

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5112 of 2020

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.- Hajipur, Dist.- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Hajipur, District- Vaishali (Bihar).
3. The Chief Electrical Engineer, East Central Railway, Hajipur, P.O.- Hajipur, District- Vaishali (Bihar).
4. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad (Jharkhand).
5. The Senior Divisional Electrical Engineer, East Central Railway, Dhanbad (Jharkhand).
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. Khagaul, District- Patna (Bihar).

... .. Petitioner/s

Versus

1. Sri Munna Kumar son of Dharendra Kumar Singh Assistant Loco Pilot, Gomoh Under Senior Divisional Electrical Engineer, East Central Railway, Dhanbad Division, District- Dhanbad.
2. Sanjeev Kumar son of Rajendra Prasad Assistant Loco Pilot, Gomoh Under Senior Divisional Electrical Engineer, East Central Railway, Dhanbad Division, District- Dhanbad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Pandey, Sr. Panel Counsel Mr. Tuhin Shankar, CGC
For the Respondent/s	:	Mr. Munna Pd Dixit (M.P. Dixit), Advocate Mr. S.K. Dixit, Advocate Mr. Sanjay Kr. Chaubey, Advocate Ms. Swastika, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-11-2022

Instant writ petition is filed by Union of India-
Railways against the order of the tribunal dated 29.05.2019
passed in O.A No. 467 of 2016. The respondents submitted



applications for inter-railway transfer from North Central Railway, Jhansi Division to Danapur division under East Central Railway. Such request is on their own on 04.12.2012.

2. Necessary approval was made by the competent authority on 12.06.2013 for effecting transfer. Thereafter, a consequential order was passed on 26.11.2013. Further orders were passed on 12.05.2014 and 09/12.05.2014. In the result respondents were posted in Danapur division on 26.08.2014 and re-posting order was issued on 05.09.2014 at Gomoh under Dhanbad division. The aforementioned orders of the Railway were given effect too in other words orders were spent its force.

3. Similarly, situated persons were stated to have aggrieved by action of the railway authorities approached Central Administrative Tribunal wherein orders were in their favour before the tribunal in O.A. No. 207 of 2014 in the case of Murari Kumar Saxena and 5 Ors. Petitioner-Railway Department filed writ petition No. 3661 of 2015 along with I.A. No. 6246 of 2015 before the High Court of Jharkhand in which order of the tribunal dated 08.01.2015 passed in O.A. No. 207 of 2014 has confirmed on 03.11.2015.

4. When things stood thus respondents open their eyes in agitating their grievance on par with such of those



persons to whom favourable orders were passed by respective judicial forum on 08.01.2015 and the same was implemented in favour of those persons on 11.01.2016.

5. Respondents agitated their right in the year 2016 stating that they are also similarly situated persons. Tribunal passed order in favour of the respondents. The respondents were stated to have approached in filing representation to the concerned officials on 23.03.2015. The same is not part and parcel of Original Application filed before the Central Administrative Tribunal and such receipt of representation dated 23.03.2015 is disputed by the petitioner-department.

6. O.A No. 467 of 2016 is filed by the respondent no.1-Munna Kumar and respondent no.2-Sanjeev Kumar was allowed in favour of them on 29.05.2019. Hence, the present writ petition by the Union of India/Railway-Department.

7. Learned counsel for the petitioner-department submitted that the respondents are not entitled to maintain their Original Application before the Central Administrative Tribunal as there is a delay and non-compliance of Section 21(3) of the Central Administrative Tribunal Act, 1985 (for short Act, 1985).

8. On this point, learned counsel for the petitioner pointed out from Para 9 of the written statement filed under rule



12(1) of the CAT Rules, 1987. Further, the same has been reiterated in the present writ petition at Para 8. Therefore, the tribunal has committed error in entertaining Original Application No. 467 of 2016 and it should have been rejected at threshold.

9. In the light of Para 9 of the written statement read with Section 21(3) of the Act, 1985. In support of the aforesaid contentions, he relied on **D.C.S. Negi vs. Union of India & Ors** reported in **2011 SCC Online 21** decision.

10. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and supported the order of the tribunal. It is submitted that entire case of the respondents no. 1 & 2 are that they are similarly situated persons who have been extended benefit of the tribunal and it has been affirmed by High Court of Jharkhand in writ petition in the year 2015 and it has been implemented in the year 2016, therefore, question of limitation is not warranted. It is also submitted that even though, if there is any delay in filing Original Application before the tribunal, having regard to the fact that similarly situated persons have been extended benefit. The same is required to be extended to the respondents and it has been extended by the tribunal, hence, no interference is warranted.



