

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

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O.A. 1181 of 2015

Order dated: 12.5.2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

1. Shri Harihar Ram @ Hari Ram,
Son of Late Amir Chand Ram,
Aged about 68 years,
Worked as Bearer,
Eastern Railway,
Residing at Bolpur Tinkari Ghosh Road,
P.O. & P.S. Bolpur,
Dist. – Birbhum – 731 204.
2. Shri Munilal Ram,
Son of Late Kashiram Ram,
Aged about 67 years,
Worked as Bearer,
Eastern Railway,
Residing at Vill. – Hat Tala (Ansha),
Mauja-Bolpur, Ward No.15, Bolpur,
Dist. – Birbhum – 731 204.

..... Applicants.

Versus

1. Union of India,
Service through The General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 700 001.
2. The Chief Personnel Officer,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 700 001.
3. The Chief Commercial Manager (Catering),
Eastern Railway,
3 No. Koilaghat Street,
Kolkata – 700 001.

..... Respondents.

For the Applicant : Ms. T. Das, Counsel

For the Respondents : Mr. S.K. Das, Counsel

ORDER

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Heard Ld. Counsels for both sides.

3. The respondents have taken a preliminary objection in regard to maintainability of the application on the ground of delay and laches. A decision rendered by Hon'ble Apex Court in State of Uttar Pradesh vs. Arvind Kumar Srivastava as rendered on 17.10.2014 in Civil Appeal No. 9849 of 2014, was cited.

Excerpts of the said Judgements would be useful to quote:

"This appeal, preferred by the State of Uttar Pradesh and its functionaries, assails the order of the High Court whereby the writ petition filed by the appellants has been dismissed and the order of the Uttar Pradesh Public Services Tribunal, Lucknow (for short, 'the Tribunal') passed in favour of the respondents herein, is affirmed.

To mentioned at the outset, the Tribunal as well as the High Court has given the respondents herein benefit of the order passed by the Court in earlier round of litigation filed by similarly situated persons. The appellants contend that as far as these respondents are concerned, they never approached the Court seeking such a relief and were only fence-sitters and, therefore, relief should not have been granted to them even if they were similarly situated as those persons who have been granted relief in the petitions filed by them. Respondents, on the other hand, contend that once it is found that both sets of persons are identically placed, the impugned orders granting them the same benefit are in tune with the constitutional mandate enshrined in Article 14 of the Constitution of India.

Such a situation has not occurred for the first time in the present appeal. There are many decisions of this Court. If outcome alone of those judgments is seen, one would find that in some cases the Courts have extended the benefit to the similarly situated persons, whereas, in some other cases similar benefit is denied to the second set of people who approached the Court subsequently.

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The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. Whereas the appellants contend that the respondents herein did not approach the Court in time and were fence-sitters and, therefore, not entitled to the benefit of the said judgment by approaching the judicial forum belatedly. They also plead the some distinguishing features on the

basis of which it is contended that the case of the respondents herein is not at par with the matter which was dealt with by the Tribunal in which order dated June 22, 1987 were passed giving benefit to those candidates who had approached the Court at that time. On the other hand, the respondents claim that their case is identical to those who had filed the Application before Tribunal inasmuch as appointments of the respondents were also cancelled by the same order dated June 22, 1987 and, therefore, there is no reason to deny the same treatment which was meted out to the said person, as denial thereof would amount to invidious discrimination which is anathema to the right of equality enshrined under Article 14 of the Constitution of India."

The Hon'ble Court referred to the following:

- (i) *Inder Pal Yadav & Ors. v. Union of India & Ors.*, (1985) 2 SCC 648
- (ii) *K.C. Sharma & Ors. v. Union of India*, (1997) 6 SCC 721
- (iii) *State of Karnataka & Ors. v. C. Lalitha*, (2006) 2 SCC 747
- (iv) *Maharaj Krishna Batt & Anr. v. State of Jammu & Kashmir*, (2008) 9 SCC 24
- (v) *M/s. Rup Diamonds & Ors. v. Union of India & Ors.*, (1989) 2 SCC 356
- (vi) *State of Karnataka & Ors. v. S.M. Kotrayya & Ors.*, (1996) 6 SCC 267
- (vii) *S.S. Rathore v. State of M.P.*, (1989) 4 SCC 582
- (viii) *U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr.*, (2006) 11 SCC 464
- (ix) *In Harwinder Kumar v. Chief Engineer, Karmik*, [10] (2005) 13 SCC 300
- (x) *Jagdish Lal v. State of Haryana*, (1997) 6 SCC 538
- (xi) *Union of India v. Virpal Singh Chauhan*, (1995) 6 SCC 684
- (xii) *In Union of India v. C.K. Dharagupta*, (1997) 3 SCC 395

and Halsbury's Laws of England (para 911, p-395):

The Hon'ble Court Held:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) Acquiescence on the claimant's part; and
- (ii) Any change of position that has occurred on the defendant's part."

It held as under:

"The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

- (1) 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 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.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their causes 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 of 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. (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 person. 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 & Ors. v. Union of India (*supra*)). 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.

Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.

For all the foregoing reasons, we allow the appeal and set aside the order of the High Court as well as that of the Tribunal. There shall, however, be no order as to costs."

4. In order to find out whether the present case squarely fits into the legal principles culled out by the Hon'ble Apex Court supra, the facts of the present case are required to be adverted to. The facts in a nutshell would be as under:

The two applicants were initially appointed as Commission Bearers in the catering Department of Eastern Railway. On 13.12.1976, Railway Board issued a Circular that Commissions Bearers/vendors would be absorbed progressively in the Railway Service. In 1990, Eastern Railway Authorities issued a Provisional Seniority List of Commissions Vendors/Bearers of catering Department for Screening and the applicants were screened and declared eligible. Subsequently applicants were appointed in the Eastern Railway and retired from service in the year 2008 and 2009 respectively. They had not completed 10 years of service.

In an Original Application, being O.A. No. 545 of 1999, this Tribunal, passed an order on 18.11.2005, directing the Railway respondents to calculate past service as Commission Bearers/ Vendors for the purpose of Pension and other retiral benefits. Against the said order the respondents prefered a Writ Petition being WPCT No. 471 of 2006 before the Hon'ble High Court, Calcutta. On 16.01.2008 the Hon'ble High Court at Calcutta passed an order upholding the order of Hon'ble Tribunal with certain modification. Being aggrieved by the order of the Hon'ble High Court, the Railways filed a Special Leave petition on 14.03.2011. The Hon'ble Supreme Court dismissed the Special Leave Petition (Civil) filed by the Union of India. On 09.07.2012 and 12.06.2013 the present applicants submitted their representation before the Railway respondents for extension of benefit of the order dated 18.11.2005 and the order dated 16.01.2008 passed in WPCT No. 471 of 2006, which did not yield any result.

Aggrieved, they filed an Original Application being O.A. No. 719 of 2013 before this Bench. The said Original Application was disposed off on 06.12.2014 by LOK ADALAT directing the respondents to re-look the matter in the light of the Hon'ble Supreme Court's order dated 14.03.2011 as the respondents argued that "after perusing the Supreme Court's order dated 14.03.2011 agreed that there was a case for reconsideration of the reply filed by the respondents and to have a relook at the grievance ventilated by the applicant". Unfortunately, the Railway Authority rejected the prayer by a speaking order vide No. E.1025/Catg./Court Case/Hari Ram/Ex-Bearer/Loose dated 26.05.2015 issued by the Chief Personnel Officer, Eastern Railway, Kolkata. Further aggrieved with the same the applicants have come before this Tribunal for redressal of their grievances.

5. The factual matrix would clearly demonstrate that in the present case there was already an order infavour of the applicants, in O.A. 719/13, directing the respondents to have a relook on the basis of Hon'ble Apex Courts judgment dated 14-3-2011. Therefore this Bench in all its propriety and fairness and for upholding the judicial discipline could not throw the petition away on the ground of delay & laches.

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6. Coming to the merits of the matter the speaking order was required to be looked into. It said as follows:

"The Zonal Railway functions under the Rly. Board, Ministry of Railways who are the Central Governing Body and the Zonal Rlys act as per Rules and Guidelines formulated by the Railway Board.

Reference accordingly was made to Rly. Board seeking their directives in respect of the order passed by the Tribunal. The Rly. Board vide their no.E(NG)II/2015/Mise/ER/3 dt. 06-04/05-2015 have now clarified that the judgment of Hon'ble Supreme Court in SLP No. 25730 of 2009 dt. 14/03/11 [WPCT No. 471 of 2006 & O.A. No. 545 of 1999] is only applicable to the case of concerned petitioner i.e. Narayan Ram & others and not to any other person.

The applicants of OA No. 719 of 2013 Sri Hari Ram [Hari Har Ram] & Another are informed accordingly that their appeal for consideration at par with the applicants of OA No. 545 of 1999 can not be acceded to.

Accordingly their appeal for consideration of pension cannot be entertained as per extant rules prevailing over the Railways."

