

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S). No. 2207 of 2009

Union of India, through Divisional Railway Manager (P), S.E. Railway,
Chakradharpur Division, P.O. & P.S. Chakradharpur, District-West
Singbhum.

... .. Petitioner

Versus

1. Shankar Kumar Sharma s/o Morarai Prasad, Resident of Diesel Colony,
84/1, P.O. & P.S. Bondamunda, District-Sundergarh (Orissa).
2. Dhiraj Kumar Pradhan s/o Bhagabata Pradhan, Resident of Sector 'A'
Bondamunda, P.O. & P.S. Bondamunda, District-Sundergarh (Orissa).
3. M. Narainga Rao son of M. Krishan Rao, Resident of Driver Colony,
Front of Indira Gandhi Club, P.O. & P.S. Bondamunda, Distt.-
Sundergarh (Orissa).
4. Permanand Yadav son of Sri Bideshi Ram aged about 34 years, resident
of near Talkies, Khhna Block, Ward No.13, P.O. Chakradharpur, Dist.-
Singhbhum.

... .. Respondents

5. Union of India, through General Manager, S.E. Railway, Garden
Reach, Kolkata-43.
6. The Chief Personnel Officer (RP), S.E. Railway, Garden Reach,
Kolkata-43.
7. Sr. Divisional Personnel Officer (SR) R/P, S.E. Railway, Garden
Reach, Kolkata-43.

.. ... Performa Respondents

With

W.P.(S). No. 2259 of 2009

Union of India, Through Senior Divisional Personnel Officer, S.E.
Railway (Sri Anant Madhukar s/o Late Saheb Sharan), Chakradharpur,
P.O. & P.S. Chakradharpur, District-West Singhbhum.

... .. Petitioner

Versus

1. Ban Bihari Pradhan, son of Late Rameshwar, Resident of Village-
Kurulia, P.O. & P.S. Chakradharpur, District-West Singhbhum.
2. Shivilal Jamunda s/o Sri Bharat Jamunda, Resident of Village-Uligutu,
P.O. & P.S. Chakradharupr, District-West Singhbhum.
3. Shambhu Sonar s/o Shri Kul Bahadur, r/o Chakradharpur, P.O. & P.S.
Chakradharpur, Dist.-West Singhbhum, Jharkhand.

4. Shivnath Mukhi, s/o Jagmohan Mukhi, r/o P.O. & P.S. Chakradharpur, Distt.-West Singhbhum.

... .. Respondents

5. General Manager, E.C. Railway, Garden Reach, Kolkata-43.
6. The Chief Personnel Officer, E.C. Railway, Garden Reach, Kolkata-43.
7. The Senior Divisional Officer, (SR)/R/SE Railway, Garden Reach, Kolkata-43.

.. ... Performa Respondents

**With
W.P.(S) No. 6445 of 2017**

Pradeep Kumar Barik son of Late Murlidhar Barik, resident of Qtr. No. C/20, Sector-2, P.O. & P.S. Rourkela, Dist.-Sundergarh (Orissa).

... .. Petitioner

Versus

1. Union of India through the General Manager, South Eastern Railway, Garden Reach, P.O. & P.S. – Garden Reach, Kolkata-43 (WB).
2. Chief Personnel Officer (RP), South Eastern Railway, Garden Reach, P.O. & P.S. – Garden Reach, Kolkata-43 (WB).
3. Sr. Divisional Personnnel Officer (SR), South Eastern Railway, CKP Division, P.O. + P.S. Chakradharpur, Dist.-Singhbhum (West) Jharkhand.
4. Divisional Railway Manager (P), South Eastern Railway, CKP Division, P.O. & P.S. Chakradharpur, Dist.-Singhbhum (West) Jharkhand.

... .. Respondents

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR**

.....

