

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 1114 OF 2017

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR Pascal Ekka & Ors. Petitioners

-Versus-

Union of India & Ors. Opp. Parties

For Petitioners : M/s. G.A.R. Dora, Sr. Advocate,
Along with M/s G.R. Dora, P.
Tripathy & (Dr.) J.K. Lenka,
Advocates

For Opp. Parties : Mr. C. Pradhan, Sr. Panel
Counsel, Union of India

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE B.P. SATAPATHY**

DECIDED ON :: 03.11.2022

B.P. SATAPATHY, J. The petitioners, who are continuing in different capacities under the Operating Department of East Coast Railways, Khurda, have filed this writ petition seeking to quash the order dated 03.01.2017

passed in O.A. No.260/00864 of 2015 under Annexure-1, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack has dismissed the said O.A. filed by the petitioners.

2. The factual matrix of the case, in brief, is that the petitioners, while continuing in different capacities under the Operating Department of East Coast Railways, Khurda Road Division, having completed more than 3 years regular service, pursuant to notification dated 24.04.2015 issued for selection to the post of Goods Guard against 60% Departmental Promotional Quota, submitted their applications. All total 214 applications were received, out of which on scrutiny 130 employees, including the petitioners, were found eligible, as per the laid down criterion, to appear in the written examination, pursuant to which 125 employees, including the petitioners, appeared in the written examinations held on 09.08.2015 and 16.08.2015. Result of the said examinations was published on 16.09.2015 and out of 125 employees appeared in the written examinations, 67 including the petitioners were

declared qualified, but they were not given promotion to the post of Goods Guard and, on the other hand, by office order dated 20.11.2015, issued from the office of opposite party no.3, result of the written examination was cancelled on administrative reasons and a fresh notification was issued for written examination for selection to the post of Goods Guard in Operating Department against 60% Departmental Promotional Quota. The petitioners filed representation against cancellation of written examination. Since no action was taken, they approached the Central Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.260/00864 of 2015 with a prayer to promote them to the post of Goods Guard on the basis of written examinations held on 09.08.2015 and 16.08.2015, which they had cleared, and also to quash the order dated 20.11.2015 cancelling the result of the written examination and issuance of notification for fresh examination.

2.1 Pursuant to notice issued by the Tribunal, the opposite parties filed their counter affidavit stating, inter

alia, during preliminary investigation, the Vigilance Department of East Coast Railway found that there were gross irregularities in evaluation of answer sheets and accordingly recommended that the written examinations held on 09.08.2015 and 16.08.2015 may be cancelled and fresh notification for written examination may be issued by modifying the existing Selection Committee. It was also stated with regard to the nature of irregularities detected by the Vigilance Department that in the answers to the objective type questions, there were corrections like cutting, overwriting etc and marks were awarded in violation of the Railway Board's Instructions in R.B.E. No.29/2009.

2.2. In response to the counter affidavit filed by the opposite parties, the petitioners filed rejoinder affidavit stating therein that they were not communicated about the instructions/guidelines contained in Railway Board's Instructions in R.B.E. No.29/2009 and, as such, the same was not circulated nor was given any instruction that in case of cutting,

overwriting, erasing, etc., the answer will not be evaluated.

2.3. The Tribunal, after considering the contentions raised in both counter affidavit and rejoinder affidavit, vide order dated 03.01.2017 dismissed O.A. No.260/00864 of 2015 holding that since there were no instances of discrimination or any *mala fide* shown by the opposite parties, decisions to notify fresh selection by cancelling the earlier results falls within the domain of the administrative authorities. Hence, this writ petition.

3. Dr. J.K. Lenka, learned counsel appearing for the petitioners, at the outset, contended that the petitioners do not want to press this writ petition in respect of petitioners no.10 and 11, as they were not parties before the Central Administrative Tribunal. Thereby, on oral prayer of the learned counsel for the petitioners, the names of petitioners no.10 and 11 are deleted from the cause title of the writ petition.

