

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 832 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Sudeep Ranjan Sahoo, aged about 22 years, S/o Govinda Chandra Sahoo, S/o Purna Chandra Sahoo, Vill-Gadakana, PO/PS-Mancheswar, Dist.-Khurda, Odisha.

.....Applicant

VERSUS

1. Union of India represented through the Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, East Coast Railway, Samant Vihar, PO-Mancheswar, Bhubaneswar, Dist.-Khurda.
3. The Chief Personnel Officer, East Coast Railway, Samant Vihar, PO-Mancheswar, Bhubaneswar, Dist.-Khurda.
4. The Deputy Chief Personnel Officer (HQS), East Coast Railway, Mancheswar, Khurda.
5. The Deputy Commissioner, Rail Co-ordination & Dy. Secretary to Govt. Commerce & Transport Dept., Odisha, Bhubaneswar, Khurda.
6. The Chief Workshop Manager, Carriage Repairing Workshop, East Coast Railway, Mancheswar, Bhubaneswar, Dist.-Khurda.
7. The Workshop Personnel Officer, Carriage Repairing Workshop, East Coast Railway, Mancheswar, Bhubaneswar, Dist.-Khurda.
8. Govinda Ch. Sahoo, aged about 56 years, S/o Purna Chandra Sahoo.
9. Rama Sahoo, aged about 51 years, D/o Purna Chandra Sahoo.
10. Dolagovinda Sahoo, aged about 48 years, S/o Purna Ch. Sahoo.
11. Nanda Kishore Sahoo, aged about 42 years, S/o Purna Ch. Sahoo.
12. Babuli Ku. Sahoo, aged about 39 years, S/o Purna Ch. Sahoo.
13. Tuni Sahoo, aged about 45 years, W/o Jayadev Sahoo, D/o Purna Ch. Sahoo of Mangalabag, Cuttack.

Sl. No. 8 to 12 are of Vill -Gadakana, PO/PS-Mancheswar, Dist.-Khurda, Odisha.

.....Respondents

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.S.Barik, counsel

Heard & reserved on : 12.2.2020

Order on : 06.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this Original Application (in short OA) seeking the following reliefs:-

- “(i) To quash the order of rejection under Annexure A/7 dated 18.6.2015 and to direct the Respondents to provide employment assistance in lieu of acquisition of land belongs to his grandfather in terms of the RBE No.279/89 keeping in mind the order of the Hon’ble High Court of Orissa dated 09.04.2010 in OJC Nos. 24 and 26 of 2002 (Chindamani Sahoo and others –vs- Union of India and others) within a stipulated time to be fixed by this Hon’ble Tribunal.
- (iii) To pass any other order/orders as deemed fit and proper.”

2. The applicant had applied for employment under the respondent-railways as a land loser in accordance with the Railway Board circular dated 10.11.1989 RBE No. 279/89 (Annexure-A/1 of the OA) since the land to the extent of Ac 0.02 acre which was in the name of the applicant’s grandfather (Purna Chandra Sahoo) was acquired by the railways for their Mancheswar Railway Workshop for which a compensation amount of Rs. 5600/- was paid by the railways. It is the applicant’s case that similarly situated land losers had been allowed employment assistance for which the applicant approached the authorities on 24.9.2013 (Annexure-A/4) stating that no one from the family of Purna Chandra Sahoo had received the employment assistance and applicant’s grandfather’s name was included in the list of land losers (vide the list at Annexure-R/9 of the Counter at serial No. 6).

3. As the respondents did not take any action on the representation dated 24.9.2013 (A/4), the applicant had filed the OA No. 886/2013 which was withdrawn by him with liberty to file better application (Annexure-A/5). He filed the OA No. 1104/2014 which was disposed of vide order dated 29.4.2015 (Annexure-A/6) at the admission stage directing the respondents to consider and dispose of the representation dated 24.9.2013 (A/4). Accordingly, the respondent No. 3 has passed the order dated 18.6.2015 (Annexure-A/7) rejecting the case. Being aggrieved, the applicant has filed the present OA.

4. In the representation dated 24.9.2013, it is stated as under:-

“Sir, as per the promise no appointment was provided to my grand father as a land oustee, while providing such appointments to many of the family members whose lands were acquired for the above purpose. In this connection I place reliance on the order of the Hon’ble High Court of Orissa dated 09.04.2010 in OJC Nos. 24 and 26 of 2002 (Chintamani Sahoo and others Vrs Union of India and others) **copy enclosed for kind ready reference.**”

5. While rejecting the applicant’s case, it is stated in the impugned order dated 18.6.2015 (Annexure-A/7) as under:-

“The ROR of land in plot No.4685 and in Khata No.1027/26 was in the name of 15 persons including the name of the applicant’s grandfather (Purna Chandra Sahoo). Out of which an area Ax 0.002 dec of land stood in the name of the applicant’s grandfather was acquired on 15.11.1989 by the Govt. of Orissa and accordingly, the compensation of Rs.5600/- towards such acquisition was also paid to him.

