

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) No.449 of 2014 & CONTC(CPC) No.60 of 2014

In WPC(OAC) No.449 of 2014

Manas Ranjan Jena *Petitioner*
Mr. Manoj Kumar Mohanty, Adv.
-versus-
State of Odisha and Ors. *Opposite Parties*
Mr. H.K. Panigrahi, Adv.
(SAT (Cuttack))

In CONTC (CPC) No.60 of 2014

Manas Ranjan Jena *Petitioner*
Mr. Manoj Kumar Mohanty, Adv.
-versus-
P.K. Mohapatra, Principal, *Opposite Parties*
Secy.,-cum- Spcl. Relief
Commissioner, Odisha,
Bhubaneswar and Anr..
Mr. H.K. Panigrahi, Adv.
(SAT (Cuttack))

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.
04.

ORDER
21.12.2022

1. This matter is taken up through hybrid arrangement.

In WPC(OAC) No.449 of 2014

2. In this Writ Petition, the Petitioner seeks to quash the Government Order No.48 dated 15.01.2013 under Annexure-2 issued by the Opposite Party No.3/ Special Relief Commissioner and Ex-Officio, Special Secretary to

Government of Odisha, Revenue and Disaster Management Department. The petition calls into question the action of Opposite Party No.3 in relaxing the sub-rule (6) of Rule-7 of the Odisha State Port Engineering (Boat Crew) Recruitment Rules, 2011 that requires the candidates to possess training completion certificate from the Crew Training Institute of the Government.

In CONTC(CPC) No.60 of 2014

3. The Petitioner has also filed this Contempt Petition against the Opposite Parties/ Contemnors for violating the order dated 05.02.2014 passed by the Tribunal in O.A. No.449(C) of 2013 by giving appointment to 43 candidates who have not passed the Crew training vide order No.191 dated 06.02.2014 of the Opposite Party No.1 pursuant to the Advertisement dated 14.02.2013 under Annexure-4.

I. Facts of the case:

4. The Government of Odisha in exercise of power conferred by the Proviso to Article 309 of the Constitution of India promulgated a rule called as Odisha State Port Engineering (Boat Crew) Recruitment Rules, 2011 (hereinafter referred to as "the Rules" for brevity) vide Notification dated 08.11.2011 for

regulating the Method of Recruitment and Conditions of Service of the Persons appointed to the Odisha State Port Engineering (Boat Crew) Service in the Office of the Special Relief Commissioner, Board of Revenue, Odisha. Under Sub-rule (6) of Rule 7, it has been prescribed that the candidate must possess the training completion certificate from the Crew Training Institute by the Government.

5. The Government of Odisha exercising its power under Rule 16 of the said rule vide Order No.48/SR dated 15.01.2013 relaxed Rule 7(6) of the Rules stating that it is necessary in the public interest to relax sub-rule (6) of Rule-7 that required the candidates to possess training completion certificate from the Crew Training Institute of the Government in order to ensure fair competition by involving sufficient number of candidates.
6. After relaxation of Sub-rule (6) of Rule 7 of the said Rules, the Opposite Party No.1 published an Advertisement bearing No.114-F dated 14.02.2013 inviting application for 43 posts of Boat Khalasi. In Clause-4 of the said advertisement in respect of the eligibility criteria the passing of Crew Training as per Sub-rule (6) of Rule-7 of the Rules has not been provided.

7. The relaxation order dated 15.01.2013 under Annexure-2 and the Advertisement dated 14.02.2013 under Annexure-4 was challenged by one Manoj Kumar Lenka in O.A. No.687(C) of 2013 before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter referred to as “the Tribunal” for brevity). The Tribunal vide order dated 14.02.2013 was pleased to grant stay on the operation of the said relaxation order under Annexure-2.
8. The Petitioner is a Graduate and has passed the Crew Training from the Crew Training Institute, Chandbali. The Petitioner was selected in a due process of selection as a Boat Khalasi for Tirtol Block and he was given appointment on Contractual basis vide Order No.411 dated 15.07.2013. Pursuant to the said appointment order the Petitioner joined as Boat Khalasi in Tritol Block on the same day on contractual basis and he is working as Boat Khalasi in Tritol Block till today.
9. While the Petitioner was continuing in service, he made an application for the post of Boat Khalasi. The Petitioner was called for swimming test and written test vide Roll No.DD-030/0369. After the written test for the post of Boat Khalasi, the Government of Odisha

published a list of 171 candidates for the via voce test wherein the Petitioner's name had featured.

II. Submissions on behalf of the Petitioner:

10. Learned Counsel for the Petitioner submitted that the order of relaxation of rule 7 (6) under Annexure-2, the Advertisement dated 14.02.2013 and the process of selection and publication of the list of candidates selected for via-voce test under annexure-16 are quite illegal, arbitrary and contrary to law and as such the order of the Government under Annexure-2, the Advertisement under Annexure-4 and the list of the selecting candidates for via-voce test under Annexure-16 are liable to be quashed.

