

Form No. J.(2)
Item No.11
Court No. 1
KS

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 27.01.2026

DELIVERED ON: 27.01.2026

CORAM:

**THE HON'BLE THE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

WP.CT 259 of 2025

Union of India & Ors.

Vs.

Debojyoti Ghosal

Appearance:-

Mr. Suman Chattopadhyay

Ms. Tapasi Sinha Palit

.....For the Petitioners

Mr. Yatindra Nath Gupta

Mr. Chandan Prakash

.....For the Respondent

JUDGMENT (ORAL):

Per, Sujoy Paul, CJ.:-

1. Parties are represented through their respective learned counsel. With the consent, matter is finally heard.
2. This petition filed under Article 226 of the Constitution of India assails the order of Central Administrative Tribunal (Tribunal) dated 02.05.2025 passed in O.A. No.350/1138/2016 whereby the original application filed by the respondent/applicant has been disposed of by granting him partial relief.

3. The admitted facts between the parties are that the Department issued a Notification for selection of certain Group – D Posts pursuant to which, the candidatures were required to be submitted up to 31st October, 2005. The Department gave appointment to 10 candidates out of 303 selected candidates from the select list.
4. Certain candidates alleging that the Railway Administration has adopted a pick and chose policy and did not appoint similarly situated persons, filed *O.A. No.935 of 2008 (A. Tulsi Das & 104 Others. Vs. Union of India & Ors.)*. The Tribunal by order dated 26.03.2010 dismissed the said O.A. Aggrieved, 80 candidates out of 105 original applicants before Tribunal filed *WP.CT 100 of 2010 (Sk. Fakruddin & Ors. Vs. Union of India & Ors.)*. This Court clubbed certain similar petitions and passed a detailed order in WP.CT 100 of 2010, relevant part of which is reproduced by the Tribunal in the impugned order.
5. The present respondent/applicant approached the Tribunal seeking similar benefits by contending that his name also finds place in the select list of 2008 and similarly situated persons have succeeded from the High Court. The Tribunal by impugned order opined that in service jurisprudence, it is important to grant similar benefits to similarly situated person. Accordingly, it was directed that the present respondent be granted similar benefit as granted to the petitioners in WP.CT 100 of 2010 notwithstanding the fact that the present respondent was not a party in O.A. No.935 of 2008 (*A. Tulsi Das & 104 Others. Vs. Union of India & Ors.*).

CONTENTION OF THE DEPARTMENT

6. Learned counsel for the Department submits that the order of Tribunal is erroneous mainly for three reasons. Firstly, the respondent is claiming himself to be a “substitute’

but, he does not fall within the definition of “substitute”. Secondly, the selection Notification was issued way back in 2005 and select list was drawn in 2005. The applicant did not file any original application or petition claiming similar benefits before this Court and was sitting tight over the matter till the outcome of WP.CT 100 of 2010. In the said case, this Court opined that the order is based on a concession given by Railway Administration and such concession shall not create any precedent. For this reason alone, the order passed by this Court in WP.CT 100 of 2010 cannot be extended in favour of present respondent. Lastly, it is urged that Section 21 of Administration Tribunals Act prescribes a statutory period of limitation. The respondent did not approach the Court within limitation and Tribunal ignored this aspect and mechanically followed the order passed by the High Court.

STAND OF THE RESPONDENT/APPLICANT

7. Learned counsel for the respondent submits that respondent is similarly situated candidate qua *Sk. Fakruddin & Ors. Vs. Union of India & Ors.* and was not a party in *WP.CT 100 of 2010* and hence, Tribunal has not committed any error in extending the similar benefits. He submits that after the pronouncement of judgment of this Court in *Sk. Fakruddin & Ors. (supra)*, the present respondent preferred series of representations followed by a legal notice. The Department did not decide either of them and, therefore, it is delay on the part of the Department, which should not come in the way of present respondent in approaching the Tribunal. He places reliance on another judgment of this Court in *WP.CT 49 of 2017 (Bipul Kumar Biswas & Ors. Vs. Union of India & Ors.)* and other connected matters decided on 24th April, 2020. It is

urged that although in the above case, the selection Notification and selection is different, the nature of selection and legal questions are similar in nature.

