

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 4366/2018

Reserved On: 30.11.2018

Pronounced on: 07.12.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)**

1. J.K Sabharwal, (All Group 'B')
Aged about 52 years
S/O Sh. S.R Sabharwal
Assistant Engineer (E)
Postal Electrical circle.
9th floor, MeghdootBhawan,
Jhandewalan, New Delhi-110001
2. Om Prakash,
Aged About 50 years
S/O Sh. Jaggannath Prasad
Assistant Engineer (E)
Postal Electrical sub division,
HPO Building, Doranda ,Ranchi.-834002
3. MrigankJohri,
Aged About 51 years
S/O Late Sh.S.S.Johri
Assistant Engineer (E)
Postal Electrical sub division-II,
P.O Building, Sion, Mumbai-400022
4. Hari Singh
Aged about 57 years.
Assistant Engineer (E)
Postal Electrical sub division,
HPO Building , Dehradun-248001Applicants

(By Advocate: Shri Anil Singal)

Versus

1. Union of India
Through its Secretary
Department of Post,
Ministry of Communication
1st Floor, DakBhawan,
Parliament Street, New Delhi-110001
2. The Secretary
Department of Telecommunications,

Ministry of Communication
Sanchar Bhawan,
New Delhi-110001

3. The Chief Engineer (HQ),
4th Floor, DakBhawan,
Parliament Street, New Delhi-110001
4. The Superintending Engineer (E)
Postal Electrical Circle
9th Floor, MeghdootBhawan,
Jhandewalan, New Delhi-110001
5. The Superintending Engineer (E)
Postal Electrical Circle
2nd Floor, Basavanagudi PO building,
Bangalore-560004
6. Sh A. Ashok Kumar
Aged about 44 years
Assistant Engineer (E)
Postal Electrical sub division
O/O the CPMG, Chennai-600002
7. Sh. Abdul Sadiq Mumir
Aged about 45 years
Assistant Engineer (E)
Postal Electrical sub division
5th Floor P&T AdmnBldg, Khanpur,
Ahmedabad-380001
8. Sh Vinod Kumar
Aged about 43 years
Assistant Engineer (E)
Postal Electrical sub division
GoleDakkhana, GPONew Delhi-110001
9. Sh Rajeev Gupta
Aged about 45 years
Assistant Engineer (E)
Postal Electrical sub division
DakBhawan, Sansad Marg,
New Delhi-110001
10. Sh. Subrato Biswas
Aged about 50 years

Assistant Engineer (E)
Postal Electrical Circle
9th Floor, MeghdootBhawan
Jhandewalan, New Delhi-110001

11. Sh. Nalini Kant Nayak
Aged about 47 years
Assistant Engineer (E)
Postal Electrical sub division
Shillong-793001
12. Sh. Man Mohan Jaiswal
Aged about 50 years
Assistant Engineer (E)
Postal Electrical sub division
Postal colony , Roop Nagar
Jammu
13. Sh. Rakesh Kumar Kashyap
Aged about 47 years
Assistant Engineer (E)
Postal Electrical sub division
HPO Bulding, Allahabad, UP
14. Sh. B. Sanjana Vijay Kumar
Aged about 48 years
Assistant Engineer (E)
Postal Electrical sub division,
DakBhawan, Bhopal-12
15. Sh. R. N Prajapati
Aged about 52 years
Assistant Engineer (E)
Postal Electrical sub division.
GPO Annex Building, Mumbai-400001
16. Sh Pankaj Kumar
Aged about 47 years
Assistant Engineer (E)
Postal Electrical sub division
1st Floor, City sorting office,
Gandhi Nagar Rly. Station, Jaipur-302015
17. Sh. Giri Shankar Khatalary
Aged about 48 years
Assistant Engineer (E)

Postal Electrical sub division,
MeghdoottBhawan, Guwahati

18. Sh.M.W.Potdar
Aged about 44 years
Assistant Engineer (E)
Postal Electrical sub division,
GPO Compound, Civil Lines, Nagpur-440001

19. Sh. V.M Sindekar
Aged about 47 years
Assistant Engineer (E)
Postal Electrical sub division
Pune-411002

20. Sh J.M Tayade
Aged about 46 years
Assistant Engineer (E)
Postal Electrical sub division
Dak Sadan,J.N Road, Troop Bazaar Kotti
Hyderabad-500001

21. Sh. RajinderGuglani,
Aged about 44 years
Assistant Engineer (E)
Postal Electrical sub division,
GPO, Kashmiri Gate,
Delhi-110006.Respondents

(By Advocate: Shri U. Srivastava, for respondents No.1 to 5

Shri Ajesh Luthra, for respondents No.9 to 21)

ORDER ON INTERIM RELIEF

By Hon'ble Mr. V. Ajay Kumar, Member (J)

Heard Shri Anil Singal, the learned counsel for the applicants,
Shri U. Srivastava, the learned counsel for respondents No.1 to 5
and Shri Ajesh Luthra, the learned counsel for private respondents
No.9 to 21.