11. He further submitted that from the year 2002 to 2012 as many as 603 candidates have passed the Crew Training and not a single candidate has been engaged permanently as Boat Khalasi in the Government of Odisha, Revenue and Disaster Management Department. Most of them are working on contractual basis till date. But, on a false and frivolous ground, only to accommodate their own people, the Opposite Parties have relaxed the Rule 7(6) of the Rules on the pretext that sufficient candidates with Crew Training certificates are not available. The said reason assigned

by the Government is not at all sustainable and as such the order of relaxation under Annexure-2 is liable to be quashed.

12. The advertisement was published on 14.02.2013 under Annexure-4 in which applications are invited for 43 posts of Boat Khalasi. Subsequently, order dated 14.03.2013 has been passed by the Tribunal in O.A. No.686 (C) of 2013 under Annexure-5 granting stay operation of the said relaxation clause. But, illegally and arbitrarily, the Opposite Parties have called for the candidates who have not passed Crew Training and they were called for Swimming test on 24.02.2013 and written test on 01.04.2013. The said action of the Opposite Parties is in violation of the stay order granted by the Tribunal under Annexure-5. The written test was not held properly.

13. It was also submitted that though the Petitioner had made a representation to Opposite Party No.3 on 25.10.2013, but no action was taken and the candidates without Crew Training certificates were allowed to appear in the selection test.

III. Submissions on behalf of the Opposite Party Nos.1, 3 & 4:

14. Learned Counsel for the Opposite Party Nos.1, 3 and 4 submitted that the Petitioner had no valid Crew Training Certificate on the date of submission of his application for the post of Boat Khalasi (Male). The applications for the post of Boat Khalasi were received from 14.02.2013 to 08.03.2013. The Petitioner has taken the Crew training from 01.06.2012 to 30.03.2013 and the certificate has been issued on 25.09.2013. Hence the Petitioner's application could have been rejected on this ground if there were no relaxation.

15. He further submitted that the said Rule was relaxed by Government of Odisha to allow the temporary Khalasis as well as other fresh candidates to appear in the Selection Test. Even though a significant number of persons are getting certificates from the Crew training Institute, there are very few who had applied for the said post and/or were engaged as temporary Khalasi. Further, there were no Crew Training Certificate holder amongst the Schedule Tribe applicants and the certificates awarded by the Crew Training Institute are not recognized by Director General of Shipping or any

other registered body. Many of the Crew Training Certificate holders had also failed in the Swimming test.

16. It was contended by Learned Counsel for the Opposite Parties that the relaxation of 10 years in the upper age limit was given to the temporary Launch Drivers and temporary Khalasis who had completed 90 days of continuous service as temporary Launch Drivers and temporary Khalasis. Therefore, the relaxation in accordance to Rule 7(6) was given as there had been no recruitment of Khalasi under State Port Engineering Organization for more than 30 years.

17. It was further submitted that the Petitioner was not in service on the date of submitting his application. He was in service from 15.07.2013 to 30.11.2013 as per his statement. Further, the Petitioner has not given any proof of his engagement under State Port Engineering Organization, Special Relief every year.

18. The Written Test was conducted on 01.12.2013 in the Gallery No.5 of Barabati Stadium, Cuttack from 11.00 A.M to 12.00 Noon. As Written Test was conducted for one hour only at one place, there was no need to give serial numbers to the Answer Sheets. The answer sheets were checked by a Committee (Annexure-D). Arrangements were made for signature of candidates

during the Examination, but as the time period was short and the number of candidates were high, it was not possible to take signature of all the candidates who appeared in the Examination. Further, towards the end of Examination the Petitioner along with Sri Manoj Kumar Lenka created disturbances in the Examination Centre which was reported to Addl. Chief Secretary, Revenue and D.M. Department through Special Relief Commissioner (Annexure-E). There is no illegality and irregularities committed in the Written Test. As the Petitioner has failed to qualify for the viva voce examination he has come up with such allegations 60 days after completion of Written Test. The selection procedure is totally transparent as the swimming test is conducted by Fire Services, Government of Odisha independently. Written test and subsequent checking of answer sheet are done by another Committee and finally viva voce test was done by a third Committee and after each step the State Level Selection Committee was apprised of all the Development. Since the Petitioner appeared the examination, he cannot challenge the same.

- 19.** It was further submitted that there was no recruitment for the post of Khalasi for more than 30 years under

SPEO, Special Relief, Odisha. Hence, engagement of Crew Training Certificate holder permanently as Boat Khalasi does not arise. The Petitioner has also not raised any objection while appearing for the Swimming test and Written test even though the Petitioner had no Crew Training Certificate on the date of submission of the application.

