

(2019) 03 CAT CK 0149

In the Central Administrative Tribunal

Case No : Original Application No. 819 Of 2019, Miscellaneous Application No. 916 Of 2019

Anil Kumar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Citation : (2019) 03 CAT CK 0149

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Sudhir Nagar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the applicants.
2. MA 916/2019 filed by the applicants for joining together in a single Original Application is allowed for the reasons stated therein.
3. By filing this OA, the applicants are seeking the following reliefs:-

"A. Pass appropriate order directing the respondents to offer appointment to the applicants by exhausting the list of extra candidates prepared for the posts as advertised vide Emp. No.220 E/Open Mkt/RRC/2010 and/or;

B. Pass such other order(s) or direction(s) as may be deemed fit and proper in the facts and circumstances of the case."
3. When this matter is taken up for hearing, this Court raised a query to learned counsel for the applicants to show the any adverse order which has been passed in this case or when cause of action arose in favour of the applicants, as according to the them if their names were included in the list of 20% extra candidates prepared by the respondents for filling up 11439 various posts in the pay scale of Rs.5200 - 20,200/- + Grade Pay of Rs.1800/- by the Railway Recruitment Board advertised vide notification dated 17.12.2010. However, the

counsel for the applicants has not been able to give any plausible reply to the same.

4. According to the applicants averment, if certain vacancies were not filled up in a particular year, that too in relation to the recruitment drive, which was commenced pursuant to the aforesaid notification dated 17.12.2010, how the same give them a cause of action to file this OA in 2019 i.e. after expiry of more than eight years is not at all explained by them in this OA. They merely stated that vide advertisement dated 12.12.2017, the respondents have again sought applications for filling up vacant posts in Northern Railway and hence, ask for their consideration against previously existing vacancies as they had participated in the recruitment issued by respondents in 2010.

5. Counsel for the applicants placed reliance on the judgment of the Hon'ble Supreme Court in the case of Dinesh Kumar Kashyap and others etc. vs. South East Central Railway and others etc. in Civil Appeal No.11360-11363 of 2018, dated 27.11.2018. We have carefully perused the same, the benefit of the said judgment by the Hon'ble Supreme Court was directed to be available to those appellants who had approached the Central Administrative Tribunal. It is not the case of the applicants in the present OA that they were parties in the case preferred by those appellants before this Tribunal earlier. As such the benefits of the said judgment, which was made specifically applicable to those who were appellants before this Tribunal, cannot be extended to those who now approach the Tribunal at this belated stage. It is further relevant to mention that Hon'ble High Court of Delhi in Writ Petition (Civil) No. 10489/2015 on 18.05.2016, titled Hariom, Head Constable Vs. The Commissioner of Police and Ors, had by placing reliance on the Hon'ble Supreme Court judgment held that the applicant in that case was a fence-sitter had approached the Court after a long delay and hence he is not entitled to any relief. Relevant para 11 of the said judgment of the Hon'ble High Court is extracted below:-

"11. The petitioner relies on State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors. (2015) 1 SCC 347. Having examined the factual matrix, we observe that the petitioner had failed to act at the relevant time and had woken up after a long delay, whereas his two counterparts in the Delhi Police had approached the Court at an earlier point of time and after a long battle had succeeded in August, 2013. The petitioner should not be given the benefit of the judgment as he was a fence sitter. In the meantime, in 2012, another examination was held, and vacancies were filled. We have already observed that the petitioner cannot claim any right on the vacancies or new posts of Sub Inspectors (Exe.) created post the vacancies, included in the Phase II, 2009 examination. There are other pertinent reasons as to why the bar of limitation would be attracted. As per the list available at page No.138 of the paper book, there were at least fifteen other departmental candidates, who had secured marks between 155 and 163 i.e., marks of the last open category general candidate and the last selected candidate under 10% departmental quota. Two

unsuccessful candidates had approached the Tribunal in 2010 and order dated 22nd August, 2013 has been passed in their favour. Thirteen others including the petitioner would be entitled to a similar benefit in case the present writ petition is allowed. The respondents would have to redo and rework the entire exercise of finding out who would or would not have qualified from the open category. Law of limitation, sometimes perceived as technical and iniquitous, serves an important public purpose. It ensures certainty and negates ill effect when settled positions are sought to be altered. At the distinct point of time in 2014, about four years after the results of the 2009 examination were declared, the said exercise would create unforeseen complications and possibly litigation on issues like seniority. The open category candidates selected in the 2009 Examination have already joined. They are not impleaded. Question of seniority etc. with those selected in 2009 and 2012 would be an issue. This is not the case of an illiterate or denied person not aware of his rights, who for economic and social reasons possibly had limited resources or had hesitated in approaching courts/tribunals/authorities."

6. In view of the above facts and circumstances of the case and for the foregoing reasons, we do not find any merit in this case and the same is accordingly dismissed in limine.