

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

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

**OA No. 584 of 2018
MA No. 423 of 2018**

Jharana Sinha Roy, aged about 64 years, W/o Late Randhir Sinha Roy, Ex-Head Clerk, Office of the then Dy. CE/C/P&S/BBS, resident of Gandarpur, New Malgodown Road, PO-College Square, Town/Dist-Cuttack-753003, Odisha.

**OA No. 189 of 2019
MA No. 248 of 2019**

Surendra Behera, aged aboutyears, S/o Late Banamali Behera, At- Jobra Majhi Sahi, near Old Post Office, PO – College Square, Dist.-Cuttack-753003.

**OA No. 195 of 2019
MA No. 259 of 2019**

Arikhita Das, aged about 71 years, S/o Late Narottam Das, At/PO-Sanapada, Via-Pichukuli, PS-Begunia, Dist.-Khurda.

**OA No. 334 of 2019
MA No. 403 of 2019**

Nilamani Mishra, aged about 70 years, S/o Late Narayan Mishra, retired Head Clerk, O/o AEN/HQ/East Coast Railway/BBSR, at present Plot No. 156/2220, Aparna Nagar, Rath Lane, Chauliaganj, PO-Nua Bazar, Cuttack, Odisha.

.....Applicants

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda-751017.
2. Chief Administrative Officer (Con.), East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.-Khurda-751017.
3. Deputy CPO/Con./Co-Ordn, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.-Khurda-751017.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.N.K.Singh, counsel
Mr.S.K.Nayak, counsel (MA 259/2019)
Mr.T.Rath, counsel (MA 403/2019)
Mr.M.K.Das, counsel (MA 248/2019)

Heard & reserved on : 16.3.2020

Order on : 06.05.2020

O R D E R**Per Mr.Gokul Chandra Pati, Member (A)**

All the MAs with OAs were heard together with consent of the parties as the reliefs claimed in the OAs are similar and the grounds for condonation of delay are same in all four cases. The claims in these OAs arise out of the orders passed by the respondent Railways in pursuance to the order dated 21.3.2002 of the Tribunal (Annexure A/1 of all the OAs). In case of OA No. 584/2018, the applicant had expired at the time of implementation of the order dated 1.3.2002 and this OA has been filed by the widow of the late employee, whereas other three OAs are filed by the employees themselves. Parties in all four MAs were heard together and four MAs are being disposed of by this order.

2. The facts in brief in the MA No.423/2018 and OA No. 584/2019 are that the husband of the applicant was reverted from a higher grade post of Head Clerk, in which they were allowed adhoc promotion in the Construction department of the Railways. The reversion was on the ground that the employees in the Construction department are not entitled for second adhoc promotion after first adhoc promotion as per the circular of the Railway Board. Being aggrieved, the applicant's husband and other similarly placed employees had challenged the decision by filing OA before the Tribunal in OA No. 509/2001 and 603/2001 which were allowed vide order dated 21.3.2002 (Annexure A/1) with direction to the respondents to restore the applicant to the post of Head Clerk from which he was reverted from the date of reversion with consequential reliefs. Accordingly, the applicant, alongwith other employees, whose OAs were also allowed, were restored to the promotional posts, treating the past period as notional promotion with no payment of the differential arrear salary. The order of the Tribunal was implemented after the Writ Petitions filed by the respondents challenging the Tribunal's order were dismissed by Hon'ble High Court vide order dated 8.3.2006 (Annexure A/7 of the Rejoinder). The husband of the applicant expired on 9.12.2003 when the Writ Petition filed by the respondents was pending before Hon'ble High Court

3. Some of other employees who were allowed notional promotion by the respondents vide order dated 11.9.2008 (Annexure -A/3) as per the direction of the Tribunal, challenged the order in the Tribunal by filing fresh OA No. 341/2009 claiming the arrear salary and these OAs were dismissed and the review applications filed were also dismissed. The concerned employees challenged the Tribunal's order before Hon'ble High Court by filing the writ petition WP(C) No. 22363/2017. Hon'ble High Court vide the order dated 23.3.2018 (Annexure A/4), allowed the writ petition and directed the respondents to allow the actual financial benefits to the petitioners as has been

extended to the similarly situated persons. The aforesaid order of Hon'ble High Court has been implemented by the respondents granting differential arrear salary for the notional promotion period.

4. After disposal of the writ petition No. 22363/2017 by Hon'ble High Court by judgment dated 23.3.2018 (Annexure A/4), allowing the benefit of arrear pay/salary to the petitioners who were similarly placed as the petitioners covered by order dated 8.3.2006 (Annexure A/7), the applicant filed a representation dated 16.8.2018 (Annexure-A/6) for similar benefit to her husband as his OA was allowed earlier by the Tribunal with consequential relief and his case was similar to the employees covered by the order at Ann.-A/4. But no decision on the representation of the applicant has been taken by the respondents, for which the OA has been filed.

