

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Joint Application No. 332/00049/2018
In Diary No. 332/00100/2018**

**Reserved on : 26.02.2018 [On IR]
Pronounced on : 12.03.2018**

Hon'ble Mr. Justice V.C. Gupta, Member (J),

Akhilesh Kumar Srivastava & othersApplicants

By Advocate: Sri Praveen Kumar.

Versus

1. Union of India, through the Secretary, Ministry of Information & Broadcasting, Govt of India, A Wing Shastri Bhawan, New Delhi.
2. The Chief Executive Officer (CEO), Prasar Bharti, Prasar Bharti secretariat, Copernicus Marg, New Delhi-110001.
3. The Director General, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi.
4. The Director General, Doordarshan, Doordarshan Bhawan, Copernicus Marg, New Delhi.
5. Additional Director General (E) (Training), National Academy of Broadcast and Multimedia (Technical), Kingway Camp. Delhi.
6. The Dy. Director General (E), Doordarshan Kendra, Ashok Marg, Hazratganj, Lucknow.

....Respondents

By Advocate: Sri Alok Trivedi.

ORDER

[Under Rule 19(b) of CAT (Procedure) Rules, 1987]

Delivered by Hon'ble Mr. Justice V. C. Gupta, M-J

Heard the learned counsel for the applicant and the learned counsel for the respondents at the admission stage and also heard on the question of grant of interim relief as claimed by the applicants.

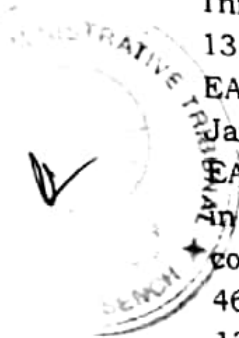
2. The facts giving rise to this original application are that the respondents issued a notification dated 17.11.2017 to hold departmental examination for promotion to the post of AE

against 75% quota through departmental competitive examination and also for 25% on the basis of seniority-cum-suitability. The aforesaid notification was challenged by applicants who are working as Engineering Assistant (EA) in All India Radio and Doordarshan and all are eligible to the promotion in the next higher post.

3. It has been contended by learned counsel for the applicants that prior to 1.1.2006, the applicants were working in the Pay Scale of Rs. 6500-10500 during 5th CPC. The post of Senior Engineering Assistant (SEA) is the promotional post to EA in the pay scale of 7450-11500 and for this post the feeder cadre is EA having 3 years qualifying service for the promotion to the post on the basis of seniority-cum-fitness.

4. It has been contended that after implementation of 6th CPC all the post which were carrying pay scale of Rs. 6500-10500 were upgraded in PB-2 with Grade Pay of Rs. 4600. Though, the replacement scale of Rs. 6500-10500 was PB-2 with GP-4200. This was done in pursuance of an O.M. issued by DOPT dated 13.11.2009 and as such in pursuance of the aforesaid OM all the EA were placed in PB-2 with Grade Pay of Rs. 4600/- w.e.f. 1st January, 2006. Pay Band and Grade Pay which has been given to EA was equivalent to Pay Band and Grade Pay of SEA who were in 5th CPC are in pay scale of Rs. 7450-11500 and the corresponding pay scale in the 6th CPC is now PB-2 with GP of Rs. 4600. It was further contended that in terms of OM dated 13.11.2009 if the post in pay scale of Rs. 7452-11500 is already existing in the cadre during 5th CPC the post in the pay scale of Rs. 6500-10500 shall merge in the post having pay scale of 7450-11500. It was argued that the result of it would be that the post of EA stands merge in the post of SEA w.e.f. 1.1.2006. However, in terms of the O.M. dated 13.11.2009 no effort has been made to merge both the post and to frame the recruitment rules. Both the post EA and SEA are still existing in PB-2 with GP 4600.

5. It was contended that when no action was taken by the respondents, some EA filed O.A. No. 2940 of 2010-Praveen Kumar and others Vs. Union of India & others before Principal Bench of this Tribunal. The Principal Bench vide its judgment dated 30.11.2010 issued direction to the respondents to finalize the merger of two post and prepare the Recruitment Rules (RRs) within three months from the date of communication of this order.



6. Some of the EA were also approach Circuit Bench, Ranchi of Patna Bench of Tribunal by filing another O.A. No. 156 of 2010 Navendu Srivastava & Others Vs. U.O.I. & Ors. The same was also decided in terms of the order passed in O.A. No. 2940 of 2010 vide an order dated 13.01.2011. When no action was taken in pursuance of the order, the petitioners of O.A. No. 2940 of 2010 filed a CCP No. 297 of 2011 before Principal Bench where the respondents filed an affidavit that process of merger had already started and process might be completed within 6 months and on the basis of this assurance the CCP was disposed of.