8. He further urged that the present petition is filed under Article 226 of the Constitution of India and such petition filed under the said Article is not maintainable.
9. We have heard the parties at length and perused the record.

FINDINGS

10. We deem it proper to take the last objection of learned counsel for respondent as the first objection because it goes to the root of the matter and related with the maintainability of petition. No doubt, the petitioner, in the petition mentioned that it is filed under Article 226 of the Constitution of India, but in our opinion, this will not make any difference because in view of a Constitution Bench Judgment of Supreme Court in the case of *L. Chandra Kumar Vs. Union of India & Ors.* reported in (1997) 3 SCC 261: 1997 SCC (L&S) 577 : (1997) 105 STC 618, it was held that the High Court can undertake the judicial review over the orders/judgments passed by the Tribunal constituted under Article 323-A of the Constitution, which includes the present Tribunal.
11. It was clearly held in the said judgment that the High Court although cannot act as a Court of first instance in relation to 'service matters' of State/Central Government Employees, it can exercise the power of judicial review under Article 226/227 of the Constitution of India. Thus, indisputably, the power of judicial review exists under the Constitution. Mere non-mentioning of enabling provision i.e. Article 227 of the Constitution of India will not denude this Court to exercise the jurisdiction [See *AIR*

1977 SC 857 (Hansa Singh Vs. State of Punjab) and *(2006) 5 SCC 789 (K. K. Parmar Vs. High Court of Gujarat & Ors.)*]. Thus, we overrule this hyper-technical objection.

12. The principal argument of Department is based on the observation of Co-ordinate Bench of this Court in WP.CT 100 of 2010 wherein it was recorded that concession given in the peculiarity of that case must not create any precedent. The Tribunal has failed to take note of this finding. The Apex Court in the case of *State of Punjab & Anr. Vs. Rajesh Syal* reported in *(2002) 8 SCC 158* opined that when the Court rules that the order/judgment shall not be treated as a precedent, it shows that the order is not passed in accordance with law. The Tribunal, in our judgment, ought to have considered the said specific finding of Co-ordinate Bench of this Court and should not have treated that order as a precedent.
13. In the case of present respondent, the limitation flowing from Section 21 of Administrative Tribunals Act, 1985 is also coming in the way of the present respondent. Admittedly, the selection Notification was issued in the year 2005 and select list was drawn in the same year. Although, certain similarly situated persons approached the Tribunal, they approached it with quite promptitude because their matter even travelled to this Court in 2010 in WP.CT 100 of 2010. The present respondent came out of his deep slumber in the year 2016 (after 11 years) and filed the instant O.A. The O.A. was hopelessly barred by time. This is trite that continuous representations will not extend the period of statutory limitation.
14. So far judgment of this Court in WP.CT 49 of 2017 is concerned, suffice it to say that this judgment is arising out of a different selection and the question of 'fence-sitter' and

delay were not there in the said case. The amount of delay, in the instant case, is enormous and cannot be ignored.

15. Apart from this, in our considered opinion, the petitioner is a fence-sitter. The Apex Court deprecated the practice of entertaining the similarly situated persons if that they do not approach the Court with quite promptitude and within limitation. The Apex Court in the case of *State of Orissa Vs. Mamata Mohanty* reported in (2011) 3 SCC 436 opined as under:

"54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time."

16. For these cumulative reasons, in our considered opinion, the Tribunal erred in entertaining the O.A. and granting relief. Resultantly, the impugned order of Tribunal dated 02.05.2025 passed in O.A. No.350/1138/2016 is **set aside**.
17. Accordingly, writ petition is **allowed**.
18. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)