For the Petitioner(s) : Mr. Anil Kumar, Addl. S.G.I.
Mrs. Nitu Sinha, C.G.C.
[W.P.(S) Nos. 2207 of 2009 & 2259 of 2009]
Mrs. M.M. Pal, Sr. Advocate
Mrs. Rukmini Kumari, Advocate
[W.P.(S) No. 6445 of 2017]

For the Respondents : Mrs. M.M. Pal, Sr. Advocate
Mrs. Rukmini Kumari, Advocate
[W.P.(S) Nos. 2207 of 2009 & 2259 of 2009]
Mr. Anil Kumar, Addl. S.G.I.
Mrs. Nitu Sinha, C.G.C.
[W.P.(S) No. 6445 of 2017]

C.A.V./Reserved on 01.10.2024

Pronounced on 19/11/2024

Per Sujit Narayan Prasad, J.:

1. All the writ petitions have been filed under Article 226 of the Constitution of India challenging the order/judgment passed by the Central Administrative Tribunal, Circuit Bench, Ranchi (Patna Bench) dated 15.01.2009 by a common order passed in O.A. Nos. 30 of 2008 and 32 of 2008 [W.P.(S) No. 2207 of 2009]; order dated 05.12.2008 by a common order passed in O.A. Nos. 84 of 2006 and 136 of 2006 [W.P.(S) No. 2259 of 2009]and; order dated 23.05.2017 passed in MA/051/00026/2017 with O.A. No. 051/800048/2017 [W.P.(S) No. 6445 of 2017].
2. All the writ petitions are having common issues, as such, are being taken up together for its consideration.

Factual Matrix

3. The brief facts of the case (W.P.(S) No. 2207 of 2009 W.P.(S) No. 2259 of 2009) as per the pleading made in the writ petitions which requires to be enumerated, are as under:

Vide Sr. DPO/CKP's Office Order no. E/Rectt/Gr. D/ Gangman-98/24 dated 05.05.1998 applications for open market recruitment in the category of Trackman (Group D) were invited.

On being selected in physical test, a panel of selected candidate was published vide DRM(P)/CKP's letter No.E/Rectt/Gr D/Gangman/CKP/Spl/2 dated 23.05.1999 and directed to the medical authority for necessary medical examination in Bee-One medical category as per requirement of Trackman category.

During the medical examination some candidate of the said panel, were found unfit in Bee- One medical category but found fit either in Bee-Two, Cey-One or Cey-Two categories. On submission of appeal by the medically failed candidates, the matter verified by the Sr. Divl. Personnel Officer and as per guidelines circulated under Estt. Sr. No 215/1999 & 232/2000, their appeal were not considered.

Aggrieved by the decision taken by the competent authority, the candidates had filed O.As. before the CAT Ranchi praying for

direction upon the respondent for providing alternative job in pursuance of Srl. No.232/2000.

The matter was disposed by the Hon'ble CAT Ranchi by directing the applicants to preferred representation before the authority concerned and further directed the authorities to consider the matter with compassion.

In compliance to the said order, authority concerned had passed order regretting the claim of the petitioners.

Thereafter, applicants had filed different O.A's being O.A. No.84/2006 and 136/2006 (respondents of W.P.(S) No. 2259 2009) and O.A. No. 30/2008 & 32/2008 (respondents of W.P.(S) 2207 of 2009) before the CAT Ranchi challenging the order regretting the claim of the petitioners passed by the authority concerned.

The matter was disposed by the CAT Ranchi and the same were allowed in the favour of the applicants vide order dated 05.12.2008 and 15.01.2009 passed in O.A. No.84/2006 and 136/2006 (respondents of W.P.(S) No. 2259 2009) and O.A. No. 30/2008 & 32/2008 (respondents of W.P.(S) 2207 of 2009).

For ready reference the operative portion of the order dated 15.01.2009 is being quoted as under:

"In view of the above as these cases are found to be covered under above said decision dated 05.12.2008, these stand disposed of in the same terms as given in order dated 05.12.2008. Registry is directed to supply copies of order dated 05.12.2008 to the parties in the instance cases alongwith this order."

Thereafter, Railway administration had taken decision to file appeal before this Court against the said order of the CAT, Ranchi. Accordingly, Writ Petition bearing No 2259 of 2009 & 2207 of 2009 was filed by Railway administration before this Court challenging the order dated 05.12.2008 passed and dated 15.01.2009 passed in O.A. No.84/2006 and 136/2006 and O.A. No.30/2008 & 32/2008 by the CAT Ranchi.

