

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 900 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Ganesh Ojha aged about 40 years, Son of Sitaram Ojha, resident of Kudiary Bazar, PO/PS-Jatni, Dist-Khurda.
2. Surendranath Behera aged about 41 years, Son of Dukhishyam Behera of At/PO-Badatota, Dist- Khurda.
3. Abdul Karin aged about 45 years, Son of Abdul Waheed of Village Rajabazar, P.O.- Jatni, Dist-Khurda.
4. Ramakanta Rout aged about 46 years, Son of Bhagaban Rout of Village/P.O.-Boarl Pokhari, Dist-Balasore.
5. Subal Swain aged about 48 years, Son of Goji Swain of Manichina, P.O.-Birapurusatampur, via-Delanga, Dist-Puri.
6. Dhusasan Baral aged about 44 years, Son of Sankar Baral of At/PO- Satangoi, P.S.- Delanga, Dist- Puri.
7. P. Prem Kumar aged about 42 years, Son of P. Seeta Ram of Hata Bazar, P.O.- Jatni, Dist- Khurda.

.....Applicants

VERSUS

1. Union of India, represented by the Secretary to the Government of India, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi-110001.
2. The General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist- Khurda, Orissa.
3. The Divisional Railway Mananger, Khurda Road Division, P.O.- Jatni, Dist-Khurda.
4. The Senior Divisional Personal Officer, Khurda Road Division, P.O.- Jatni, Dist- Khurda.

.....Respondents

For the applicant : Mr. B. Mohanty, Counsel

For the respondents: Mr. S. K. Ojha, Counsel

Heard & reserved on : 05.3.2020

Order on :13.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Seven applicants with common grievance have filed this OA, being aggrieved by the order dated 8.10.2014 and 20.10.2014 (Annexure- 5 series of

the OA) by which their case was not considered in the manner desired by the applicants and the reliefs sought for in this OA are as under:-

- “(i) The Order date 08.10.2014 and 20.10.2014 passed by the Respondent No.4 under Annexure-5 series shall be quashed, and directed that eligible candidates may be given appointment.
- (ii) The Respondent Nos. 2, 3 & 4 shall be directed to publish the result of the Screening Test and the candidates found suitable, may be given appointment.
- (iii) Any other reliefs, as this Hon’ble Tribunal may consider.”

2. The facts as stated in the OA are that the applicants had applied in response to the advertisement dated 13.8.1990 (Annexure-1) published by the respondent-railways for children of the railway employees who had retired between 1.1.1987 and 31.12.1993. The applicants claimed that although they faced interview, but instead of proceeding further for the recruitment, the respondent no. 2 cancelled the said advertisement on 22.1.1999. Some of the candidates (other than the applicants) had challenged the said cancellation before the Tribunal in OA No. 520/2001 which was disposed of by the Tribunal vide order dated 20.4.2004 (Annexure-3) with direction to the respondents to consider the case of all candidates who had applied in response to the said advertisement as and when they recruit the substitutes in Khurda Road Division. Some of the applicants in OA No. 520/2001 challenged the Tribunal’s order in W.P. (C) No. 8814/2004. Hon’ble High Court upheld the order of the Tribunal confining the same to the applicants of the OA No. 520/2001, vide the judgment dated 17.3.2006. The petitioners filed a contempt petition before Hon’ble High Court alleging non-compliance of the order in W.P. (C) No. 8814/2004 and thereafter, they were appointed by the railway authorities. The applicants of the present OA claim that although they are similarly placed as the candidates who were appointed, but their case has not been considered, for which they filed OA No. 893/2010. That OA was disposed of by the Tribunal vide order dated 5.3.2014 with direction to applicants to file representations before the authorities who were directed to consider and dispose of the same by a speaking order. In compliance, the respondents have passed the impugned orders rejecting the representation of the applicants.

3. We have heard learned counsel for the applicants and the respondents and perused the material on record. Learned counsel for the applicants filed a written note of submission reiterating the stand in the OA and highlighting the contention that the impugned orders are not in conformity with the judgment dated 17.3.2006 of Hon’ble High Court passed in W.P. (C) No. 8814/2004 (Annexure-R/5 of the Counter). He also highlighted the fact that as per the information received under the RTI Act, 2005, the respondents have appointed 16 persons as substitutes from 1.1.2007 and 31.7.2007 (Annexure-7 of Rejoinder).