III. Court's reasoning and analysis

20. On perusal of the abovementioned pleadings, this Court is of the view that the relaxation of the sub-rule (6) of Rule-7 of the Odisha State Port Engineering (Boat Crew) Recruitment Rules, 2011 was a policy decision on the part of the Government to enable more participation (in numbers) in the recruitment process. Moreover, the relaxation of 10 years in the upper age limit was given to the temporary Launch Drivers and Khalasis who had completed 90 days of continuous service. The relaxations were given only for the concerned recruitment period/session as there had been no recruitment of Khalasi under State Port Engineering Organization for more than 30 years.

21. It has been contended by Learned Counsel for the Opposite Parties that the said rule was relaxed by

Government to allow the temporary Khalasis as well as other fresh candidates to appear in the Selection Test. Moreover, even though there are significant number of persons who have certificates from the Crew training Institute, very few had applied for the post of Boat Khalasi and/or were engaged as temporary Khalasi. Further, there are no Crew Training Certificate holders amongst the Schedule Tribe applicants. The certificates awarded by the Crew Training Institute are also not recognized by Director General of Shipping or any other registered body. Many of the Crew Training Certificate holders have failed in the Swimming test. This Court finds force in the submission of the Opposite Parties.

22. The Tribunal took up the matter on 05.06.2013 and passed an order. The relevant portion has been extracted hereinunder for reference:

“Opposite Party No.1 may go ahead with the appointment of Boat Crew on ad hoc basis as per order No.48/SR, dated 15.01.2011 and the appointment of such Boat Crew shall be subject to outcome of the O.A. and in case the applicants succeed in such litigation those candidates appointed on ad hoc basis shall stand terminated and the applicants were appointed in their places. This shall also be reflected in appointment orders of those

selected in the meantime before issue of the appointment orders (Annexure-A)".

23. Insofar as the power of the Government to relax certain rules pertaining to any recruitment is concerned, this Court is of the view that the authority which has the power to specify the requirements and method of recruitment must be deemed to have the power to revise and substantiate the same in the wake of any policy decision. There is no prohibition in law preventing the State from revising the rules for selection as long as such a revision did not render any one of the otherwise eligible candidates ineligible to participate in the selection process. In the present case, the revision in question was only to enable some more candidates to participate in the selection process. The power to make such a revision is within the inherent power of the State. This position in law has been affirmed by the Supreme Court in *Rameshwar Nath Moudgil v. State of Punjab*¹ and *Jai Singh Dalal and Ors. vs State of Haryana and Anr.*²

24. Furthermore, the Petitioner did not possess any valid Crew Training Certificate on the date of submission of his application for the post of Boat Khalasi (Male). The

¹ W.P (C) 1464 of 1976

² 1993 Supp (2) SCC 600

applications for the post of Boat Khalasi were received from 14.02.2013 to 08.03.2013. The Petitioner had taken the Crew training from 01.06.2012 to 30.03.2013 and the certificate was issued on 25.09.2013. Therefore, the Petitioner had failed to attach the Crew Training Certificate in his application for the post of Boat Khalasi. However, despite such shortcomings, the Petitioner was allowed to appear in the written examination and swimming test. The swimming test was conducted from 04.11.2013 to 08.11.2013 giving due respect to the orders passed by the Tribunal. So, it can be construed that even though the Petitioner has challenged the legality of the relaxation order dated 15.01.2013, he has actually benefitted from the relaxation of the said rule.

25.In the present case, the Petitioner could not qualify the written examination and swimming test and hence, was not considered eligible to advance into further stages of the recruitment process. It is a settled position that the unsuccessful candidates cannot turn back and assail the selection process. The Petitioner took a calculated chance and appeared for the written examination and swimming test and only because the result not palatable to him, he cannot turn around and challenge the recruitment process.

26. The Petitioner participated in recruitment process conforming to the eligibility criteria provided in the advertisement dated 14.02.2013. Even though the Petitioner was aggrieved by the revision of Rule 7(6) of the Odisha State Port Engineering (Boat Crew) Recruitment Rules, 2011 and the irregularities in the written examination, he did not espouse his remedy. Instead, he participated in the recruitment process, and it was only upon being unsuccessful that he challenged the revision of Rule 7(6) and alleged bias and irregularities in the recruitment process in the writ petition. This was clearly not open to the Petitioner. The principle of estoppel would operate.

27. The law on the subject has been crystalized in several decisions of the Supreme Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla*³, the Supreme Court laid down the principle that

“....when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and

³ Appeal (civil) 3441-3446 of 2002

contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable."

28. In the case of ***Pradeep Kumar Rai v. Dinesh Kumar Pandey***⁴, the Supreme Court held that :

"Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted."

