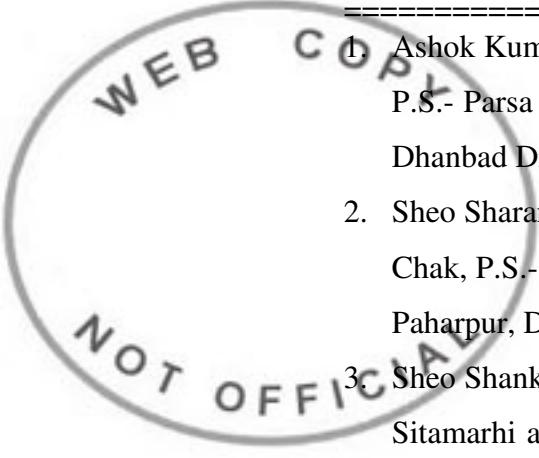


## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.9625 of 2015

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1. Ashok Kumar Singh, S/o Sarju Singh, resident of Village- Mahuli, P.O.- Suitha, P.S.- Parsa Bazar, District, Patna at present Station Manager II, Kathrash Garh, Dhanbad Division, E.C.R., Hazipur.
  2. Sheo Sharan Prasad Singh, S/o Late Ram Singh, Resident of Village- Abdul Hai Chak, P.S.- Rahui, P.O.- Sonsa, District- Nalanda at present Station Manager II, Paharpur, Dhanbad, Division E.C.R., Hazipur.
  3. Sheo Shankar Singh, S/o Late Amir Singh, Resident of Village- Garba, District- Sitamarhi at present Station Manager II, Parsanath, Dhanbad Division, E.C.R., Hazipur.
  4. Vijay Kumar Sharma, S/o Late S.N.P. Sharma, Resident of Mohalla- Malsalami, Patna City, District- Patna at present Station Manager II, Sijua Dhanbad Division, E.C.R., Hazipur.

.... .... Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Rail, Rail Bhawan, New Delhi.
2. The Director (Establishment) Railway, Ministry of Railway, Railway, Ministry of Railway, Rail Bhawan, New Delhi.
3. The General Manager, East Central Railway, Hazipur.
4. The Chief Personnel Officer, East Central Railway, Hazipur.
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur.
6. Divisional Railway Manager, Dhanbad, Officer of the Divisional Railway Dhanbad, (Jharkhand).
7. The Senior Deputy Personnel Officer, Divisional Railway Manager, Officer, Dhanbad (Jharkhand).
8. The Zonal Railway Manager, Railway Dhanbad, P.O.- Dhanbad.
9. The Senior DOR Dhanbad, P.O.- Dhanbad, District- Dhanbad under East Central Railway, Dhanbad (Jharkhand).
10. Sri Binod Jha, Area Manager, Sonapur at Muzaffarpur, Sonapur Divison, E.C.R. At and P.O. Muzaffarpur, Bihar.
11. P.R. Sinha, Instructor, Transportation, Zonal Training Institute, Bhulli, Dhanbad, Eastern Railway (Jharkhand).

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. R. K. Rajan, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate  
Mr. Abhimanyu Deo, Advocate

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**

**and**

**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 24-06-2016

The challenge in the present petition is to an order dated 7<sup>th</sup> of August, 2013 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as, 'the Tribunal') whereby the Tribunal dismissed the Original Application filed by the petitioners on the ground that once the matter is adjudicated, there should be an end to the litigation.

2. The facts, in brief, are that some of the similarly situated employees such as the present petitioners filed O.A. No.517 of 1996 before the Tribunal. In the said case, some Guards (Goods) were appointed sometime in the years 1989, 1990, 1991 and 1992 on the basis of panel of selected candidates for appointment to various Class III posts. Such panel was prepared on the basis of result of written examination and viva-voce which were held in the years 1980 and 1981.

3. As per the Original Application no.517 of 1996 filed by some of the co-applicants, 968 candidates were appointed by the



Railways without considering the cases of candidates getting higher marks. Another advertisement was issued in which 674 persons were appointed. It appears that the petitioners are the one of 674 persons who were appointed. The claim of the petitioners as also the applicants in O.A. No.517 of 1996 was to grant seniority. The Tribunal recorded the following findings in O.A. No.517 of 1996 decided on 08.06.2001:

“11. Nevertheless, it remains that the allegations of serious irregularities committed by the respondents in making the appointments to the post, which were advertised in the notification no.9/78 dated 11.6.1978 even before the panels were formed remained uncontroverted. It remains uncontroverted that the posts which were advertised on 11.6.1978 were advertised again even before the panels of selected candidates were properly formed on the basis of the results of the written examination and viva voice/psychological tests held in 1980 and 1981. It is unfortunate that the Railway Recruitment Board, Muzaffarpur and the Railway Administration resorted to such sordid malpractices.

12. The application is disposed of with the following observations:

The reliefs as prayed for cannot be granted on the basis of the inadequate informations furnished to us by the applicants. However, they will be entitled to seniority over those who were below them in the order of merit in the result of the examination, even though the latter may have been appointed earlier or they have been appointed without being empanelled on the result of the examination. Our observations will not apply to those whose appointments were earlier because of the quota of reservations for the categories to which they belong. There shall be no order as to costs.”

4. Similar direction was issued in subsequent O. A. No.95 of 2001 decided on 21.11.2008.

5. Learned counsel for the petitioners submitted that the order passed in O.A. No.517 of 1996 was an order *in rem* and therefore, the same is to be given effect in respect of all candidates, including the present petitioners. He relies upon an order passed by the Hon'ble Supreme Court reported as State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others, 2014 AIR SCW 6519.

6. We have heard learned counsel for the petitioners at length and find no merit in the present writ petition. The dispute in the entire petition is of seniority. Seniority is a matter personal to a candidate. Once the petitioners have chosen not to dispute their seniority for long number of years, they cannot be permitted to claim seniority on the basis of an order passed in the case of other candidates. The petitioners were satisfied with the seniority granted to them and did not raise even little finger for more than 20 years. Since some of the employees have been given some relief in earlier round of litigation initiated in the year 1996 will not confer any right in the petitioners to seek the same relief as has been granted to the other employees by way of an application filed in the year 2015.

7. We find that the proceedings initiated by the petitioners are nothing but abuse of the process of the law having

raised after unexplained gross delay and laches.

8. We find that the judgment in Arbind Kumar Srivastava's case is not helpful to the arguments raised. It rather says contrary to what is argued by the Learned Counsel for the Petitioner. It has laid down the following principles:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a

situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India, AIR 1997 SC 3855: 1997 AIR SCW 3699). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

9. We find that the direction No.(1) is not applicable to the petitioners. A perusal of the order shows that the relief was granted to the applicants of the application before the Tribunal alone. Still further, the claim is for seniority. It was not a class action but assertion of individual rights. There was no omnibus direction in favour of the employees. It is the case which is covered by direction No.(2), i.e. laches and delay. The petitioners have acquiesced in the seniority so fixed for long number of years. The order passed by the Tribunal is not a judgment *in rem*, as argued by the petitioners as the order of the Tribunal is an order passed in favour of the applicant.

10. Consequently, we dismiss the present writ petition.

**(Hemant Gupta, J.)**

**(Ahsanuddin Amanullah, J.)**

Sunil/-

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