

Central Administrative Tribunal
Principal Bench

OA No.641/2018
MA No.705/2018

New Delhi, this the 9th day of February, 2018

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Uday Kumar Varma, Member (A)

1. Harmohinder Pal Singh, AE (C), Group-B
Aged about 55 years,
s/o late S.Surinder Singh,
R/o 140-C, LIG DDA Flats,
Jhilmil Colony, New Delhi.
2. Biswajit Basu, AE (C), Group-B
Aged about 59 years,
s/o late Sh. S.N. Basu,
R/o Qtr. No.1020, Type-IV,
Sec.12, R.K. Puram,
New Delhi – 110 022. ...Applicants

(By Advocate: Sh. M.K. Bhardwaj)

Versus

1. Union of India through Secretary,
Ministry of Information & Broadcasting,
A-Wing, Shastri Bhawan,
New Delhi.
2. The Director General,
All India Radio,
Akashwani Bhawan,
Parliament Street,
New Delhi – 110 001.
3. The Chief Engineer,
Office of Director General,
All India Radio, Soochna Bhawan,
6th Floor, CGO Complex, Lodhi Road,
New Delhi – 110 003.
4. Sh. Jagdish Chandra, ASW (C), CCW, AIR
O/o Superintending Surveyor of Works Civil,
6th Floor, Soochna Bhawan, CGO Complex,
Lodhi Road, New Delhi.

5. Sh. S.K. Verma, R. Vigilance Officer,
DG: AIR Room No.220, 2nd Floor,
Akashwani Bhawan, Parliament Street,
New Delhi – 110 001.
6. Sh. S.K. Vaid, Executive Engineer (CD-V),
DSIIDC, Terminal Centre Building,
Wazirpur Industrial Area,
Delhi – 110 052.
7. Sh. P.K. Aggarwal, Assistant Surveyor of Works,
O/o Superintending Engineer (C)-II,
CCW: AIR, 9th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
8. Sh. S.K. Rohilla, ASW (C),
O/o Superintending Engineer (C)-II,
CCW: AIR, 9th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
9. Sh. P.K. Saha, Assistant Engineer (C),
Guwahati Sub-Division,
CCW: AIR, All India Radio Complex,
Chandmari, Guwahati-781003.
10. Sh. R.K. Talwar, Assistant Engineer (Vig.),
O/o Executive Engineer (Vig.),
Room No.511, 5th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
11. Sh. B. Masi Lamani, ASW (C),
O/o Executive Engineer (C),
CCW: AIR, Taluka Officer Road,
Sadai Peth, Chennai – 600 018.
12. Sh. Pradeep Kumar, ASW (C),
O/o Superintending Engineer (C),
CCW: AIR, 9th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
13. Sh. R.K. Sharma, ASW (C),
O/o Superintending Engineer Works (C),
CCW: AIR, 6th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

14. Sh. D.D. Ranga, AE (Trg.),
O/o Superintending Engineer (Trg.),
CCW: AIR, 1st Floor, Soochna Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
15. Sh. Ashutosh Roy, ASW (C),
O/o Superintending Engineer (C),
CCW: AIR, 4th Floor, Golf Green,
Kolkata – 700 095.
16. Sh. V.S. Ramesh, Assistant Engineer (C),
O/o Executive Engineer (C),
CCW: AIR & DD, J.C. Nagar,
Bengaluru -560 006.
17. Sh. K.K. Goel, ASW (C),
O/o Superintending Surveyor of Works (C),
CCW: AIR, 6th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road,
New Delhi.
18. Sh. Mohd. Mohsin, ASW (C),
O/o Superintending Surveyor of Works (C)-III,
CCW: AIR, 11th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road, New Delhi.
19. Sh. Kishan Pal, ASW (C),
O/o Superintending Surveyor of Works (C)-III,
CCW: AIR, 11th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road, New Delhi.
20. Sh. S.K. Sharma, AE (C), CCW: AIR,
Sirifort Auditorium Andrews Ganj,
New Delhi – 110 049.
21. Sh. Rakesh Malhotra, ASW (C), P&M,
O/o Superintending Surveyor of Works (C)-I,
CCW: AIR, 6th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110 003.
22. Sh. K.M. Sharma, Assistant Engineer (C),
O/o Executive Engineer (C, CCW: AIR,
11th Floor, Soochna Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110 003.

