IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 11160 of 2026

==========

Anand Roy, Son of Dwarika Roy, Ex- Loco Driver, Grade- A (Mail/Express), N.E.R/GKP (Now, E.C.R./HJP). Resident of Village- Jitawarpur Nizamat, Ward No. 19, Near- Pustakalaya, P.S.- Samastipur, District- Samastipur, Bihar, Pin Code- 848134.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway Board, Govt. of India, New Delhi, PIN- 110001.
2. The General Manager, E.C. Railway, Hajipur, At P.O.- Hajipur, District- Vaishali, PIN- 844101.
3. The Divisional Railway Manager, E.C. Railway, Samastipur, At P.O. and District- Samastipur, Pin Code- 848101.
4. The Senior Divisional Personnel Officer, E.C. Railway, Samastipur, At P.O. and District- Samastipur, PIN- 848101.
5. The Divisional Mechanical Engineer, E.C. Railway, Samastipur, Pin Code- 848101.

... ... Respondent/s

==========

Appearance :

For the Petitioner/s	:	Mr. Sadan Kumar Singh, Advocate
	:	Mr. Amrendra Kumar Sinha No.1, Advocate
For the UOI	:	Mr. Kumar Priya Ranjan, Sr. Panel Counsel
		Mr. Sandeep Kumar, Advocate
		Mr. Sudarshan Bharadwaj, Advocate
		Mr. Sanjay Bharti, CGC

==========

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 18-08-2026

The present writ petition has been filed against the order dated 13.05.2025 passed by the Ld. Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the ‘Ld.

WEB COPY

CAT') in OA No.050/000339/2025, whereby and whereunder the original application filed by the petitioner herein has been dismissed being barred by the principles of *res judicata.*

2. The brief facts of the case, according to the petitioner are that the petitioner was initially appointed on the post of Engine Cleaner on 21.10.1955, whereafter he was promoted as Fireman-II in the year 1957 and then as Fireman-A in the year 1964. The petitioner was then promoted to the post of Shunter-A in the year 1967, as Driver-C in the year 1971 and finally as Driver-B in the year 1972 in the Samastipur Division of North Eastern Railway, whereupon he retired on 31.03.1995.

3. It is the further case of the petitioner that the Senior Divisional Mechanical Engineer, North Eastern Railway, Samastipur had served a notice dated 21.10.1975 upon the petitioner under Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the 'Rules, 1968'), whereupon he was removed from service with effect from 22.10.1975. The petitioner had then filed an appeal before the Divisional Superintendent, North Eastern Railway, Samastipur on 17.11.1975 which was rejected by an order dated 22.05.1976. The petitioner had then filed a review petition before the General Manager, North Eastern Railway, Gorakhpur, who after reviewing

WEB COPY

the case of the petitioner had sympathetically passed an order dated 13.01.1978 to re-appoint the petitioner at the same pay, leading to the petitioner being re-appointed *vide* order dated 27.02.1978. The petitioner had then filed an original application before the Ld. CAT bearing OA No. 4 of 1992, *inter alia* praying therein that the order of his re-appointment be converted to that of reinstatement, however the same was dismissed by an order dated 22.06.1993, wherein the comprehensive reply filed by the respondents has been noted in paragraph No.7, which is reproduced herein below:-

> *"**7.** The respondents have filed a very comprehensive reply. The facts of the case are not in dispute. The respondents assert that the applicant had been removed from service on account of misconduct. It was not practicable to hold a regular enquiry. Therefore, the disciplinary authority exercised the power vested in him under rule 14 (ii) of the disciplinary and appeal rules and removed the applicant from the service. However, on review, the General Manager took a sympathetic view and offered him reappointment. The applicant was, therefore, reappointment, which means that he was given a fresh appointment on the same post from which he was removed. The respondents deny that the removed of the applicant from service was an act of excesses during the internal emergency. It is stated in the reply that the removal of the applicant had nothing to do with the*

WEB COPY

emergency and that the removal had been ordered in normal course under the existing rules. Therefore, he was not entitled to get the same benefits which other employees who had been subjected to excesses during the emergency were entitled to. Thus, the respondents have distinguished the case of the applicant from those of other employees who were removed during the emergency and were reappointed. Such employees were treated as having been reinstated. The applicant's case was different and it did not merit the same consideration."

