

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 23416 OF 2022

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

AFR Arup Kumar Pati Petitioner

-Versus-

Union of India & Ors Opp. Parties

For petitioner : M/s. C.P. Sahani, P.K. Samal,
B.K. Samal & D.K. Mohanty,
Advocates

For opp. parties : Mr. D.R. Bhokta,
Central Government Counsel

P R E S E N T:

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

DECIDED ON : 17.10.2022

DR. B.R. SARANGI,J. The petitioner, by way of this writ petition, seeks to quash the order dated 10.03.2022 passed in O.A No.570 of 2021, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack, has dismissed the

Original Application on the ground of territorial jurisdiction granting liberty to the petitioner to approach the appropriate forum of law, if so advised.

2. The factual matrix of the case, in brief, is that the Ministry of Railways, Govt. of India issued one centralized notification on 03.02.2018 for recruitment to the posts of Assistant Loco Pilot & Technicians. The petitioner, having satisfied the eligibility criteria, applied for the post of Technician Gr.-III through online, but inadvertently his name was typed as 'Arup Pati' in place of 'Arup Kumar Pati'. The opposite parties entertained his application and issued call letter for the 1st stage of Computer Based Test, which was held on 29.08.2018 at Academy of Business Administration, Harida, Kuruda, Balasore, Odisha. Since there was mistake in his name in the application form, he brought to the notice of the departmental authorities and submitted all the required documents for rectification of the mistake. Consequentially, the opposite parties took the Form-3A from him for required correction during the 1st stage of examination, i.e., Computer Based Test.

2.1 The petitioner, having qualified in the 1st stage of Computer Based Test, was issued with call letter by the opposite parties for the 2nd stage of Computer Based Test, which was held on 21.01.2019. He appeared the 2nd stage of Computer Based Test and became successful by obtaining 52.08 normalized marks in Part-A. As per the method of recruitment, the mark obtained in Part-B in the 2nd Stage of Computer Based Test is only qualifying in nature and the mark obtained in Part-A has to be taken for preparation of merit list. Thereafter, the opposite parties issued call letter for document verification and medical examination, which was scheduled to 18.06.2019. When he appeared on the schedule date before opposite party no.2, his documents were verified and he was asked to submit one affidavit as per the instruction at Para-(xx) of Annexure-A/6 before his medical examination. Accordingly, he submitted an affidavit of the date of 10.07.2019 and he was told by the authorities that they will intimate him later on regarding his medical examination.

2.2 In the above regard, since no communication was made to him, he repeatedly approached the

departmental authorities. But he came to know that in the month of October, 2021 his candidature was rejected vide reject list dated 09.03.2021 due to mismatch of his name in the online application and Class-X certificate. Therefore, finding no other way, he approached the Central Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.570 of 2021, which was dismissed vide order dated 10.03.2022 on the ground of territorial jurisdiction. Hence, this writ petition.

3. Mr. P.K. Samal, learned counsel appearing for the petitioner vehemently contended that a part of cause of action arose within the State of Odisha. Meaning thereby, the petitioner, being a resident of Odisha, submitted his application from the State of Odisha and appeared in the 1st stage of Computer Based Test, which was held on 29.08.2018 at Academy of Business Administration, Harida, Kuruda, Balasore, Odisha, in which he was eligible for 2nd stage of Computer Based Test. More so, the advertisement, which was issued by the Ministry of Railways, Govt. of India, was for a centralized recruitment and there was no provision for

the petitioner to give any choice for any Railway Recruitment Board at the time of submission of his application. But, after qualifying the 1st stage of Computer Based Test held at Balasore, Odisha, he was asked to give his choice of Railway Recruitment Board considering the number of posts in the category available at different Railway Recruitment Boards, in response to which he made his choice for RRB, Chennai. Since a part of cause of action had arisen in the State of Odisha, the Central Administrative Tribunal, Cuttack Bench, Cuttack has jurisdiction. It is further contended that as per Rule-6(1)(ii) of the Central Administrative Tribunal (Procedure) Rules, 1987, an application shall ordinarily be filed with the Registrar of the Bench within whose jurisdiction the cause of action, wholly or in part, has arisen. More so, the East Coast Railway comes under the Ministry of Railways, Union of India. Therefore, the Central Administrative Tribunal, Cuttack Bench, Cuttack has jurisdiction to entertain the O.A. filed by the petitioner. Thereby, rejection of O.A. No.570 of 2021, vide order dated 10.03.2022, on the ground of territorial

jurisdiction is absolutely misconceived and, therefore, he seeks for quashing of the same.

