

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**CUTTACK BENCH**

**OA No. 327 of 2018**

**CP No. 55 of 2018**

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

**Hon'ble Mr. Anand Mathur, Member (A)**

**OA No. 327 of 2018**

1. R. Govinda Rao, aged about 38 years, Son of Late R. Dharma Rao, at present working as a Peon in the office of Senior DMM, E. Co. Rly., Waltair Division, resident of C/O. – P. V. Rao, D No. 25/163, MIG-58, Vegapunta, Simhapuri Colony, Visakhapatnam – 530047, Andhra Pradesh

.....Applicant.

**VERSUS**

1. Union of India, represented through its General Manager, E. Co. Rly, E. Co. R. Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda - 751017.
2. The Chief Personnel Officer, East Coast Railway, E. Co. Rly, E. Co. R. Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda - 751017.
3. The Sr. Divisional Personal Officer, East Coast Railway, Waltair Division, At/P.O. – Dandoparti, Visakhapatnam, Andhra Pradesh – 530016.

4. Senior Divisional Material Manager, East Coast Railway, East Coast Railway, Waltair Division, At/P.O. – Dandoparti, Visakhapatnam, Andhra Pradesh – 530016.

5. Chief Depot Material Superintendent, East Coast Railway, Waltair Division, At/P.O. – Dandoparti, Visakhapatnam, Andhra Pradesh – 530016.

.....Respondents.

For the applicant : Mr. N. R. Routray, Advocate.

For the respondents: Mr. T. Rath, Advocate.

Mr. K. C. Kanungo, Advocate.

### **CP No. 55 of 2018**

1. R. Govinda Rao, aged about 38 years, Son of Late R. Dharma Rao, at present working as a Peon in the office of Senior DMM, E. Co. Rly., Waltair Division, resident of C/O. – P. V. Rao, D No. 25/163, MIG-58, Vegapunta, Simhapuri Colony, Visakhapatnam – 530047, Andhra Pradesh

.....Petitioner.

### VERSUS

1. Mr. Umesh Singh, General Manager, East Coast Railway, E. Co. R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda – 751017.

2. Mrs. Manju Roy, Chief Personnel Officer, East Coast Railway, E. Co. R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda – 751017.

.....Contemnors.

For the applicant : Mr. N. R. Routray, Advocate.

For the respondents: Mr. T. Rath, Advocate.

Heard & reserved on :23.12.2020 Order on :18.01.2021

## O R D E R

**Per Mr. Swarup Kumar Mishra, Member (J)**

## **O.A. NO. 327 OF 2018**

The applicant by filing this OA under section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:-

- (i) To direct the respondents to conduct a special supplementary written examination for the post of Junior Clerk-Cum-Typist as per notification under Ann.-A/1;
- (ii) And to direct the Respondents to allow the applicant to appear in the special supplementary examination;
- (iii) And to quash the order of rejection dtd. 17.07.2018 under Annexure A/5
- (iv) And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. The case of the applicants as averred in brief in the OA is that in response to notification dated 04.01.2018 (Annexure A/1) the applicant had applied for the post of Junior-Clerk-Cum-Typist and he was enlisted as list of

72 of eligible candidates vide letter dated 02.05.2018 (Annexure A/2 series) published by Respondent No. 5. The applicant submitted that he had submitted an application dated 15.03.2018 to Respondent No. 3 for consideration of his candidature for selection to the post of Junior Clerk-Cum-Typist and his representation was disposed of vide letter dated 04.06.2018 (Annexure A/3) intimating that he has already been provisionally declared eligible for selection to the post of Junior Clerk against 33.1/3% departmental promotion quota. Thereafter Respondent No. 2 vide letter dated 13.06.2018 (Annexure A/4) instructed to all the authorities of Waltair Division to inform the date, venue to the candidates and further instructed to spare the candidates with proper identification letters to the Presiding Officer (Examination) at MHSS/KUR to appear the written examination. The applicant submitted that when nothing was communicated to him by any of Respondents to be ready to participate in the written examination to be held on 24.06.2018, he approached Respondent No. 5 who straightway refused to spare him on the ground of filing of OA No. 398/2017 pending before this Tribunal. The applicant approached Respondent No. 3 on 22.06.2018 regarding issuance of identification letter as well as spare memo but Respondent No. 2 on hearing the applicant replied that in which way you have applied for the post,

by that way you appear in written examination and the applicant could not able to appear in the written examination held on 24.06.2018. The applicant further submitted that Respondent No. 2 vide order dated 17.07.2018 (Annexure A/5) rejected the claim of the applicant to conduct supplementary exam. The applicant submitted that Respondent no. 2 in the order of rejection had relied upon para 223 of Chapter II of IREM Vol-1 (Annexure A/6). Hence the OA.