4. The Ld. CAT, in the aforesaid order dated 22.06.1993, passed in OA No. 4 of 1992 had also noted the contents of the letter dated 04.10.1991 written by the Railway Board to the General Secretary of Indian Railway Men's Federation wherein it has been categorically stated that the petitioner was not the victim of excesses during the emergency like many others and he had been removed from service under the statutory rules for an act of gross indiscipline and misconduct as also order of removal had to be passed under Rule 14 (ii) of the Discipline and Appeal Rules because it was not reasonably practicable to hold an inquiry into the charges, however the General Manager has considered the review application of the petitioner sympathetically and by way of relief to the petitioner, the petitioner has been offered re-appointment. In such view of the matter the Ld. CAT by the

WEB COPY

aforesaid order dated 22.06.1993 had dismissed the said original application No.4 of 1992.

5. The petitioner had also filed one original application bearing OA No.284 of 1998 for condoning the break in service of about two and a half years for the purposes of calculation of the pensionary benefits, however the same has also stood dismissed by an order dated 19.03.1999 but with liberty to the petitioner to represent his case before the appropriate authority. The petitioner had then filed a representation but since, the same was not being disposed of, the petitioner had filed yet another original application bearing OA No. 145/2003, which was disposed of by an order dt. 17.2.2003 with a direction to the concerned respondents to look into the matter and dispose of the representation dated 22.10.2002 filed by the petitioner. Thereafter, the Senior DPO/SPJ by an order dated 18.12.2003 had rejected the representation of the petitioner dated 22.10.2002 with the following findings:-

> *"Sri Anand Rai S/O Late Dwarika Rai, retired as Driver Special on 31.03.95. He was removed from service under section 14 (ii) of Railway Servant's Discipline and Appeal Rule 1968 on 22.10.75 vide DS (M)/Samastipur letter no. E/PC/AR/75, dated 21.10.1975, for service misconduct.*
>
> *The case was further reviewed by the General Manager/NER/GKP who passed the following orders :-*
>
> > *"I have reviewed the case of Anand Rai Ex driver/SPJ sympathetically. Although Sri Rai has been found responsible for disobedience of orders as a matter of*

WEB COPY

cleaning, he may be offered re-appointment on the same pay." The applicant's self averment in para 4.5 of O.A. that he challenged the order of re-appointment to covert this re-appointment in to reinstatement was also rejected departmentally & judicially is also important.

In the light of GM's order as quoted above and communicated vide GM/P/GKP's letter no. E/74/8/HB/ 249(III) dated 13.01.78, he was reappointed with effect from 27.02.1978. From the records it appears that Shri Anand was not removed for participating in the strike of 1974 from service under 14 (ii) of D & AR 1968, rather for some other service misconduct. And the competent authorities had taken appropriate disciplinary actions against him.

In the light of above circumstance and facts of the issues and case, his claim for reinstatement is not based on rule and hence cannot be considered. His representation dated 22.10.2002, is thus fit to be rejected.

This speaking order has the concurrence of CPO/ECR."

The aforesaid order dated 18.12.2003 was challenged by the petitioner before the Ld. CAT by filing an original application bearing OA No.104 of 2004 which was disposed of by an order dated 05.02.2004 by the Ld. CAT with an observation that the concerned respondent shall refer the matter of the petitioner to the higher authority (Ministry of Railway) after recording the reasons in this regard in light of Rule 107 of the Railway Services (Pension) Rules, 1993 within a period of two months. It may be pointed out that Rule 107 of the Railway Services (Pension) Rules, 1993 stipulates power to relax where the pension sanctioning authority is satisfied that the operation of any of these rules causes

WEB COPY

undue hardship in any particular case, then that authority may for reasons to be recorded in writing approach the Ministry of Railways (Railway Board) for dispensing with or relaxing the requirement of that Rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. As per the said direction of the Ld. CAT dt. 05.02.2004, the matter pertaining to the petitioner was referred to the Railway Board for consideration, however, the Railway Board passed the following order:-

> *"It is seen that Shri Anand Rai had received all his settlement dues and is also drawing pension as per his entitlement. Hence, no extreme hard ship has been caused to him on account of break in service. Moreover, his reappointment as fresh entrant by the Railway Administration itself was an act of generosity by the Railway and any further relaxation is not considered necessary. The case therefore does not merit relaxation by invocation of Rule 107 of Railway Service (Pension) Rules, 1993, for condonation of break in service."*

6. Thus, for cogent and justified reasons, in view of the fact that the petitioner had received all his settlement dues and is also drawing pension as per his entitlement, the Railway Board had come to the conclusion that no extreme hardship has been caused to the petitioner on account of break in service apart from the fact that his re-appointment by the Railway Administration itself was

WEB COPY

an act of generosity by the Railways. Hence, the Railway Board was of the view that no further relaxation is necessary, therefore the case of the petitioner for condonation of break in service was rejected and accordingly, the same was communicated to the petitioner *vide* letter dated 23.02.2005, issued by the Assistant Personnel Officer/ Administration, Samatipur.

