

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE AMRITA SINHA
AND
THE HON'BLE JUSTICE BISWAROOP CHOWDHURY

WP.CT/4/2026

SHRI EROTU KURMA RAO **... PETITIONER**

VS.

UNION OF INDIA AND OTHERS **... RESPONDENTS**

For the petitioner	:	Mr. Gopala Binnu Kumar Mr. Samson Stephen
For the respondents	:	Mr. Rakesh Kumar
Heard on	:	September 02, 2026 & September 03, 2026
Reserved on	:	September 03, 2026
Judgment delivered on	:	September 07, 2026
Judgment uploaded on	:	September 07, 2026

AMRITA SINHA, J.

1. The order dated 18th September, 2025 passed by the learned Central Administrative Tribunal in O.A. No. 351/1669/A&N/2024 is impugned in the instant writ petition.
2. By the said order the Original Application filed by the petitioner stood dismissed. The learned Tribunal held that the

petitioner failed to intimate the details of his pending application for job in the post of Lower Grade Clerk immediately after joining the post of Peon. The petitioner failed to fulfill the condition mentioned in paragraph 2.1.2(i) of the Office Memorandum dated 17th August, 2016 issued by the Government of India, Ministry of Personnel, Public grievance and Pension (Department of Personnel and Training). The Tribunal held that the respondent authority rightly rejected the prayer of the petitioner for grant of Old Pension Scheme as per Office Memorandum dated 03rd March, 2023.

3. The facts of the case are that in response to a paper publication in May, 2002 inviting applications for filling up vacancy in the post of Peon, the petitioner applied for the same. He also applied for job in response to another paper publication for the post of Lower Grade Clerk in the year 2005.

4. The written test for the post of Peon was conducted in March, 2005. He was successful in the same and an appointment order was issued in his favour in the post of Peon on 12th September, 2006. The petitioner reported for duty before the Divisional Forest Officer, Diglipur on 15th September, 2006.

5. While discharging duties as Peon, the result of the recruitment process in the post of Lower Grade Clerk was published

in the year 2007. The petitioner was successful in the same and an appointment order was issued in his favour on 12th March, 2007.

6. The petitioner immediately tendered resignation in the post of Peon on 14th March, 2007 specifically disclosing that he got selected for appointment in the post of Lower Grade Clerk and he intended to join the said post. His resignation letter was forwarded by the Divisional Forest Officer, Diglipur to the Principal Chief Conservator of Forests on 15th March, 2007 and the same stood accepted vide order dated 20th March, 2007 without invoking any clause of Rules. He was relived from his duties of Peon with effect from the afternoon of 23rd March, 2007.

7. The petitioner joined the post of Lower Grade Clerk immediately thereafter on 27th March, 2007 and is serving uninterruptedly without any blemish. The appointment order of the petitioner in the post of Lower Grade Clerk clearly mentioned that he would be governed by the New Pension Scheme, 2004.

8. An Office Memorandum dated 03rd March, 2023 was published by the Government of India, Ministry of Personnel, Public Grievance and Pension (Department of Personnel and Training) providing one-time option to be covered under the CCS (Pension) Rules, 1972 (now 2021) to the Central Government civil employee appointed against a post or vacancy which was advertised/notified

for recruitment/appointment prior to the date of notification for New Pension Scheme that is 22nd December, 2003 and is covered under the New Pension Scheme on joining service on or after 01st January, 2004. Such option was to be exercised by the concerned government servant latest by 31st March, 2023.

9. The petitioner, on 08th August, 2023, applied in terms of the aforesaid Office Memorandum (OM) seeking coverage under the old CCS (Pension) Rules, 1972. His application stood rejected by the authority by communication dated 30th October, 2023 with the remark 'the government servant resigned from the post of Peon directly without applying for 'technical resignation'. Be it mentioned that in the same order of rejection, the prayer of one Shri D. Ganapathi Rao seeking coverage under CCS (Pension) Rules, 1972 was also rejected.