Rly Board vide letter No-E(NG)11/82/RC1/95 dtd. 31.12.82/ 1.1.83 (Estt Srl No-322/87) issued instructions on appointment to son/daughter/ward/wife of a person displaced against on the Railways owing to large scale acquisition of land for Rly. Projects. In the said letter Railway Board categorically stipulated that the dispensation should be limited to the first recruitment or within a period of two years after the acquisition of the land, whichever is later. Subsequently, Rly Board vide letter No-E(NG)11/82/RC1/95 dtd 11.02.1988 clarified on connotation of term 'ward' in the aforesaid letter dated 01.01.1983 that the intention is that the provisions of the letter dated 01.01.1983 (as amended/clarified) should apply only to the displaced persons himself or his wife/son/daughter and not to others.

The process of providing employment assistance on rehabilitation scheme was completed giving with equal opportunity with due notification to all land losers of the concerned project in four different stages of selection/screening and candidates were given offer of appointment in Gr-D post. The entire process of employment assistance on rehabilitation scheme for Mancheswar Workshop was closed long back.

Neither the displaced person, Sri Purna Chandra Sahoo nor his wife/son/daughter had applied for the employment assistance on rehabilitation scheme within the stipulated period of two years from the date of acquisition of land i.e. 15.11.89. As the scheme of rehabilitation by way of giving Employment Assistance as grandson of Sri Purna Chandra Sahoo cannot be considered at this distant date."

6. Apart from the ground mentioned in the representation dated 24.9.2013, the applicant has also averred in the OA that the respondents have allowed employment assistance to the grandson of the land losers. Hence, taking a different view in case of the applicant violates the Article 14 and 16 of the Constitution of India and that the impugned rejection order did not consider the RBE No. 279/89 and the judgment of Hon'ble High Court in OJC Nos. 24 and 26 of 2002.

7. In the Counter, opposing the ground of applicability of the judgment of Hon'ble High Court to this case, it is stated as under:-

"That, further, employment assistance to the applicants in OJC No.24/2002 & 26/2002 Sri Chintamani Sahoo & Sri Sibendra Sahoo & another respectively have been given for acquisition of Khata No. 1027/26 and Plot No. 4635 in compliance of the Hon'ble High Court of Orissa's order dtd. 09.04.2010 wherein the Hon'ble High Court has specifically mentioned that "We make it clear that this order will not be a precedent in general." The copy of the order of the Hon'ble High Court is attached herewith as **Annexure-R/8.**"

8. It is further stated in the Counter that on the issue of employment assistance, a meeting with the State authorities was held on 2.9.1985 (copy of the proceeding at Annexure-R/2 of the Counter) in which it was decided that if there are a number of share-holders then all of them would be notified to apply for employment and the best among them would be selected and if there is no response, then the matter will be treated as closed. In the Counter, the following averments as under are also made:-

"That, subsequently, Railway Board vide letter No.E(NG)/1/82/PC1/95 dtd 11.02.1988 clarified the connotation of term 'ward' in the aforesaid letter dated 01.01.1983 that the intention is that the provision of the letter dated 01.01.1983 (as amended/clarified) should apply only to the displaced person himself or his wife/son/daughter and not to others. As the applicant is the grandson of Sri Purna Chandra Sahoo, hence he is not coming under the purview of 'Ward'. Therefore, the request of the applicant cannot be considered

at this distant date as the scheme of rehabilitation by way of giving Employment Assistance has been closed since long back following due procedure as stated above.”

9. Rejoinder has been filed by the applicant, stating that as the information at Annexure-R/1 of the Rejoinder, received by the applicant under the RTI Act reveals that in a number of cases, the grandson of the land loser has been allowed the benefit of employment assistance and the same was extended till 10.7.2014. In the Rejoinder the grounds in the OA are reiterated.

10. We have heard learned counsel for the applicant who also submitted his written notes, mainly reiterating the points made in the pleadings and urging that the benefit of the judgment dated 9.4.2010 of Hon’ble High Court in OJC Nos. 24 & 26 of 2002 (Annexure-R/8 of the Counter) should be allowed to the applicant. Learned counsel for the applicant also submitted that the ground that the grandson is not eligible for employment assistance under the scheme is incorrect in view of the information at Annexure-R/1 of the Rejoinder.

