

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

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

OA No. 901/2015

1. S.Bhaskar Sharma aged about 47 years, S/o S.Samba Murty At-Brahmin Street, PO-Arasavalli, Dist-Srikakulam, A.P.
2. R.Niranjan Rao aged about 47 years, S/o R.Simhachalam, resident of Qr.No.A-46/E, Loco Colony, PO-Jatni, Dist.-Khurda.

OA No. 884/2015

1. M.Chandi Babu aged about 39 years, S/o M.Rama Das of Raja Bazar, PO-Jatni, Dist-Khurda.
2. Nrusingha Kumar Rath, aged about 43 years, S/o Umesh Chandra Rath of Madhusudan nagar, PO/PS-Jatni, Dist-Khurda.
3. Lala Aditya Kumar Ray, aged about 46 years, S/o Lala Ramanath Ray of Balichak Sahi, PO/PS-Jatni, Dist-Khurda.
4. Deepak Kumar Kharat aged about 43 years, S/o Balakrishna Kharat, C/o Lala Aditya Kumar Ray of Balichak Sahi, PO/PS-Jatni, Dist-Khurda.
5. Mohammad Yusuf aged about 47 years, S/o Md. Husain of Imambada Lane, Raja Bazar, PO/PS-Jatni, Dist.-Khurda.
6. K.James Robert aged about 44 years, S/o K.Robert of Gajapati Nagar, PO/PS-Jatni, Dist.-Khurda.
7. Lokanath Pani, aged about 44 years, S/o Dinabandhu Pani of Gualipada, PS-Delang, Dist.-Puri.

OA No. 989/2015

1. Ashok Kumar Barik aged about 41 years, S/o Damodar Barik, At-Somanathpur, PO-Dadhimachhagadia, PS/Dist-Khurda.
2. A.Venkat Rao, aged about 50 years, S/o A.Harinarayan Rao of First Military Line, PO/PS_Berhampur, dist-Ganjam.
3. T.Padmabati aged about 43 years, D/o T.Rajarao of Hatabazar, PO/PS – Jatni, Dist.-Khurda.
4. S.Laxman Rao aged about 50 years, S/o S.Kesava Rao of Loco Colony, PO/PS-Jatni, Dist.-Khurda.

OA No. 916/2015

1. Aparti Swain aged about 43 years, S/o Late Bula Swain of At/PO-Nadhara, PS-Matango, Dist.-Dhenkanal.
2. Arun Kumar Sahoo aged about 43 years, S/o Dharanidhar Sahoo of At-Ekoghararia, PO-Balaramprasad, PS-Motango, Dist.-Dhenkanal.
3. Gatikrushna Baral aged about 47 years, S/o Late Udaya Charan Baral, At-Mahadia, PO-Balapada, PS-Matango, Dist-Dhenkanal.
4. Saroj Kumar Baral, aged about 43 years, S/o Dasarathi Baral of At/PO-Balapada, PS-Matango, Dist.-Dhenkanal.

OA No. 917/2015

1. Rajendra Prasad Tiwari, aged about 46 years, S/o Balaji Das Tiwari of Gopinathpur, PO-Jatni, Dist.-Puri.
2. Udayanath Swain aged about 49 years, S/o Lingaraj Swain of Hatabazar, PO/PS-Jatni, Dist.-Khurda.
3. Chandrasekhar Samantaray aged about 36 years, S/o Late Parikhita Samantaray of Village-Godasahi, PO- Godiput, Matiapara, Dist-Puri.

