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

+ **W.P.(C) 10591/2017**

N.K. SHARMA AND ANR

..... Petitioners

Through: Ms. Jyoti Singh, Senior Advocate with
Mr. N.K. Bhatnagar, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. V.S.R. Krishna, Advocate for R-1
and R-2.

Mr. Naresh Kaushik, Mr. Omung Gupta and
Mr. Devik Singh, Advocates for R-3/UPSC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **05.04.2018**

CM APPL. 12825/2017 (by the petitioners for condonation of delay in filing the affidavit)

1. For the reasons stated in the application, the same is allowed. The delay of 70 days in filing the affidavit is condoned.
2. Counsel for the respondents No.1 and 2 states that he has received a copy of the affidavit filed by the petitioners. However, counsel for the respondent No.3/UPSC denies having received a copy of the said affidavit. A copy of the affidavit be furnished to the counsel for the respondent No.3/UPSC within one week.
3. Reasons have been furnished by the petitioners in the affidavit to explain the delay in approaching the Court for relief. We are satisfied with the said explanation.
4. The application is allowed and disposed of.

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W.P.(C) 10591/2017 and CM APPL. 43352/2017 (stay), CM APPL. 43354/2017 (additional documents), CM APPL. 12824/2018 (u/s 151 CPC)

1. The petitioners are aggrieved by the judgment dated 31.05.2016 pronounced by the Central Administrative Tribunal in O.A. No.591/2009 and 2981/2009, raising an issue with regard to seniority on the post of Section Officer.
2. Ms. Jyoti Singh, learned Senior Advocate appearing for the petitioners states that both the O.A's. were disposed of by quashing the Memorandum dated 22.12.2008 issued by the Secretary, Railway Board, who has decided the issue of seniority between the direct recruits and the promotees in the Railway Board Secretarial Service (RBSS). Further, the Tribunal directed the respondent No.1 to recast the entire year-wise Seniority Lists of the RBSS on the level of Section Officers right from the scratch on the basis of the principles elaborated in para 182 of the impugned judgment.
3. Mr. Krishna, counsel for the respondents No.1 and 2 states that pursuant to the aforesaid judgment, respondents No.1 and 2/Railways had filed a review application before the Tribunal, which was dismissed vide order dated 14.03.2017 with directions issued to the Railways to start the process of implementation of the order and prepare a revised Seniority List. Accepting the observations made by the Tribunal, the Railways proceeded to implement the impugned judgment dated 31.05.2016, by circulating a draft seniority list in May, 2017, inviting objections from all stakeholders.
4. We are informed by the counsel for the petitioners that the petitioners had also submitted their objections to the draft Seniority List, which were

considered and rejected by the respondents No.1 and 2 and the same was finalised on 29.08.2017. Aggrieved by the final Seniority List, the petitioners, who are departmental promotees on the post of Section Officer, have filed this petition not only challenging the judgment dated 31.05.2016 passed by the Tribunal, but also the Seniority List dated 29.08.2017, prepared by the respondents No.1 and 2 in compliance with the said judgment.

5. Mr. Krishna, learned counsel for the respondents No.1 and 2 states that the final Seniority List is under challenge before the Tribunal by a set of departmental promotees in **O.A. No.4309/2017** entitled Sanjay Gauri and vs. UOI. Notice has already been issued in the said O.A. and the matter has been posted by the Tribunal for 10.04.2018. He submits that in view of the fact that the Seniority List is being scrutinized by the Tribunal, this court may refrain from doing so in this petition.

6. Ms. Singh, learned Senior Advocate appearing for the petitioners states that but for the fact that the petitioners were applicants before the Tribunal in the captioned O.As, which have been disposed of by the impugned judgment, they too would have approached the Tribunal to assail the Seniority List, which is a subsequent development. She adds that even if the petitioners file a fresh O.A. to challenge the Seniority List and the view expressed by the Tribunal in the operative para of the impugned judgment is maintained, then any such attempt on their part would be reduced to a futile exercise.

7. We are of the opinion that since the validity of the final Seniority List is already a subject matter of adjudication before the Tribunal, it would not be appropriate for this Court to contemporaneously examine the said list

drawn by the respondents No.1 and 2 pursuant to the impugned judgment. Instead, it is deemed appropriate to dispose of the present petition with liberty granted to the petitioners to approach the Tribunal with their grievance against the manner in which the Seniority List has been drawn, as raised in this petition, so that the entire issue can be examined comprehensively by the Tribunal, being the court of first instance, alongwith O.A. No.4309/2017, already pending before it. The Tribunal shall be at liberty to consider all the pleas taken before it to assail the Seniority List dated 29.8.2017, and thereafter take a final view in the matter, uninfluenced by the findings returned on this aspect in the impugned judgment.

8. The petition is disposed of alongwith the pending applications.



HIMA KOHLI, J

PRATIBHA RANI, J

APRIL 05, 2018

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