7. One SEA namely Sunny Joseph filed OA No. 782 of 2015 before Ernakulum Bench for his promotion to the post of AE which is the promotional post to the post of SEA against the vacancies of 2009-10 or subsequent vacancies. It was also contended that as per existing service rules those SEA who have completed 8 years regular service of which there should be 2 years regular service as SEA as on the 1st January of preceding year, is eligible for departmental competitive examination for promotion to the post of AE. It was also contended that an advertisement issued for fill up to the post of AE through Departmental Competitive Examination for the vacancy of 2009-10 and applicants of that OA who are working then as EA were also provisionally allowed to appear in the examination. However, the respondents postpone the examination till further instructions. However, the department is still continuing to conduct the test to fill up the post of EA from its feeder cadre of Sr. Technician and also for the post of JTS from AE. The reason was assigned for postponing the examination for considering promotion to the post of AE was an order passed by Principal Bench on 7/9/2010 in O.A. No. 2940 of 2010- Praveen Kumar & Ors (Supra). It was contended that Principal Bench has also permitted large number of candidates to appear in the examination, the verification required lots of time.

8. It was contended that in the matter of extending benefit of MACP to EA and SEA is sub judis as per direction of Ministry of Information and Broadcasting. However, screening committee has been constituted to examine the matters in the light of court verdict for extending the benefit of MACP.

9. The Ernakulum Bench had examine the matter and found that there is no provision that during pendency of amendment of RRs for promotion, the departmental examination should be stayed because the amendment in RR would be prospective. It



was further observed that the vacancies prior to amendment shall not govern by the amended rules and therefore direction was issued to fill up approximately 600 vacancies of AE as per existing rules within 90 days from both 75% and 25% quota. It was also observed that department gave statement to abide court directions and will allowed both EA and SEA to appear in the departmental competitive examination for the post of AE. It was further observed that result shall be kept in sealed cover and should be placed before respective Court. In pursuance thereof the respondents moved a clarification application before Principal Bench in the light of Judgment of Ernakulum Bench but the same was rejected vide order dated 16.11.2017, the copy of which has been annexed as Annexure No. A-8. While rejecting the application the Tribunal observed that if any clarification is required the same may be sought from Ernakulum Bench. But instead of seeking clarification from Ernakulum Bench, the impugned notification was issued. The applicants submitted their representation on 8/12/2017 but they have not gave any heed to the representations of the applicants.

10. Learned counsel for the respondents on oral instructions informed that CP was filed by the applicants of O.A. No. 2940 of 2010 before Principal Bench having CP No. 849 of 2017 the same was dismissed as barred by time.

11. It was further contended by counsel for the applicant that Principal Bench by another order passed in O.A. No. 282 of 2018-Vijay R. Haror & Ors. Vs. U.O.I. & Ors decided on 8.2.2018 directed the respondent no. 1-Union of India to notify the modified RRs within a period of 3 months from the date of receipt of certified copy of this order. In the judgment, reference has been made by Principal Bench that Prasar Bharti in its 139th Board Meeting approved the draft rules for merging the cadre of EA and SEA. It was also observed that proposal was sent on 17.02.2017 and request was made to the Ministry for notifying the modified RRs. It was further contended that a reminder was also issued to the Ministry on 24.11.2017 by the respondents.

12. Having considered all the facts and circumstances of the case, it is crystal clear that not only the department but all the Benches of the Tribunal are permitting EA and SEA provisionally to appear in the examination, the applicants are working as EA. Therefore, without making any further comment on merit, this Tribunal is of the view that departmental examination for promotion yet not stayed by any Court or Tribunal going to be

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held in pursuance of the order of Ernakulum Bench. Therefore, this Bench cannot stay the conduct of Departmental Competitive Examination. It is pertinent to mention here that even the Principal Bench has not stayed the holding of examination in terms of notification dated 17.11.2017. Probably this was due to grant of permission to EA to appear in the examination provisionally.

13. Having considered this aspect of the matter, this Tribunal is of the view that this matter at interim stage may be disposed of by allowing the petitioners provisionally to appear in Departmental Competitive Examination going to be held in pursuance of notification dated 17.11.2017. The department shall also allow them to appear in the departmental competitive examination in 75% quota as well as 25% quota, as examination has not yet been conducted.

14. Therefore, direction is issued to the respondents that if applicants, so desired, may apply to appear in the departmental competitive examination against 75% or against 25% quota for promotion to the post of AE within a week from today. They shall be permit to appear in the examination provisionally. The result of examination will subject to final outcome of application for interim relief.


15. The respondents may file reply to interim relief application as well as against the OA within 4 weeks. Reply, if any, may be filed within 2 weeks thereafter.

16. Let the matter be listed for admission before DB as and when available.

(S/)

Member (J)

JNS


Section Officer
Central Administrative Tribunal
Lucknow Bench
Lucknow
12-3-2018