4. Bhagyarathi Nisank aged about 38 years, S/o Nabakishore Nisank, of Village-Haripur, PO-Godiput, Matiapara, Dist.-Puri.
5. Bijaya Kumar Das aged about 43 years, C/o Gopal Das of Bachharapatna, PO-Jatni, PS-Jatni, Dist.-Khurda.
6. P.Prem Kumar aged about 41 years, S/o P.Setaram of Hatabazar, PO/PS-Jatni, Dist.-Khurda.
7. Tophan Kumar Samantaray aged about 35 years S/o Biswamber Samantaray of At/PO-0Satanagoi, PS-Delanga, Dist.-Puri.
8. Amiya Kumar Swain aged about 46 years, S/o Raghunath Swain of Madhusudan Nagar, Near Sidheswar Temple, At/PO-Jatni, Dist.-Khurda.
9. Horatio D.Costa aged about 46 years, C/o G.D.Costa of Balichak Sahi, Jatni, Dist.-Khurda.
10. Balajinath panigrahi aged about 47 years, S/o Sarat Chn. Panigrahi of Hatabazar (Near Radha Mohan Mandir), PO-Jatni, Dist.-Khurda.
11. Dusasan Mohanty aged about 46 years, S/o Bandhu Mohanty, resident of Erain, PO-Charampa, Dist-Bhadrak.
12. Debendra Kumar Samal aged about 44 years, S/o Chintamani Samal of At/PO-Boral Pokhari, Dist.-Balasore.
13. Sk.Abdul Subhan aged about 40 years S/o Abdul Nazir of Gajapati Nagar, PO-Jatni, Dist.-Khurda.
14. Jagadananda Rajguru aged about 48 years, S/o Purna Ch. Praharaj of Guachauka, PO/PS-Delanga, Dist.-Puri.
15. Sudhir Naik, aged about 50 years, S/o Madan Naik of Loco Colony, PO-Jatni, Dist.-Khurda.
16. Debananda Sethi aged about 40 years, S/o Hadu Sethi of Handiola, PO-Kaluparaghat, Dist.-Khurda.
17. Riyaz Mohammad aged about 46 years S/o Gulzar Mohammad, C/o Fiahayaz Mohammad, Railway Qr. No. D-14-A, Traffic Colony, PO/PS-Jatni, Dist.-Khurda.

OA No. 973/2016

Sk.Sajuruddin aged about 43 years, S/o Sk. Rahim At/PO-Bajpur, PS/Dist.- Khurda.

.....Applicants

VERSUS

Respondents in OA 901/2015, 884/2015, 989/2015, 917/2015, 973/2016

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

Respondents in OA 916/2015

1. Union of India, represented by the Secretary to the Government of India, Railway Board, Ministry of Railways, Rail Bhavan, New Delhi-110001.
2. The General Manager, East Coast Railway, Chandrasekharapur, Bhubaneswar, Dist-Khurda, Orissa.

3. The Divisional Railway Manager, Khurda Road Division, PO-Jatni, Dist.-Khurda.
4. The Chief Personnel Officer, East Coast Railway, Bhubaneswar, Dist.-Khurda.

.....Respondents

For the applicant : Mr.B.Mohanty, counsel

For the respondents: Mr.S.K.Ojha, counsel (OA 901/2015, OA 989/2015, OA 917/2015, OA 917/2015)
Mr.T.Rath, counsel (OA 884/2015, 973/2016)

Heard & reserved on : 9.12.2019

Order on : 07.01.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

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 an 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.

8. Heard learned counsel for the applicants. He submitted that the applicants are entitled for the same reliefs as allowed to the applicants of the OA No. 520/2001, who were similarly situated as the applicants in the present OAs. The rejection order dated 18.9.2014 (Annexure-5 of the OA) has mentioned the reason that the applicants have not furnished any documentary proof to prove that they had submitted application in response to the notification dated 13.8.1990.

9. Learned counsel for the respondents was heard. He submitted that the OAs are barred by limitation as the cause of action had arisen in 1999 when the notification dated 13.8.1990 was cancelled by the respondents and the applicants failed to challenge such cancellation within stipulated time. He specifically drew our attention to the averments in para 9 to 14 of the Counter. A written note of submission was also filed by the respondents' counsel mainly highlighting the question of delay on the part of the applicants. It was further submitted that the applicants had approached the Tribunal in OA No. 892/2010 which was after 20 years from the date of notification in 1990. The judgments of Hon'ble Apex Court in the case of U.P. Jal Nigam and Anr. vs. Jaswant Singh and Anr., reported in (2007) 1 SCC (L&S) 500 and State of U.P. vs. A.K. Srivastava, reported in (2015) 1 SCC(L&S) 191 have been cited in the written note of submission filed by learned counsel for the respondents. It is stated that as per the notification dated 13.8.1990, there was no guarantee of employment and it was to be given as and when occasion arises. It is also stated that 20 candidates in OA No. 520/2001 were allowed to apply alongwith others as and when the vacancy will be notified.

