

**Court No. - 7**

**Case :-** SERVICE BENCH No. - 7740 of 2018

**Petitioner :-** Union Of India Thru. Secy., Ministry Of Information & Broad

**Respondent :-** Akhilesh Kumar Srivastava And Ors.

**Counsel for Petitioner :-** Surya Bhan Pandey

**Hon'ble Dr. Devendra Kumar Arora,J.**

**Hon'ble Virendra Kumar-II,J.**

At the out set, we would like to mention that learned Additional Solicitor General yesterday has made a mention for taking up this today on account of extreme urgency as the examination is scheduled for 17.3.2018. Accordingly, the petitioner's Counsel was directed to inform the counsel appearing on behalf of the respondents before the Tribunal about case being coming up for hearing/ orders today.

Today, an Affidavit has been filed by the Station Director, All India Radio, Lucknow, that Shri Praveen Kumar, Advocate, appearing on behalf of the respondents before the Central Administrative Tribunal was apprised about the filing of the writ petition, but he informed that he has no instructions in the matter from his clients. The affidavit filed by the Station Director, All India Radio is taken on record.

Submission of Sri S.B. Pandey, learned Additional Solicitor General of India, appearing for the petitioners is that the private respondents have approached the Central Administrative Tribunal for quashing the Notification dated 17.11.2017 whereby applications were invited from the eligible candidates for promotion of Senior Engineering Assistants of All India Radio and 'Doordarshan' to the post of Assistant Engineer against 75% quota through Departmental Competitive Examination and also for 25% on the basis of seniority-cum-suitability and to hold the selection on the post of Assistant Engineer in either of the quota only after finalization of the process of merger of the posts in terms of OM dated 13.11.2009 as directed by the Hon'ble Principal Bench in the matter of Praveen Kumar and others. The respondents have inter-alia also prayed for a restraint order against the respondents (petitioners herein) from proceeding ahead with the selection in pursuance of the impugned notification dated 17.11.2017 during the pendency of the case.

According to the learned Counsel, the learned Tribunal without appreciating the fact that petitioners are working on the post of Engineering Assistant and not on the post of Senior Engineering

Assistant and further that the process of merger of two posts have not been done till date, passed an interim order allowing the respondents to appear provisionally in the Departmental Competitive Examination which is scheduled to be held in pursuance to the notification dated 17.11.2017 and also allow them to appear in the Departmental Competitive Examination in 75% quota and the respondents were given liberty to move an application, if they desire to apply in the Departmental Competitive Examination against 75% quota for promotion to the post of Assistant Engineer within a week from the date of order. The Tribunal has further provided to permit the respondents to appear in the examination provisionally and the result of the examination has been made subject to final outcome of the application for interim relief.

Submission of learned Counsel for the petitioner is that there was no request/ prayer on behalf of the opposite parties for allowing them to appear in the Departmental Competitive Examination rather they have approached for quashing of the notification dated 17.11.2017 and accordingly a prayer was also made for restraining the respondents from proceeding ahead with the selection in pursuance of the impugned notification but the learned Tribunal fell into error in granting a relief which was never sought for by the respondents.

It has further been submitted by the learned Counsel for petitioners that the respondents are working on the post of Engineering Assistant and are eligible to seek promotion to the next higher post and they themselves have stated in their Original Application that prior to implementation of 6th C.P.C. with effect from 01.01.2006, the respondents were working in the pay-scale of Rs.6500-10500 in terms of 5th C.P.C. It has also been stated in the Original Application that the post of Senior Engineering Assistant is a promotional post of Engineering Assistant in All India Radio and 'Doordarshan', which is filled by seniority-cum-fitness basis from the Engineering Assistant with three years qualifying service. It has also been averred in the Original Application that despite the OM dated 13.11.2009, no efforts have been made to merge both the posts. The post of Engineering Assistant and Senior Engineering Assistant both still exists in Grade Pay of Rs.4600/- and the prescribed qualification for both the posts are one and same and as such there is no impediment if these two posts are merged.

In this background, submission of learned Counsel for he petitioner is that admittedly, the post of Engineering Assistant and Senior Engineering Assistant are still in existence and no amendment has been made in the Regulation and only granting

same pay-scale to both posts will not automatically give rights or make them eligible for appearing in the Departmental Competitive Examination for the post of Assistant Engineer. It is an admitted case of the respondents that the process of merger has yet not been finalized by the Departmental Authorities and, therefore, they have approached the Central Administrative Tribunal for restraining the process of selection but the Central Administrative Tribunal passed an *ad interim* order permitting them to appear in the Departmental Competitive Examination, which would effect the entire selection process through out the country as the respondents alone are not the candidates but there are large number of candidates working on the post of Engineering Assistant and getting the pay-scale of Senior Engineering Assistant.

Having examined the submission made by the learned Counsel and perusing the material on record and impugned order passed by the Central Administrative Tribunal, *prima-facie* a case for interim relief is made out.

Issue notice to the respondents returnable within four weeks. Let counter affidavit be filed by opposite parties within four weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List thereafter.

Till then it is provided that the operation and implementation of the order dated 12.03.2018 passed by the Central Administrative Tribunal in Joint Application No.332/ 00049/ 2018 in Diary No.332/ 00100/ 2018 (*Akhilesh Kumar Srivastava and others Vs. Union of India and others*) shall remain stayed.

**Order Date :- 16.3.2018**

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