11. In support of the aforesaid contention, learned counsel for the respondents relied on **State of U.P. & Ors vs. Arvind Kumar Srivastava & Ors** reported in (2015) 1 SCC 347 (Para 22, 22.1, 22.2, 22.3).

12. The aforesaid decision would overcome the limitation issue and also similarly situated persons are entitled to benefit, even though, if there is any delay. It is further submitted that once decision is in favour of particular persons and similarly situated persons are entitled to relief on par with such of those persons who obtained favourable order before judicial forum. In this regard, learned counsel for the respondents relied on the following decisions:-

1. **State of Karnataka & Ors vs. C. Lalitha** reported in (2006) 2 SCC 747 (Para 29)

2. **Maharaj Krishan Bhatt & Anr vs. State of Jammu and Kashmir & Ors** reported in (2008) 9 SCC 24 (Para 22 & 23)

3. **State of Rajasthan & Ors vs. Shankar Lal Parmar** reported in (2011) 14 SCC 235 (Para 22)

4. **Union of India through the Chairman, Railway Board, Ministry of Railway & Ors vs. Manoj Kumar & Ors** reported in (2017) 3 PLJR 741



5. Unreported decision of the Apex Court namely **Govt. of NCT of Delhi & Anr vs. Somvir Rana (TGT ENG) & Ors** decided on 01.09.2007 in the case of Diary No.23663 of 2017. It is submitted that in the light of these judicial pronouncements Original Application filed by the respondents under Section 19 of the Central Administrative Tribunal Act read with Section 21 is maintainable. Therefore, there is no infirmity in the order of the tribunal dated 29.05.2019 passed in O.A No. 467 of 2016.

13. Heard learned counsel for the respective parties.

14. Respondents who are working in North Central Railway, Jhansi division. They had requested for their transfer on their own request to Danapur division under East Central Railway, and it was processed by the petitioner Railway authorities and proceeded to pass order on 12.06.2013 and 26.11.2013 further on 12.05.2014, 09/12.05.2014. Thereafter, consequential orders were passed posting the respondents in Dhanbad division on 26.08.2014 and further re-posting at Gomoh on 05.09.2014. The respondents have accepted the aforesaid proceedings of the Railway authorities and they did not raise any objection or accepted the proceedings under any



protest.

15. Similarly, situated persons who have also requested for transfer to Danapur division, they were aggrieved by the decision of the Railway authorities and invoke remedy of the Central Administrative Tribunal Act, 1985 and they got relief in the year 2014. Petitioner-Railway authorities feeling aggrieved and dissatisfied with the order of the tribunal preferred writ petition before High Court of Jharkhand and suffered order. In the result, petitioner-Railway authorities proceeded to implement the order of the tribunal in the year 2015-2016. These events were noticed by the respondents in the year 2016 and proceeded to invoke remedy before the tribunal under Section 19 of the Act, 1985. Before invoking the aforesaid remedy the respondents were stated to have submitted representation on 23.03.2015. The same is not part and parcel of Original Application and even the same has not been placed in the present proceedings. However, such filing of representation dated 23.03.2015 has been disputed by the learned counsel for the petitioner-department. To the extent that they are not in receipt of representation dated 23.03.2015 on behalf of the respondents insofar as extending benefit of the earlier orders of the tribunal in their favour.



16. At this stage, it is necessary to reproduce Para 3 and Para 8 of the Original Application which reads as under:-

“3. LIMITATION: *That the Applicants further declare that the instant application is within the time of limitation period, prescribed in Section 21 of the A.T. Act, 1985 as the same has been filed for extension of the benefit of similar order passed by this Hon’ble Court dated 08.01.2015 implemented by the Respondents on 11.01.2016, however the Applicants undertake to file the petition for condonation of delay, if so, required or as directed by this Hon’ble Court.*

8. RELIEFS SOUGHT FOR:

That in view of the statement made in paragraph no. 4 and 5 here-in-above, Your Lordships may be pleased to grant following relief(s):-

8.1 That your Lordships may graciously be pleased to extend the same benefit of judgement/order dated 08.01.2015 passed on OA No. 136/2014, 207/2014 and 311/2014 upheld by Hon’ble High Court dated 03.11.2015 implemented by respondents through order dated 11.01.2016 as contained in Annexure A/6, A/7 and A/8 respectively.

8.2 That your Lordships may further be pleased to quash and set aside the order dated 26.08.2014 passed by the Respondents as contained in Annexure A/3 series which are contrary to the Order passed by this Hon’ble Court dated 08.01.2015 upheld by Hon’ble High Court dated 03.11.2015 as contained in Annexure-A/6 & A/7 respectively.



