

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 270 of 2016
OA No. 865 of 2016
OA No. 493 of 2015

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

OA 270/2016

Purna Chandra Rana aged about 43 years, S/o Padmalava Rana, At-Bhingarpur, PO-Bhatapatna, PS-Baliana, Dist-Puri, at present residing at Majhana Sahi, PO-Kudiary, Dist-Khurda, Pin – 752050.

OA 865/2016

S.Venkata Bhima Rao aged about 43 years, S/o Late S.Delhi Rao, C/o G.Mangama, At-Chhatrapur Railway Station Road, PS-Chhatrapur, Dist.-Ganjam.

OA 493/2015

G.Bhagavathi Srinivas aged about 45 years, S/o G.Sambasiva Rao, At-Jagadamba Nilayam, Bachhrapatna, Towards Bachhra Road, in front of Saraswati Sishu Vidya Mandir, Khurda Road, PS-Jatni, Dist.-Khurda.

.....Applicants

VERSUS

1. Union of India, represented through the Secretary to the Government of India, Railway Board, Ministry of Railways, Rail Bhavan, New Delhi – 110001.
2. The General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.-Khurda, Orissa.
3. The Divisional Railway Manager, East Coast Railway, Khurda Road Division, PO-Jatni, Dist.-Khurda.
4. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, PO-Jatni, Dist.-Khurda.

.....Respondents

For the applicant : Mr.B.S.Rayguru, counsel

For the respondents: Mr.S.K.Ojha, counsel (OA 270/2016)
 Mr.T.Rath, counsel (OA 865/2016 & OA 493/2015)

Heard & reserved on : 3.2.2020 (OA 270/2016 & OA 865/2016)
 20.1.2020 (OA 493/2015)

Order on : 12.2.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

All the OAs were considered together as the nature of grievance and reliefs sought for by the applicants are similar. The applicants have prayed for the following reliefs :

OA No. 270 of 2016
OA No. 865 of 2016

“(i) The Order dated 17.12.2014 passed by the Respondent No.4 under Annexure-5 shall be quashed and the Respondents be directed to issue appointment order to the applicant in the post of substitutes.

- (ii) The Respondent Nos. 2, 3 and 4 shall be directed to publish the result of the Screening Test in which the applicant appeared for the post of substitutes.
- (iii) Any other reliefs, as this Hon'ble Tribunal may consider."

OA 493 of 2015

- "(i) The respondent Nos. 2 & 3 be directed to publish the result of screening test and directed that eligible candidates may be given appointment.
- (ii) The candidates if found suitable they may be given appointment.
- (iii) Any other reliefs, as this Hon'ble Tribunal may consider."

2. Briefly stated, the applicant's case in OA No. 270/2016 is that he was one of the candidate in response to the advertisement dated 13.8.1990 (Annexure A/1) issued by the respondent Railways for appointment of Substitutes. That advertisement was issued for the children of the Railway employees who retired between 1.1.1987 to 31.12.1993. It is claimed by the applicant that although he had appeared in the interview the respondents cancelled the advertisement dated 13.8.1990 on 22.1.1999 on the ground that there were some irregularities in selection process. The cancellation order was challenged before the Tribunal in OA 520/2001 by some other candidates and that OA was disposed of vide order of the Tribunal dated 20.4.2004 (Annexure A/3), directing the respondent authorities to consider the case of the applicants. This order of the Tribunal was challenged by some of the persons before Hon'ble High Court in WP(C) 8814/2004 which was disposed of with directions to the respondents to consider the case of the petitioners alongwith other candidates. Thereafter, some of the petitioners had filed contempt before the Hon'ble High Court alleging non-compliance of the aforesaid order of Hon'ble High Court by the respondents. It is stated that the respondents issued appointment letter to 20 petitioners who had filed the contempt petition before Hon'ble High Court. The applicant, in the present OA, claimed that he was similarly situated person and he is entitled for similar benefit. The applicant filed OA No. 816/2013 which was disposed of by this Tribunal vide order dated 11.2.2013 with liberty to the applicant to file a representation which will be duly considered by the respondents in terms of the judgment passed in WP(C) 8814/2004. However, the said matter has been disposed of by respondents vide order dated 17.12.2014 rejecting the applicant's case, which is challenged in this OA No. 270/2016.

3. Counter is filed in OA No. 270/2016 by the respondents, stating that the present OA is not maintainable on the following grounds :

- i) The applicant has not produced any proof that he had applied in response to the advertisement dated 13.8.1990.
- ii) The present OA is hopelessly barred by limitation since the cause of action arose in 1990 and the said OA is filed in 2016.
- iii) The aforesaid selection in question has already been cancelled by the General Manager, South Eastern Railway in 1999 on the ground of some irregularities. But the said non-completion of the selection process or cancellation order has not been challenged in the present OA.
- iv) The benefit of the judgment of Hon'ble High Court in WP(C) No. 8814/2004 cannot be extended to the applicants because the said direction was applicable for the petitioners of the aforesaid writ petition.