3. The respondents in their counter inter alia submitted that in response to the notification dated 04.01.2018 and applicant's application dated 15.01.2018 the applicant was advised to appear in the written examination scheduled to be held on 24.06.2018 vide letter dated 05.06.2018 (Anneure R/8). The Railway Adminstration (Senior Divisional Materials Manager/Waltair) prepared the identification memo of the applicant on 19.06.2018 (Annexure R/9) for sparing him to attend the said examination, the applicant refused to take the identification memo from Senior Divsional Materials Manager/Waltair on 22.06.2018 which was witnessed by other staff. It is submitted that the ten staff including the applicant remained absent in the written examination and PCPO/ECoR/Bhubaneswar vide letter dated 28.06.2018 (Annexure R/10) asked to know the reasons for their absence with valid proof so as to consider him

for being eligible to appear in the supplementary exams.

9 candidates out of ten absentees submitted their unwillingness to take selection whereas the applicant vide his reply dated 02.07.2018 (Annexure R/11) intimated that he was willing to appear the examination provided his seniority is finalised whether at HQs-Cos Office Peons or in the Division. The respondent submitted that applicant's doubt regarding maintenance of his seniority in question had been clarified vide speaking order dated 05.06.2017 (Annexure R/12). The respondent submitted that since the applicant failed to submit the valid reason, in terms of para 223 of Chapter II of IREM, vol-I, for his absence in the written examination he was not further considered for supplementary examinations which was communicated to him vide letter dated 17.07.2018 (Annexure R/13).

4. The respondents further submitted that while disposing of representation dated 15.03.2018, Sr. DPO/Waltair vide letter dated 04.06.2018 had informed that "The Group D staff of stores depot are having channel of progression as Material Clerk (now Jr. Clerk) in stores department. Therefore, they cannot compete for the selection for promotion to the post of Jr. Clerk-cum-Typist based on the vacancy of other departments" and since the seniority and avenue of channel of promotion of stores depot cadre is maintained separately there is no ambiguity in the

letter dated 04.06.2018. Respondents submitted that Sr. DMM/WAT vide his letter dated 19.06.2018 booked the applicant for attending the examination but the applicant refused to take the identification memo on 22.06.2018 to attend the same which was duly witnessed by other staff. It is submitted that the applicant submitted a copy of grievance dated 08.05.2018 which was already given to PCPO/ECoR/Bhubaneswar which was confirmed by Respondent No. 4 vide letter dated 09.07.2018 and since he is working under Respondent No. 4 who is the immediate authority of the applicant the plea taken by the applicant that he approached Respondent No. 5 for sparing is an attempt to mislead the Tribunal. The respondent submitted that Respondent No. 4 had prepared the identification memo which the applicant refused to accept and Respondents No.3 & 5 are not the authorities to spare the applicant.

5. The respondents submitted that interim order dated 29.06.2018 passed by the Tribunal could not come to the notice of the concerned authority and subsequently two UR were filled up by extending provisional promotion to the senior most empanelled candidates from the UR category and the applicant had filed a Contempt Petition No. 55/2018. The show cause reply has been filed and one MS for modification of interim order has also been filed.

**CP No. 55/2018**

The petitioner in the contempt petition has prayed for the following relief:

- i. *To admit this Contempt Petition, issue notice to the Contemnors/Opp. Parties to show cause as to why the Contemnors/Opp. Parties shall not be dealt with under the provisions of the Contempt of Court Ac for deliberate and intentional violation of order dated 29.6.2018 passed in OA No. 327/2018*
- ii. *And pass any other orders as deems proper and fit in the interest of justice.*

6. The petitioner in the CP submitted that the Tribunal on 29.06.2018 after hearing both the sides had passed the interim order as follows:

*“3. XXXX. However, I make it clear that if all the posts under the said notification dated 04.01.2018 for which the applicant has applied under UR category have not been filled up then one post will be kept vacant until further orders. However, Ld. Counsel for the respondents are free to file any petition for recall/modification of this order within a period of two weeks, if so advised.”*

7. The petitioner submitted that vide notification dated 04.01.2018 four posts have been notified to be filled up out of which two were meant for UR and SC- 1 & ST – 1. Tribunal vide order dated 29.06.2018 had directed as interim measure not to fill up one UR post if not filled up but Contemnor No.2 vide order dated 21.08.2018 (Annexure 2 of CP) had published

provisional panel of suitable candidates out of which two candidates empanelled against UR vacancy and one against SC. The petitioner submitted that Contemnors/Respondents had received paper book of OA and order dated 29.06.2018 issued from the registry of the Tribunal as well from their counsel. The petitioner further submitted that Contemnor No. 2 vide order dated 27.08.2018 (Annexure 3 of CP) has promoted Sri G. Dibakar Reddy and B. Krishna Rao to the post against UR vacancy which clearly violates the order dated 29.06.2018 passed in OA No. 327/2018.

