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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 4670 OF 2021
WITH
CONTEMPT PETITION NO. 325 OF 2018**

Sanjay Y. Khade

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

Mr. J. P. Cama, Senior Advocate a/w Mr. Abhijeet Desai, Mr. Karan Gajra, Mr. Dilip Jadeja, Ms. Sanchita Sontakke i/by Desai Legal for petitioner.

Mr. Rui Rodrigues a/w Mr. D. P. Singh for respondent nos.1 to 4.

Mr. Abhijeet A. Joshi a/w Ms. Varsha Sawant for respondent no.6/AICTE.

Mr. Mihir R. Govilkar for respondent no.5/YCMOU.

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE : DECEMBER 7, 2022

P.C.:

1. The petitioner is an employee of All India Radio, presently working as an Assistant Engineer. The post of Assistant Engineer is the feeder post for promotion to Junior Time Scale (JTS) cadre. The petitioner's name was not included in the list of eligible candidates for promotion to the post of Assistant Engineer which triggered a writ petition (Civil Writ Petition No. 4121 of 2014). In such petition the petitioner sought for the following relief: -

"b. This Hon'ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other Writ, order, direction to quash and set aside impugned order dated 10.02.2014 together with the list which had excluded the name of the petitioner as the eligible candidate for promotion to JTS cadre.

c. This Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other Writ, order, direction to the Respondent no.1,2,3 and 4 thereby including or adding the name of the petitioner as the eligible candidate in the final list as on 01.01.2008 of dtd: 10.02.2014 for the promotion to JTS cadre from the post of Assistant Engineer upon considering the credentials of the Petitioner."

2. An affidavit-in-reply was filed on behalf of the respondent no.3 in the said writ petition.

3. Upon consideration of paragraph 4 of such affidavit, a coordinate Bench of this Court disposed of Writ Petition No. 4121 of 2014 by passing the following order: -

" Upon hearing the parties for some time and after perusal of the affidavit filed by Respondent No.3, dated 15 September 2016, and specifically para 4, which is reproduced as under: -

'4. Thus grievance of the Petitioner no more survives as his name is being included in the eligibility list of Asst. Engineers for promotion. In fact no cause of action survives in view of what is stated above.'

we are inclined to dispose of the present Writ Petition, as the Petitioner's main prayer clauses (b) and (c), have been worked out.

2. The interim order granted by this Court dated 14 July 2014 whereby, directed the Respondents not to finalize the list of Assistant Engineer to the post of JTS cadre, therefore, also stands vacated.

3. We have not gone into the other contentions of the Petitioner. Writ Petition is accordingly disposed of.

All the contentions of the parties, are expressly kept open.”

4. By an order dated 8th December, 2016, a draft eligibility list of Assistant Engineers working in All India Radio and Doordarshan from 1st January, 2007 to 1st January, 2016 was notified. The name of the petitioner figured at Sr. No.20 of such list. However, by another order dated 16th January, 2018, a revised eligibility list was notified which did not include the name of the petitioner. The ground for exclusion of the petitioner’s name was that he had obtained a degree in Engineering through distance mode after 2005.

5. Aggrieved by exclusion of his name from the revised eligibility list, the petitioner instituted on 18th June, 2018 a petition for contempt (Contempt Petition No. 325 of 2018).

6. More than a year later, the petitioner initiated a second round of writ litigation (Writ Petition No.4670 of 2021) praying, inter alia, as follows: -

“a. This Hon’ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other Writ, order, direction to the Respondent no.1-4 to quash and set aside the impugned promotion list impugned promotion list order no.03./2018-BA(E) dated 29/05/2018 at Exhibit “J”.

b. This Hon’ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus either to revise the impugned promotion list impugned promotion list order no.03./2018-BA(E) dated 29/05/2018 or alternatively to prepare a fresh list thereby inserting the name of the Petitioner for the promotion to JTS cadre from the post of Assistant Engineer upon considering the credentials of the Petitioner with retrospective effect, considering his seniority & with all consequential benefits;”

7. The contempt petition and the writ petition are on board today.

8. We have heard Mr. Cama, learned senior advocate appearing for the petitioner, Mr. Rodrigues, learned advocate for the respondents 1 to 4, Mr. Govilkar, learned advocate for the respondent no.5/University and Mr. Joshi, learned advocate for the respondent no.6/All India Council of Technical Education.