29. In the case of ***Ramesh Chandra Shah & Ors vs Anil Joshi***⁵, the Supreme Court observed:

"In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question

⁴ CIVIL APPEAL NO.6549 OF 2014

⁵ CIVIL APPEAL NOS. 2802-2804 OF 2013

the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

30. In the present case, the Petitioner alleged irregularities in the written examination after 60 days. Had the Petitioner cleared the tests, he wouldn't have raised any question or objection to the recruitment process or the methodology adopted by the Opposite Party. In other words, he took a chance to be selected in the written examination conducted by the Opposite Party on the basis of the advertisement dated 14.02.2013. This conduct of the Petitioner clearly disentitles him from seeking relief under Article 226 of the Constitution. To put it differently, by having appeared in the written test and taken a chance to be declared successful, the Petitioner will be deemed to have waived their right to challenge the advertisement and the procedure of selection.

31. Much has been argued by the Petitioner with respect to bias in the selection process. According to him, most of the candidates in the merit list were acquaintances of the Opposite Parties, particularly, Khirod Sindhu Mahanta

at Sl. No.46 and Krushna Ch. Behera at Sl. No.102 were working at the residence of Special Relief Commissioner, Shri P.K. Mahapatra. This Court finds absolutely no merit in this argument. In the instant case, the Government had issued a public advertisement for recruitment to the post of Boat Khalasi and merely because two applicants were working at the residence of Special Relief Commissioner, it cannot be said that the selection process suffers from illegalities on account of bias. This court is of the opinion that the Appointing Authority/Selection Committee is placed in a better position to ascertain the eligibility of the candidates and it has every justification to shortlist the deserving candidates for next phase of the recruitment process.

32. More appropriate for this present case would be an earlier decision in *Dr. G. Sarana v. University of Lucknow and Others*⁶, wherein a similar question had come up for consideration before a three-judge bench of the Supreme Court as the petitioner, after having appeared before the selection committee and on his failure to get appointed, had challenged the selection result pleading bias against him by three out of five members of the selection committee. He also challenged

⁶ AIR 1976 SC 2428

constitution of the committee. Rejecting the challenge, the Supreme Court had held:

"We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him.

It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

33. The aforementioned discussion and observation finds strength from the decision of the Supreme Court in

Union Public Service Commission v. M. Sathiya Priya⁷

wherein the Court held that:

“...the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules and the courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a court of appeal. The Hon’ble Court further observed that “This discretion has been given to the Selection Committee only, and the courts rarely sit as a court of appeal to examine the selection of a candidate; nor is it the business of the court to examine each candidate and record its opinion. Since the Selection Committee constituted by UPSC is manned by experts in the field, we have to trust their assessment unless it is actuated with malice or bristles with mala fides or arbitrariness.”

34.In *National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman*⁸, the Supreme Court held that the expert committee's finding should not be lightly interfered. It was held as follows—

“The function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. Where selection has been made by the assessment of relative merits of rival

⁷ (2018) 15 SCC 796

⁸ 1992 Supp (2) SCC 481

candidates determined in the course of the interview of candidates possessing the required eligibility and there is no rule or regulation brought to the notice of the Court requiring the Selection Committee to record reasons, the Selection Committee is under no legal obligation to record reasons in support of its decision of selecting one candidate in preference to another. Even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement."

35.In view of the above ratio, which is applicable, it is not necessary for this Court to delve further into the allegations and submissions based on assertion of bias and prejudice.

36.The selection made by an authority for appointment is not ordinarily open to judicial scrutiny because whether a candidate is fit for a particular post or not, has to be decided by the duly constituted Appointing Authority/Selection Committee which has the expertise on the subject. Since it lacks the expertise, it is not the function of the Court to hear appeals over the decisions of Selection Committees and to scrutinize the relative merits of candidates.

37.If a candidate despite being aware of any defect or infirmity in a process of selection appears at the examination for recruitment/interview by taking a calculated chance and finds the result of such examination/interview not palatable to him, he cannot turn around and subsequently contend that the process of examination/interview was either defective or unfair.

38.The cardinal principle pertaining to service jurisprudence is that it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been followed by the legislature or its delegate and to strike down as unreasonable a regulation or resolution merely on the ground that the policy enunciated and followed therein does not meet with the approval of the court in regard to its efficaciousness for implementation.

39.In the final analysis, this Court is of the opinion that the writ petition is devoid of merits for the foregoing reasons and is, accordingly, liable to fail. The challenge in this Writ Petition should be spurned, being hit by the doctrine of approbation and reprobation. The Writ

Petition is dismissed. Consequently, the CONTC (CPC) is also dismissed being dropped. No order as to costs.

(*Dr. S.K. Panigrahi*)
Judge

B.Jhankar