23. Sh. R.S. Sharma, ASW (C),
 O/o Superintending Surveyor of Works (C)-I,
 CCW:AIR, 6th Floor, Soochna Bhawan,
 CGO Complex, Lodhi Road,
 New Delhi – 110 003.

24. Sh. Panna Lal Singh, AE (QC),
 O/o Superintending Engineer (Trg.),
 CCW: AIR, 1st Floor, Soochna Bhawan,
 CGO Complex, Lodhi Road,
 New Delhi – 110 003. ...Respondents

(By Advocate: Shri S.M. Arif)

ORDER (Oral)

By Hon'ble Mr. Uday Kumar Varma, Member (A):

MA No.705/2018

This MA filed by the applicants under Rule 4(5) of the CAT (Procedure) Rules, 1987 for joining together is allowed.

OA No.641/2018

2. The instant Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief(s):-

- (i) *To quash and set aside the impugned seniority list dated 19.12.2017 being illegal and declare the seniority of applicants as well as private respondents notified vide letter No.A-23011/1/96-CW1 dated 10.08.1998 as valid seniority list for all purposes including further promotion to the post of EE (C);*
- (ii) *To declare the action of respondents in preparing impugned seniority list of AE (C) on the basis of such promotions which have become invalid on quashing of order of Full Bench dated 06.12.1999 and subsequent judgment of Hon'ble High Court of Delhi in WP(C) No.2579/2001 & 4542/2000, as illegal and issue appropriate directions to fix the seniority of applicants as well as private respondents as AE (C) on the basis of their promotion granted after completion of 5 years from the date of acquiring degree and 8 years from the date of appointment as JE (C), whichever is earlier;*

- (iii) *To direct the respondents to regulate the promotion and seniority of AE (C) of CCW of All India Radio including private respondents as well as applicants strictly as per judgment and order of Hon'ble Supreme Court of India dated 18.01.2017 in Civil Appeal No.813-814 of 2011 and grant all consequential benefits;*
- (iv) *To allow the OA with cost;*
- (v) *To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.*

3. Brief facts of the case, as derived from the OA, are that the applicants initially joined as JE (C) in 1982 & 1983 respectively and, as per recruitment rules notified in 1975 and subsequently amended in 1988, they acquired eligibility for promotion to the post of AE (C) after putting in eight years of regular service. It is submitted that as per amended recruitment rules, quota of promotion to the post of AE(C) was raised from 50% to 60% and of direct recruitment, the quota was reduced to 40%. It was also provided that JEs(C), who were holding degree, were made eligible to be promoted as AE (C) after completion of five years of service from the date of acquiring degree. However, the respondents promoted degree holder JEs, junior to the applicants, to the post of AE(C) without completion of five years from the date of their acquiring degree. It is contended that being aggrieved by the said promotions, OA No.1078/1989 was preferred before the Kolkata Bench of this Tribunal, which was allowed vide order dated

06.05.1994 with a direction to hold review DPC and make promotion to the post of AE(C) strictly by determining the eligibility of diploma and degree holders on completion of requisite length of service from the date of acquiring the said qualification. The said order of the Tribunal was challenged before the Hon'ble Supreme Court by way of SLP No.27230/1994 and the said SLP was dismissed vide order dated 09.01.1995. It is further submitted that pursuant to dismissal of the SLP, the respondents conducted review DPC and reverted 23 degree holder JEs vide order dated 27.06.1995 and consequently the applicants, being senior, were promoted as AE(C). Accordingly, the seniority of the applicants was fixed and notified vide letter dated 30.08.1998.

4. The applicants contend that thereafter two JEs, junior to the applicants, namely, Jagdish Chandra & Ashutosh Roy filed RA No.37/1995 before the Kolkata Bench of this Tribunal to review its order dated 06.05.1994 passed in OA No.1078/1989, which was dismissed vide order dated 21.07.1995. Thereafter, one Sh. S.K. Vaid, who was party in SLP No.1774/1995, filed OA before this Tribunal challenging his reversion order as well as Tribunal's order dated 06.05.1994 passed in OA No. 1078/1989. In the meantime, SLP No.21236/1995 filed in the Hon'ble