4. We take note of the fact that a batch of OAs, which were filed on the same ground as the present OA, has been already considered and disposed of by this Tribunal vide order dated 7.1.2020 in OA No. 901/2015 and other OAs in the batch. The contentions of the parties in OA No. 901/2015 and the reliefs sought in these OAs were similar to the contentions and reliefs in the present OA. Regarding the facts, we mote the following observations of the Tribunal in order dated 7.1.2020 as under:-

“In these OAs, the applicants are aggrieved by non-consideration of their cases in the light of the cases of similarly placed persons which were considered in accordance with the order dated 20.4.2004 of this Tribunal passed in the OA No. 520/2001, copy of which has been annexed with the OA. The order was passed in the said OA with direction to the respondents “to consider the cases of all the applicants, who had applied in response to the Notification under Annexure-A/2 dated 13.8.1990, as and when they would take action for enrolment of substitutes under their organization.”

2. The aforesaid order of the Tribunal was challenged by the respondents before Hon’ble High Court in W.P. (C) No. 8814 of 2004, which was disposed on vide order dated 17.3.2004, confirming the order of the Tribunal. Thereafter, for violation of the order of Hon’ble High Court in W.P. (C) No. 8814 of 2004, a contempt petition was filed against the respondents and their case was considered by the respondents for appointment. The applicants in the present OAs claimed similar benefits as allowed to the applicants of the OA No. 520/2001. When their case was not considered in the light of order in OA No. 520/2001, they filed OAs before this Tribunal, which were disposed of with direction to the applicants to file representation before the respondents for consideration of their cases in terms of the order of Hon’ble High Court in W.P.(C) No. 8814 of 2004. In compliance of the direction, the respondents have considered the cases of the applicants and rejected the same. The orders of rejection issued to the applicants are under challenge in these OAs.

3. It is clear from the above sequence of the facts, that the issues involved in these OAs are common, for which, these OAs were heard together and these six OAs are being disposed by this common order, considering the facts of the OA No. 901/2015 for the purpose of this order.

4. Two applicants in the OA No. 901/2015 have filed the OA seeking the following reliefs:-

“(a) The Order date 18.9.2014 passed by the Respondent No.4 under Annexure-5 shall be quashed, and directed that eligible candidates may be given appointment.

(b) The Respondent Nos. 2, 3 and 4 shall be directed to publish the result of the Screening Test and the candidates found suitable, may be given appointment in the post of substitutes under the South Eastern Railway.

(c) Any other reliefs as this Hon’ble Tribunal may consider.”

5. The main ground advanced in the OA is that they are entitled to the benefits allowed to the applicants of the OA No. 520/2001 in which the decision to cancel the selection of the children of the Railway employees in Khurda division in pursuance to the notification dated 13.8.2990 (Annexure-1 of the OA) was challenged and the Tribunal directed the respondents to consider the cases of the applicants in that OA when they will recruit the substitutes for Khurda division. As per the order of Hon’ble High Court, the applicants of OA No. 520/2001 were considered for appointment by the

respondents. The applicants of the present OA before us also claim the same benefit by invoking the Article 14 and 21 of the Constitution of India.

6. The Counter filed by the respondents opposed the OA mainly on the following grounds:-

(i) When the screening process as per the notification at Annexure-1 was stopped due to complaints and vigilance inquiry, 83 candidates who had applied approached the Tribunal in OA No. 511/1994, which was dismissed vide order dated 4.1.1999 (Annexure-R/1). The said order was challenged unsuccessfully by the those candidates before Hon'ble High Court.

(ii) On perusal of the Vigilance report, the respondent no. 1 decided to cancel the entire selection process which commenced as per the notification dated 13.8.1990. Accordingly, the notification dated 22.1.1999 (Annexure-2) was issued cancelling the notification at Annexure-1.

(iii) Thereafter, 20 out of the candidates who had filed OA No. 511/1994, filed OA No. 520/2001 to challenge cancellation order dated 22.1.1999. The respondents challenged the Tribunal's order dated 16.4.2004 (Annexure-3) before Hon'ble High Court in the writ petition which was disposed of vide order dated 17.3.2006 (Annexure-R/5 of the Counter) granting only the benefit of age relaxation to the concerned candidates. Subsequently, these candidates were appointed with approval of the competent authority.

(iii) The applicants' claim for similar benefit cannot be acceded to since they have failed to prove their rights in the case as claimed and the OA is barred by limitation as the cause of action arose in the year 1990. Cancellation of the notification on 22.1.1999 has also not been challenged by the applicants. The applicants have failed to produce any document to prove that they had applied in response to the notification dated 13.8.1990.