4. Rejoinder has been filed by the applicant in OA No. 865/2016, stating that the cancellation order dated 22.1.1999 was challenged before the Tribunal in OA No. 520/2001 by some of the candidates and the Tribunal directed the Railway authorities to consider the case of all the applicants of OA No. 520/2001. That order was challenged before the Hon'ble High Court and eventually the Railway Authorities issued appointment order in favour of them. The applicant being similarly situated person approached the Tribunal by filing OA No. 892/2010, which was disposed of vide order dated 5.3.2014 directing the applicant to file a representation. The applicant submitted a representation which was disposed of vide order dated 29.12.2015 rejecting his case. Thereafter the applicant has filed the present OA. Regarding the proof of applying in response to the advertisement dated 13.8.1990, the applicant has produced the Call letter issued by the Railway authorities which is annexed at Annexure A/7 to the Rejoinder. It is also stated in the Rejoinder that the decisions relied upon by the respondents are not applicable to the case of the applicant in OA No. 856/2016.

5. In OA No. 493/2015, the applicant has filed one MA in which the call letter dated 21.11.1991 by which the applicant claimed to have participated in the interview in pursuance to advertisement dated 13.8.1990. Order dated 14.7.2009 in CONTC No. 1239/2007 in which 20 number of petitioners were given appointment by the respondents, has also been enclosed with the MA.

6. Similar issues raised in the present OA were also raised in OA No. 901/2015 and a batch of other OAs which was disposed of by the Tribunal vide order dated 7.1.2020 with the following observations :

“1. 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.

10. We have considered the pleadings as well as the submissions by both the parties. 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.

11. Regarding the question of limitation, it is a fact that the applicants first agitated the matter

candidates who had filed OA No. 520/2001 for consideration in terms of the notification dated 13.8.1990, which was cancelled by the respondents vide notification dated 22.1.1999 (Annexure-2 of the OA). No dispute was raised by the applicants till 2010 challenging the order dated 22.1.1999 cancelling the notification dated 13.8.1990 (Annexure A/1). The applicants have not furnished the order dated 5.3.2014 of the Tribunal by which the OA No. 892/2010 was disposed of. In this regard the impugned order dated 18.9.2014 (Annexure-5 of the OA) states as under:-

“The Hon’ble CAT/CTC vide its order dated 5.3.2014 in OA No. 892 of 2010 granted liberty to the applicants for making applications individually before the Respondents enclosing thereto proof in support of submission of applications in pursuance of the notification dated 13.8.1990 and on receipt of the same, the Respondents are directed to act upon the same keeping in mind the orders of Hon’ble High Court of Orissa in WP(C) No. 8814 of 2004 within a period of sixty days from the date of receipt of such application.”

12. No document has been furnished by the applicants to show if the question of delay was considered by the Tribunal while passing the order dated 5.3.2014 in OA No. 892/2010. Hence, the question of delay is required to be considered since the cause of action arose first on 22.1.1999 when the notification dated 13.8.1990 was cancelled by the respondents. Under section 21 of the Administrative Tribunals Act, 1985, the applicants were required to challenge the order dated 22.1.1999 within time as stipulated therein. Admittedly, no such challenge was made. Even in this OA, the order of cancellation dated 22.1.1999 has not been challenged. In such factual background, the order dated 18.9.2014, which was passed in response to the representation as per the order of the Tribunal will not give rise to fresh cause of action in view of the judgment of Hon’ble Apex Court in a number of cases.

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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 inn 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 costs.”

7. From the order dated 7.1.2020 as extracted above, it is clear that the present OAs will be squarely covered by the said order as the case of the applicants in the present OA are similar to the OAs covered under the order which were disposed of vide order dated 7.1.2020. The submission of learned counsel for the applicants that the applicant in OA No. 865/2016 and OA No. 493/2015 have furnished copy of call letters with Rejoinder or MA, will not alter the fact

that the applicants in the present OAs had never challenged the order dated 22.1.1999 of the respondent Railways to cancel the advertisement dated 13.8.1990 and that their cases are not similar to the cases of 20 petitioners in contempt case before the Hon'ble High Court as discussed in the order dated 7.1.2020 of the Tribunal passed in OA No. 901/2015 as extracted above.

8. Hence, following the order dated 7.1.2020 of the Tribunal passed in OA No. 901/2015 and batch of similar OAs, these OAs are also devoid of merit. Hence, the present OAs are dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath