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

+ **W.P.(C) 4125/2015**

RAM DAYAL

..... Petitioner

Through Mr. S N Kaul, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through Mr. Rakesh Kumar, CGSC for R-1 to
3

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **20.10.2016**

1. Ram Dayal, applicant No.1 in O.A. No.591/2013 has impugned order dated 12.11.2014 passed by the Principal Bench of the Central Administrative Tribunal in this writ petition. The order dated 07.01.2015 passed in RA No.223/2014, is also challenged.
2. We have heard counsel for the Union of India, Director General of EME (Civil) and the Commandant. There is no appearance on behalf of the respondents No.4 to 8 though they have been served.
3. The petitioner and respondents No.4 to 8 along with Rahul Rana was selected for the post of Engineer Equipment (Mechanic) in September, 1998 and were offered appointments vide letter dated 10.04.1999. While fixing the seniority inter se, respondents No.1 to 3 have taken the date of joining as the relevant basis/criteria. The petitioner, however, claims that seniority should be fixed on the basis of the merit position secured in the selection process. The petitioner had secured the second position and Rahul Rana had stood first in the said exam. The respondents 4 to 8 were lower in merit ranking.

4. The petitioners have relied upon OM dated 04.11.1992 of the Department of Personal and Training and the decision of the Supreme Court in *Suresh Chandra Jha Vs. State of Bihar and Ors.* (2007) 1 SCC 405 and *Chairman, Puri Gramya Bank v. Ananda Chandra Das* (1994) 6 SCC 301.

5. The Tribunal in the impugned order has not examined the merits of the contention raised by the petitioner and Rahul Rana for the O.A. was dismissed as barred by limitation. Reference was made to Section 21 of the Administrative Tribunal's Act.

6. Learned counsel for the petitioner has submitted that the seniority list of Engineer Equipment (Mechanic) was published for the first time and circulated on 15.11.2012. Thus, the cause of action arose on the said date. Only when and after the seniority list was published, could the petitioner have challenged and questioned the seniority given to respondent Nos.4 to 8.

7. Learned counsel appearing for the respondent Nos.1 to 3 has not been able to dispute and deny the said factual assertion i.e. seniority list was published on 15.11.2012.

8. In the counter affidavit, it was averred that service books of all employees were available to the individuals to look into and there were instances where anomalies in the service record were rectified.

9. It would be a matter of debate whether the aforesaid assertion would be sufficient to oust and bar the petitioner from challenging the seniority list published on 15.11.2012. The petitioner has contested this factual position. Service books, it is stated, would not confer or create cause of action.

10. The respondent Nos. 4 to 8 were given promotions with retrospective effect in view of the exercise done pursuant to the order dated 14.06.2010. Immediately and thereupon, the petitioner had raised objections and asserted that he was senior to those who had been promoted. The petitioner had then filed the OA on 05.11.2012 after the representation was rejected vide order dated 09.10.2012. The petitioner had protested against the promotions of respondent Nos. 4 to 8, who were the petitioner's batch mates, and asserted that their promotions would affect the overall structure of seniority.

11. The aforesaid facts and aspects have not been noticed by the Tribunal in the impugned order dated 12.11.2014. In these circumstances, the said order is set aside with direction to the tribunal to decide the O.A. afresh. Consequently, the order in RA No. 223/2014 will be also treated as set aside. In order to cut short the delay, the parties are directed to appear before the Tribunal on 15.11.2016 when a date of hearing will be fixed.

12. We further observe that the observations made in the present order have been made for the disposal of the present writ petition. All aspects, including the question of limitation, would be re-examined by the Tribunal while passing a fresh order. The Tribunal will not be influenced by the order passed on 12.11.2014. Observations made in this order, will not be treated as deciding the question of limitation on merits. It will be also open to the petitioner to file an application for amendment of the OA or an application separately seeking condonation of delay, if required and necessary.

The writ petition is disposed of.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 20, 2016/VLD