Meanwhile, the applicants have filed Contempt Petitions before the CAT Ranchi bench for non-implementation of common

order dated 05.12.2008 & 15.01.2009 passed in aforementioned OA's.

The learned Bench of CAT, Ranchi heard the matter and passed the interim order dated 11.11.2009. The operative part of the order is furnished hereunder-

"The respondents are directed to comply with the order of this Tribunal passed in O.A. No.30/2008 subject to the outcome of the Writ Petition and submit the compliance report The respondents are directed to comply with the orders of this Tribunal dated 05.12.2008 passed in O.A. No.84/2006 subject to the outcome of the Writ Petition and submit the compliance report."

In compliance to the Order dated 11.11.2009, the Railway administration had decided to implement the order of the Tribunal and provisional appointment order was issued against the applicants duly mentioning that the engagement is provisional and subject to outcome of the Writ Petition No.2259/2009 & 2207/2009. In the same line many other applicants who have filed different O.A. have been offered provisional appointments.

For adjudication of the aforesaid issues the instant writ petitions have been preferred.

4. It is evident that the grievance of the applicants which led them to approach the learned Central Administrative Tribunal is for issuance of appointment letters in Bee-Two, Cey-One or Cey-Two categories in place of bee-one category. The matter was disposed by the learned CAT Ranchi by directing the applicants to preferred representation before the authority concerned and further directed the authorities to consider the matter with compassion.
5. It is further evident that in compliance to the said order, authority concerned had passed order regretting the claim of the petitioners. Thereafter, applicants had filed different O.A's being O.A. No.84/2006 and 136/2006 (respondents of W.P.(S) No. 2259 2009) and O.A. No. 30/2008 & 32/2008 (respondents of W.P.(S) 2207 of 2009) before the CAT Ranchi challenging the order passed by the authority concerned by which claim of the petitioners was regretted.

6. The matter was disposed by the CAT Ranchi and the same were allowed in the favour of the applicants vide order dated 05.12.2008 and 15.01.2009 passed in O.A. No.84/2006 and 136/2006 (respondents of W.P.(S) No. 2259 2009) and O.A. No. 30/2008 & 32/2008 (respondents of W.P.(S) 2207 of 2009).
7. Thereafter, Railway administration had taken decision to file appeal before this Court against the said order of the CAT, Ranchi order. Accordingly, Writ Petition bearing No 2259 of 2009 & 2207 of 2009 have been filed by Railway administration before this Court challenging the order dated 05.12.2008 and dated 15.01.2009 passed in O.A. No.84/2006 and 136/2006 and O.A. No.30/2008 & 32/2008 by the CAT Ranchi.

Submission of the learned counsel for the petitioners:

8. Mr. Anil Kumar, learned Additional Solicitor General of India assisted by Mrs. Nitu Sinha, learned CGC appearing for the petitioners in W.P.(S) Nos. 2207 of 2009 and 2259 of 2009 has assailed the order passed by the learned Tribunal on the ground that the same is not sustainable in the eyes of law reason being that the power to offer alternative appointment has ceased to exist after issuance of letter No.99/E(RRB)/25/12 dated 25th May, 2009.
9. The ground has been taken that the rule for providing appointment in technical categories does not exist now. The question of considering the applicants' case, therefore, does not arise.

Submission of the learned counsel for the respondents:

10. While, on the other hand, Mrs. M.M. Pal, learned senior counsel assisted by Mrs. Rukmini Kumari, learned counsel appearing for the respondents in W.P.(S) Nos. 2207 of 2009 and 2259 of 2009 has submitted that the order passed by the learned Tribunal requires no interference in view of the fact that the order dated 15.01.2009 has been passed by taking into consideration the fact that the decision has already been taken by the Tribunal by passing order in O.A. Nos. 84 of 2006 and 136 of 2006 as such since the learned Tribunal after

taking into consideration the aforesaid fact has passed the order, the same requires no interference.