4. Dr. J.K. Lenka, learned counsel appearing for the petitioners vehemently contended that the notification dated 24.04.2015 laid down the mode of selection, referring to Establishment Sl. Nos.266/99 and 113/09 prescribing the procedure for selection and for giving marks, and does not mention about the Railway Board's Instructions in R.B.E. No.29/2009, and that Estt. Serials are statutory and instructions in RBE are subordinate and cannot override the statutory requirements. His further contention is that the Railway Board's Instructions in R.B.E. No.29/2009 was not only not referred to in the notification dated 24.04.2015 for selection to the post of Goods Guard, but also in the fresh notification dated 20.11.2015. It is further contended that Railway Board's Instructions in R.B.E. No.29/2009 clearly state that the said instructions should be widely circulated so that all the staff concerned will fully aware of the implications of making corrections in their answers to objective type of questions and these may also be made a part of the instructions printed on the question papers and answer

sheets so that there will be no room for complaint from any candidate, but the same was not done. Therefore, the order for cancellation of results and issuance of fresh notification cannot be sustained in the eye of law and, as such, the Tribunal has failed to take into consideration of the same. Thereby, the petitioners seek for quashing of the order dated 03.01.2017 passed by the Tribunal in O.A. No.260/00864 of 2015. It is further contended that the authorities, who have issued notifications for conducting examination, is also not aware of the Railway Board's Instructions in R.B.E. No.29/2009, which fact is apparent from the earlier and subsequent notifications at Annexure-A/1 and Annexure-A/4 respectively to the O.A.. The same having not been taken into consideration, the order impugned so passed by the Tribunal cannot sustain in the eye of law.

5. Mr. Chandrakant Pradhan, learned Senior Panel Counsel of Union of India appearing for the opposite parties, while justifying the order passed by the Tribunal, contended that the notification dated 24.04.2015 under Annexure-A/1 to the O.A. was issued

in order to draw a panel of 341 staff (U.R-283, SC-41, ST-17) for selection to the post of Goods Guard against 60% DPQ (Departmental Promotional Quota) through general selection, pursuant to which applications were invited from the serving regular employees of Operating/ Commercial Department of East Coast Railway, Khurda Road Division, having minimum three years regular service as on 24.04.2015 (for SC/ST candidates minimum one year of service). It is contended that as many as 214 applications were received and after scrutiny, 130 applications were found eligible. The written examinations for the eligible candidates were held on 09.08.2015 and 16.08.2015 as per letter dated 30.07.2015 marked as Annexure-3 to the writ petition. Out of 130 candidates, 125 appeared in the said examination and the result of the written examinations was declared on 16.09.2015, in which 67 candidates were qualified. Thereafter, with the approval of competent authority, a panel was to be drawn purely on merit as per rule and the empanelled candidates were to be sent for promotional training subject to passing of the

prescribed medical examination and after successful completion and passing of the promotional course training, they were to be promoted to the post of Goods Guard subject to S.P.E., Vigilance and D&A clearance. It is contended that the Vigilance Department of East Coast Railway, Bhubaneswar, ceased the selection papers and subsequently on 10.11.2015 informed that during the preliminary investigation it was noticed that gross irregularity in evaluation of answer sheets has taken place, which was in violation of Railway Board's Instructions contained in RBE No.29/2009. It is also contended that considering the essentiality of the selection, it was decided by the competent authority to cancel the written examinations held on 09.08.2015 and 16.08.2015 and conduct written examination afresh by modifying the existing selection committee without cancelling the whole selection process. It is further contended that the Railway Board has stipulated the guidelines for setting up of objective type questions, disallowing corrections in the answers, under R.B.E. No.29/2009, wherein the Railway Board has decided

that in the answers to objective type questions, no corrections of any type may be permitted. In case any correction is made, that answer shall not be evaluated at all. The nature of correction is stipulated therein. Thereby, no illegality or irregularity has been committed by cancelling the result of the written examinations. As a consequence thereof, the Tribunal is well justified in passing the order impugned dated 03.01.2017, which does not warrant interference of this Court.

6. This Court heard Dr. J.K. Lenka, learned counsel appearing for the petitioners and Mr. C. Pradhan, learned Senior Panel Counsel of Union of India appearing for the opposite parties through hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

7. The factual matrix, as succinctly enumerated above, indicates that pursuant to notification issued on 24.04.2015, as many as 214 applications were received

and after scrutiny, 130 applications were found eligible. The written examinations for the eligible candidates were held on 09.08.2015 and 16.08.2015, as per letter dated 30.07.2015 at Annexure-3 to the writ petition. Out of 130 candidates, 125 had appeared and the result of the written examinations was declared on 16.09.2015, in which only 67 candidates were qualified. After publication of the result of written examinations, it was expedient on the part of the selection committee for scrutiny of service records, professional ability, annual performance appraisal report and approval of selection procedures by the competent authority in terms of notification as at Annexure-2 to the writ petition and, as such, a panel was to be drawn purely on merit as per rules. Thereafter, with the approval of competent authority, the empanelled candidates were to be sent for promotional training subject to passing the prescribed medical examination and after successful completion and passing of the promotional course training, they were to be promoted to the post of Goods Guard subject to S.P.E., Vigilance and D&A clearance. As it appears,