4. Mr. D.R. Bhokta, learned Central Government Counsel appearing for the opposite parties justifies the order passed by the Tribunal contending that the Tribunal lacks territorial jurisdiction to entertain the O.A. filed by the petitioner in view of specific condition stipulated in Clause-18.4 of the Centralized Employment Notice (CEN) No.01/2018 under Annexure-2 that any legal issues arising out of the CEN shall fall within the legal jurisdiction of respective Central Administrative Tribunals under which the RRB concerned is located. Thus, it is contended that since the petitioner had opted for RRB, Chennai and impugned order rejecting his candidature was passed by the RRB, Chennai, the Central Administrative Tribunal, Chennai Bench, Chennai has jurisdiction over the matter and, as such, the Central Administrative Tribunal, Cuttack Bench, Cuttack has rightly dismissed the O.A. on the ground of lack of jurisdiction.

5. This Court heard Mr. P.K. Samal, learned counsel appearing for the petitioner and Mr. D.R. Bhokta, learned Central Government Counsel appearing for the opposite parties in hybrid mode. Examining the materials on record and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. There is no iota of doubt with regard to the stipulation made in Clause-18.4 of the Centralized Employment Notice (CEN) No.01/2018 that any legal issues arising out of the CEN shall fall within the legal jurisdiction of respective Central Administrative Tribunal under which the RRB concerned located. There is also no doubt that the said CEN, vide Annexure-2 to the writ petition, was issued by the Government of India, Ministry of Railways, Railway Recruitment Boards. There is no dispute with regard to the fact that for the 2nd stage of Computer Based Test, the petitioner had opted for RRB, Chennai. Whether such exercise of option by the petitioner and putting a condition in the CEN issued by the Government of India, Ministry of Railways, Railway

Recruitment Boards vide Annexure-2 will *ipso facto* disentitle him to invoke the jurisdiction of the Central Administrative Tribunal, Cuttack Bench, Cuttack is the sole question to be decided in this writ petition.

7. At the outset it may be noted with emphasis that the term 'railway administration', which has been defined in Section-3 (6) of the Indian Railways Act, 1890 to mean the Manager of the railway, does not warrant the inference that a suit against the railway administration can be brought against the Manager of that railway.

8. In ***State of Kerala v. The General Manager Southern Railway, Madras***, AIR 1976 SC 2538, the apex Court held as follows:

"We have to bear in mind the distinction between the owner of the railway, namely the Union of India, and the authority which actually runs the railway and to whom duties have been assigned for this purpose by the Act. The manager of the railway under the Act is such authority. When, however, liability is sought to be fastened on the railway administration and a suit is brought against it on that account, the suit, in our opinion, would have to be brought against the Union of India because it is the Union who owns the railway and who would have the funds to satisfy the claim in case decree is awarded in such suit."

As such, the petitioner has impleaded the Union of India represented through its General Manager, East Coast Railway, Bhubaneswar as opposite party no.1. Since the Union of India has been made as a party and the very same Government of India has issued the aforesaid CEN, even though petitioner had chosen RRB, Chennai, but a part of cause of action having arisen within the territorial jurisdiction of Odisha, mere putting a restriction in the CEN cannot take away the rights of the petitioner to approach the Central Administrative Tribunal, Cuttack Bench, Cuttack.

9. Furthermore, Rule-6 of Central Administrative Tribunal (Procedure), Rules, 1987 reads as follows:

“6. Place of filing applications.- (1) An application shall ordinarily be filed by an application with the Registrar of the Bench within whose jurisdiction. (i) the applicant is posed for the time being, or (ii) the cause of action, wholly or in part, has arisen: Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.”

A bare reading of Rule-6(1)(ii) of the Central Administrative Tribunal (Procedure) Rules, 1987, it is made clear that within whose jurisdiction the cause of action, wholly or in part, has arisen, the said Bench will have jurisdiction to entertain an application.

10. In **Raizada v. Gorakhram**, AIR 1964 SC 1348, the apex Court held that the defendant by his defence cannot force the plaintiff to choose a forum different from one chosen by him.

11. In **Dwarka Prasad Agarwal v. Ramesh Chandra Agarwal**, (2003) 6 SCC 220, while considering the scope of Section 9 of the Code of Civil Procedure with regard to jurisdiction, the apex Court held that Court would normally lean in favour of construction, which would uphold retention of jurisdiction of the civil court. The burden of proof in this behalf shall be on the party who asserts that the civil court's jurisdiction is ousted. Similar view has also been taken by the apex Court in **Sahebgouda v. Ogeppa**, (2003) 6 SCC 151 and

Bhagubhai Dhonabhai v. State of Gujarat, (2007) 4 SCC 244.

12. In ***Bhagubhai Dhonabhai***, as mentioned supra, the apex Court held that a party having a grievance must have a remedy. Access to justice is a human right. When there exists such a right, a disputant must have a remedy in terms of the doctrine *ubi jus ibi remedium*.

13. So far as territorial jurisdiction of the Court is concerned, it is to be seen whether any part of the cause of action has arisen within the State of Orissa. The cause of action has been defined as every fact, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. Right to invoke Article 226 of the Constitution of India to enforce fundamental rights and other legal rights against the State or authority or its agency is a constitutional right. Such right should not be made illusory or unenforceable upon narrow construction of the concept of cause of action.

14. In **Chandrama Bhusan Sarangi v. Union of India and others**, 2011 (I) ILR-CUT 398, this Court held that High Court can exercise power to issue writ, direction or order for enforcement of any of the fundamental rights conferred by Part-III of Constitution or for any other purpose, if cause of action wholly or in part has arisen within the territorial jurisdiction of High Court. The expression 'cause of action' means bundle of facts which petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, question of territorial jurisdiction must be decided on facts pleaded in petition. Similar view has also been taken by this Court in **Girish Mohanty v. Union of India and others** (O.J.C. No. 2607 of 2001 disposed of on 03.03.2015).

15 In **Nawal Kishore Sharma v. Union of India**, (2014) 9 SCC 329, the apex Court categorically held that cause of action partly arose at his native place High Court within whose territorial jurisdiction, he received the letter has jurisdiction to entertain the application. Further it is held that as cause of action for

the purpose of Article 226 (2) of Constitution of India must be assigned the same meaning of cause of action as given under Section 20 (c) of the Code of Civil Procedure, 1908. In that view of the matter, since all the correspondences have been made in the local address of the petitioner, which is within the territorial jurisdiction of this Court and part of cause of action arose within State of Orissa, this Court has got jurisdiction to entertain this application. Similar view has also been taken in ***Subhaya Prusty v. Union of India and others***, 2016 (I) ILR CUT 738.

16. It is of relevance to mention here that the Central Administrative Tribunal (Procedure) Rules, 1987 has been framed in exercise of powers conferred by Clauses (d), (e) and (f) of Sub-section (2) of Section 35 and Clause (c) of Section 36 of the Administrative Tribunals Act, 1985 (13 of 1985). Thereby, it has got statutory force and as a consequence thereof, if the statute prescribes under Rule-6 of Central Administrative Tribunal (Procedure) Rules, 1987 the place of filing application, where cause of action wholly

or in part has arisen, in that case by putting a condition in an advertisement such statutory power cannot be taken away and such fact should not have been lightly considered by the Tribunal. More so, when the Union of India, which is the owner of the Railway and is the authority which actually runs the Railway and to whom duties have been assigned for this purpose by the Act, has been impleaded as a party, in view of an inequitable and impracticable condition stipulated in the advertisement, if the petitioner is relegated to the jurisdiction of the Central Administrative Tribunal, Chennai, he will be gravely prejudiced. Even though reliance has been placed by the Tribunal on the judgment of the High Court of Delhi in **Ex. Rect./Gd Vinod Kumar v. Union of India** and the judgment of the High Court of Karnataka in **Narayan Swamy G.V. v. Union of India**, 1998(5) Kar.L.J. 279 and the judgment of the apex Court in **Oil and Natural Gas Commission v. Utpal Kumar Basu**, the same may not have application in the peculiar circumstances of the case at hand.

17. Therefore, in our considered opinion, the Central Administrative Tribunal, Cuttack Bench, Cuttack has jurisdiction, as the Union of India has been made as party to the proceeding and a part of cause of action had arisen within the territory of the State of Odisha, as per Rule-6(1)(ii) of the Central Administrative Tribunal (Procedure) Rules, 1987. Thereby, the order dated 10.03.2022 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.570 of 2021 cannot be sustained and is hereby quashed, The matter is remitted back to the Central Administrative Tribunal, Cuttack Bench, Cuttack for fresh adjudication of the grievance of the petitioner on merits.

18. The writ petition is thus allowed. However, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

G. SATAPATHY, J. I agree.

(G. SATAPATHY)
JUDGE

Orissa High Court, Cuttack
The 17th October, 2022, Alok