(iv) Similar policy of giving preferential treatment for the children of the railway servants who retired on medical grounds or on superannuation after completing 25 years of service, has been held to be violative of the Article 16 (2) of the Constitution of India by Hon'ble Andhra Pradesh High Court in the case of K. Nagaraju vs. Sr. Manager, APSRTC Eluru reported in 1997 Lab. I.C. 1596 (1602).

7. The applicants have filed Rejoinder, reiterating the contentions made in the OA. It is also stated that the judgments referred in the Counter are not applicable to this case. Copies of the letter/order of the respondents have been enclosed showing the fact that fresh candidates were entertained by the respondents for appointment as Substitutes and the applicants of OA No. 520/2001 have been appointed."

5. From above, it is clear that facts and circumstances as well as the grounds taken by the parties in their pleadings are similar to the present OA No. 900/15. In order dated 7.1.2020 in OA No. 901/2015, the Tribunal considered the matter and framed the following issues for consideration as under:-

"10..... The issues for decision in these OAs are:- (i) Whether the OA is barred by limitation; and (ii) Whether the cases of the applicants are similar to the cases of 20 other persons who had filed the OA No. 520/2001 and who were eventually appointed by the respondents."

6. Finally, after considering the relevant case laws and facts relating to two issues framed in the matter as extracted above, it was held by the Tribunal as under:-

"17. Applying the principles as laid down in the judgments discussed above, it is clear that the applicants in this OA have not been vigilant

enough to have raised their grievances as soon as the notification dated 13.8.1990 (Annexure-1) was cancelled by the authorities on 22.1.1999. The applicants also did not press for similar reliefs within a reasonable time after order dated 16.4.2004 (Annexure-3 of the OA) was passed by the Tribunal in OA No. 520/2001. The order dated 17.3.2006 (Annexure-R/5) of Hon'ble High Court by which the order dated 16.4.2004 of the Tribunal passed in OA No. 520/2001 was modified and subsequent order dated 14.7.2009 of Hon'ble High Court in CONTC No. 1239/2007, after which the respondents considered the case of 20 petitioners, cannot be considered to be the judgments in rem, as those orders were applicable to the cases of the petitioners of those cases only. Hence, applying the ratio of the judgment in the case of Arvind Kumar Srivastava (supra), delay in raising the claim will be a relevant factor in this OA in which the applicants claim parity with 20 persons in OA No. 520/2001. The applicants in the present OA had waited till the benefit was extended by the respondents to 20 petitioners of the contempt case before Hon'ble High Court by the respondents in the year 2009. It is clear that the applicant's claim for similar treatment as those 20 petitioners of CONTC No. 1239/2007 is hit by delay/limitation and acquiescence of the decision of the respondents, for which, the present OA is barred by limitation under section 21 of the Administrative Tribunals Act, 1985. **The question at (i) of paragraph 10 of this order is answered accordingly against the applicants.**

18. Regarding merit of the case, the applicants have claimed parity with 20 petitioners who had been appointed as per the order of the Tribunal in OA No. 520/2001 followed by the order dated 17.3.2006 of Hon'ble High Court in the W.P. (C) No. 8814/2004 filed by the respondents challenging the Tribunal's order (Annexure-R/5 of the Counter) and the order dated 14.7.2009 of Hon'ble High Court in CONTC No. 1239/2007 (Annexure-A/8 series of the Rejoinder). Their claim is that the applicants are similarly situated as 20 petitioners of the contempt case CONTC No. 1239/2007 who had also filed the OA No. 520/2001 and who had been appointed as substitutes by the respondents. We are unable to agree with such contentions for the reason that 20 petitioners were the petitioners in OJC No. 6140/1999 before Hon'ble High Court which was filed by 53 out of 83 applicants who had filed OA No. 511/1994 in which the decision of the respondents not to proceed with the notification dated 13.8.1990 was challenged. Clearly, those 20 petitioners had challenged the decision of the respondents in OA No. 511/1994, as stated in the paragraph 2 of the Counter which has not been refuted by the applicants in the Rejoinder. Further as stated in para 2(G) of the Counter, those 20 persons had filed the OA No. 520/2001 challenging the order dated 22.1.1999 (Annexure-2) of the respondents cancelling the notification dated 13.8.1990. There is nothing on record to show that the applicants in the present OA had ever challenged the order dated 22.1.1999 cancelling the selection process, which had been accepted by the applicant since in this OA also there is no challenge to the said order. Hence, those 20 persons had agitated the matter before appropriate forum about their rights since 1994 and had also challenged the order dated 22.1.1999 of the respondents, unlike the present applicants who did not take any such action. In view of the above factual circumstances, the cases of 20 petitioners in CONTC No. 1239/2007 cannot be considered to be similar as the applicants in this OA and therefore, the claim of the applicants for parity with those 20 persons, appointed by the respondents as per the order of Hon'ble High Court, is misplaced and not tenable.

