

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4833 of 2023

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, Dist- Vaishali (Bihar).
3. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad (Jharkhand).
4. The Chairman, Railway Recruitment Board, Ranchi, Jharkhand.
5. The Member Secretary, Railway Recruitment Board, Ranchi, Jharkhand.

... .. Petitioner/s

Versus

Shri Dipak Kumar Singh S/o Sri Raghunandan Prasad Singh, R/o Village- Bindwara, Begumpur Tola, Near Airport, P.O.- Munger, District- Munger, PIN Code- 811201 (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Tuhin Shankar, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 09-05-2023

In the instant petition, petitioner has assailed the order of the Central Administrative Tribunal (for short “CAT”) dated 12.04.2022 passed in O.A. No. 050/00852/2016.

2. Shri Dipak Kumar Singh, who was a candidate for recruitment to the post of Goods Guard and he was not selected and his candidature was considered for alternative appointment to the post of Enquiry cum Reservation Clerk, had approached



CAT, Patna Bench, Patna. CAT in O.A. No. 050/00866/2015

dated 27.11.2015 passed the following order:-

“The applicant has challenged the present O.A. for the following reliefs:-

"8.1 To direct/command the Respondents particularly Respondent No.2 to issue offer of alternative appointment letter to the post of Enquiry Cum Reservation Clerk in favour of the Applicant under Category No. 14 against Employment Notice No.NTPC/ER/1/2007 without any further delay which is being delayed unnecessarily as evident from their Letter dated 09.09.2014 as contained in Annexure - A/8.

8.2 To grant all consequential benefits in favour of the Applicant including arrears of pay, seniority etc. at par with other selected persons on the basis of same employment notice".

2. Ld. counsel for applicant draws attention of the Tribunal to letter dated 09.09.2014 (Annexure - A/8) wherein steps have been taken by sending the dockets of the applicant to G.M. (P), E.C.R., Hajipur along with copy of medical fitness (B2 & below) in connection with adjustment in alternative posts. As the matter is still under consideration of respondent No.2, the O.A. is disposed of with a direction to respondent No.2 to take a decision in the matter in the light of their own circulars and guidelines, treating this O.A. as an additional representation, preferably within a period of three months from the date of receipt/communication of this order.

The O.A. is disposed of without passing any order on merit at pre admission stage. A copy of this order be transmitted to respondent No.2 for necessary compliance at his end.”

3. Thereafter, representation of respondent - Shri Dipak Kumar Singh was rejected on 18/19.10.2016. Feeling aggrieved by the rejection of his representation, he has filed one more O.A. No. 050/00852/2016 and it was decided in his favour



on 12.04.2022 by the CAT, hence, the present petition.

4. Learned counsel for the petitioner vehemently contended that CAT has committed error in not noticing that there is a delay and laches on the part of the respondent – Shri Dipak Kumar Singh, since, he had a cause of action in the year 2009. He had approached the CAT in the year 2015 and obtained an order for consideration of representation or grievance which was pending consideration before the 2nd respondent and it was disposed of asking the respondent to file additional representation preferably within a period of three months from the date of receipt/communication of the order of CAT.

5. It is to be noted that cause of action accrued to the petitioner – department as and when CAT decided O.A. No. 050/00866/2015 dated 27.11.2015 so as to contend that there was a delay and laches on the part of the respondent in approaching CAT. In other words, they had a remedy of filing writ petition before this Court against the order dated 27.11.2015 in the light of Apex Court's decision in the case of ***L. Chandra Kumar V. Union of India & Ors.*** reported in ***(1997) 3 SCC 261*** judgment. On the other hand, they have accepted the order of CAT dated 27.11.2015 passed in O.A. No.



050/00866/2015 and proceeded to consider the respondent's representation and rejected his grievance on merits and not on the score that grievance of the respondent was belated one or stale claim. The petitioners are not entitled to take the contention of delay and laches in the second round litigation in O.A. No. 050/00852/2016, since earlier order dated 27.11.2015 has attained finality among the petitioner and contesting respondent.

6. Learned counsel for the petitioner submitted that with these material information, the CAT should have rejected (respondent's O.A. No. 050/00852/2016 decided on 12.04.2022), at threshold on the ground of delay and laches. On this point, learned counsel for the petitioner relied on Apex Court's decision passed in SLP (C) No. 3008 of 2022 in the case of Surjeet Singh Sahni Vs. State of U.P. & Ors., and he is relying on para-4. The cited decision does not assist the petitioner for the reasons that petitioner had cause of action insofar as contending delay and laches arose before the CAT in O.A. No. 050/00866/2015 and opposing the directions of the CAT to consider the respondent's claim/representation or submission of additional representation by the respondent. Further, they had a remedy of filing writ petition before this



Court against the order of CAT dated 27.11.2015. Thus, decision dated 27.11.2015 passed by the CAT has attained finality among the respective parties. In the second round litigation, the petitioner is taking the contention that there was a delay and laches, the same cannot be accepted. It is noticed from para-3 of the O.A. No. 852 of 2016, respondent has stated that O.A. is within the limitation. At the same time, petitioner in the written statement at para-16, it is stated that insofar as para-3 of O.A. is concerned that “No Comments”. Therefore, to defeat the decision of CAT for the first time, petitioner-department raised the issue of delay and laches in filing O.A. by the respondent. Whereas petitioner-department waived their right to agitate in the intital O.A. No. 866 of 2015, failed to file writ petition, while rejecting respondent’s representation and it was decided on merits and in the second round, O.A. No. 852 of 2016, delay and laches issue has not raised on the contrary it was stated “No Comments”. Facts of the case in the Surjeet Singh Sahni vs. State of U.P & Ors., matter is different from the case in hand. In the Surjeet Singh Sahni’s case, there were no lapses on the part of State of U.P. to take the delay and laches issue. Writ Court in the second round litigation noticed delay and laches and maintainability of writ and non-filing of suit, whereas petitioner



in the present case accepted the earlier verdict. Moreover, speaking order dated 18.10.2016, which is the subject matter of second round litigation before CAT was not rejected on the ground of delay. On the other hand, it was rejected on merits. Hence, we are distinguishing to the extent that Surjeet Singh Sahni’s case is not applicable to the case in hand. The petitioner has not urged any other ground so as to interfere with the order dated 12.04.2022 passed in O.A. No. 050/00852/2016.

7. Accordingly, present writ petition stands rejected.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2023.
Transmission Date	NA

