



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P(C). No.26004 of 2022

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

Jyoti Sankar Baliarsingh **Petitioner**
-versus-

1. Union of India **Opp. Parties**

**2. Chief Personnel Officer, East
Coast Railway**

**3. Divisional Railway Manager,
East Coast Railway**

Advocates Appeared in this case

For Petitioner - Mr. N. R. Routray, Mr. J. Pradhan,
Mr. T.K. Choudhury, Mr. S.K.
Mohanty, Advocates

For Opp. Parties - Mr. S. Swain, Senior Panel Counsel
Mr. A. K. Roy, Senior Panel Counsel

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CORAM :

HON'BLE MR. JUSTICE KRISHNA SHRIPAD DIXIT
HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Judgment : 24.03.2026

PER KRISHNA S. DIXIT,J.

This Petition filed essentially under Article 227 of the
Constitution of India, other companion provision, namely, Article



226 having been ornamentally employed, seeks to call in question the Cuttack Central Administrative Tribunal's order dated 29.08.2022, whereby Petitioner's O.A. No.260/0001017 of 2012 has been negated. In the said O.A., he had called in question the order of OPs in denying engagement to him essentially on the grounds that he was over-aged; there was change of the Policy Guidelines; and there was no requirement of services of anyone much less the Petitioner.

2. Learned counsel appearing for the Petitioner submits that the first ground as to his client being over qualified was faltered by a Co-ordinate Bench of this Court in the earlier round of litigation, i.e., W.P.(C) No.3318 of 2018 disposed off on 12.07.2022, whereby matter was remitted to the Tribunal for consideration afresh; despite that the Tribunal glossed over the issue and that itself constitutes first infirmity on the face of record. Secondly, he submits that there was no change of Policy Guidelines and the Tribunal grossly erred in holding to the contrary in paragraph-5 of the impugned order. Thirdly, the Tribunal blind foldedly accepted the contention of OPs that there was no requirement of services of anyone much less the Petitioner. He draws our attention to the RTI information, which his



client has procured at the hands of OPs to the effect that *pendente lite* as many as 31 persons were engaged in Category-D as substitutes and therefore, the impugned order is liable to be voided.

3. Learned Senior Panel Counsel-Mr. Roy appearing for the OPs with equal vehemence makes submission in justification of the impugned order and the reasons on which it has been constructed. He tells that the Policy Guidelines were changed and that there was no requirement of services of the Petitioner. He turned the pages of the case papers in undertaking this exercise. Learned Panel Counsel tells us that now the Petitioner having been over-aged for employment, no relief can be granted in the changed circumstances.

4. Having heard learned counsel for the Parties and having perused the petition papers, we are inclined to grant indulgence in the matter as under and for the following reasons:-

4.1. The first contention of learned counsel for the Petitioner that no citizen can be denied the benefit of public employment or State largesse only on the ground that he is over-aged, has to be accepted in view of declaration of law by the Apex Court in ***Chandra Shekhar Singh v. State of Jharkhand***, 2025 INSC 372. A Co-



ordinate Bench of this Court, in W.P.(C) No.3318 of 2018 vide order dated 12.07.2022, had faltered the very same ground which the Tribunal had earlier assigned in denying relief to the Petitioner. That being the position, the Tribunal was not expected to gloss over the issue and therefore, as rightly submitted, this is the first error apparent on the face of the impugned order, which needs to be set at naught.

4.2. The second submission of learned counsel for the Petitioner that there was no change of Policy Guidelines, which governed the engagement of services of persons of the kind again needs to be countenanced, inasmuch as the Tribunal misconstrued the document as being different from the earlier one, when they were one and the same. This could have been ascertained just by turning the pages of the said documents that were produced in series. Thus, second lacunae in the impugned order, is demonstrated.

4.3. The last contention that there was no need for the services of Petitioner at all and therefore, the Tribunal rightly denied relief to him again cannot be accepted because during the long drawn legal battle, as many as 31 persons of the kind have been engaged by the OPs, which fact is vouched by the RTI answer, a copy whereof



avails at Annexure-13 of the petition. This document being a part of the record has not been disputed by the other side, rightly.

4.4. All the above being said, now, the relief as sought for by the Petitioner cannot be granted to him because he has turned to be over-aged for employment. That does not mean, no relief can be granted by the Court in the changed circumstances, Petitioner not being responsible for all that. Time and tide wait for none, goes the saying. If a scrupulous litigant is prejudiced because of long pendency of his litigation, Court can do justice on the principle of *ex debito justitiae* and an argument to the contrary would result into right thinking people losing faith in the judicial process. In matters like this, award of some monetary compensation would undo the injustice, by way of recompense. In our considered view, a sum of Rs.5,00,000/- (Rupees Five Lakh) only, if paid to the Petitioner, injustice done to him can be undone, at least to some extent.

4.5. We have taken the above view in W.P.(C) No.22397/2018 between ***Sudhansu Nanda v. Collector-cum-District Magistrate, Sambalpur***, disposed off on 20.01.2026. Paragraph 4.3 of the said judgment, which is relevant, reads as under:



“4.3. AS TO AWARDING DAMAGES BY WAY OF SECONDARY REMEDY WHEN PRIMARY REMEDY CANNOT BE GRANTED:

(i) Judgment & orders are not meant for photo framing. Courts and Tribunals do exist for maintaining the practical rights of citizens. They cannot turn away a worthy cause by quoting some jurisprudential theories. It was Justice Oliver Wendell Holmes of U.S. Supreme Court, who in **DAVIS v. MILLS**, 194 US 451 (1904) has observed as under:

“Constitutions are intended to preserve practical and substantial rights, not to maintain theories...”

An English Court in **Ashby v. White**, 92 ER 126, awarded damages for infringement of the right to vote, even in the absence of demonstrable damage when vote was intended to a candidate who had eventually won the election by majority. The Court acted on the maxim *injuria sine damno*. Since, right to appointment that had become concrete by the Tribunal’s order dated 05.09.2002, case of the petitioner stands on a higher footing. There is infringement of the right and there is prejudice caused to the petitioner because of denial of appointment. Thus, there is *injuria coupled with damage*.

(ii) When primary remedies in terms of orders that are entered after due adjudication, cannot be granted for one or the other reason, the Court or Tribunal cannot send back a victorious party in the legal battle, empty handed. All exercise should be undertaken to grant secondary remedy such as, damages, compensation or costs. This approach is not reflected in the impugned order of the statutory Tribunal and that would constitute an error apparent on the face of the record warranting interference of this Court.”

After all, all standard Books on Jurisprudence including the one by Amartya Sen’s ‘The Idea of Justice’ broadly support this view.

In the above circumstances, this Petition is allowed in a different form. A Writ of Certiorari issues quashing the impugned order of the Tribunal; Petitioner’s O.A. No.260/0001017 of 2012 having been partly favoured a Writ of Mandamus issues to OP No.1 to pay to the Petitioner a sum of Rs.5,00,000/- (Rupees Five Lakh)



only within eight (8) weeks, failing which the delay, if brooked, would carry an additional levy of Rs.500/- per day for the first thirty days and Rs.1,000/- for each of the days next following.

The additional levy component shall be recovered from the erring officials of department, personally.

Web copy of judgment to be acted upon by all concerned.

(Krishna Shripad Dixit)
Judge

(Chittaranjan Dash)
Judge

Orissa High Court, Cuttack
The 24th day of March 2026 /Madhusmita