9. After extensive hearing in course whereof the Court *prima facie* expressed its disinclination to proceed further with the petition for contempt, Mr. Cama has prayed that the contempt petition may be disposed of as withdrawn. It is ordered accordingly.

10. Insofar as the writ petition is concerned, an objection to the maintainability thereof is raised by Mr. Rodrigues by referring to notification dated 1st December, 2008 of the Ministry of Personnel, Public Grievances and Pensions issued in exercise of power conferred by sub-section (2) of section 14 of the Administrative Tribunals Act, 1985 (hereafter "the 1985 Act", for short). By such notification, the Central Government specified 15th December, 2008 as the date on and from which the provisions of sub-section (3) of section 14 of the 1985 Act was applied to the organizations mentioned therein, relevant part whereof is quoted below: -

Sr. No.	Name of the Corporation/ Society/Other Authority	Status
156 to		

184	*****	
185	Prasar Bharati	Statutory Body/ Autonomous Body under Ministry of Information and Broadcasting
186 to 191	*****	

11. It is not in dispute that All India Radio is under the administrative control of Prasar Bharati. According to Mr. Rodrigues, the remedy of the petitioner lies in an application under section 19 of the 1985 Act before the Central Administrative Tribunal and not before this Court. He refers to the decision of the Supreme Court in **L. Chandra Kumar vs. Union of India**, reported in (1997) 3 SCC 261, and in particular to paragraph 93 wherein it has been held as follows: -

“...We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

12. Reliance is also placed by Mr. Rodrigues on the decision dated 4th March, 2022 of a coordinate Bench of this Court in Writ Petition No. 2270 of 2021 (Gaurav Ganesh Das

Daga & Ors. vs. Maharashtra Public Service Commission & Anr.) and connected matters, wherein the coordinate Bench, after considering the decision in **Vijay Ghogare & Ors. vs. State of Maharashtra & Ors.**, reported in (2013) 4 Bom CR 724, had the occasion to hold that the remedy made available by section 19 of the 1985 Act in respect of matters referred to in section 14 thereof cannot be by-passed and the writ Court approached as if it were the Court of first instance.

13. At this stage, Mr. Cama makes a request that the petitioner may be permitted to withdraw the writ petition too so that he can approach the Central Administrative Tribunal, Mumbai Bench (hereafter "the Tribunal", for short) with an appropriate application. He also makes a prayer that since the petitioner has been running from pillar to post for the purpose of seeking relief of inclusion of his name in the eligibility list for promotion to the post of Assistant Engineer for the last eight years and that valuable time has been lost in pursuing a remedy before an inappropriate forum, the Tribunal may be directed to dispose of the petitioner's application under section 19 within three months from date of its institution.

14. The Court is loath to make any order in anticipation of any event. Regard being had to the fact that the petitioner is yet to file an application under section 19 of the 1985 Act, normally a direction of the nature sought for by Mr. Cama would not be issued. However, the petitioner has been pursuing his remedy before this Court for the last eight years without being properly advised that his remedy

lies before the Tribunal. As a very special case, we observe that if the petitioner applies before the Tribunal under section 19 of the 1985 Act within a fortnight from date together with an application for condonation of delay, the Tribunal shall dispose of the latter application bearing in mind the principle in section 14 of the Limitation Act, 1962; and, thereafter, make honest endeavour to dispose of the original application in accordance with law as early as possible, preferably within six months from the date of institution thereof.

15. We are informed that an original application (Original Application No. 448 of 2018) is pending before the Tribunal involving similar issue which is sought to be raised by the petitioner. Mr. Desai, learned for the petitioner, submits that pleadings in Original Application No.448 of 2018 are complete. If, indeed, that be so, the Tribunal may at its discretion take up Original Application No. 448 of 2018 together with the application that the petitioner proposes to institute before the Tribunal and dispose of the same by a common order.

16. With the aforesaid observations, the writ petition stands dismissed as withdrawn. No costs.

(ABHAY AHUJA, J.)

(CHIEF JUSTICE)