A bare perusal would make it clear that the rejection was not on the ground of delay or merit but simply on the ground that the present applicants were not parties to the earlier spat of litigations culminating with the Hon'ble Apex Court decision. It was a question of counting of past service for pension. If one set was allowed to count such, the similarly circumstanced could not be discriminated against. The benefits could be sought for by the present applicants only after the law was propounded and not earlier. Such declaration was affirmed only on 14.03.2011 and so it was not available prior to 14.3.2011. A quick glance into the orders passed in the cited matter would be inevitable.

O.A. 545 of 1999 (Narayan Ram –vs- UOI & Ors.), cited by the applicant, was disposed of with the following declaration:

"29. In view of the foregoing discussion, both the cases are disposed of with the following directions:

- i) *Let it be declared that in respect of the commission bearers/vendors who have been absorbed in railway service, for the purpose of calculation of pension, their service on commission basis from 1.12.83 shall be reckoned for computing qualifying service. In case there is any shortfall of qualifying service, in that event the service rendered before 1.12.83 shall also be taken into consideration to the extent of the shortfall.*
- ii) *The respondents shall calculate the pension and other retiral benefits in respect of applicants of OA 545/99 accordingly and*

disburse the same to them within four months from the date of communication of this order.

iii) So far as the applicants of OA 109 of 2003 are concerned, the respondents shall pay them terminal/ service gratuity according to law on the basis of emolument calculated at the minimum of the revised scale of pay computing their service for the period from 1.12.83 till their attaining the age of superannuation. The payment be made within four months from the date of communication of this order.

30. This common order shall govern both the O.As. No costs."

Hon'ble High Court in WPCT 471 of 2006 modified the order passed in OA, on 16.1.08 in the following manner:

"We are of the view that action should have been taken by the Eastern Railway immediately after issuance of the Board Circular in 1976 and not after rendering of the judgment by the Supreme Court in 1983 with right earnest. Railway authorities cannot take advantage of their own wrong. We are of the view that even by the latest, the Eastern Railway authorities would have fixed the date for computation of pension from 1st December 1984. As such we think that the judgment and order of the learned Tribunal is quite justified on legal as well as factual aspect but then it needs certain modification in view of our observation. Therefore, service period should be reckoning for the purpose of computation of pension from 1st of December 1984 instead of 1st December 1983. In so far as reckoning of the service rendered prior to 1st December 1984 in the capacity of Commission Bearers/Vendors/Agents, as directed by the learned Tribunal, is concerned the same cannot be taken into consideration because the aforesaid principle has been drawn from the analogy derived from the Rules providing reckoning of service period during casual employment. An agent cannot become a servant so the Rule provided for the public servant cannot be made applicable to agents. The jural relationship in the cases are different as in case of employment master and servant relationship exists, whereas in case of principal and agent the relationship of master and servant does not exist as there is no disciplinary or administrative control qua master over the agent since it is a contractual one and they are not liable to be disciplinary proceeded with unlike employment, either on temporary or casual basis. In case of agency, it would be open for the principal and agent to put an end to their bilateral contractual relationship. We, therefore, recall and set aside this portion of the order of the learned Tribunal. The remaining portion of the relief granted by the learned Tribunal, so far O.A. 454 of 1999 is concerned, will remain as it is. Therefore, we direct the Eastern Railway authorities to give effect to the order passed by the learned Tribunal as modified by us within four months from the date of communication of this order."

Hon'ble Apex Court passed the following order on 14.3.2011:

"UPON hearing counsel the Court made the following

ORDER

The special leave petitions are dismissed both on grounds of delay and on merits.
(emphasis supplied)

Leaving no iota for doubt in ones mind that the law declared by the Tribunal as modified by the Hon'ble High Court was affirmed by the Hon'ble Apex Court.

7. The respondents have failed to demonstrate the difference in the status of the present applicants vis-à-vis applicants in O.A. 545 of 1999. Therefore the present applicants are to be treated as identically circumstanced to the applicants in O.A. 545 of 1999 and consequently they would deserve identical relief.
8. In the aforesaid backdrop the impugned order dated 26.5.15 is quashed and the O.A. is disposed of with a direction upon the respondents to examine the case of each and every applicant in the light of the decision rendered in O.A. 545 of 1999 as modified by the Hon'ble High Court in WPCT 471 of 2006 and release the benefits identical to that of the applicants Ram Narayan, within three months from the date of communication of this order. No costs.

[Signature]
(Bidisha Banerjee)
Judicial Member

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