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

+ **Date of Decision 30th August, 2017**

W.P.(C) 7613/2017

R P MEENA

.... Petitioner

Through Mr. Raman Duggal, Mr.
Akshay Chaudhary and Ms.
Aayushi Gupta, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS

..... Respondent

Through Mrs. Biji Rajesh, Adv for Mr.
Gaurang Kanth, Adv. for
NDMC, Mr. Kumar Rajesh
Singh, Adv for R-2, Mr. Rajan
Tyagi, ASC for R-3, Mr. Tarun
Sharma, Adv. for Mr. Uttam
Datt, Adv for R-5.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

C.M. No.31429/2017(for exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

C.M No.31428/2017(condonation of delay)

For the reason stated in the application the same is allowed.

The application stands disposed of.

W.P.(C) 7613/2017.

1. The present Writ Petition assails the order dated 01.08.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in RA No.291/2015, whereby the Tribunal has dismissed the Review Application filed by the Petitioner in OA No.1276/2012. The Review Application had been filed by the Petitioner seeking review of order dated 30.04.2014 passed by the Tribunal, allowing the aforesaid OA in which he was not a party.

2. The Petitioner was appointed to the post of Junior Engineer(Civil) in the Respondent Corporation and was promoted to the post of Assistant Engineer(Civil) on 30.12.1997 with respect to vacancy year 1995. In 1998, the Respondent No.6 and 7 were appointed as Assistant Engineer(Civil) via mode of direct recruitment. In 2010, the Respondent Corporation conducted a year wise review DPC, of the DPCs held from 1991 to 1997. As a result of this process, the

Petitioner herein, had been promoted to the post of Assistant Engineer against the vacancy of the year 1995.

3. After conducting the review DPCs, the Respondent Corporation issued a revised seniority list dated 18.07.2011. Aggrieved by the aforesaid seniority list, Respondent Nos. 6 and 7 hereinafter referred to as Original Applicants, preferred O.A No.1276/2012 before the Tribunal challenging the revised seniority list dated 18.07.2011. In the aforesaid OA the applicants had impleaded not only the Respondent Corporation, but 24 other private Respondents.

4. The Tribunal after considering the submissions of the Respondent Corporation as well as the private Respondents, vide its order dated 30.04.2014, set aside the seniority list dated 18.07.2011 and directed the Respondent Authorities to restore the seniority position of the applicants therein-as appeared in the earlier seniority list dated 15.02.2005. It further directed that the seniority of the private Respondents therein, who had been promoted pursuant to review DPCs, would be fixed from the date of their actual appointment/promotion.

5. Aggrieved by the aforesaid order dated 30.04.2014, the present Petitioner preferred O.A No.2035/2014 before the Tribunal with a prayer to set aside the earlier order dated 30.04.2014 passed by the Tribunal in OA 1276/2012. The OA filed by the Petitioner was dismissed by the Tribunal vide its order dated 17.10.2014, as not being 'maintainable'.

6. Aggrieved by the order dated 17.10.2014, the Petitioner approached this Court in W.P.(C) No.9733/2014, wherein this Court granted leave to the Petitioner to file a review Petition in OA 1276/2012 which had been allowed vide order dated 30.04.2014. The Writ Petition was accordingly disposed of at the admission stage itself, with a direction that if the review Petition was filed by the Petitioner within two weeks, the plea of limitation would not be raised by the Respondents.

7. The Petitioner then filed a review application being RA No.291/2015, which has been dismissed by the Tribunal vide its order dated 01.08.2016 leading to the filing of the present Petition. At this stage, it may be also relevant to note that, in the meanwhile, vide order dated 24.11.2014 passed by the Tribunal in TA No.327/2009, the seniority list dated 15.02.2005 was also quashed by the Tribunal and the Respondents were directed to prepare a fresh seniority list by properly applying the rota-quota rule.

8. The Respondents, accordingly issued a revised provisional seniority list of Assistant Engineer (Civil) on 21.12.2015 which was, after due consideration of all objections, finalized vide circular dated 10.03.2016.

9. In his Review Petition before the Tribunal, the only submission raised by the Petitioner was that he was a proper and necessary party in OA No.1276/2012, as his seniority was adversely affected by the order passed by the Tribunal on 30.04.2014 in the said OA. He had, therefore, contended that

once he was able to demonstrate that grave prejudice had been caused to him, his review application was liable to be allowed and the order allowing the said OA was liable to be recalled.

10. It may be noticed that before the Tribunal, the Petitioner -except contending that he was a proper and necessary party in the OA, did not point out any infirmity in the Original order passed by the Tribunal. The Tribunal, after considering the submissions of the review Petitioner, as well as of the Respondents, both official and private, found that even though the Petitioner had not been impleaded in the original OA, 24 other identically placed persons i.e. promotee Assistant Engineers, whose seniority was disturbed to their disadvantage by virtue of orders passed in the OA, had been impleaded as party Respondents to the OA and they had contested the same on merits. The OA had been allowed only after considering their contentions also. The Tribunal also noticed the fact, that in the meanwhile, after the passing of the order dated 30.04.2014, the Respondents had already implemented the said order by issuing a seniority list dated 10.03.2016, after calling for objections from all affected persons, including the present Petitioner.