2. Shri Anil Singal, the learned counsel appearing for the applicants submits that the applicants, 4 in number, were initially appointed as Junior Engineers (Electrical) on regular basis in the All India Radio during the years 1987 to 1990. Thereafter, they were sent on deputation to the Department of Posts in the category of JE (Electrical) and thereafter, were absorbed in the Department of Posts as JE (Electrical). When the official respondents issued a Draft Seniority List of JE (Electrical) dated 05.01.2004, modified on 16.07.2004 (Circle Wise) showing the applicants as juniors to 1997-1998 batch of directly recruited JEs (Electrical), the applicants along with one Shri V.S. Kundlass, filed OA No.1490/2004, for counting their past service rendered in the analogous post in All India Radio and consequently to grant proper place in the seniority list of Jr. Engineers of the Department of Posts. The said OA was allowed by order dated 30.08.2005. However, W.P. (C) Nos.372-76/2006 filed by certain affected parties against the said order, was allowed on 06.07.2011. The Civil Appeal Nos.9316-9320/2013 filed by the applicants was also dismissed by holding that the applicants are bound by the terms and conditions of their absorption, wherein they have specifically agreed that they shall be treated as new recruits and not entitled for counting of their past service for the purpose of seniority in the cadre.

3. The learned counsel further submits that, however, during the pendency of the above referred Writ Petition, the respondents promoted the applicants to the post of Assistant Engineers (Electrical), on regular basis, unconditionally and accordingly, they have been working as such, till date.

4. It is also submitted that the official respondents after allowing of the W.P. (C) Nos.372-76/2006, on 06.07.2011, setting aside the orders of this Tribunal in OA No.1490/2004, filed by the applicants, dated 30.08.2005, initially issued a Provisional Seniority List placing the applicants below the private respondents and thereafter, vide Annexure A-1 Office Memorandum dated 16.05.2014, issued the Final Seniority List, confirming the said position. Though the applicants were aggrieved with both the said Provisional Seniority List as well as Final Seniority List, but in view of the pendency of the Civil Appeals before the Hon'ble Apex Court, not chosen to challenge the same till now. It is submitted that though the applicants were promoted as AEs (Electrical), unconditionally vide Annexure A-15 Office Order dated 02.07.2009 and though there was no direction by any court to review their said promotion, now the official respondents illegally proceeding to review their promotions by holding a review DPC, vide impugned Annexure A-2 Office Memorandum dated 05.11.2018. In these circumstances, the applicants filed the instant OA challenging the Final Seniority List

of JE (Electrical), as on 28.12.2005 issued vide OM dated 18.05.2014 and the other proceedings under which the respondents are proceeding to hold a review DPC for review of the promotions of the applicants as AEs (Electrical). They also prayed for interim stay of the seniority list dated 16.05.2014 and a direction to the official respondents not to hold the review DPC.

5. The learned counsel appearing for the respondents submits that the OA is liable to be dismissed *in limine* on the ground of limitation as the applicants are challenging the final seniority list dated 16.05.2014 by filing the instant OA on 27.11.2018. They further submit that the impugned seniority list is dated 16.05.2014 and whereas the Civil Appeal of the applicants was dismissed on 10.07.2018, wherein the said seniority list was affirmed and on this ground also, the OA is liable to be dismissed. It is further submitted that this Tribunal in OA No.2192/2016 in the matter of L.K. Sharma and Others Vs. Union of India and Others, vacated the stay on conducting of the Review DPC vide an interim order dated 05.10.2018 and hence, the action of the official respondents in proceeding to conduct the Review DPC, cannot be interfered with.

6. In view of the fact that the impugned seniority list was issued during the pendency of the Civil Appeal filed by the applicants, and that the respondents also made the said seniority list as subject to result of the said Civil Appeal, the contention of the respondents

that the OA is liable to be dismissed *in limine* on the ground of limitation, is *prima facie*, unacceptable.

7. Since the promotion of the applicants as AEs (Electrical) was made during the pendency of the Writ Petition, which was finally dismissed against the applicants and upheld by the Hon'ble Apex Court, and since this Tribunal by its order dated 05.10.2018, in L.K. Sharma and Others (supra) in OA No. 2192/2016, clarified that “the holding of a Review DPC was never stayed”, we do not find any *prima facie* case in favour of the applicants for granting of any interim stay.

8. However, since all the issues are required to be examined in detail, it is made clear that any observations made hereinabove, shall not have any bearing on the further/final hearing of the OA, and the parties are at liberty to take all the grounds available to them, as per law.

9. Hence, issue notice to the respondents returnable by 6 weeks. They shall file their replies before the said date. The official respondents may proceed with the Review DPC, however, the same shall be subject to the result of the OA.

List on 27.02.2018 before the Court.

(ARADHANA JOHRI)
Member (A)

(V. AJAY KUMAR)
Member (J)