10. The petitioner challenged the order of rejection before the learned Tribunal by filing the Original Application. Being dissatisfied with dismissal of the same, the instant writ petition has been filed.

11. Specific submission of the petitioner is that the ground for rejecting his prayer is bad and liable to be set aside. It has been submitted that the resignation letter clearly disclosed that as he got another job, accordingly, he tendered his resignation. The petitioner

never suppressed his selection in the post of Lower Grade Clerk at the time of submitting his resignation in the post of Peon.

12. It has been contended that such resignation, being duly accepted by the employer, the ground for rejecting his prayer for granting benefit in terms of OM dated 03rd March, 2023, is liable to be set aside.

13. The OM dated 17th August, 2016 mentioning the guidelines for technical resignation has been placed before this Court. The clause for technical resignation mentions that resignation is treated as a technical formality where a government servant applied through proper channel for a post in the same or other department, and is on selection required to resign from the previous post for administrative reasons. The resignation will be treated as technical resignation if the conditions are met, even if the government servant has not mentioned the word 'technical' while submitting his resignation.

14. The said OM also prescribes that the benefit of technical resignation is admissible to government servant who has applied before joining the government service and on that account the application was not routed through proper channel subject to the condition that (i) the government servant should intimate the details of such application immediately on joining; (ii) the government

servant at the time of resignation should specifically make a request indicating that he was resigning to take up another appointment under the government for which he applied before joining the government service; (iii) the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel.

15. The applicability of the pension scheme as mentioned in OM dated 17th August, 2016 states that where government servants, who originally joined government service prior to 01st January, 2004, apply for posts in the same or other departments and on selection are asked to tender technical resignation, the past services are counted towards pension if the post is in a pensionable establishment.

16. According to the petitioner, as he disclosed the reason for resignation at the time of joining the new post, as such, his resignation ought to be treated as technical resignation and he ought to be provided the coverage under CCS (Pension) Rules, 1972 in terms of OM dated 03rd March, 2023.

17. It has been submitted that the aforesaid D. Ganapathi Rao whose prayer for coverage under CCS (Pension) Rules, 1972 stood rejected by the authority and affirmed by the learned Tribunal was

allowed by a Coordinate Bench of this Court vide judgment dated **18th December, 2025** passed in **WP.CT/47/2025, (D. Ganapathi Rao vs. Union of India and others (2025:CHC-PB:87-DB))**.

18. It has been submitted that the petitioner and the said D. Ganapathi Rao stand in the same footing. As D. Ganapathi Rao got selected in the post of Primary School Teacher within a very short period of his application, as such, he got a chance to tender his resignation from the post of Peon disclosing the details immediately thereafter. The petitioner prays that similar relief as granted in the case of D. Ganapathi Rao be also allowed in his favour.

19. Learned advocate representing the respondents opposes the submission of the petitioner. It has been submitted that the petitioner ought to have intimated the details of his prior pending application for job in the post of Lower Grade Clerk when he joined the post of Peon. As the petitioner failed to disclose such prior application, he would be governed by the New Pension Scheme and not the old CCS (Pension) Rules, 1972.

20. According to the respondents, the petitioner would be bound by all the rules and regulations mentioned in his order of appointment which mentions that, in respect of matters not specified in the order of appointment, his service shall be governed

by the relevant rules and orders applicable to employees of similar categories working under the Administration.

21. According to the respondents, disclosure of applications for job made prior to joining the post of Peon was obligatory on the part of the petitioner. As the petitioner failed to act in terms of the OM dated 17th August, 2016, he cannot be extended the coverage of the CCS (Pension) Rules, 1972 in terms of the OM dated 03rd March, 2023.

22. D. Ganapathi Rao (supra) interpreted the OM dated 17th August, 2016 and laid down that the disclosure ought to have been made within a reasonable period of time. The petitioner disclosed the fact of previous application only after he got selected for the job resulting in delay of nearly six months. Hence, the benefit extended to D. Ganapathi Rao ought not to be allowed in case of the petitioner.