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. 520/2001 and who were eventually appointed by the respondents.

11. Regarding the question of limitation, it is a fact that the applicants first agitated the matter when they filed the OA No. 892/2010 before the Tribunal to claim the benefits similar to 20 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.

13. In the case of **C. Jacob vs. Director of Geology & Mining & Anr. reported in AIR 2009 SC 267**, Hon’ble Apex Court on the question of delay in service matters, has held as under:-

“7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or

representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

In this OA, the claim of the applicants for consideration of their case as per the notification dated 13.8.1990 was already delayed by the time the OA No. 892/2010 had been filed by them. Hence, applying the ratio of the above judgment, disposal of their representations by the respondents by passing order dated 18.9.2014, will not give rise to a fresh cause of action.

14. The applicants have claimed similar treatment as the candidates whose case was considered for appointment in 2009 in pursuance to the order of Hon'ble High Court. In the case of State of U.P. vs. Arvind Kumar Srivastava, reported in (2015) 1 SCC(L&S) 191, Hon'ble Apex Court after examining the judgments in a number of cases on the question whether the government, being an ideal employer should grant similar relief to other similarly situated employees, has 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 of 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 situated 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 the 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 regularisation 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."

15. In the case of **Chairman, U.P Jal Nigam & Anr. vs. Jaswant Singh & Anr. reported in (2007) 1 SCC (L&S) 500**, it was held by Hon'ble Apex Court on the question of delay and laches as under:-

"In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence."

16. Similarly, in the case of **Ajay Kumar Behera vs. State of Odisha in W.P. (C) No. 15392/2011, reported in 2018(1) ILR-CUT-740**, on the issue of delay in raising the service related grievance at par with the Court order on similar issue, it was held by Hon'ble High Court of Orissa as under:-

"8. Be that as it may, the petitioner essentially seeks to challenge the selection of the year 1988 and for extension of the benefit of the judgment passed in OA No.206 of 1989, in his favour, which was subsequently confirmed by Hon'ble Supreme Court by judgment dated 03.12.2002. On perusal of record, it appears that the petitioner thereafter had only made representations to the authorities for redressal of his grievance and lastly filed OA No.377(C) of 2008. Direction of learned Tribunal in OA No.377(C) of 2008 cannot be a fresh cause of action for the petitioner to agitate his grievance, which has become stale by the time of filing of the said Original Application.

Law is well-settled in the case of C.Jacob Vs. Director of Geology Min.Indus.Est. & Anr., reported in (2008) 10 SCC 115 that direction for disposal of representation will not give rise to a fresh cause of action to maintain an Original Application before the learned Tribunal seeking for a relief which has become stale. It appears that the State authorities raised the issue of limitation before the learned Tribunal, which has not been properly dealt with. Learned Tribunal holding that the cause of action of the petitioner arose after disposal of his representation only on 03.02.2009, directed for reinstatement of the petitioner. The finding of the learned Tribunal to the effect that the Original Application in OA No.211 of 2010 is in time, is erroneous, inasmuch as the same is hopelessly barred by time. As held by learned Tribunal more than two decades have passed by the time the selection of 1988 was challenged. As such, entertaining an application after two decades after the initial cause of action shows the laches on the part of the petitioner. As such, the order passed in OA No.211 of 2010 is not sustainable in the eyes of law and is liable to be set aside.

9. Accordingly, the impugned order dated 08.04.2011 passed by learned Tribunal in OA No.211 of 2010 is set aside. Consequently, W.P.(C) No.17011 of 2012 filed by the State of Odisha succeeds and W.P.(C) No.15392 of 2011 filed by Sri Ajay Kumar Behera is dismissed holding that OA No.211 of 2010 was barred by limitation. Ordered accordingly."

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 cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)