

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 4276 of 2009

1. Mostt. Shyam Sunder Devi wife of Late Bhola Singh
 2. Ram Krishna Singh S/o Late Bhola Singh
 3. Balram Singh S/o Late Bhola Singh
 4. Ram Lagan Singh S/o Late Bhola Singh
- All are resident of village- Walipur P.O. Walipur P.S. Pipariya District Lakhisarai (Bihar)

... .. **Petitioners**

Versus

1. The Union of India through the Divisional Railway Manager, South Eastern Railway, Hatia, P.O. + P.S.- Hatia, Ranchi Division, District- Ranchi.
2. The Senior Divisional Engineer, Chakradharpur, P.O.- Chakradharpur, District- West Singhbhum at Chaibasa.
3. The Railway Divisional Engineer, P.O.- Chakradharpur, District- West Singhbhum at Chaibasa.
4. The Assistant Engineer (1), South Eastern Railway, Bonda Munda, Chakradharpur, District- West Singhbhum at Chaibasa, Jharkhand

... .. **Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioners	: Mr. Dilip Kumar, Advocate Mr. Sunil Kumar Mahto, Advocate
For the Respondents	: Mr. Sunil Kumar, Advocate

16/02.05.2022

1. Heard Mr. Dilip Kumar along with Mr. Sunil Kumar Mahto, advocates appearing on behalf of the petitioners.
2. Hear Mr. Sunil Kumar, learned counsel appearing on behalf of the respondents.
3. This writ petition has been filed for the following reliefs:

“(i) That to set aside dismissal notice dated 13.10.1980 issued by the Respondent No.-4 and order of appellate authority dated 1.9.1981 issued by the respondent no. -3 which was received by the petitioner on 7.1.1982.
(ii) That the petitioner prays that this Hon’ble Court may direct the concerned respondent to compute and pay entire dues of the petitioner forth with.
(iii) That is respectfully submitted that since no final termination/dismissal order was passed, therefore, entire period of service of the petitioner may be treated as service of the petitioner after setting aside the dismissal notice dated 13.10.1980 and order of appellate authority dated 1.9.1981.
(iv) That it is prayed that your Lordships may be pleased to direct the respondents to compute and pay the entire retiral dues of the petitioner taking into account of length of service of the

petitioner and on 1.9.2008 the petitioner crossed his date of superannuation.”

4. Learned counsel appearing on behalf of the respondents, at the threshold, has raised a serious objection in connection with the maintainability of the present writ petition primarily on the ground that the present writ petition is a stale case as the impugned order of dismissal is dated 13.10.1980 and the appellate order is dated 01.09.1981 and the present writ petition has been filed on 09.09.2009. The learned counsel has also submitted that the original petitioner had moved the Central Administrative Tribunal by filing O.A. No. 63 of 2009 and the case was withdrawn by the original petitioner vide order dated 17.03.2009 with a liberty to file the case in appropriate forum.

5. The learned counsel for the respondents further submits that the original petitioner had attained the age of superannuation on 01.09.2008 and the steps, if any, for the purposes of redressal of his grievances, were earliest taken in the year 2009 when he filed O.A. application before the Central Administrative Tribunal. The learned counsel has submitted that the present writ petition is not maintainable and therefore, it may be dismissed. The learned counsel for the respondents has rightly relied upon the judgement passed by this Court in ***W.P.(S) No. 6708 of 2019*** wherein this Court has referred to the judgement passed by the Hon’ble Supreme Court reported in ***(2014) 4 SCC 108 (Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu)*** holding that the doctrine of delay and laches should not be lightly brushed aside.

6. The learned counsel appearing on behalf of the petitioners, in response, has submitted that the original application was withdrawn before the Central Administrative Tribunal in view of the fact that the period of dispute was of the year 1980 and the tribunal’s jurisdiction commenced from 1982 as per the provisions of Section 16 of the Administrative Tribunals Act, 1985 and in such circumstances, the original application was withdrawn with liberty to file the case in appropriate forum.

7. However, during the course of argument, it is not in dispute that the original application before Central Administrative Tribunal was withdrawn by the original petitioner, but the Central Administrative Tribunal did not give any pronouncement upon its jurisdiction.

8. The learned counsel for the petitioners further submits that merely because there is delay in filing the writ petition, the same by itself is not sufficient to dismiss the writ petition as the Limitation Act as such does not apply to writ proceedings.

9. The learned counsel for the petitioners has further referred to the impugned order dated 01.09.1981 (Annexure-6) to submit that the authority has acted with a pre-conceived mind and for this, he has referred to The Railway Servants (Discipline & Appeal) Rules, 1968 and has referred to Rule 14 thereof to submit that upon receipt of the inquiry report, the authority should not use the term 'Article of charge is fully proved' or 'Article of charge is fully substantiated' as that would indicate bias.

10. However, it is not in dispute that the inquiry report has been annexed by the petitioners in the writ petition. It is further not in dispute from the side of the petitioners that the original petitioner had participated in the inquiry proceedings. No other point has been argued by the learned counsel for the petitioners.

Findings of this Court

11. The original writ petition was filed by Bhola Singh and upon his death, his legal heirs and successors are pursuing this case.

12. After hearing the learned counsel for the parties and considering the facts and circumstances of this case, this Court finds that the orders dated 13.10.1980 and 01.09.1981 passed against the original petitioner are primarily under challenge in this writ proceedings and this writ petition itself has been filed on 09.09.2009. The filing of the writ petition was preceded by an order passed by the Central Administrative Tribunal in O.A. No. 63 of 2009 filed by the original petitioner which was withdrawn vide order dated 17.03.2009 (Annexure- 11). The said order is quoted as under:

“As the case pertains to the period of 1980 and the Tribunal’s jurisdiction commenced from 1982 as per the provisions of Section 16 of the Administrative Tribunals Act, 1985, the learned counsel for the applicant seeks permission to withdraw the OA with liberty to file the case in appropriate forum. The OA is dismissed as above.”

13. The aforesaid order passed in O.A. No. 63 of 2009 by the learned Central Administrative Tribunal, is an order of withdrawal and it does not indicate that the tribunal has decided its jurisdiction.

14. However, from the arguments advanced on behalf of the parties, it is not in dispute that the cause of action is a stale one and the impugned orders are dated 13.10.1980 and 01.09.1981. It is also not in dispute that the original petitioner had attained the age of superannuation in the year 2008 and the earliest step which has been taken by the original petitioner in connection with his grievance is by filing of original application before the learned Central Administrative Tribunal only in the year 2009. There is no dispute that the Limitation Act as such does not apply to the writ proceedings, but unexplained delay and laches on the part of the original petitioner in approaching any authority or this Court, is certainly a sound reason for denying relief under Article 226 of the Constitution of India when seen in the light of the judgement relied upon by the respondents. The counter-affidavit filed by the respondents has specifically raised the point of delay and laches and it has also been stated that records are very old records of the year 1980.

15. So far as the argument on behalf of the petitioners regarding Rule 14 of The Railway Servants (Discipline & Appeal) Rules, 1968 is concerned, this Court is of the considered view that the same by itself is not sufficient when applied to the facts and circumstances of this case to interfere in the impugned orders which were passed way back in the year 1980 to 1981, particularly when the original petitioner had participated in the disciplinary proceedings.

16. Considering the fact that the filing of the present writ petition suffers from delay and laches, this writ petition is dismissed.

17. At this stage, the learned counsel for the petitioners has submitted that certain amount of the original petitioner on account of Provident Fund deduction is lying with the respondents to which the petitioners are entitled as per law.

18. Upon this, the learned counsel for the respondents has submitted that if there are any dues on account of the Provident Fund etc., the same can be taken care of, if the petitioners file a representation before the respondent no. 2 subject to verification of the

records. Accordingly, liberty is reserved with the petitioners to approach the respondent no. 2 who shall deal with the aforesaid grievance of the petitioners, if any, in accordance with law.

19. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

Pankaj