23. The respondents pray for dismissal of the writ petition.

24. We have heard and considered the rival submissions made on behalf of both the parties and have perused the materials on record.

25. It appears from records that in response to the advertisement of vacancy published in the year 2002, the petitioner applied for the post of Peon. Before the selection process being finalized, he applied in response to the vacancy noticed published in the newspaper in the year 2005 for the post of Lower Grade Clerk. He got selected as

Peon in the year September, 2006 and joined the post. He also got selected in the post of Lower Grade Clerk in March, 2007.

26. On being selected in the post of Lower Grade Clerk in March, 2007 he tendered resignation in the post of Peon. According to the authority, at the time of joining the post of Peon, the petitioner ought to have disclosed that he also applied in response to an advertisement in the post of Lower Grade Clerk. On account of such non-disclosure, the benefit of extension of coverage under CCS (Pension) Rules, 1972, as per OM dated 03rd March, 2023, has been disallowed.

27. It is common knowledge that an unemployed youth files several applications simultaneously whenever a vacancy notice is published. Getting a job becomes the primary concern. There is no bar in applying for job in various departments at the same time. There is always uncertainty with regards to selection in a public recruitment process. One cannot vouch that he will be selected for the job in a recruitment process as and when he files application. An unemployed youth accepts the very first job offer where he is selected as the next one is always uncertain.

28. Here, the petitioner was lucky enough to be selected in both the recruitment processes applied by him. When he was serving in the post of Peon, he learnt that he got selected for the post of Lower

Grade Clerk. The petitioner opted to join the post of Lower Grade Clerk and, accordingly, tendered resignation in the post of Peon. He duly disclosed the ground for resignation in his letter of resignation. The said resignation letter was accepted.

29. At the time of joining in the post of Peon, the petitioner was never specifically informed that he ought to have disclosed the details of all other applications for job that he made. No document has been produced by the respondents to suggest that the appointment order in the post of Peon prescribes that the employee is required to disclose about all other pending applications for job made by the employee.

30. No document has been produced before this Court to show that the petitioner was intimated by his employer about his obligation to disclose that he applied for job elsewhere. A newly appointed employee is not supposed to know about all orders, circulars, OMs covering the field. Had there been such mandatory stipulation for disclosure, the employer should have brought the same to the notice of the employee.

31. The petitioner being unaware of such requirement did not disclose about his pending job application at the time of joining in the post of Peon. However, at the time of tendering resignation, he distinctly mentioned that as he got selected in the post of Lower

Grade Clerk and he intended to join the said post, he was tendering his resignation. The authority never raised any issue at that point of time.

32. Had the petitioner been intimated about his selection to the post of Lower Grade Clerk at an early date, he could have disclosed the same immediately after joining the post of Peon as was the case of D. Ganapathi Rao. The petitioner could not have professed that he would be selected for appointment as Lower Grade Clerk. Had he not been selected for the job of Lower Grade Clerk he would have continued in the post of Peon and in that case, he would have been eligible for the benefit of reverting to the old pension scheme in terms of OM dated 03rd March, 2023.

33. As the petitioner applied in response to a public advertisement of vacancy, there is no scope for any suppression or misrepresentation of fact by the petitioner. The OM dated 17th August, 2016 appears to be operative prospectively. It is evident from the opening paragraph of the said Office Memorandum that the same came to be published as the department continued to receive frequent reference on the issue of technical resignation. The parent OM in this regard appears to be the OM dated 17th June, 1965.

34. By merely retaining an Office Memorandum in the file does not serve the purpose. Any Government Order, Circular or OM

which deals with regular service issues, ought to be widely published so that the same remains in the knowledge of all concerned. It is an obligation on the part of the employer to bring to the notice of the employee the formalities, including the disclosures, required to be complied with by an employee immediately when he joins service. If the appointment order does not mandatorily specify the requirements and the obligations of disclosure, then it has to be taken that the same are directory in nature. Non-disclosure ought not to cause any disadvantage to the employee at a later date.

