

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No.6302 of 2015

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| 1. | Dhaneshwar Mahto | | |
| 2. | Kameshwar Singh | | |
| 3. | Surendra Choudhury | --- | Petitioners |

Versus

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| 1. | Union of India through the General Manager,
E.C. Railway, Hazipur. | | |
| 2. | Divisional Railway Manager, East Central Railway, Dhanbad. | | |
| 3. | Senior Divisional Personnel Officer,
East Central Railway, Dhanbad. | --- | Respondents |

CORAM: The Hon'ble Mr. Justice Aparesh Kumar Singh
The Hon'ble Mrs. Justice Anubha Rawat Choudhary
Through Video Conferencing

For the Petitioners	: Mrs. M.M. Pal, Sr. Adv. Ms. Aprajita Sinha, Adv.
For the Respondents	: Mr. Mahesh Tewari, Adv.

08/14.12.2020 Heard learned senior counsel Mrs. M.M. Pal assisted by Ms. Aprajita Sinha for the petitioners and Mr. Mahesh Tewari for the respondents railways.

2. Applicants in O.A. No.195 of 2010(R) are before this Court in the present writ petition being aggrieved by the order dated 19th December 2013 passed by the learned Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi). Applicants had approached the learned C.A.T. after issuance of the rejection order dated 16th June 2010 passed by the Divisional Railway Manager, East Central Railway, Dhanbad on their claim for absorption pursuant to the order of the learned C.A.T. passed in the earlier O.A. No.201/2009 dated 7th September 2009. They are seeking absorption under the railways.

3. From the pleadings on record it appears that their claim is based upon the following set of facts :

East Central Railways, Dhanbad had invited applications with particulars of quasi employees of Consumer Cooperative Stores/Railway Club and Institutes under the Railways in the said Division vide a notice dated 5th August 1994. Vide another letter dated 14th March 1996 the Senior Divisional Personnel Officer, Eastern Railway, Dhanbad requested all the Vice-Presidents/Secretaries of Railway Club and Institutes of Dhanbad Division to furnish particulars of quasi employees of Consumer Cooperative Stores/Railways Club and Institutes under the Division who have completed

five years or more of services up to 28th July 1994 as per the proforma. On receipt of details a list was prepared on 11th September 1996 and the staff under those organizations were informed to attend the D.R.M. office, Dhanbad on 25th September 1996 and 26th September 1996 to appear before the screening committee. 99 persons had appeared for screening. Applicants were also amongst them. Since no result was published, some of the quasi administrative staff who were posted in Railway Club and Institutes, Dhanbad, moved before the learned C.A.T. vide O.A. No.1145/1995 for their regular absorption. Pursuant to the order dated 13th February 1997, those six candidates were regularized vide order dated 9th March 1998. Applicants herein contended that they also made several representations individually and also through their unions including to the Joint Director, Establishment (N) II, Railway Board. Vide letter dated 3rd May 2006 the General Managers were asked to furnish list for one time relaxation for absorption of only those staff of quasi administrative office/organization who were on roll continuously for a period of at least three years as on 10th June 1997 and were still on roll.

4. It is not in dispute that the Cooperative Store, Barkakana was closed in 1997 and no staff were working. These applicants approached the learned C.A.T. in O.A. No.201/2009 for the first time which was disposed of with a direction upon the respondents to pass speaking order on their representation. Learned Tribunal did not go into the question of delay at that stage. After their representation has been rejected, they approached the learned Tribunal once again in the present O.A. Before the learned C.A.T. the respondents contended that these applicants along with others were screened but were not absorbed as they did not fulfill the requisite criteria. Even as per the Railway Board's letter dated 30th May 2000 granting one time relaxation, cases of only those staff of quasi administrative offices/organizations were considered for absorption who were on roll continuously for a period of at least three years as on 10th June 1997 and were still on roll, subject to fulfillment of other conditions. According to them, Barkakana Cooperative Store was closed in 1997 and no staff were working there, a fact which is not disputed by the applicants. However, during course of argument a plea has been raised that even though the Cooperative Store was closed, some of the staff were engaged on regular basis in the year 1998.

5. Learned C.A.T. took into account the relevant material facts on record as also noticed herein above and arrived at the following conclusion :-

“4. The fact remains that the letters issued on 28.07.1994 and 06.03.1998 was never challenged in appropriate forum at appropriate time. Had it been the case of the applicants that they had put on more than five years of service as on 28.07.1994 and were above the age of 18 years at the time of their initial appointment, certainly, the respondents were duty bound to regularize them. Merely because six candidates approached before Central Administrative Tribunal, Kolkata Bench in 1995 does not open a Pandora box for other persons to adjudicate their matter. It is not the case that those applicants had also not completed five years as on 28.07.1994. Even by a relaxation circular dated 06.03.1998 as one time settlement liberty was given to quasi administrative staff to apply for absorption who had completed three years as on 10.06.1997 but there was one rider to the said circular, the staff must be working by then. Admittedly, the Cooperative Store of Barkakana was closed in 1997 and no staff was working there. It may not be lost sight of the fact that in OA 201 of 2009, the question of limitation was not decided and even no opinion was given on the merit of the case.

