

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 21107 of 2020

Union of India and others

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Petitioners

Mr. P.P. Behera, CGC

Vs.

G. Srinivas Rao and others

.....

Opposite Parties

Mr. D.K. Panda, Adv.[O.P.No.1]

Ms. S. Mohapatra, Adv.

[O,P.Nos. 2 to 6, and 8 to 15]

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

26.10.2022

Order No.

10.

This matter is taken up through hybrid mode.

2. Heard Mr. P.P. Behera, learned Central Government Counsel appearing for the Union of India-Petitioners; Mr. D.K. Panda, learned counsel for opposite party no.1 and Ms. S. Mohapatra, learned counsel appearing for opposite parties no. 2 to 6 and 8 to 15.

3. The Union of India and its functionaries have filed this writ petition seeking to quash the order dated 04.02.2020 passed in O.A. No.609 of 2019 and O.A. No. 717 of 2019, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack has allowed the original application filed by the opposite parties to the extent that the case of those applicants in both the original applications, who had been notified/declared to be successful in the examination held on 06.05.2018 as per the result declared on 14.09.2018, will be considered by the petitioners for their selection and appointment against the post in question with consequential service benefits as per the provisions of law. It has been further clarified that the order has been passed taking into account the facts and circumstances in respect of the applicants in both the original applications who had challenged the decision of

the petitioners to re-conduct the examination held on 06.05.2018 in respect of some of the rooms.

4. The factual matrix of the case, in brief, is that the opposite parties had filed O.A. No. 609 of 2019 aggrieved by the decision of petitioner no.1 to have the examination for the post of Goods Guard cancelled so as to conduct the examination again for some of the applicants. The facts leading to filing of the said original application are that opposite parties had conducted a LDCE for selection for the post of Goods Guard on 06.05.2018 and its result was declared on 14.09.2018, by which the present opposite parties were shown to have qualified. But the examination in respect of candidates appearing in room nos.4, 5 and 7 were cancelled subsequently on 23.01.2019, while retaining the examination held in room nos. 1 and 6. Such partial cancellation of the examination was resorted to after the result of said examination had been published on 14.09.2018 and, as such, without assigning any reason. On 06.02.2019, the date of re-examination was notified to be held on 28.02.2019 and the candidates who will appear in the re-examination was also notified.

5. Being aggrieved, the opposite parties had filed the original applications in the first round disputing partial cancellation of the examination affecting them adversely and those original applicants were disposed of by the tribunal vide order dated 10.07.2019, by which the order dated 06.02.2019 for re-conduct of the examination was quashed and the matter was remitted to the petitioner no.1 to reconsider and take a decision after perusing the CCTV footages for the LDCE and the records. Accordingly, petitioner no.1 reconsidered the matter and passed the order dated 21.08.2019 confirming the earlier decision to cancel the examination in respect of room nos.4, 5 and 7 while retaining the

examination in room nos.1 and 6.

6. Being aggrieved by the aforesaid order, the opposite parties filed original application with a prayer to declare the order dated 06.09.2019 under Annexure-A/8 and order dated 12.09.2019 under Annexure-A/9 are non est in the eye of law and thereby quash the same by directing the petitioner no.1 to issue empanelment for promotion to the post of Goods Guard on the basis of the result published on 14.09.2018. Similar relief had also been sought in O.A. No. 717 of 2019. The opposite parties have also filed M.A. in the said original applications and, as such, after due adjudication, the tribunal in paragraphs-15, 16, 17, 18 came to the following conclusions:-

“15. It is clear from above observations that the Vigilance report did not disclose any specific malpractice and the reason why they recommended cancellation of the examination in Room Nos. 4, 5 and 7 whereas as per the preliminary report, similar malpractices were reported in all the rooms. Sr. Vigilance Officer excluded the Room Nos. 1 and 6 for the purpose of cancellation of the examination without assigning any reason for such recommendation made in his report. We also note that the order dated 21.8.2019 and 22.11.2019 passed by the Respondent No. 1 did not clearly mention if any assessment of the examination in respect of the examination in the Room Nos. 1 and 6 was done before arriving at the finding confirming the decision based on the report of the Sr. Vigilance Officer.

