

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6787 of 2018**

Devanand, Batch No. 130, (New Batch No. 203), Aged about 49 years, S/o Shri Baba @ Bawa, Member of Dakhshin-Purva Madhya Railway Coolie Kalyan Samiti, (S.E.C. Rly. Licensed Porters Welfare Association) A Co-Operative Society Duly Registered Under M.P./C.G. Co-Operative Society Act. 1960, Bearing Its Reg. No.- CG/670/2002, Bilaspur, Having Its Registered Office At Railway Porters Rest Room, Railway Station Premises, P.S.-G.R.P. Railway-Station Bilaspur, Civil And Revenue District- Bilaspur, Chhattisgarh, R/o Village-Silpahri, Tahsil-Belha, P.S.- Belha, Civil And Revenue District- Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Union of India Through The General Manager (G.M.), S.E.C.R., Zonal Office Building, Civil And Revenue District- Bilaspur, Chhattisgarh.
2. Divisional Railway Manager (DRM) S.E.C.R. Office Of Divisional Railway Manager, (D.R.M. Office) Bilaspur, Civil And Revenue, District- Bilaspur, Chhattisgarh.
3. Sr. Divisional Commercial Manager S.E.C.R. Office Of Sr. D.C.M. At Divisional Railway Manager, (D.R.M. Office) Bilaspur, Civil And Revenue, District- Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri J. A. Lohani, Advocate.
For Respondent/Railways	: Shri Abhishek Sinha, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**Per Ajay Kumar Tripathi, Chief Justice****10/10/2018**

1. Vide order dated 17.07.2018 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur, (for short 'the Tribunal'), Original Application No. 203/00092/2017 (for short 'the OA') filed by the Petitioner has been dismissed.

2. The reason for dismissal of the said OA is that for the same cause of action *i.e.* for consideration of permanent appointment under the Railways in terms of the Railway Board's circular dated 01.04.2008 and 05.06.2008, the benefit was not extended to the Petitioner for which he approached the Tribunal earlier but the Tribunal dismissed the said application being OA No. 203/317/2016, for the reasons recorded as part of the order impugned, which reads in following terms:

"2. Needless to say that the said impugned order has been passed in pursuance of the direction issued by this Tribunal in OA 242 of 2012 dated 30th March, 2012, wherein the Dakshin-Purva Madhya Railway Coolie Kalyan Samiti (SECR License Porter Welfare Asso.) (Annexure A/4 was the applicant, who had initiated the move on behalf of a group of licensed porters who have been ignored for appointment as the Gangmen/Trackmen as per the scheme of the Railways.

3. Since the impugned order was passed way back on 06.08.2012 and the applicant did not agitate for his grievance before this Tribunal within a reasonable period of time, let alone within a period of one year as prescribed in Section (21) of the Administrative Tribunal Act, 1985. The OA has been filed in March 2016, and as such, is hopelessly barred by limitation. Hence, it is dismissed on the ground of limitation. No costs."

3. The Tribunal further noted that when the order was assailed by filing a writ application before the High Court, the High Court, on the request made by counsel for the Petitioner, passed the following order:

"Counsel for the petitioner submits that he may be permitted to withdraw the petition with liberty to approach the Tribunal again.

2. Counsel for the respondents has no objection if the petitioner withdraws this petition at his own risk.

3. The petition is accordingly dismissed as withdrawn."

4. In this background, if a second OA was moved again for the same set of reliefs, then refusal by the Tribunal to entertain such OA on the ground that the same was barred by the principles of *res judicata* is not an erroneous view to take because repeated applications cannot be allowed to be made or entertained.

5. Submission of the counsel representing the Petitioner is that the Tribunal, on both the occasions dismissed the OAs not on merit but on the technicalities.
6. Applications being barred by limitation are not required to be entertained as would be evident from a categorical position indicated in Section 21 of the Administrative Tribunals Act, 1985 (for short 'the Act'). Section 21 of the Act is in the following terms:

"21. Limitation.—(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

7. There was no obligation upon the Tribunal in view of the legal provision stated in Section 21 of the Act to entertain an application which was

otherwise time barred and for which no cogent or valid explanation as such was offered for condonation.

8. The facts being such, we do not find any infirmity with the view taken by the Tribunal in dismissing the second OA which is the subject matter of challenge in this writ application.
9. The writ application is dismissed being devoid of merit.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE