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

+ W.P.(C) 1883/2019

THE DIRECTOR GENERAL, ALL INDIA RADIO & ORS

..... Petitioners

Through: Mr. S.M. Arif, Adv.

versus

ROHTASH KUMAR VERMA & ANR

..... Respondents

Through: Mr. Apurb Lal and Ms. Nisho Verma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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25.02.2019

Caveat No.185/2019

1. Since counsel for the caveator has entered appearance, the caveat stands discharged.

CM APPL. 8814/2019

2. Exemption allowed, subject to all just exceptions.

W.P.(C) 1883/2019 & CM APPL. 8813/2019

3. By the instant writ petition, the petitioners assail the orders dated 20.12.2017 and 08.10.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) in OA No.216/2017 and RA No.85/2018 preferred in the said Original Application.

4. By the first order, the Tribunal allowed the Original Application preferred by respondent No.1-Rohtash Kumar Verma, seeking a declaration that he was senior to respondent No.4-Kum. P. Geetha Rani, who is respondent No.2 in the present petition, in the Junior Administrative Grade

(JAG). The Tribunal has rejected the Review Application preferred by petitioners herein.

5. The case of the respondent No.1-applicant was that in the feeder cadre i.e. Junior Time Scale (JTS) i.e. IB(E)(S) Officers, he was placed at serial No.736 whereas, respondent No.4, who was also a direct recruit, was placed at serial No.804. Thus, he was senior to Km. P. Geetha Rani. However, on account of the fact that Km. P. Geetha Rani belongs to the reserved category of Scheduled Caste, she came to be promoted to the Senior Time Scale (STS) grade on 05.03.1992—on account of accelerated promotion being granted to reserved category candidate. Respondent No.1-applicant was subsequently promoted to STS as a General Category candidate on 06.03.1993. The respondent No.2 and the respondent No.1 were further promoted to the JAG grade in the years 2009 and 2016, respectively on the basis of the seniority in the STS, which was counted from their respect dates of promotion as STS. The applicant/respondent No.1 sought application of the “catch up” rule, once he stood promoted to the JAG grade.

6. Before the Tribunal, the petitioner contended that the promotion granted to respondent No.2 herein—Km. P. Geetha Rani as JAG in the year 2009 was based on her seniority as STS. The petitioner, therefore, claimed that the applicant/respondent No.1 could not claim application of the “catch up” rule, since the said promotion granted to Km. P. Geetha Rani as JAG was not premised on the fact that she belonged to the reserved category.

7. The Tribunal has rejected the said argument of the petitioner by observing that Km. P. Geetha Rani had got promotion to STS on 05.07.1992 on account of accelerated promotion, even though she was junior to respondent No.1/applicant in the JTS, and consequently, the Tribunal

applied the “catch up” rule recognised in ***Ajit Singh-II & Ors. vs. State of Punjab***, (1999) 7 SCC 209 and ***S. Panneer Selvam & Ors. vs. Government of Tamil Nadu & Ors.***, (2015) 10 SCC 292.

8. The submission of learned counsel for the petitioner Mr. S.M. Arif is that the Tribunal has ignored the fact that the Original Application was barred by limitation. He submits that the applicant/respondent No.1 did not invoke the “catch up” rule in the year 1993, when he was promoted as STS, after promotion was granted to respondent No.2 in the year 1992. He submits that in the year 2005, the seniority list was published, corrected upto 01.01.2005 wherein respondent No.2 was shown senior to respondent No.1/applicant. He did not assail the same. Thereafter, respondent No.2 was promoted to the JAG in the year 2009 on the basis of her seniority in STS, and respondent No.1 was promoted to the JAG in the year 2016. Only thereafter, respondent No.1 preferred the Original Application in the year 2017.

9. We may, firstly, observe that the dispute essentially is between respondent No.1 and respondent No.2. In such like situations, we cannot appreciate the petitioner-Director General of All India Radio and others, assailing the order of the Tribunal. It should have been left to the said two respondents to litigate on their respective rights qua seniority, and the petitioner-department cannot be seen to be taking sides. In ***Sub-Inspector Rooplal and Another. vs. Lt. Governor, Through Chief Secretary, Delhi and Others***, (2000) 1 SCC 644, the Supreme Court observed as under :

“24. Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State

should only play the role of an impartial employer in the inter se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to arrive at a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned.”

10. Even otherwise, we do not find any infirmity in the impugned order, which has only applied the “catch up” Rule recognised by the Supreme Court in the aforesaid two decisions. When respondent No.1 was promoted to STS grade in the year 1993, the decision in **Ajit Kumar Juneja** (supra) was not available. It is only when the respondent No.1 again caught up with respondent No.2 in the year 2016 in the JAG, that he could have sought the application of the said Rule. Thus, to us it appears that the claim made by respondent No.1 could not be said to be barred by limitation.

11. Respondent No.2 came to be promoted to JAG before respondent No.1 only because she was ranked senior to respondent No.1 in the STS. Had the “catch up” Rule been applied, and seniority of the two respondents fixed correctly, that would not have been the position. It is not the petitioners case that promotion to the JAG was by way of selection where

both the respondents competed, and respondent No.2 emerged meritorious. Thus, there is no merit even in the second submission of Mr. Arif.

12. We, therefore, find no merit in this petition. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

FEBRUARY 25, 2019

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