7. The petitioner had ceaselessly filed the connected OA No. 050/000339 in the year 2025, *inter alia* praying therein for same and similar reliefs, as had been sought for in the earlier OA No. 4 of 1992, *i.e*. for directing the concerned respondents to convert the order of re-appointment of the petitioner into an order of his reinstatement in light of letter dt. 22.04.1985, issued by the Office of the General Manager (Personnel), Gorakhpur. The aforesaid OA No. 050/00339/25 has been dismissed by the Ld. CAT by an order dated 13.05.2025, being barred by the principles of *res judicata*.

8. The learned counsel for the petitioner has submitted that the connected original application has been filed by the petitioner relying on a letter dated 22.04.1985, issued by the Office of the General Manager (Personnel), Gorakhpur, whereby and whereunder it has been postulated that in cases of such employees who had break in service till the month of February, 1981, the break in service will be treated as non-working days. Thus, it is

WEB COPY

submitted that the period of break in service of the petitioner is required to be regularized.

9. We have heard the learned counsel for the petitioner and perused the materials on record from which it is apparent that the connected original application has been filed by the petitioner for directing the respondents to convert the order of re-appointment of the petitioner into an order of his reinstatement, however we find that same prayer was made by him in OA No.4 of 1992 which has already stood dismissed by an order dated 22.06.1993, passed by the Ld. CAT on the ground that the case of the petitioner is not akin to the victim of excesses during the emergency like many other railway employees and moreover, he has not been removed from service for participating in the strike of 1974 but the petitioner was removed from service under statutory rules for an act of gross indiscipline and misconduct and the order of removal had to be passed under Rule 14 (ii) of the Rules because it was not reasonably practicable to hold an inquiry into the charges, nonetheless the review petition filed by the petitioner was considered sympathetically by the General Manager and by way of relief the petitioner was re-appointed. Thus, we find that the present writ petition is barred by the principle of *res judicata* and constructive *res judicata* in terms of Section 11 and

WEB COPY

Order II, Rule 2 of the Code of Civil Procedure, 1908. It is a well settled law that the Courts are barred from trying any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court.

10. It is equally a well settled law that the principles of *res judicata* and constructive *res judicata* as provided for in the Code of Civil Procedure, 1908 are also applicable to writ petitions. In this regard, reference be had to the Constitution Bench judgment of the Hon'ble Apex Court rendered in the case of ***Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Others***, reported in **(1990) 2 SCC 715.**

11. Thus, we find that since the petitioner had filed an original application bearing OA No.4 of 1992, which has already stood dismissed by an order dated 22.06.1993, *inter alia* seeking same and similar reliefs as has been sought for in the connected original application, now filing yet another original application seeking same and similar reliefs as had been prayed for in the earlier original application or for that matter seeking such reliefs which might have been omitted in the earlier round of litigation, the

WEB COPY

connected original application bearing OA No. 050/00339/25 was/is clearly barred by the principles of *res judicata* and constructive *res judicata.*

12. We further find that the letter dated 22.04.1985, which is being used by the petitioner as a ploy to circumvent the principles of *res judicata* and constructive *res judicata*, is of no help to the petitioner inasmuch as the same was in existence at the time of filing of the earlier OA No. 4 of 1992 by the petitioner and secondly the said letter dated 22.04.1985 stipulates grant of concession of treating the break in service up to the month of February, 1981 as non-working days only in case of such employees who have not been given payments liable to be made after retirement on account of participating in strike, stop work and protest like campaign, however in the present case the petitioner was removed from service under statutory rules for an act of gross indiscipline and misconduct and was not a victim of excesses during the emergency or for participating in the strike of 1974.

13. We further finds that the said Circular dated 22.04.1985 had been issued by the General Manager, however the case of the petitioner for condonation of break in service has stood rejected by the Railway Board, duly communicated to the petitioner *vide* letter dated 23.02.2005 written by the Assistant Personnel Officer/

WEB COPY

Administrative, Samastipur, which has never been challenged by the petitioner, thus at this juncture no relief can be granted to the petitioner.

14. Having regard to the facts and circumstances of the case and for the foregoing reasons, we find that the present writ petition is not only sans merit but also frivolous and vexatious inasmuch as procrastination of litigation in this manner amounts to deceit and moreover, frivolous litigation clogs the wheels of justice making it difficult for the Court to provide speedy justice to the genuine litigants. Accordingly, the present writ petition stands dismissed with cost.

(Mohit Kumar Shah, J)

(Sourendra Pandey, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	22.08.2026
Transmission Date	

WEB COPY