5. The applicant's husband, who had not challenged the order dated 11.9.2008 (Annexure-A/3) restoring him to the promotional post as per the Tribunal's order, notional benefit without arrear salary was allowed. The applicant has challenged that order in this OA which has been filed with the MA No. 423/2018 for condoning delay in filing the OA. Although as per the order passed on previous date, both the MA and OA will be considered together, but the respondents counsel opposed to simultaneous consideration of the MA and OA and submitted that the issue of condonation of delay be decided first. The submission of respondents' counsel was accepted and we heard learned counsel for the applicant on the MA No. 423/2018. Applicant's counsel gave a brief overview of the facts and reiterated the grounds in the MA for condoning delay. He also cited judgments referred to in para 4.7 of the OA. Learned counsel for the respondents was heard also. He cited the judgments in the case of State of Karnataka and others –vs- S.M.Kotrayya and others [(1996) 6 SCC 267] in support of his argument opposing the MA for condonation of delay.

6. It is noted that in the case of State of Uttar Pradesh and others Vrs. Arvind Kumar Srivastava and others reported in (2015) 1 SCC (L&S) 191, which is cited in para 4.7 of the OA, Hon'ble Apex Court in paragraphs 22 held as under:-

“22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma V. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

7. The applicant has cited the judgment dated 23.3.2018 of Hon’ble High Court at Annexure A/4 of the OA, by which other similarly placed employees, who had challenged the decision of notional promotion vide order dated 11.9.2008 (Annexure A/3) were allowed the actual financial benefit with the following observations :-

“This Court has taken note of the fact that the two applicants i.e. Chintamani Mohanty and Dasharathi Sahoo have faced the qualifying test before recommendation for their promotion and posts were lying vacant and the said posts are to be filled up as per the service rule. However, the Tribunal had not allowed another batch of original applications who have not regularly appointed as like that of the present petitioners i.e. Original Application Nos. 320, 321, 669 of 2000, 567, 597 of 2001 etc. So far as the other set of original applications were concerned, the Tribunal directed to reconsider their cases within a period of three months from the date of submissions of representation by the applicants to that effect. Challenging such order of the Tribunal they have filed WP(C) Nos. 3198, 3199, 3451 and 4149 of 2002 before this Court which were disposed of on 8.3.2006. In that batch of cases this Court directed that the petitioners are entitled to the benefit which were given to other persons by the Tribunal namely Chintamani Mohanty and Dasharathi Sahoo in OA Nos. 509 and 603 of 2001 (present writ petitioners) and also directed it would be open for the authorities to consider the regular promotion of the petitioners and other eligible persons in accordance with the existing guidelines, by quashing the order of the Tribunal so far as the said petitioners are concerned. However, the authorities in a misconception and without applying their mind granted the actual financial benefit in respect of other batch of applicants, whose original applications were rejected by the Tribunal, but granted only notional benefit to the present petitioners whose original

applications were allowed by the Tribunal and confirmed by this Court. Due to such illegal action of the authorities, the present petitioners have approached the Tribunal in OA No. 341 of 2009. However, without considering the above facts, the Tribunal rejected the prayer of the applicants on an erroneous impression that grant of consequential benefit does not include the financial benefit. Hence, the present writ petition. Learned counsel appearing for the Railways however fairly submitted that the aforesaid narration of facts to be correct.

It appears, the Tribunal while passing the impugned order has not taken into consideration the aforesaid fact. Thus, this Court in exercising its jurisdiction conferred under Article 227 of the Constitution of India sets aside the order dated 29.3.2011 passed in OA No. 341 of 2009 and dated 21.9.2017 passed in RFA No. 260/01 of 2011 and directs the opposite party railways to extend the actual financial benefit in favour of the petitioners as has been extended to similarly situation persons under Annexure-4.”

8. The employees whose OAs were earlier dismissed by this Tribunal, while allowing the OA filed by the husband of the applicant, had moved the Hon’ble High Court in batch of Writ petitions starting with WP No. 3198, 3199, 3451 and 4149 of 2002 which were disposed of by Hon’ble High Court vide order dated 8.3.2006 (Annexure A/7 to the rejoinder filed by the applicant). The judgment dated 23.3.2018 of Hon’ble High Court (Annexure A/4) extracted at paragraph 6 of this order has also referred to the order dated 8.3.2006 of Hon’ble High Court in WP(C) Nos. 3198, 3199, 3451 and 4149 of 2002, in which it was held as under :

“11. In view of the above mentioned facts and circumstances, we are of the view that the instant petitioners were also entitled to the same benefits which were given to other persons by the Tribunal, namely, Chintamani Mohanty and others, applicants in O.A. No.509 and 603 of 2001 and the Tribunal has committed manifest error of law in not providing the same to the instant petitioners.