Supreme Court against the order of the Tribunal passed in RA No.37/1995 was dismissed as withdrawn vide order dated 20.09.1995 with liberty to pursue any remedy available to them under law. Pursuant to withdrawal of SLP No.21236/1995, Sh. Jagdish Chandra and three others preferred OA No.2055/1995 challenging their reversion order and the Tribunal, considering the nature of issue involved, referred the matter to the Full Bench with the following questions:-

- (i) *Whether the applicants who were promoted subject to the result of the case pending before the Tribunal, are precluded from questioning the correctness of the order of the Calcutta Bench of the Tribunal and agitating their right to promotion on completion of five years of service irrespective of the date of the acquisition of the degree?*
- (ii) *If Point no.(1) is to be answered in negative, whether the view taken by the Calcutta Bench can still hold good in the light of the decision of the Supreme Court in M.B. Joshi's case and Stephen Joseph's case?*

5. The Full Bench considered the submissions of the parties and answered both the questions in negative vide order dated 06.12.1999 with a direction to the office to place the papers before the Chairman for posting the OAs before the Division Bench for its decision. The relevant part of the decision of Full Bench reads as under:-

"39. In view of the aforesaid discussion, we are of the opinion that the decision of the Calcutta Bench is per incuriam in the light of the decision in M.B. Joshi's case (supra) and Stephen Joseph's case (supra) and that the applicants are entitled for promotion on completion of five years of regular service in the cadre of Junior Engineers irrespective of their date of acquisition of the degree in Engineering.

40. *Thus both the questions referred to us are answered in the negative.*

41. *The reference is accordingly answered and the office is directed to place the papers before the Hon'ble Chairman for posting the OAs before the Division Bench for its decision."*

6. Consequent upon the answer to the reference, the OA No.2055/1995 was listed before the Division Bench. However, the order dated 06.12.1999 of the Full Bench of the Tribunal was challenged before the High Court of Delhi by some of the aggrieved persons, who were not party before the Tribunal by way of WP(C) 4542/2000. In the meantime, OA No.2055/1995 along with connected matters was allowed by the Tribunal vide common order dated 30.01.2001 directing the respondents to consider the claim of the applicants therein as Assistant Engineer on completion of five years regular service in the cadre of Junior Engineer irrespective of their date of acquisition of degree. Aggrieved, the applicants approached the High Court by filing CM in pending Writ Petition No.2579/2001 against the Full Bench decision dated 06.12.1999 as well as challenging the decision of the Tribunal dated 30.01.2001 passed in OA No.2055/1995.

7. It is contended by the applicants that despite pendency of the aforesaid writ petitions, the respondents reverted the petitioners vide order dated 19.06.2001 without any justification and accordingly the petitioners

filed yet another OA No.1636/2001 and other similarly situated persons being aggrieved also filed their respective OAS. OA No.1636/2001 & other connected OAs were dismissed by the Tribunal vide order dated 18.01.2002 making the reversion order dated 19.06.2001 subject to the outcome of the final decision of the High Court of Delhi. Thereafter, the High Court of Delhi dismissed the WP(C) No.4542/2000 with connected writ petitions vide order dated 12.08.2010 upholding the decision of the Full Bench of the Tribunal dated 06.12.1999. It is further contended that finally the Hon'ble Supreme Court vide order dated 18.01.2017 allowed the Civil Appeal No.813-814/2011 and set aside the judgment of the Full Bench as well as of High Court of Delhi passed in Writ Petitions, referred to above.

The relevant part of the decision reads as under:-

"In the latest judgment i.e. K.K. Dixit case, it was held that the experience of service for a person holding diploma but acquiring degree while in service is counted post degree. The Tribunal and the High Court have held to the contrary. We are not in agreement with the view taken by the High Court and the Tribunal. Accordingly, we set aside the impugned judgment and hold that the experience of a diploma holder who had acquired degree while in service will be counted only after acquisition of the degree.

The appeals stand disposed of in the above terms. No costs.