11. It has further been contended that the approach of the Railways in offering appointments to the candidates who have approached the CAT is discriminatory in view of the fact that there cannot be any discrimination in the mode of appointment.

12. Learned senior counsel has further submitted that the co-ordinate Bench of this Court has already passed order in W.P.(S) No. 937 of 2015 and W.P.(S) No. 3211 of 2013 declining to interfere with the order passed by the learned Tribunal passed in original applications whereby the prayer of granting alternative employment has been allowed by the tribunal in favour of the applicant, as such the order passed by the learned CAT Ranchi has been affirmed by the Co-ordinate Bench of this Court.

13. Herein also, the case since is exactly similar, as such, the instant writ petitions are fit to be dealt with similarly.

Response of the learned counsel for the Petitioner

14. In response to the argument advanced by the learned senior counsel, Mr. Anil Kumar, learned Addl. SGI has submitted that the co-ordinate Bench of this Court has clarified that the case of the respondent (W.P.(S) No. 937 of 2015) should not be treated as precedent for other such persons approaching the court after a prolonged delay, as such, whatever has been contended on behalf of the learned senior counsel about the applicability of the judgments passed by the co-ordinate Bench of this Court declining to interfere with the orders impugned therein, is not applicable since the same has been restricted only to the case of the respondents/applicants of the said case.

Analysis

15. We have heard the learned counsel for the parties, gone across the finding recorded by the learned Tribunal as also the affidavit filed on behalf of the respective parties.

- 16.** It is admitted that the applicants of O.A. No.30/2008 & 32/2008 (respondent of W.P.(S) 2207 of 2009) have approached before the learned Tribunal based upon the order passed in O.A. No. 84 of 2006 and 136 of 2006. (respondent of W.P.(S) 2259 of 2009).
- 17.** The learned Tribunal has passed the order on consideration of the rival submissions made on behalf of the parties in the said original applications by directing the authority to appoint the applicants herein of respondent of W.P.(S) Nos. 2207 of 2009.
- 18.** For ready reference, relevant part of the order is being reproduced as under:

W.P.(S) No. 2207 of 2009:

“In view of the above and as these cases are found to be covered under the above said decision dated 05.12.2008, these stand disposed of in the same terms as given in order dated 05.12.2008. Registry is directed to supply copies of order dated 5.12.2008 to the parties in the instance cases along with this order.”

W.P.(S) No. 2259 of 2009:

“We find that by misquoting and misapplying Circulars, the applicants stand discriminated. Resultantly, we quash the impugned orders. We direct that positively within a period of three months from today, the applicants are to be conferred with appointments in Group “D” posts which require only Cey one medical standard. However, the appointments may be with prospective effect only.”

- 19.** The learned Tribunal in the case of the other original applications filed on behalf of the applicants has also relied upon the order passed on 05.12.2008 as such passed the direction in the similar line. The other original application being O.A. No. 23 of 2010 has also been allowed, but subject to the outcome of W.P.(S) 2259 of 2009.
- 20.** Thereafter due to divergent views in some other O.As the matter was referred to Full Bench of the learned CAT, Ranchi and the matter was adjudicated vide order dated 10.07.2012 whereby the Railway was directed to provide alternative employment to the applicants but the said order was also said to be the subject to the outcome of W.P.(S) 2259 of 2009.
- 21.** Thereafter several orders were drawn in different O.As on the similar line.

22. Thus, in the aforesaid context this Court deems it fit to consider the merit of writ Petition being W.P.(S) 2259 of 2009.
23. It is evident that the learned counsel for the respondent applicant has relied upon the judgment passed by the Co-ordinate Bench of this Court in W.P.(S) No. 937 of 2015 wherein the Co-ordinate Bench while taking note of the order passed by the tribunal in O.A. No. 65 of 2010 has not interfered with the order passed by the learned tribunal by dismissing the said writ petition.
24. The copy of the order of the said writ petition has been brought on record by the learned counsel for the respondent in order to substantiate that the issue has already attained its finality due to non-interference by the Co-ordinate Bench of this Court.
25. In the light of judicial discipline, we have considered the said judgment and found therefrom that the co-ordinate Bench of this Court has refused to interfere with the direction passed by the learned Tribunal by answering two questions, as would be evident from paragraph-6 of the said judgment, having been dealt with in paragraph-7 thereof. For ready reference, both the paragraphs are being reproduced as under:

“6. We have considered the submission of the learned counsel for the parties and taken note of the rival pleadings on record. We have also gone through the impugned order and the supplementary affidavit filed by the petitioners pursuant to the order dated 17th January, 2021 whereby this Court had posed two questions upon the petitioners:”

(A) As to how many candidates in the panel of 5 th May, 1998 have been offered alternative employment on they being found medically unfit for B-1 B-2 categories and

(B) The date by which the last appointment has been given to any of the candidates.

7. The contents of the supplementary affidavit have been taken note of in the opening paragraph of this order. It appears that out of 50 such medically unfit candidates out of total 1837 candidates empanelled as Gangman by Senior Personnel Officer, Chakradharpur’s panel dated 23rd May, 1999, twenty three (23) have been offered appointment pursuant to the order passed by the learned tribunal from time to time and the last one, who has been conferred appointment on provisional basis is Shri Basudev Singh, who was appointed on 16th May, 2013. It further appears that though the Railways, being aggrieved by the order of the learned Tribunal, has preferred W.P.(S) No. 2207 of 2009 but this court has refused to grant any stay upon

the order passed by the learned Tribunal. The said writ petition has been dismissed for default due to non-representation on the part of the Railways on 6th April, 2017. The learned Tribunal has considered the case of the applicant on grounds of parity as would appear from the operative part of the impugned order quoted hereinabove. Railways have been granting provisional appointment to the other applicants who approached the learned Tribunal and got orders in their favour, the last appointment having been made in May, 2013. In that background, we are of the view that the claim of this respondent should not be denied on technical grounds of having approached the learned Tribunal in the year 2014 when otherwise all such medically unfit candidates including those 23 who were offered appointment on provisional basis stood on the same footing. However, we are also conscious that this recourse to seek relief after prolonged delay should not be encouraged as the right of affected persons also gets extinguished over a period of time if they sleep and snore and do not approach the court in reasonable time.”

- 26.** It is apparent from the aforesaid order that the Co-ordinate Bench has affirmed the order of tribunal by observing that the learned Tribunal has considered the case of the applicant on grounds of parity as would appear from the operative part of the impugned order and consequently Railways have been granting provisional appointment to the other applicants who approached the learned Tribunal and got orders in their favour and the last appointment having been made in May, 2013.
- 27.** It needs to refer herein that the Co-ordinate Bench of this Court after taking into consideration the ratio of the aforesaid writ petition being W.P.(S) 937 of 2015 had allowed the writ petition being W.P.(S) W.P(S) No. 3211 of 2013. In the said writ petition the subject matter was order passed by the Tribunal in O.A. No. 74 of 2009 whereby the learned tribunal had dismissed the prayer of the applicant for alternative employment.
- 28.** The Co-ordinate Bench of this Court while allowing the said writ petition (W.P(S) No. 3211 of 2013) has held that the series of appointments made to such candidates out of the same panel in alternative posts on being declared medically unfit, therefore, the reasoning of learned Tribunal is not correct and further direction was passed to the respondents to consider the case of the petitioner in the light of observations made hereinabove and offer him alternative employment in any suitable category.

29. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

“12. However, this Court made passing observation that the case of Champeshwar Rajhansh should not be treated as a precedent for such other persons, who approach the Court after long delay. The case of the present petitioner does not fall in the category of those who have approached this Court after long delay, rather he had approached the learned CAT in 2009 itself five years before the said applicant Champeshwar Rajhansh had approached the learned CAT through O.A. No. 051/00004/2014. As such, the observations relating to non-treating of precedent of the case of Champeshwar Rajhansh would not come into way of the present petitioner. On merits otherwise, it is not disputed that the petitioner is also one of those candidates, who were empanelled in the panel of Gangman prepared in May, 1999 pursuant to the Notification dated 5th May, 1998 but was found medically unfit in B-I category for the post of Gangman. It is also true that 23 such candidates, who were declared medically unfit from the same panel were appointed provisionally by the Respondent-Railways and Champeshwar Rajhansh has also been offered employment thereafter though provisionally. As such, the case of the petitioner would not be rejected on the ground of delay as he had approached the learned CAT and this Court well in time. Therefore, we do not find any reason as to why similar treatment should not be accorded to the petitioner as other such candidates have been offered alternative appointment provisionally on being declared medically unfit in B-I category from the same panel of Gangman. Learned Tribunal seems to have misdirected itself while distinguishing the case of the present petitioner from that of the others.

13. In the conspectus of facts and the series of appointments made to such candidates out of the same panel in alternative posts on being declared medically unfit, we, therefore, do not approve the reasoning of learned Tribunal. The impugned order passed by learned Tribunal in O.A No. 74 of 2009 and Review Application No. 24 of 2010 (R) are accordingly set aside. The respondents should consider the case of the petitioner in the light of observations made hereinabove and offer him alternative employment in any suitable category, in which he is found medically fit as has been accorded to other similarly situated persons. Accordingly, writ petition is allowed. Let such decision be taken within a period of eight weeks from the date of receipt/production of a copy of this order.”

30. Now coming to the instant case, it is evident that the case of the applicants is also exactly similar which fact has not been disputed by the learned Addl. SGI.

31. The only objection has been raised on behalf of the learned Addl. SGI that the case of the applicants should not be treated as precedent for other such persons approaching the court after a prolonged delay, as such, the judgment is not having binding effect universally.

32. This Court has considered the aforesaid observation made by the co-ordinate Bench of this Court and on scrutiny of the record has found

that the original application which has been dealt with as the subject matter of said writ petition [W.P.(S) 937 of 2015] was of the year 2014.

33. Herein, the issue which is under consideration is the original application of the year 2006 and 2008, as such, as per the observation made by the co-ordinate Bench at paragraph-9 that the case of the applicants should not be treated as precedent for other such persons approaching the court after a prolonged delay is not applicable since the original applications have been filed by the applicant /respondent, prior to the original application filed by the applicant of the said writ petitions.
34. This Court, considering the aforesaid fact, is of the view that the since the similar issue has already been decided and as such, the present writ petitions also deserve to be disposed of in terms thereof.
35. Accordingly, the writ petitions being W.P.(S) No. 2207 of 2009 and W.P.(S) No. 2259 of 2009 stand dismissed.
36. Pending interlocutory application(s), if any, also stands disposed of.
37. So far as the petitioner/applicant of writ petition being W.P.(S) 6445 of 2017 is concerned he is also one of the candidates, who was empaneled under Chakradharpur Division of Railways in terms of the Notification dated 5th May, 1998, but due to his medical unfitness in B-I Category, he was subjected to re-medical examination, but again declared medically unfit in that category.
38. There was a provision for alternative employment against next below medical category for which he is medically fit. The grievances were pending for long and therefore the applicant moved the learned CAT citing different orders passed in different O.As. concerning different applicants, wherein the rejection orders were quashed and the respondents were directed to provide employment to those applicants in Group-D post which required only C-I Medical Standard next below B-I category Medical Standard in which they had failed.

39. The applicant claimed that he was also medically fit for C-I category and accordingly entitled for employment in any lower medical category of Group-D post pursuant to Railway's Board Circular.
40. Learned Tribunal considered the case of the parties, but in his case, took a different view and dismissed the original application holding as time barred and dismissed the same at the admission stage itself, against which the present writ petition has been filed.
41. Adverting to the facts of the instant case it is pleaded that petitioner in the month of September 2016 came to know that one Sri Chamepshwar Rajhans (petitioner of W.P.(S) 937 of 2015) had moved before Tribunal in OA no. 04 of 2014 for a direction to provide alternative employment in any Group 'D' post for which he is medically fit and his OA has been allowed vide an order dated 31st October, 2014 with a direction to provide him employment in alternative post in below Medical Grade at par with the similarly situated persons.
42. Accordingly, the petitioner/applicant has preferred the O.A being O.A. No. 051/800048/2017 with MA/051/00026/2017 for the similar relief and for the condonation of delay in filing the said O.A. But the said O.A was dismissed by the learned tribunal vide order dated 23.05.2017.
43. It is further pleaded that apart from the above, as many as about 18 to 20 OAs have been allowed in between the period 2009 to 2013 in terms of the order dated 5th December, 2008 and alternative employment have been provided to all such medically unfit candidates who applied against the notification dated 05.05.1998 and in all such cases either delay have been condoned/ignored or never raised by the respondents.
44. It is contended by the learned counsel for the petitioner that the petitioner's case is squarely covered by the decision dated 31.10.2016 passed in ***OA no. 04 of 2014 (Champeshwar Rajhans Vs Union and India and others)***. Both the petitioner and applicants of the said OA were appointed against the notification dated 05.05.1998 and were