12. In the result, the writ petitions are allowed in part. The impugned judgment and order passed by the Tribunal in so far as it relates to the instant petitioners is quashed. The orders of reversion of the instant petitioners dated 30.11.2001 and also quashed. Consequently, the petitioners shall be reinstated with the same terms and conditions, which were fixed by the opposite parties at the time of their ad hoc promotion. It goes without saying that on reinstatement, the petitioners’ services shall be treated as continuing on ad hoc basis on the respective posts held by them. They shall be given consequential benefits accordingly. However, it will be open for the opposite parties to consider the regular promotion of the petitioners and other eligible persons in accordance with the existing guidelines. Till the regular promotion is considered and the regular candidates become available, the petitioners shall be allowed to continue on ad hoc basis.”

9. The judgment dated 23.3.2018 (Annexure A/4 of the OA) allowed the actual financial benefit in favour of the petitioners, who had challenged the order of the respondents granting only notional benefit for the period of their reversion vide order dated 11.9.2018 in which the name of the applicant’s husband was included in the said order at Annexure A/3 of the OA. The actual financial benefit was granted by Hon’ble High Court to the petitioners since other similarly placed employees were allowed the same benefit by the respondents in pursuance to the order dated 8.3.2006 of Hon’ble High Court. It

is seen that although Hon'ble High Court vide order dated 8.3.2006 had directed the benefit similar to the benefit allowed to the other employees including the applicant's husband by the Tribunal, by the respondents had allowed differential arrear salary to the petitioners of the WP No. 3198, 3199, 3451 and 4149 of 2002 on their own, while the applicant's husband and other employees whose OAs were allowed by the Tribunal with the following directions (vide order dated 21.3.2002 at Annexure A/1) were not allowed the actual financial benefit :

"As a consequence, the reversion orders passed against the applicants in OA Nos. 509/2001 and 603/2001 (and against the other similarly placed applicants) are hereby set aside and they are to be treated as regular 'PLR' staffs of Construction organization for all purposes and consequential relief need to be given to them within a period of three months hence."

From the above, it is clear that the respondents have interpreted the term "consequential relief" differently for the applicant's husband and for those employees who were covered by the order dated 8.3.2006 of Hon'ble High Court (Annexure A/7 of the rejoinder).

10. Learned counsel for the respondents at the time of hearing of the MAs has cited the judgment of Hon'ble Apex Court in the case of State of Karnataka & others -vs- S.M.Kotrayya & others. In this case the petitioner had approached the authorities for similar treatment that was allowed to other similarly placed employees who had moved the Court. On the issue of delay in raising such claim on the ground that similar claim has been allowed to other similarly placed employees, Hon'ble Apex Court in s.M.Kotrayya (supra) has held as under :

"9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) of (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) of (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

11. Learned counsel for the applicant has cited in the MA the judgment in the cases of B.N.Nagarajan & Others -vs- State of Mysore [AIR 1966 SC 1942], Amrit Lal Berry -vs- Collector of Central Excise & Others [AIR 1975 SC 538], K.I.Shephard -vs- Union of India [Air 1988 SC 686] and Tukaram Kanha Joshi & Others -vs- MIDC [(2013) 1 SCC 353] to justify his prayer for condonation of delay. It was stated specifically that in view of the ratio of the judgment in the

case of Tukaram Kana Joshi (supra), the applicant's case for condoning delay in filing the OA is to be considered.

12. In the case of B.N.Nagarajan (supra), the order quashing the appointment of 88 Assistant Engineers and the condonation of delay was not the main dispute. Hence, the said judgment is not helpful for the applicant. Similarly, the judgments in the case of Amrit Lal Berry (supra) will not be applicable for deciding the issue of condoning the delay in filing this OA. In the case of K.I.Shephard (supra), the question was absorption of some of the employees of private banks which were merged with nationalized banks, who were not absorbed by the nationalized bank after merger. While allowing the relief, Hon'ble Apex Court also allowed the same benefit to other similarly placed employees who have not approached Hon'ble Apex Court, taking into account the specific problems. In view of the specific directions of Hon'ble Apex Court, the judgment was made applicable to all such employees.

13. In the case of Tukaram Kana Joshi (supra), the relief was granted by Hon'ble Apex Court ignoring the delay in the matter which involved acquisition of the petitioner's land without payment of compensation and taking into account the fact that similarly situated persons were granted compensation for land. It was held by Hon'ble Apex Court on the issue of delay as under:-

"12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners."