the Vigilance Department of East Coast Railway, Bhubaneswar, ceased the selection papers and subsequently on 10.11.2015 intimated that during preliminary investigation it was noticed that gross irregularity in evaluation of answer sheets has taken place in violation of Railway Board's Instructions in RBE No.29/2009. In response to the report of the Vigilance Department, the competent authority, considering the essentiality of the selection, decided to cancel the written examinations held on 09.08.2015 and 16.08.2015 and conduct written examination afresh by modifying the existing selection committee without cancelling the whole selection process.

8. It is of relevance to note that the Railway Board formulated guidelines in R.B.E. No.29/2009 for setting up of objective type questions, disallowing corrections in the answers once indicated. Therein, it was stipulated by the Railway Board that in the answers to objective type questions, no corrections of any type can be permitted. In case any correction is made, that answer shall not be evaluated at all. The correction may

be any one of the following types: (a) cutting; (b) overwriting; (c) erasing; (d) scoring off a ticked answer in multiple-choice and ticking another answer; and (e) modifying the answer in any way. The Vigilance Department of East Coast Railway, after conducting preliminary investigation, noticed that gross irregularity has taken place in the evaluation of answer sheets in violation of Railway Board's instructions stipulated in R.B.E. No.29/2009.

9. It may not be out of place to mention here that while entertaining the O.A., the Tribunal passed interim order. Learned counsel appearing for the Railway Authorities produced vigilance report dated 22.12.2015, wherein grounds of cancellation were indicated. As such, the Tribunal had an occasion to go through the vigilance report produced before it and on perusing the same the Tribunal arrived at a conclusion that after publication of result of written examinations, the Railway Authorities were justified in cancelling the same and passing orders for conducting written examinations afresh by modifying the existing selection committee. While examining the

same, the Tribunal also took note of the fact that as per preliminary report of the vigilance authorities about 50% of the total declared passed should be declared as failed and therefore it was proposed to cancel the written examination held on 09.08.2016 and 16.08.2016 and go for fresh examination by modifying the existing selection committee without cancelling the whole selection process considering the essentiality of the selection. In the vigilance record, it was also mentioned that in some answer sheets there were cuttings. The preliminary investigation report also revealed that corrected, over written, modified answers against objective type questions were evaluated and given full marks. In case of 67 candidates, who were declared as qualified, irregularities were noticed in respect of 52 cases. In respect of them, it is mentioned that according to the R.B.E. No.29/2009, in the answer to objective type questions no correction of any type is permitted. In case any correction is made, the answer shall not be evaluated at all. Therefore, it is observed that out of 50 candidates, who have made corrections in objective type

questions, 33 candidates have scored the minimum required pass marks. Therefore, it was opined that the evaluation of answer sheets was in violation of R.B.E. No.29/2009. Thereby, the case was required to be investigated further to fix responsibilities on this matter. As such, the administrative authorities accepted the recommendations made in the vigilance report and accordingly took further steps. Since vigilance authorities detected large scale irregularities in the matter of evaluation of answer sheets, the competent authority decided to cancel the result of the written examinations and go for fresh written examinations by issuing fresh notification.

10. It is no doubt true that the notification dated 24.04.2015 in Annexure-A/1 and letter dated 20.11.2015 in Annexure-A/4, which laid down the procedure for selection, do not refer to the Railway Board's Instructions in R.B.E. No.29/2009. So far as R.B.E. 29/2009 is concerned, it contains the instructions for evaluation of answer sheet and that has no nexus with the notification dated 24.04.2015 in

Annexure-A/1 and letter dated 20.11.2015 in Annexure-A/4 to the O.A., which deals with procedure for selection. Therefore, R.B.E. No.29/2009 is independent of the mode prescribed for selection and procedure for selection. Without adhering to instructions contained in R.B.E. No. 29/2009, since evaluation has been done, therefore, it cannot be said that any irregularity has been committed by the authority.

11. The Tribunal in its impugned order has come to a definite conclusion that it would have interfered with the matter had there been a case of discrimination, whereby right to equality and right to equal opportunity of employment would have been jeopardized by the decision of the authorities and, as such, there were no instances of discrimination or any *mala fide* shown to have been done the opposite party authorities. On the other hand, they have decided to notify for fresh selection by cancelling the earlier result because of irregularities committed in the evaluation process. The same having been done in tune with the guidelines issued by the Railway Board in R.B.E. 29/2009, the

decision taken by the competent authorities falls within the domain of their administrative functions.