19. The order of the Tribunal in OA No. 520/2001 filed by 20 persons, was challenged by the respondents before Hon'ble High Court in a writ petition W.P. (C) No. 8814/2004 which was disposed of vide order dated

17.3.2006 (Annexure-R/5 of the Counter) with the directions to the respondents as under:-

“8. In view of the above mentioned facts and circumstances, the writ petition is liable to be allowed in part and the impugned judgment and order passed by the Tribunal is liable to be modified to the extent as directed below.

9. In the result, the writ petition is allowed in part,. The impugned judgment and order passed by the Tribunal is modified to the extent that on the availability of vacancies the petitioners shall invite applications according to their requirement by making publication in some newspapers having wide circulation. Opposite parties 1 to 20 shall also be allowed to apply therein along with the outsiders, in case, they move applications pursuant to the same mentioning that they were applicants had applied for in respect of the earlier notification dated 13.8.1999 inviting applications for the same purpose. The case of those who have become over-age shall be considered for relaxation.

10. It goes without saying that as a result of the selection, the select list shall be prepared without any discrimination between the wards of the Ex-Railway employees and the outsider who are declared selected. Further the observation made against the petitioners by the Tribunal in paragraph 10 of the judgment regarding their misleading the Tribunal as well as this Court and imposing cost of Rs.1000/- upon them is quashed.”

20. It is clear from the order dated 17.3.2006 that the Tribunal's order in OA No. 520/2001 was modified to the extent that 20 persons (opposite parties in the aforesaid writ petition) would be allowed to apply for any vacancy publication through news papers and if they claim that they had applied in response to the notification dated 13.8.1990 for the same purpose, then they will be considered for age relaxation. It is clear that the said order for age relaxation was applicable only for the petitioners in W.P. (C) No. 8814/2004 and CONTC No. 1239/2007. There is no direction in the aforesaid orders of Hon'ble High Court in W.P. (C) No. 8814/2004 and CONTC No. 1239/2007 for appointing 20 petitioners. Rather, there was clear direction in order dated 17.3.2006 (R/5) to the effect that the selection will be without any discrimination between the wards of the Ex-Railway employees and outsiders. It is clear that the action of the respondents to appoint 20 petitioners was not in accordance with the order of Hon'ble High Court, by which, the respondents were required to consider their case alongwith outsiders without any discrimination, if they apply in response to a public advertisement , but with consideration for age relaxation for those 20 petitioners. Hence, the applicants in the present OA cannot claim appointment on the ground of similarity with those 20 persons, who were appointed although there was no such direction as per the order of Hon'ble High Court.

21. From above discussions, it is clear that the orders of Hon'ble High Court in W.P. (C) No. 8814/2004 and CONTC No. 1239/2007 were applicable only for the petitioners in those cases. In view of the observations of Hon'ble High Court in order dated 17.3.2006 (Annexure-R/5) about publication of vacancies through news papers and no discrimination in consideration between outsiders and the wards of the ex-railway employees, the claims of the present applicants for appointment and declaration of the results of the test as per the notification dated 13.8.1990 on the ground of similarity of their case with 20 persons who had filed CONTC No. 1239/2007 are not tenable. **The question (ii) of paragraph 10 of this order is accordingly answered in negative against the applicants.**

22. In the circumstances as discussed above, the OA No. 901/2015 lacks merit and is liable to be dismissed both on the ground of limitation and on merit. Accordingly the OA No. 901/2015 is dismissed. Similarly, other OAs in this batch are also dismissed. There will be no order as to cost.

7. From above, we are of the view that the present OA No. 900/2015 is squarely covered by this Tribunal's order dated 7.1.2020 passed in OA No. 90/2015 as extracted above. Accordingly, the OA No. 900/2015 is also dismissed both on the ground of limitation as well as merit. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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