11. The Tribunal, accordingly, dismissed the Review Application holding that since persons identically placed like the Petitioner had already been heard, and a fresh seniority list had been issued, if the Petitioner was aggrieved by his seniority position in the said list dated 10.03.2016, he would be at liberty

to challenge the same by raising all grounds available to him, in accordance with law.

12. The Tribunal while dismissing the review application of the Petitioner also placed reliance on the judgment of the Supreme Court in the case of *A. Janardhana V. Union of India*, (1983) 3 SCC 601.

13. In the above circumstances, the Petitioner has preferred the present Petition. Before us, arguing for the Petitioner Mr. Raman Duggal, Advocate has made the same submissions as had been raised before the Tribunal. He reiterates that since the Petitioner's seniority had been adversely affected by the order passed in the OA, he was a necessary party and the order was liable to be set aside on this ground alone. He has further submitted that since the Tribunal had, vide its order dated 30.04.2014(of which review had been sought), while quashing the seniority list dated 18.07.2011, restored the earlier seniority list dated 15.02.2005, grave prejudice had been caused to the Petitioner as his seniority was much lower in the earlier seniority list dated 15.02.2005 vis-à-vis his seniority position in the seniority list dated 18.07.2011.

14. Having perused the impugned order and the record, we are of the view that the non-impleadment of the Petitioner in the OA cannot be a ground to set aside the order dated 30.04.2014 whereby the said OA was allowed, in the facts and circumstances of the case. No doubt, the Tribunal had vide its order dated 30.04.2014 quashed the seniority list dated

18.07.2011, while restoring the list of 15.02.2015. The order of the Tribunal, therefore, undoubtedly acted to the detriment of the Petitioner. But, it is also an admitted fact that 24 similarly placed persons had been impleaded in the original OA. It also appears from a perusal of the original order passed in the OA, that those private Respondents who were similarly placed as the Petitioner, had actively contested the said OA. The arguments advanced by them before the Tribunal had been duly considered by the Tribunal, while allowing the OA. Thus, the interest of the Petitioner was adequately safeguarded and defended in the said proceedings.

15. We also find that in their OA, the original applicants had not claimed seniority over and above any particular individual, and they were only aggrieved by the manner in which the Respondents had drawn up the seniority list dated 18.07.2011. In fact, the relief claimed by them was mainly against the official Respondents and, therefore, in our view it was not necessary for the original applicants to implead each and every person in the seniority list, whose position was likely to be altered if their OA were to be allowed by the Tribunal.

16. We are fortified in our aforesaid conclusion by the observations of the Supreme Court in the case of **A. Janardhana's** case (*supra*) paras 35 and 36 of which have been relied upon by the Tribunal. They read as follows:-

“35. At this stage, we must briefly deal with some technical contentions of minor importance.

36. It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellant. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellant. By an order made by the High Court, the names of Respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this court by nine direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr P.R. Mridul, learned Senior Counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negatived on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of

any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to G.M., South Central Railway, Secundrabad v. A.V.R. Siddhanti. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this court observed that [SCC para 15, p.341 : SCC (L&S) p.296] the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against any individual nor any seniority is claimed by anyone

individual against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negated.”(emphasis supplied)

17. We repeatedly called upon the Petitioner to disclose to us, and to state before us, as to what did he have to say on the merits of the dispute raised in the OA. We asked Mr. Duggal to tell us, as to what the Petitioner would have argued or pointed out-had he been impleaded as a party in the OA, which was not argued or placed before the Tribunal by the private Respondents who were impleaded in the OA. But Mr. Duggal has not disclosed to us anything in this regard. Thus, we are of the view that the Petitioner was not prejudiced merely because he was not impleaded in the OA.

18. There is another relevant factor, which in our view the Tribunal has also rightly considered while rejecting the Petitioner's review application. Pertinently, both the seniority lists dated 15.02.2005 and 18.07.2011 now stand superseded by a fresh seniority list dated 10.03.2016. Thus the grievance raised by the Petitioner, that by restoration of the seniority list dated 15.02.2005, his seniority was adversely affected, no longer survives in this changed scenario.

19. The Respondents have now issued a fresh seniority list dated 10.03.2016 and the Petitioner, if aggrieved by it, can

challenge the same. In fact, the Tribunal has already granted liberty to the Petitioner to challenge the same on all legal grounds available to him.

20. In the aforesaid circumstances, we find no infirmity in the order passed by the Tribunal. The Writ Petition is devoid of merit and is dismissed without any order as to costs.

REKHA PALLI, J

VIPIN SANGHI, J

AUGUST 30, 2017

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