declared medically unfit in B-1 category and now Champeshwar Rajhans has been provided employment, as such this petitioner is entitled for the same benefit after condoning the delay.

45. The learned counsel for the petitioner has further submitted that the similar points were raised in OA no. 65 of 2010 and that OA was referred before the Full Bench due to dissenting opinion between the two members of the Division Bench, and the learned Full Bench of the Tribunal vide a detailed order dated 10.07.2012 disposed of said O.A with a direction to the respondents to extend the same benefits to the similarly placed persons subject to outcome the decision of the in W.P (S) No. 2259 of 2009, however, it was made clear that the order is restricted only to the candidates selected against the Notification dated 05.05.1998.

The learned counsel in the backdrop of the aforesaid fact emphasized on the last sentence and tried to argue that this is a judgment in rem and, therefore, the applicant is entitled to similar relief.

46. In the aforesaid context we are now revisiting the facts of the instant case and after perusal it appears that it is the admitted case the present petitioner that he has preferred the O.A. in year 2017 when the order in the O.A being **OA No. 04 of 2014** was passed by the learned tribunal whereby the relief was granted to the similarly placed applicant namely *Champeshwar Rajhans*.
47. The learned tribunal after taking into consideration of the long delay in filing the application had dismissed the said O.A being O.A. No. 051/800048/2017 with MA/051/00026/2017 on the ground of delay at the admission stage itself without entering into the merit of the case.
48. At this juncture we would like to refer the settled position of law that the principle of fence sitter can be made applicable when there is delay and laches on the part of the concerned employee.
49. The issue of fence sitter has elaborately been discussed by the Hon'ble Apex Court in the case of *State of Uttar Pradesh and*

Others vs. Arvind Kumar Srivastava and Others, (2015) 1 SCC 347,

wherein, at paragraph 18 and 19, the Hon'ble Apex Court has been pleased to hold as under:

“18. Both these judgments, along with some other judgments, were taken note of in U.P. Jal Nigam v. Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] . That was a case where the issue pertained to entitlement of the employees of U.P. Jal Nigam to continue in service up to the age of 60 years. In Harwindra Kumar v. Chief Engineer, Karmik [(2005) 13 SCC 300 : 2006 SCC (L&S) 1063] this Court had earlier held that these employees were in fact entitled to continue in service up to the age of 60 years. After the aforesaid decision, a spate of writ petitions came to be filed in the High Court by those who had retired long back. The question that arose for consideration was as to whether the employees who did not wake up to challenge their retirement orders, and accepted the same, and had collected their post-retirement benefits as well, could be given relief in the light of the decision delivered in Harwindra Kumar [(2005) 13 SCC 300 : 2006 SCC (L&S) 1063] . The Court refused to extend the benefit applying the principle of delay and laches. It was held that an important factor in exercise of discretionary relief under Article 226 of the Constitution of India is laches and delay. When a person who is not vigilant of his rights and acquiesces into the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to the persons similarly situated who were vigilant about their rights and challenged their retirement. In para 7, the Court quoted from Rup Diamonds [Rup Diamonds v. Union of India, (1989) 2 SCC 356 : AIR 1989 SC 674] . In para 8, S.M. Kotrayya [State of Karnataka v. S.M. Kotrayya, (1996) 6 SCC 267 : 1996 SCC (L&S) 1488] was taken note of.