14. In this OA, the railway employee concerned (applicant's husband) expired on 9.12.2003 when the relief granted to him by the Tribunal vide order dated 21.3.2002 (A/1) was under challenge by the respondents who had filed Writ Petitions before Hon'ble High Court. The respondents allowed the benefit of restoration as per the Tribunal's order on 11.9.2008 (A/3) after dismissal of the writ petition, allowing notional benefit and this was done after more than five years of death of the late employee. The applicant, who is the wife of the late employee, has filed the OA within one year from the date of judgment dated 23.3.2018 (A/4) of Hon'ble High Court by which actual financial benefit was allowed to similarly situated persons. Under the specific circumstances of the case as above, we are of the considered view that the circumstances of the applicant's case are similar to the circumstances in the case of Tukaram Kana

Joshi (supra) in which it was observed by Hon'ble Apex Court that the appellants were unaware of their rights.

15. Taking into consideration the factual circumstances of this case, we also consider the reasons furnished by the applicant in the MA no. 423/18 for condoning delay to be satisfactory, particularly since the applicant's husband had expired by the time the order dated 11.9.2008 (A/3) was passed by the respondents for which the said order could not be challenged by the applicant like the petitioners of the W.P. (C) No. 22363/2017 in which the actual financial benefits were allowed to the petitioners vide the judgment dated 23.3.2018 (Annexure-A/4). It is noted that the reasons in the MA do not include the reason that the applicant came to know about the benefit allowed to other persons after order of Hon'ble High Court, for which the judgment in the case of S.M. Kotrayya (supra) will not be helpful for the respondents' case in this OA/MA. Hence, applying the ratio of the judgment of Hon'ble Apex Court in the case of Tukaram Kana Joshi (supra), we allow the MA No. 423/2018 and condone the delay in filing the OA No. 584/2018, which deserves to be considered on merit.

OA No. 189/2019, MA No. 248/2019

OA No. 334/2019, MA No. 403/2019

OA No. 195/2019, MA No. 259/2019

16. In the above OAs, the circumstances are different from the OA No. 584/2018 as the applicants were the railway employees and they were in service or retired recently when the order dated 26.6.2008 (Annexure-A/3 in all the OAs) was passed by the authorities in pursuance of the order dated 21.3.2002 of the Tribunal (Annexure-A/1 of all the OAs) after dismissal of the Writ Petitions filed by the respondents before the Hon'ble High Court. They did not choose to challenge the aforesaid order dated 26.6.2008 granting only the notional benefits, while the petitioners of the W.P.(C) No. 22363/2017 i.e. Chintamani Mohanty and Dasharathi Sahoo (Sl. No. 1 and 5 respectively in order dated 26.6.2008 at (Annexure A/3) had filed the writ petition No. 22363/2017 before Hon'ble High Court after unsuccessful challenge before the Tribunal and vide the judgment dated 23.3.2018 (Annexure-A/4 of all the OAs), both the petitioners were allowed the actual financial benefits. Thereafter, they filed the OAs along with the MAs for similar benefits. The applicants' counsel has referred to the judgment of Hon'ble Apex Court in the case of Tukaram Kana Joshi (supra). It cannot be said that the applicants were not aware of their rights as the railway employees, for which, the judgment in the case of Tukaram Kana Joshi (supra) will not be applicable to their case unlike the case of the applicant of the OA No. 584/2018 as discussed in paragraphs 14 and 15

of this order. Other judgments cited by the applicant's counsel in the MAs will not be helpful for the applicant's case in view of the discussions in paragraph 12 of this order.

17. In view of the above discussions, the applicants in these three OAs are considered to be the fence sitters in terms of the judgment of Hon'ble Apex Court in the case of Arvind Kumar Srivastava (*supra*) as extracted in paragraph 6 of this order. In the circumstances as discussed in the preceding paragraph, we are not able to accept the grounds mentioned in the MA as sufficient to justify condoning the delay in filing the respective OAs. Hence, the MAs in all three OAs are liable to be dismissed. The judgment dated 23.3.2018 (Annexure-A/4 of the OA) of Hon'ble High Court, which has been relied upon by the applicant to advance the claims in the OAs, was applicable for the petitioners of the Writ Petition and it is a judgment in personam, for which the delay in filing the OA will be relevant for considering the similar claims of the applicants.

18. As a result, three MA Nos. 248, 403 and 259 of 2019 for condoning delay in filing the respective OAs are dismissed. Accordingly, the respective OA Nos. 189, 195 and 334 of 2019 are also dismissed, being barred by limitation.

MA No. 423/2018
OA No. 584/2018

19. In view of the discussions in paragraphs 14 and 15 of this order, the MA No. 423/2018 in OA No. 584/2018 is allowed and delay in filing the OA No. 584/18 is condoned. Since the pleadings in the OA No. 584/18 are complete, list this OA for hearing on merit on 4.5.2020.

20. All the MAs and OAs in this batch except MA No. 423/2018 in OA No. 584/2018 are dismissed in view of paragraphs 18 and 19 of this order. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)