35. Here the cause of action of the petitioner to approach the Tribunal was the rejection of his prayer for extending coverage under CCS (Pension) Rules, 1972 in terms of OM dated 03rd March, 2023 by which one-time option scheme was floated by the Ministry. Till prior thereto the petitioner never faced any issue for not disclosing the details of his pending job application at the time of joining his earlier post of Peon. The petitioner could not have anticipated that such a one-time scheme would be floated by the authority during his service tenure.

36. OM dated 03rd March, 2023 has been published as a welfare measure of the employees who applied for appointment against the vacancy prior to 22nd December, 2003. Admittedly, the petitioner applied for the post of Peon in the year 2002 and got selected in the year 2006. It does not appear that there has been any mala fide

intention on the part of the petitioner in not disclosing his pending application for the post of Lower Grade Clerk in the year 2005 at the time of joining as Peon in September, 2006.

37. By the impugned order the learned Tribunal dismissed the prayer of the petitioner solely relying upon OM dated 17th August, 2016. The order of the learned Tribunal does not mention as to whether the said OM would be applicable retrospectively in respect of the appointment made in the year 2006.

38. The learned Tribunal ought to have appreciated the beneficial nature of the OM relying on which the petitioner sought coverage. Such strict and technical approach ought not to have been adopted for rejecting a welfare scheme meant for the benefit of the employees.

39. A Coordinate Bench of this Court in the matter of D. Ganapathi Rao (supra) took note of the order dated 04th September, 2025 of the Hon'ble Supreme Court in Special Leave Petition (Civil) 27139 of 2024 in the case of ***Shreya Kumari Tirkey vs. The State of Jharkhand and others*** wherein the Court held that procedure being a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The Court was pleased to set aside the impugned order of rejection passed in respect of D. Ganapathi Rao.

40. It appears that the petitioner and the said D. Ganapathi Rao (supra) more or less are similarly placed. The rejection order of D. Ganapathi Rao (supra) has been set aside by a co-ordinate Bench of this Court, albeit on a different ground. In the facts and circumstances of the said case the issue of retrospective application of the OM dated 17th August, 2016 was, however, not required to be urged. Here, the same becomes very relevant.

41. In case of interpretation of welfare Scheme both Courts and Government authorities should take a broad and pragmatic view and not a narrow and pedantic view so that the welfare object is fulfilled.

42. In view of the discussions made hereinabove, we are of the considered opinion that the authority applied a very strict and constrictive approach to consider the application of the petitioner seeking coverage under CCS (Pension) Rules, 1972 in terms of OM dated 03rd March, 2023. The entire purpose of the welfare scheme will be frustrated if such approach is adopted by the authority. The learned Tribunal also dealt the matter in an extremely myopic and restrictive manner and failed to interfere with the impugned order of rejection.

43. Accordingly, the Court is inclined to set aside the rejection order passed by the authority and the impugned order passed by

the learned Tribunal upholding the same. The respondent No.5 is directed to reconsider the prayer made by the petitioner seeking benefit in terms of OM dated 03rd March, 2023 without raising the issue of technical resignation. If the petitioner is found otherwise eligible for grant of benefit under the OM dated 03rd March, 2023, then necessary consequential follow-up steps shall be taken by the authority.

44. A reasoned decision shall be taken in the matter and communicated to the petitioner at the earliest but positively within a period of six weeks from the date of communication of this judgment.

45. WP.CT/4/2026 stands disposed of.

46. There shall, however, be no order as to costs.

47. All parties are directed to act on a server copy of this judgment duly downloaded from the official website of this Court.

(AMRITA SINHA, J.)

I agree.

(BISWAROOP CHOWDHURY, J.)