12. In ***Vine v. National Dock Labour Board***, (1957) AC 488 (HL), it is held that where it acts within its statutory limits i.e. intra vires but it acts in violation of fundamental principles of judicial procedure known as rule of natural justice.

13. In the case at hand, there is no dispute with regard to the fact that Annexure-A/1 and A/4 dated 24.04.2015 and 20.11.2015 respectively laid down the mode of selection and procedure for selection, whereas the instructions issued in R.B.E. No. 29/2009 envisaged the procedure for evaluation of answer sheets. Therefore, Annexures-A/1 and A/4 vis-à-vis R.B.E. 29/2009 are operative in their respective fields. More so, instructions contained in R.B.E. No. 29/2009, being meant for those who are to examine the answer sheets, may not be required to be circulated amongst the candidates. As a consequence thereof, no illegality or irregularity was committed by the opposite party-authorities in not

circulating the instructions contained in R.B.E. No.29/2009 to the candidates. But the fact remains that R.B.E. No.29/2009 was in force by the time Annexure-A/2 was issued on 24.04.2015.

14. In **R. v. Northumberland Tribunal**, (1952) 1

All E.R. 122 C.A., it is held as follows:

“The ancient writ of certiorari in England is an original writ which may issue out of a superior Court requiring that the record of the proceedings in some cause or matter pending before an inferior Court should be transmitted into the superior Court to be there dealt with. The writ is so named because in its original Latin form it required that the Kind should ‘be certified’ of the proceedings to be investigated, and the object is to secure, by the exercise of the authority of a superior Court, that the jurisdiction of the inferior tribunal be properly exercised”.

15. In **Ryots of Garabandhu v. Parlakimedi**, A.

1943 Privy Council 164, it is held that the object of the writ was thus to remove the record of the inferior tribunal to the superior Court so that the latter may “inform itself upon every subject essential to decide upon the propriety of the proceedings below”.

16. In **R. v. Northumberland Compensation Tribunal**, (1942) 1 K.B. 338, it is held that an error of

law which is apparent from the record of the proceedings brought before the superior Court, and does not require to be established by evidence. Through certiorari will not issue to quash a decision which is within the jurisdiction of the tribunal, on the mere ground that it is erroneous on the merits.

17. In **Basappa v. Nagappa**, (1955) 1 S.C.R. 250 and **Ambica Mills v. Bhatt**, AIR 1961 SC 970, the apex Court has acknowledged the exception to the foregoing proposition, namely, that when it is an error of law, and it is 'apparent', certiorari will issue even though the tribunal has not transgressed its 'jurisdiction' in any way.

18. Applying the above principles to the present case, this Court is of the considered view that the Tribunal has not committed any error apparent on the face of the records so as to cause interference of this Court. Therefore, the Tribunal is well justified in holding that since there are no instances of discrimination or any *mala fide* shown by the opposite party authorities

and on the other hand they have decided to notify fresh selection by cancelling the earlier result, which falls within the domain of the administrative authorities, it does not find any reason for interfering in the process. The Tribunal also noticed that the vigilance authorities had recommended that fresh written examinations should have been conducted by modifying the existing selection committee and this recommendation of vigilance authorities should have been accepted and implemented. In that view of the matter the Tribunal is well justified in dismissing O.A. No.260/00864 of 2015 vide order dated 03.01.2017, which is confirmed by this Court.

19. Before parting with the case, it is of worthy to note that the petitioners have not taken any steps to implead the selected candidates as parties to the writ petitions after publication of selection list on 15.03.2017. Thereby, the writ petition suffers from non-joinder of proper parties. More so, the very impugned order dated 03.01.2017 passed by the Tribunal in O.A. No.260/00864 of 2015 was also challenged in W.P.(C)

No.14037 of 2017 and this Court, vide order dated 13.12.2017, has dismissed the said writ petition. Thereby, the present writ petition filed against the self same order is not entertainable.

20. For all the above reasons, the writ petition merits no consideration and same is hereby dismissed. However, there shall be no order as to costs.

DR. B.R. SARANGI, J.

I agree.

**(B.P. SATAPATHY)
JUDGE**

**(DR. B.R. SARANGI)
JUDGE**

***Orissa High Court, Cuttack
The 3rd November, 2022, Alok/Subrat***