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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8712/2018 & C.M. No.33459/2018 (stay)

THE UNION OF INDIA THROUGH THE
SECRETARY

..... Petitioner

Through Mr.Sameer Agrawal, Adv.

versus

SH. VIJAY R HAROR AND ORS.

..... Respondents

Through Dr.Ashwani Bhardwaj, Adv. with
Mr.U. Srivastava, Adv. for R-1 to 10.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **20.08.2018**

C.M. No.33458/2018 (exemption)

1. Allowed, subject to just exceptions.

W.P.(C) 8712/2018

1. The petitioner/Union of India is aggrieved by an order dated 08.02.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, allowing OA No.282/2018 filed by the private respondents working on the post of Engineering Assistant (EA) at different stations of All India Radio and Prasar Bharati. The impugned order takes note of the fact that earlier in the year 2010, some of the Engineering Assistants had filed OA No.2940/2010 before the Tribunal for permission to appear in the LDCE for the post

of Assistant Engineer. An additional prayer was made in the said OA to the effect that there should be merger of the post of EA and SEA by modifying the Recruitment Rules within a stipulated time period. Vide order dated 30.11.2010, the captioned OA was disposed of by the Tribunal with the following observation:-

“3. In the above view of the matter, the claim of applicants without RRs being changed, on a proposed administrative action, cannot override the RRs as per the decision of the Apex Court in Union of India Vs. K.P. Joseph, 1973 (1) SCC 194. We, however, cannot be oblivious of the right of the applicants to be considered on fair and equitable basis for promotion as a fundamental right for which we now direct respondents to finalize the merger and also the RRs in consultation with whatever authorities involved within a period of three months from the date of receipt of a copy of this order and thereafter on the basis of vacancies available, the claim of applicants for promotion through departmental competitive examination be considered. In such an event, the law shall take its own course. The OA accordingly stands disposed of. MAs stand disposed of also. No costs.”

2. We are informed by learned counsel for the respondents that despite the aforesaid directions issued by the Tribunal in the year 2010, the petitioner did not take steps to finalize and notify the Rules. As a result, the respondents filed a contempt petition before the Tribunal in the year 2011 (CP (Civil) No.297/11) wherein the petitioners filed a progress report with regard to merger and finalizing Recruitment Rules for Engineering Assistant, by way of an affidavit

in the year 2011, the relevant extract whereof states as follows:-

“14. That with the approval of DoPT and Ministry of Finance, one action i.e. merger of SEA and EA is complete. However, the follow up action for amendment of the Recruitment Rules, has also been initiated. As regards further course of action i.e. amending the recruitment rules the proposal for amending the Recruitment Rules on the basis of the decision to merge the posts of Engineering Assistant and Senior Engineering Assistant received from DG. Doordarshan is presently under examination in the Ministry of Information and Broadcasting. The framing of Recruitment Rules of the merged posts of SEA and EA will again require approval of DoPT and thereafter, the proposal would go to Ministry of Law and UPSC before these are notified after finalization. As such, the process and procedure involved may take considerable time and it may not be possible to commit any precise date for the notification of the finalized Recruitment Rules. Nevertheless the Respondents are making all out efforts to finalize the Recruitment Rules as early as possible.

15. That in the backdrop of the steps taken by the Respondent-Contemnors it is prayed that this Hon’ble Tribunal may graciously be pleased to dispose of the contempt or may grant at least six months time to finalize the amended recruitment rules for the merged cadre.”

3. Learned counsel for the respondents states that in view of the clear averments made by the petitioner in the aforesaid affidavit to the

effect that the merger of SEA and EA was complete and the process for amendment of the Recruitment Rules had already been initiated and that the Recruitment Rules of the merged post of SEA and EA, would need necessary approvals before they are notified after finalization, it was expected of the petitioner to have made compliances within the period of six months as prayed for by them but they failed to take any steps even after expiry of six years, thus, compelling the respondents to once again approach the Tribunal for relief.

4. We may note that the Tribunal has been rather indulgent to the petitioner as after noticing that directions as above were issued in the earlier OA in the year 2010, but compliances had not been made for over seven years, the petitioners were still granted further time of three months to notify the modified Recruitment Rules in accordance with the order dated 30.11.2010 and a decision of the Prasar Bharati Board taken in the 139th Board meeting. The period of three months stood expired on 07.05.2018 but the petitioner did not take any action.

5. We are informed that instead of complying with the impugned order, the petitioner filed a review application (R.A. No.83/2018) which was withdrawn on 28.05.2018. In spite of withdrawing the aforesaid review application, the petitioner did not make compliances. As a result, the respondents were compelled to file a contempt petition before the Tribunal, on which, notice was issued to the petitioners on 23.07.2018, returnable on 10.09.2018.

6. Learned counsel for the respondents states that it is only the notices in the contempt petition that have propelled the petitioner to approach the Court by filing this petition. We have requested learned counsel for the petitioner to explain as to why the modified Recruitment Rules have not been notified so far. Learned counsel submits that the notification could not be issued for the reason that there was no clarity as to whether the respondents could be treated as Government servants or not and the said position became clear only after the amendment to the Prasar Bharati Act, that took place sometime in the year 2012.

7. Having regard to the fact that the clarification that the petitioner was awaiting also took place in the year 2012, on the amendment to the aforesaid enactment, they need to explain the inaction on their part from the year 2012 onwards. An affidavit shall be filed by an officer of the petitioner/Ministry not below the rank of a Joint Secretary, to explain the above, within four weeks.

8. List on 22.10.2018.

HIMA KOHLI, J

REKHA PALLI, J

AUGUST 20, 2018/aa