8.3 That your Lordships may further be pleased to direct/command the Respondents to post back the Applicants also to their opted Division at Danapur Division maintaining their seniority from the date they reported to the HQ Office of Hajipur of East Central Railway.

8.4 That the Respondents be further directed to grant all consequential benefits in favour of the Applicants.

8.5 Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the Applicants.”

17. The petitioner-department in order to meet Para 3-limitation in the Original Application. They have taken specific contention in Para 9. Para 9 of the written statement reads as under:-

“9. The present application is barred by law of limitation under section 21 of the Administrative Tribunal Act 1985. It is stated that the applicants joined Dhanbad division on 6.9.2014 and filed the instant OA in 04.06.2016 which is after two years.”

18. The tribunal has not appreciated contentions of the petitioner-Railway with reference to Para 9 of the written statement filed in O.A before the Central Administrative Tribunal.

19. Learned counsel for the petitioner relied on **D.C.S. Negi vs. Union of India & Ors** reported in 2011 SCC



Online 21 decision and further cited decision in the case of
Ramesh Chand Sharma vs. Udham Singh Kamal and Ors
reported in **(1999) 8 SCC 304 Para 5** reads as under:-

“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)****

(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.

Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the OA filed by the first respondent Udham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-section (3) of Section 21 praying for



condonation of delay, the Tribunal had no jurisdiction to admit and dispose of the OA on merits. It was, therefore, contended that the Tribunal had totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, the impugned order be set aside.”

20. In the light of Ramesh Chand Sharma case that Apex Court had an occasion to interpret Section 21 of the Central Administrative Tribunal Act. Having regard to the limitation column in the Original Application in the present case read with Ramesh Chand Sharma case which is aptly applicable.

21. At this stage, it is necessary to take note of Apex Court decision in the case of **Nair Service Society Vs. Dr. T. Beermasthan & Ors** reported in **(2009) 5 SCC 545** at **Para 48** reads as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

22. In the light of Ramesh Chand Sharma and Nair



Service Society decision all the citations cited on behalf of the respondents has no application to the case in hand. For the reasons that Section 21 of the Central Administrative Tribunal Act, 1985 is required to be taken note of. The cited decision on behalf of the respondents is not relating to Section 21 of the Administrative Tribunal Act, 1985.

23. At this juncture, learned counsel for the petitioner-department submitted that respondents have failed to question the order dated 12.06.2013 before the tribunal which is the first order of generating request transfer of the respondents. Learned counsel for the respondents submitted that it was not communicated to the respondents, therefore, the aforesaid contention of the respondent may not be correct.

24. It is to be noted that even though the respondents have assailed the order dated 26.08.2014 *vide* Annexure-3 series to O.A. conditions imposed therein has not been set aside. Even to this day by any judicial forum. For the reasons that Tribunal passed the following order in O.A.No. 467 of 2016 dated 29.05.2016:-

“9. It is noticed that the judgment passed by the Hon’ble High Court of Jharkhand at Ranchi in WP(S) 3661/2015 dated 03.11.2015 and order passed by this tribunal in OA 207/2014 dated 08.01.2015 and order passed in OA



145/2015 dated 12.05.2016 in identical cases have been implemented and respondents have posted the employees to their/opted division on his own request. It would suffice, if the respondents are directed to treat the applicant at par with the employees in the O.A referred hereinabove.

10. In view of the above, the respondents are directed to review their order dated 26.08.2014 in the light of orders as referred (supra) and pass appropriate order for allotting/posting the applicant to his opted/approved division on his own request within 30 days from the dated of receipt of copy of this order.”

Therefore, the respondents had remedy of filing writ petition and the same has not been availed. Even on this point respondents have not made out case in the present petition.

25. Apex court in the case of **State of U.P. vs. Aravind Kumar Srivastava** reported in **2015 (1) SCC 347** examined even belated claim in respect of similarly situated persons are entitled to have benefit or not?

Para 22, 22.1, 22.2, 22.3 reads as under:-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The 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.

22.2. *However, this principle is subject to well-recognised 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.*

22.3. *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 v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]).

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.”

26. In view of the facts and circumstances of the case petitioner-department have made out a *prima facie* case so as to interfere with the order of the tribunal dated 29.05.2019 passed in O.A. No. 467 of 2016 *vide* Annexure-1 and the same is set aside.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

abhishek/shoaib

AFR/NAFR	
CAV DATE	
Uploading Date	30.11.2022
Transmission Date	