16. For the reasons discussed above, we are of the considered opinion that based on the materials on record, it is difficult to agree with the contentions of the respondents that there were malpractices in the examination in Room Nos. 4, 5 and 7, which has compromised the examination in these rooms to the exclusion of the Room Nos. 1 and 6. Taking into account the facts that there was no mention of any complaint from anyone after conduct of the

examination on 6.5.2018 till declaration of the result on 14.9.2018 and that the Vigilance has not reported any irregularity in the examination till 10.1.2019 i.e. about more than three months after declaration of the result on 14.9.2018 without explaining the reason for such delay, we are of the view that the irregularities reported were not such as to warrant cancellation of the examination in Room Nos. 4, 3 and 7 after more than three months of declaration of the results on 14.9.2018. Further, it is also noticed that no independent inquiry involving the stakeholders and witnesses was conducted by the authorities before deciding to cancel the examination in three rooms out of five rooms long after declaration of the result.

17. The applicants had prayed for a direction to stay the conduct of the reexamination scheduled to be held on 28.12.2019. We did not accept such a prayer as neither the order dated 22.11.2019 nor the order dated 3.12.2019 has been challenged in the OA. By passing the order dated 22.11.2019, the respondent No.1 has modified his earlier order dated 21.8.2019 taking into account the order dated 10.7.2019 of this Tribunal.

18. In view of the above discussions, both the OAs (No. 609/19 and 717/19) are allowed to the extent that the case of those applicants in both these OAs, who had been notified/ declared to be successful in the examination held on 6.5.2018 as per the result declared on 14.9.2018, will be considered by the respondents for their selection and appointment against the post in question with consequential service benefits as per the provisions of law. It is made clear that this order has been passed taking into account the facts and circumstances in respect of the applicants in both these OAs who had challenged the decision of the respondents to re-conduct the examination held on 6.5.2018 in respect of some of the rooms. There will be no order as to cost.”

7. Mr. P.P. Behera, learned Central Government Counsel appearing for the Union of India-Petitioners contended that since there was irregularity in holding of the examination, the tribunal

has committed gross error in passing the order impugned in not considering such facts. Therefore, the order so passed by the tribunal cannot sustain in the eye of law.

8. Mr. D.K. Panda, learned counsel for opposite party no.1 and Ms. S. Mohapatra, learned counsel appearing for opposite parties no. 2 to 6 and 8 to 15 vehemently contended that if some irregularities had been committed while conducting the examination in room nos.4, 5 and 7, for that purpose the examinees of room nos.1 and 6 cannot be put to difficulties. It is contended that the entire action has been taken pursuant to the vigilance report of Senior Vigilance Officer and, as such, the tribunal has considered the same and passed the order impugned. Therefore, no illegality or irregularity has been committed by the tribunal so as to warrant interference by this Court.

9. Having heard learned counsel for the parties and after going through the records, this Court finds that the vigilance report which was produced before the tribunal did not disclose any specific malpractice and the reason why they recommended cancellation of the examination in room nos.4, 5 and 7, whereas as per the preliminary report, similar malpractice were reported in all the rooms. The Senior Vigilance Officer excluded the room nos. 1 and 6 for the purpose of cancellation of the examination without assigning any reason for such recommendation made in his report. As such, the orders dated 21.08.2019 and 22.11.2019 passed by petitioner no.1 did not clearly mention if any assessment in respect of the examination in room nos. 1 and 6 was done before arriving at the finding confirming the decision based on the report of Senior Vigilance Officer. Thereby, the tribunal has opined that on the basis of the materials available on record, it is difficult to agree with the contentions of the petitioners that there were malpractices

in the examination in room nos. 4, 5 and 7, which has compromised the examination in those rooms to the exclusion of room nos.1 and 6. If that be so, in that case also, the tribunal taken into consideration the further examination to be conducted by the authority and after due adjudication allowed O.A. No.609 of 2019 and O.A. No. 717 of 2019 to the extent that the case of those applicants in both the original applications, who had been notified/declared to be successful in the examination held on 06.05.2018 as per the result declared on 14.09.2018, will be considered by the petitioners for their selection and appointment against the post in question with consequential service benefits as per the provisions of law.

10. In the above view of the matter, this Court does not find any error apparent in the order impugned passed by the tribunal so as to cause interference with the same. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

Ashok/Debasis