8. The applicants are challenging the draft seniority list dated 19.12.2017 on the ground that consequent to diverse decisions of the Tribunal and eventually the judgment of

Supreme Court in SLP No.7651 of 2009 decided on 18.01.2017 that settled the matter, they are entitled to a seniority higher than the private respondents. The basic rationale provided by the applicants is that these candidates were promoted as Assistant Engineer without completing five years of service after acquisition of the qualification of degree and resultantly they were reverted to the post of Junior Engineer vide Notification dated 27th June, 1995 (Annexure A-7). It is the contention of the applicants that after reversion of the private respondents, seniority list as on 01.06.1998 was issued by the respondents vide letter dated 31.08.1998 wherein the names of the applicants figure at serial no.164 and 168 respectively. In the OA, the applicants have specifically mentioned of two candidates namely, Jagdish Chandra & Ashutosh Roy. It is their contention that they were shown senior to these candidates in the previous seniority list but in the draft seniority list issued on 19.12.2017 they have been shown junior to them. In nutshell, the following is the case of applicants:-

In compliance of the decision dated 18.01.2017 of the Supreme Court the respondents were required to recast the seniority of AE(C) for future promotions. However, the respondents acted in violation of the said order of the Supreme Court as while fixing

seniority of AE(C) the juniors whose eligibility and promotion as AE(C) granted on the basis of service rendered as JE(C) before acquiring degree was set aside have been placed over and above the applicants. The contempt petition filed by the applicants before the Supreme Court was dismissed with liberty to them to approach appropriate forum for implementation of the order of the Supreme Court in true letter and spirit and, therefore, they are before us.

9. The main question before us for adjudication is that whether the applicants are entitled to a seniority over and above their alleged juniors who have been promoted as AE(C) on completion of five years regular service irrespective of the date of acquisition of degree?

10. On going through the judgment of the Hon'ble Supreme Court in Civil Appeal No.7651/2009 with Civil Appeal No.813-814/2011 decided by a common order dated 18.01.2017, it becomes abundantly clear that the experience of a diploma holder who had acquired degree while in service will be counted only after acquisition of the degree, as alleged by the applicants. However, we are not inclined to accept the argument of the applicants that the respondents have violated the above decision of the Supreme Court while fixing the seniority in the cadre of Assistant Engineers for the simple reason that the applicants are relying on the first part of the decision of

their choice. To understand the decision in toto, we deem it appropriate to extract the other relevant part thereof as under:-

"We, however, direct that any promotions given so far to the post of Assistant Engineers will not be disturbed nor the pay of any such incumbent be reduced. However, it will be open to the Department to re-cast the seniority for future promotions. We may also observe that while on interpretation of the Scheme of the rules, experience of service is to be counted post degree, the Department may consider giving appropriate weightage to the past service by amending the rules for future. This consideration may be done within three months from the date of receipt of a copy of this order."

11. Perusal of the above makes it clearly unambiguous that the promotions given so far to the post of Assistant Engineers will not be disturbed nor the pay of any such incumbent be reduced. The Supreme Court has given this latitude to the respondents to consider any weightage for the past service to the Junior Engineers before they acquired the requisite qualification of degree.

12. In the facts and circumstances of the case, we are of the considered view that the applicants cannot seek recasting of seniority of the Junior Engineers promoted to the post of Assistant Engineers prior to the Supreme Court decision dated 18.01.2017 as is clearly stipulated in the same judgment. It is also seen that the applicants had preferred a Contempt Petition (Civil) No.20-21 of 2018 against the Supreme Court's decision dated 18.01.2017 pursuant to which seniority list dated 19.12.2017 was

issued, which is under challenge in the instant application, and the Supreme Court finding no good ground to initiate contempt proceedings, dismissed the Contempt Petition vide order dated 23.01.2018 with liberty to the applicants to take steps to implement the order of the Supreme Court at appropriate forum in accordance with law.

13. Lastly but most significantly, the impugned seniority list dated 19.12.2017 is a draft seniority list. The covering letter circulating this seniority list clearly mentions that any discrepancy or anomaly noted in the draft seniority list may be brought to the notice of the office along with supporting documents by 18.01.2018 for incorporation in the final seniority list. It is not clear from the contents of the OA whether the applicants have first approached the competent authority pointing out discrepancy or anomaly in the first place. To that extent, the OA seems to be premature and deserves to be dismissed on this count alone.

14. Given these facts, the instant OA deserves to be dismissed on both counts i.e. being premature and bereft of merit, and is accordingly dismissed. This is not to validate the draft seniority list. It is still incumbent upon the competent authority among respondents to consider the objections raised on this seniority list and decide them

keeping in mind the basic directions of the Supreme Court contained in its decision dated 18.01.2017. No costs.

(Uday Kumar Varma)
Member (A)

(Permod Kohli)
Chairman

/AhujA/