11. Learned counsel for the respondents was also heard who stressed on the averments in the Counter relating to the closure of the issue as per the proceeding of the meeting at Annexure-R/2 of the Counter and non-applicability of the judgment dated 9.4.2010 of Hon’ble High Court (Annexure-R/8 of Counter) since it is clearly observed that the judgment will not be a precedent as averred in para 4(xii) of the Counter. He also raised the ground of delay in filing the OA.

12. With due regard to the submissions by both the sides, it is necessary to consider the issue of delay. The applicant’s grandfather’s name is listed as one of land losers for Mancheswar railway workshop project in the letter at Annexure-R/9 of the Counter which was issued on 17.9.1993. The joint meeting whose proceedings are at Annexure-R/2 of the Counter, was held on 2.9.1985. From the Annexure-R/1 of the Counter which is dated 11.5.1982, it is clear that the land acquisition for the land of the applicant’s grandfather was taken up before 1982. What action was taken by the applicant’s grandfather or father to raise their claim for employment assistance as per the Railway Board circular dated 10.11.1989 (Annexure-A/1 of the OA) within a reasonable time after 10.11.1989 has not been mentioned in the OA. It would appear from the OA that the applicant approached the authorities with his representation dated 24.9.2013 (A/4) for the first time citing the benefit of the judgment dated 9.4.2010 of Hon’ble High Court (Annexure-R/8 of the Counter). There is no explanation for such delay in the OA and no separate application has been filed in this OA or in the OA No. 1104/2014 for condoning delay in approaching the Tribunal for his grievance.

13. The applicant claims the benefit of the judgment dated 9.4.2010 of Hon'ble High Court on OJC Nos. 24 & 26 of 2002 (Annexure-R/8 of the Counter). For that purpose, he should have approached the authorities within the time as stipulated under the Administrative Tribunals Act, 1985 or delay should have been explained as per the provisions of law. Hon'ble Apex Court in the case of **State of Uttar Pradesh and others Vrs. Arvind Kumar Srivastava and others, (2015) 1 SCC (L&S) 191**, while considering the issue of allowing benefit at par with the court judgment in similar cases has laid down the following principles as under:-

“22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma V. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

14. From the ratio of the aforesaid judgment of Hon'ble Apex Court, the case of the applicant is covered within the paragraph 22.2 of the judgment in view of the delay in approaching this Tribunal even while filing the OA No. 1104/2014 in the first round which was disposed of at admission stage without entering into merit of the case as observed in order dated 19.4.2014 (Annexure-A/6 of the OA). Hence, the order dated 18.6.2015 (Annexure-A/7) passed by the respondent No. 3 in compliance of the Tribunal's order, will not be considered to be a fresh cause of action in view of the judgment of Hon'ble Apex Court in

the case of C. Jacob vs. Director of Geology & Mining & Anr. reported in AIR 2009 SC 264, in which it was held as under:-

“8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of ‘acknowledgment of a jural relationship’ to give rise to a fresh cause of action.”

15. In view of the discussions above, we are of the view that the OA is barred by limitation under section 21 of the Administrative Tribunals Act, 1985 and it is liable to be dismissed on that ground alone.

16. However, on merit also the claim of the applicant in the OA lacks merit. The applicant’s reliance on the judgment dated 9.4.2010 of Hon’ble High Court (Annexure-R/8 of the Counter) is not tenable in view of the observations in paragraph 6 of the judgment as under:-

“We make it clear that this order will not be a precedent in general.”

No authority has been cited on behalf of the applicant to show how the aforesaid judgment can be applied to his case in view of the above observations.

17. In addition, the contentions of the respondents in the Counter in para 4(xv) which is extracted in paragraph 8 of this order, has not been contradicted by the applicant. If such an interpretation is accepted, then the applicant, being the grandson of the land loser, cannot be considered to be his ward so as to entitle him for the employment assistance as per the circular at Annexure-A/1 of the OA. The applicant has cited that in some cases grandsons of some of the land losers have been appointed under the scheme as shown in the Annexure-R/1 of the Rejoinder. If such an appointment has been given to grandson of land losers, then it is against the circulars of the Railway Board as contended at para 4(xv) of the Counter and such wrong decision in case of some persons will not entitle the applicant for such wrong and incorrect decision as well. It is the settled law that the Article 14 of the Constitution of India cannot be invoked for claiming equal treatment in respect of an illegal benefit allowed wrongly to another person.

18. In view of the discussions above, we are of the view that the OA is liable to be dismissed both on the ground of delay/limitation and on merit as well. Accordingly, it is dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