8. The Contemnors in their show cause reply inter alia averred that in the OA both the zonal authorities as well as authorities of Waltair Division were added combines as respondents and therefore inadvertently due to communication gap in the court cell of the PCPO's office, the interim order of Tribunal received from the Standing Counsel could not be brought to the notice of the authority conducting the selection i.e the Senior Personnel Office (Staff) and that the applicant has not communicated the copy of the order. The contemnors submitted that the notice of the OA was received on 03.08.2018 in the PCPO office where the copy of the interim order dated 29.06.2018 was also not available except the notice admitting the OA and copy of the OA to all respondents impleaded.

The contemnors further submitted that while reviewing the pending work the copy of the interim order dated 29.06.2018 was found in the court cell of PCPO's Office and was immediately brought to the notice of opposite parties on 12.09.2018 but by then the order dated 27.08.2018 was issued. For which there was no scope to file MA for recall/modification of the order within stipulated period of time fixed by the Tribunal and MA was filed on 07.01.2019. The contemnors submitted that they have already taken steps in deciding to keep one anticipated vacancy in the cadre of Junior Clerk-cum-Typist of the Stores Depot in the month of June, 2019 earmarked for UR category for the present petitioner of the OA. The contemnor further submitted that if the above steps taken by them is felt inadequate in compliance of the order of the Tribunal then they may be granted some time to revert the junior most UR candidates posted in term of order dated 27.08.2018 and keep one post vacant till disposal of OA.

9. We have heard learned counsel for both the parties and carefully gone through their pleadings and averments. It is the specific stand of the applicant that he has not been given opportunity to appear in the departmental examination in question and he was not spared or permitted by the authority to appear in

the departmental examination on 24.06.2018. The applicant had prayed for special recruitment examination to be conducted in order to enable the applicant to enable the said departmental examination. In the counter at Para L and the material on record clearly reveal that the applicant has given his signature on the said document and it has been attested by four employees in order to show that he had refused to take the identification memo/sparing memo. Necessary entry to that were also made in the booking memo register. It is seen from Annexure R/11 that the applicant has stated that he will not be appearing in the examination unless his seniority is finalised whether at Hqrs-COS office peons or in the division. Besides that even if for the sake of argument it is assumed that the applicant was not given any opportunity to appear the departmental exam in question, still then he could not have got the promotion in question even within 10 years as per the seniority list vide Annexure A/2 wherein the name of the applicant finds place at S1. No. 72. The mode of selection was merit cum seniority as seen from A/1 and 33.3% quota was from amongst the qualified senior. The applicant has not made any particular officer or authority as party in this case in order to enable him to plead and prove that there was

malafide against him by the said authority. The applicant has also not challenged the order at Annexure at R/9.

10. In the above circumstances we are not satisfied with the claim made by the applicant that he was not given due opportunity to appear in the departmental examination in question. In view of the discussion already made, the OA is devoid of merit and is dismissed.

11. In the show cause the department has explained the situation in details and have shown their bonafides by making categorical undertaking and explaining their position very clearly that the circumstances in which copy of interim order dated 29.06.2018 was not available in the office of PCPO. By the time the said matter was brought to the notice of contemnors on 12.09.2018, the order dated 27.08.2018 was already issued by the department. Thereafter the MA was filed on 07.01.2019. The contemnors have already taken steps to keep one anticipated vacancy in Junior Clerk cum Typist of the Store department earmarked for UR category for the present petitioner. They have also shown their bonafides in expressing that in case the steps taken by them is felt inadequate with regards to compliance of interim order passed then they are prepared to revert the junior most UR

candidate posted in pursuance to order dated 27.08.2018 and to keep one post vacant till disposal of OA.

12. In view of the above position and since the OA has been dismissed being devoid of merit vide observation at Para 10 of this order, therefore, no contempt of this Tribunal is made out against the contemnors. Accordingly the CP is dropped and notices issued are discharged.

(ANAND MATHUR)  
MEMBER (A)

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(csk)