropriate places, by counting their past service. Thereafter, they were

promoted, on regular basis as Assistant Engineers (Civil) vide Annexure A-4 Office Order dated 02.07.2009. The applicants, though promoted as AEs (Civil) on regular basis, but with an intention to improve their seniority, when applied for LDCE, 2010, for promotion to the post of AEs (Civil), the respondents rejected their candidature on the ground that they have already been promoted as AEs (Civil) on regular basis. The respondents issued another Final Seniority List of JEs (Civil) as on 28.12.2005, vide OM dated 16.05.2014, wherein the names of the applicants were not shown, as the applicants had not been absorbed till 28.02.2005. But the official respondents showing a judgment of the Hon'ble Apex Court in Civil Appeals No.9316-9320/2013 in *Mrignak Johri and Others Vs. Union of India and Others*, issued the impugned Annexure A-1 Office Memorandum dated 05.11.2018 and proceeding to review the promotions of the applicants as JEs, on regular basis, by holding a Review DPC. They have stated that the stay for conducting the Review DPC was vacated vide interim order dated 05.10.2018 in OA No.2192/2016, also as a reason for proceeding with the conducting of the Review DPC.

5. The learned counsel for the applicants, submits that, the persons involved in Civil Appeals in *Mrignak Johri and Others* (supra) were the persons who were absorbed in the Department of Posts from the All India Radio, as Junior Engineers, in the year 1999 and whereas the applicants were absorbed in the year 2006. The terms and conditions of the absorption of the persons affected by the orders of the Hon'ble Apex Court in *Mrignak Johri and Others* (supra) and of the applicants herein are different and distinct. In case of *Mrignak Johri and Others* (supra), the absorption order clearly indicates that they were not entitled for counting their past service in All India Radio and whereas in the orders of absorption of the applicants herein, there was a specific term that the applicants are entitled for counting of their past service. Hence, the OA seeking quashing of the proceedings issued for the purpose of conducting Review DPC and also prayed for an interim stay of the same.

6. Shri R.K. Sharma, learned counsel appearing for the official respondents and Shri Ajesh Luthra, learned counsel appearing for the petitioners in MA No.5001/2018 filed for impleadment in the OA, submit that one Shri K.S. Tripathi, who is aggrieved with the Final Seniority List dated 01.07.2009, basing on which the applicants were promoted as AEs (Civil) vide Office Order dated 02.07.2009, challenged the said Seniority List by impleading some of the applicants herein also as party respondents, by filing the OA No. 428/2009 before the Patna Bench of this Tribunal and the Seniority List dated 01.07.2009 was quashed by an order dated 14.01.2013, in the said OA. It was also directed in the said OA to grant benefit to the applicants therein who are identically placed like the proposed respondents herein. Accordingly, they submitted that the proposed respondents are necessary and affected parties and also opposed the granting of any stay on the Review DPC, accordingly.

7. We find prima facie case in the submissions made by the learned counsel for

the respondents. Hence, the prayer for stay of the Review DPC is rejected. However, any action taken in pursuance of the proposed Review DPC is subject to the result of the OA. Further, it is made clear that any of the observations made hereinabove, shall not have any bearing on the further/final hearing of the OA. The parties are at liberty to take all the pleas available to them as per law.

8. Further, the MA No.5001/2018 for impleadment is allowed. The applicants counsel shall file the amended memo of parties before the next date of hearing. Issue notice in the OA to all the respondents including the newly impleaded respondents as per the amended memo of parties.

9. List on 28.02.2018 by all the respondents.