19. Some other judgments on the same principle of laches and delay are taken note of in paras 9 to 11 which are as follows : (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , SCC pp. 469-70)

“9. Similarly in Jagdish Lal v. State of Haryana [(1997) 6 SCC 538 : 1997 SCC (L&S) 1550 : AIR 1997 SC 2366] this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows : (SCC p. 542)

‘The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Union of India v. Virpal Singh Chauhan [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] . The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.’

10. In Union of India v. C.K. Dharagupta [(1997) 3 SCC 395 : 1997 SCC (L&S) 821] it was observed as follows : (SCC p. 398, para 9)

‘9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi v. Union of India [OA No. 497 of 1986, decided on 17-3-1987 (Tri)] gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case [OA No. 497 of 1986,

decided on 17-3-1987 (Tri)] . In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief.'

11. In Govt. of W.B. v. Tarun K. Roy [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] , Their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows : (SCC pp. 359-60, para 34)

'34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in State of W.B. v. Debdas Kumar [1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841 : (1991) 17 ATC 261] . The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law.'"

50. Thus, it is evident from the aforesaid settled position of law that when a person who is not vigilant of his rights and acquiesces into the situation, his grievance cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to the persons similarly situated who were vigilant about their rights and challenged their cause.

51. Further it is admitted facts that the petitioner/applicant has approached the tribunal and authority concerned after 16 years for redressal of his grievances merely on the ground that he came to know about the order of learned tribunal passed in the O.A being **OA No. 04 of 2014** whereby the relief was granted to the similarly placed applicant namely *Champeshwar Rajhans*, therefore this ground as taken by the petitioner is not said to be sufficient ground in condoning the delay in the light of the settled position of law as rendered by the Hon'ble Apex Court in the case of *State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others* (supra).

52. The learned counsel has relied upon the order passed by the learned Full Bench of the Tribunal in OA no. 65 of 2010 wherein vide order dated 10.07.2012 a direction was passed to the respondents to extend the same benefits to the similarly placed persons subject to outcome the decision of the in W.P (S) No. 2259 of 2009 and further ordered that the order is restricted only to the candidates selected against the Notification dated 05.05.1998.

The learned counsel contended that this is a judgment in rem and, therefore, the applicant is entitled to similar relief.

53. It is admitted fact that the applicant has approached the tribunal inordinate delay of 16 years and the applicant has been in deep slumber and has never approached any forum for more than 16 years for his relief. The judgment made by the Full Bench of the tribunal is not a judgment in rem and the ground of recent knowledge of the relief granted in similar cases is not acceptable in terms of the aforesaid settled position of law particularly the judgment rendered by the Hon'ble Apex Court in the case of *State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others*.

54. The case of the petitioner/applicant is fit to be considered in the light of the judgment passed by the co-ordinate Bench of this Court in W.P.(S) No. 937 of 2015 wherein consideration has been given that the case of the respondent of the said case should not be treated as precedent for other such persons approaching the court after a prolonged delay.

55. However, we have considered the case of the respondents/applicants as above who are the respondents of W.P.(S) No. 2207 of 2009 and W.P.(S) No. 2259 of 2009 by taking into consideration the fact that they were before the Court of Law since the year 2006 and 2008 respectively while the petitioner of W.P.(S) No. 6445 of 2017 has approached the Tribunal only in the year 2017 after the order having been passed by the learned Tribunal in O.A. No. 04 of 2014.

56. Hence, applying the principle of fence sitter and basing upon the delay and laches, this Court is of the view that the order passed by

the learned Tribunal is not amenable to be interfered with in exercise of power of judicial review under the power conferred under Article 226 of the Constitution of India.

57. Accordingly, the writ petition being W.P.(S) No. 6445 of 2017 is hereby dismissed.

(Sujit Narayan Prasad, J.)

I agree,

(Navneet Kumar, J.)

(Navneet Kumar, J.)

High Court of Jharkhand, Ranchi

Dated: 19/11/2024

Saurabh/-

A.F.R.