*5. Admittedly, even though the applicants failed in the screening test held in 1996, they did not challenge the same at appropriate time before the Tribunal. Since some persons approached Central Administrative Tribunal, Kolkata Bench in 1995, their case was ordered to be considered by holding screening committee. Even though six candidates were absorbed in 1998, still the present applicant did not approach the Tribunal for redressing their grievances. In the case of **State of Orissa vs. Mamta Mohanti**, [2001] 3 SCC 436, their Lordships of the Hon'ble Apex Court have categorically observed that the litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent persons have approached the Court within a reasonable time. There is considerable force in the submissions of the learned counsel for the respondents that the present applicants had never worked after 1994. In any capacity as quasi employees of any Consumer Cooperative Society of Railway Club and Institutes as such their rights were long since sealed and their very claim in 2009 after more than two decades of their cessation of work will not germinate a right which was extinguished long back. Therefore, we are of the firm view that no right accrues in favour of the applicants for giving direction to the respondents to consider the status of the employees who had worked as quasi employees in 1994 at this distance of time. Hence ordered.*

6. The OA being devoid of merit, is dismissed and in the peculiar circumstances, without any costs.”

6. Before us, learned senior counsel for the petitioners has questioned the findings recorded by the learned Tribunal on the ground that there was no delay on the part of applicants since learned Tribunal in O.A. No.201/2009 categorically directed the respondents to pass a reasoned order on the representation of the applicants and once the representation has been rejected vide order dated 16th June 2010, the applicants have moved before the learned C.A.T. in the instant O.A. No.195/2010 without any delay. Therefore, the cause of action was alive. The case of the applicants should not have been dismissed only on the ground of delay without going into the merits of their case. It is contended that it is surprising as to how out of 100 candidates who had appeared before the screening committee and were not found suitable, six of them out of the same lot were appointed on regular posts after they had moved in O.A. No.1145/1995 and 1155/1995 before the learned Tribunal. She further submits that respondents have not published the result of the total 100 candidates in a transparent manner which could clear any element of doubt as to the basis on which some of the candidates have been failed while latter some of them have been regularized.

7. Mrs. Pal, learned Senior Counsel therefore submitted that the respondents should be directed to publish the results of those candidates who faced the screening in the year 1995 as that would determine the fate of these petitioners also who have been unfairly discriminated. She further submits that the respondents took a plea before the learned Tribunal that the results could not be published as the matter was subjudice before the learned Tribunal at the relevant point of time. However, respondents should not shy away from publishing the results even at this stage if the matter continues to be subjudice.

8. Learned counsel for the Railways submits that the applicants were not only ineligible for consideration for absorption as per the relaxation given under circular dated 30th May 2000 as they were not on roll on the date of the circular on account of closure of Barkakana Cooperative Store in 1997, even otherwise their case would be grossly barred by delay since they approached learned C.A.T. raising the instant cause of action in the year 2009 for the first time after 14 years of the original applications filed by the other candidates being O.A. No.1145 and 1155/1995. It is submitted that mere rejection of the representation by a speaking order pursuant to the order

passed in O.A. No.201/2009 could not revive their cause of action. If such a course is adopted at this stage, it would open a Pandora's box for several other persons, who have slept over their rights. Learned Tribunal has considered the matter in proper perspective and rightly relied upon the decision of the Apex Court in the case of *State of Orissa vs. Mamta Mohanti*, [2001] 3 SCC 436 to hold that a litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent persons have approached the Court within a reasonable time. Therefore, the writ petition, being devoid of merits, is fit to be dismissed.

9. We have considered the submissions of learned counsel for the parties in the background facts and circumstances noted herein above.

10. Upon anxious consideration to the plea raised by the petitioners herein, we do not find any reason to hold that the view taken by the learned Tribunal suffers from any errors of law or on facts requiring interference by this Court in writ jurisdiction. As it appears from the gamut of facts discussed above, the claim for absorption of quasi administrative staff of Cooperative Societies/Institutes under the Dhanbad Division of railways arose by virtue of the notice inviting offer dated 5th August 1994. These applicants faced the screening test but could not succeed. They slept over the matter and for the first time approached the learned Tribunal in O.A. No.201/2009. In the meantime, Eastern Railway, Dhanbad had issued letter dated 6th March 1998 clarifying that five years' experience is mandatory and those who had spent certain years before attaining the age of 18 years, that period could not be counted. Further vide circular dated 30th May 2000 one time relaxation was given to those who were on roll on 10th June 1997 for three years and were still on roll. However, Barkakana Cooperative Store where the applicants were engaged, was closed in the year 1997 itself. These applicants, therefore, were not on roll at the time of issuance of the circular dated 30th May 2000. Rejection of their representation by virtue of the directions passed in O.A. No.201/2009 on 16th June 2010 cannot revive a stale cause of action. Making of repeated representations does not arrest the march of time. Even if such a direction was issued by the learned Tribunal to pass a reasoned order on their representation, a stale claim such as this could not be revived. Reliance is placed upon the decision of the Hon'ble Supreme Court rendered in the case

of *State of Uttaranchal & Anr. vs. Shiv Charan Singh Bhandari & Ors.* [2013] 12 SCC 179 paragraphs 18 and 19 which read as under :-

“18. In Union of India v. M.K. Sarkar this Court after referring to C. Jacob has ruled that : (SCC p.66, para 15)

“15. When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.”

11. Learned Tribunal, having considered the entire matter in its correct perspective, has therefore declined to grant any relief primarily on the ground of gross delay in raising the cause of action and for other attendant findings also. We do not find any reason to interfere in the same. We also do not find much merit in the plea relating to publication of results of the screening held in 1995 at this stage when the whole claim raised by the applicants is stale. Moreover, if the absorption process has closed more than 20 years back, it would be an exercise in futility to direct the respondents to do so. Accordingly, the writ petition being devoid of merit, is dismissed. Let the original lower court record be sent down the learned C.A.T. concerned.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)