



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O. A. NO. 1823 OF 2016

M-A-213/2017

In the matter of:

An application under Section 19 of
the Administrative Tribunal Act,
1985;

And

In the matter of:

1. Chandi Das Khan, son of
Sambhunath Khan, aged about
34 years, residing at Village-
Kashpukur, P.O. Torkona, P.S.
Indas, District- Bankura, Pin-
713 423, West Bengal.
2. Chiranjit Hati, son of Samir Hati,
aged about 23 years, residing at
Village-Kashpukur, P.O.
Torkona, P.S. Indas, District-
Bankura, Pin- 713 423, West
Bengal.
3. Sk. Abdur Rahim, son of Sk.
Abdur Rahaman, aged about 32
years, residing at Village and
P.O. Biur, P. S. Patrasayer,
District-Bankura, Pin- 722 206,
West Bengal.

4. Nasiruddin Molla, son of Somsur Molla, aged about 44 years, residing at Village- Manderpur, P.O. Kaunta, P.S. Madhabdihi, District-Burdwan, Pin- 713 423, West Bengal.
5. Atanu Hazra, son of Monoranjana Hazra, aged about 26 years, residing at Village and P.O. Uchalan Bharale Para, P.S. Madhabdihi, District-Burdwan, Pin- 713 427, West Bengal.
6. Chandan Mohanta, son of Rai Charan Mohanta, aged about 30 years, residing at Village-Narrah, P.O. Akui, P.S. Indas, District-Bankura, Pin-722 201, West Bengal.
7. Safikul Mallik, son of Nur Mahammad Mallik, aged about 25 years, residing at Village-Narrah, P.O. Akui, P.S. Indas, District- Bankura, Pin-722 201, West Bengal.
8. Sanjib Nandi, son of Shiba Prasad Nandi, aged about 47 years, residing at Village-Manderpur, P.O. Kaunta, P.S.

Madhabdihi, District-Burdwan,
Pin- 713 423, West Bengal.

9. Santanu Kundu, son of Trilochan Kundu, aged about 40 years, residing at Village- Manderpur, P.O. Kaunta, P.S. Madhabdihi, District-Burdwan, Pin- 713 423, West Bengal.

10. Ajfar Hossain Khan, son of Jaynal Abed Khan, aged about 45 years, residing at Village- Manderpur, P.O. Kaunta, P.S. Madhabdihi, District-Burdwan, Pin- 713 423, West Bengal.

11. Biswajit Majhi, son of Ajit Majhi, aged about 31 years, residing at Village and P.O. Torkona, P.S. Khandaghosh, District-Burdwan, Pin- 713 423, West Bengal.

12. Moni Sankar Das, son of Shasadhar Das, aged about 35 years, residing at Village- Bulchandrapur, P.O. Painta, P.S. Madhabdihi, District- Burdwan, Pin- 713 427, West Bengal.

13. Soumya Ray, son of Ganesh Chandra Ray, aged about 27 years, residing at Village and

P.O. Uchalan, P. S. Madhabdihi,
District- Burdwan, Pin-713 427,
West Bengal.

14. Soumen Hazra, son of
Chittaranjan Hazra, aged about
46 years, residing at Village and
P.O. Uchalan, P. S. Madhabdihi,
District- Burdwan, Pin-713 427,
West Bengal.

15. Sk. Selim Ali, son of Sk. Haider
Ali, aged about 27 years, residing
at Village and P.O. Uchalan, P. S.
Madhabdihi, District- Burdwan,
Pin-713 427, West Bengal.

16. Binay Kundu, son of
Dhrubananda Kundu, aged
about 36 years, residing at
Village- Manderpur, P.O. Kaunta,
P.S. Madhabdihi, District-
Burdwan, Pin- 713 423, West
Bengal.

17. Barnali Kundu Dey, daughter of
Samir Kundu, aged about 33
years, residing at Village-
Sadhanpur, P.O. Sahaspur, P.S.
Khandaghosh, District-
Burdwan, Pin-722 205, West
Bengal.

18. Khaja Arif Islam, son of Khaja Mokbul Islam, aged about 33 years, residing at 195, Bahirsarbamangla Para (West), P.O. & District- Burdwan, Pin- 713 101, West Bengal.

19. Chowdhury Saddam Hossain, son of Chowdhury Liakat Hossain, aged about 23 years, residing at Village & P.O. Guir, P.S. Khandaghosh, District- Burdwan, Pin- 713 423, West Bengal.

20. Debashis Hati, son of Sushil Kumar Hati, aged about 26 years, residing at Village- Kashpukur, P.O. Tarkona, P.S. Indas, District- Bankura, Pin-713 423, West Bengal.

21. Partha Hati, son of Late Sukumar Hati, aged about 26 years, residing at Village & P.O. Naisarai, P.S. Arambagh, District-Hooghly, Pin-712 602, West Bengal.

22. Arun Das, son of Ranjit Kumar Das, aged about 39 years, residing at Village- Muidhara, P.O. Uchalan, P.S. Madhabdihi,

District- Burdwan, Pin-713 427,
West Bengal.

All are unemployed youth.

..Applicants

Versus

1. Union of India through the
General Manager, South Eastern
Railway, Garden Reach, Kolkata-
700 043.
2. The General Manager, South
Eastern Railway, Garden Reach,
Kolkata- 700 043.
3. The Chief Personnel Officer,
South Eastern Railway, Garden
Reach, Kolkata-700 043.
4. The Divisional Railway Manager
(P), South Eastern Railway,
Andra Division, District-Purulia,
Pin-723 121.
5. The Chief Engineer
(Construction), South Eastern
Railway, Garden Reach, Kolkata-
700 043.
6. The Deputy Chief Engineer
(Construction) (LA for
Bowaichandi - Arambag New
Railway Line Project), South

Eastern Railway, Garden Reach,
Kolkata- 700 043.

7. The Chairman, Railway
Recruitment Cell, South Eastern
Railway, Garden Reach, Kolkata-
700 043.

..Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

M.A.350/00213/2017
O.A. No.350/01823/2016.

Date of order : This the 3rd Day of December, 2019.



Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member

Chandi Das Khan & Others

.....Applicants

-Versus-

Union of India & Ors.

.....Respondents

Advocate for the Applicants : Mr A. Benerjee & Mr S.K.Datta.

Advocate for the Respondents : Ms S. Choudhury

ORDER(ORAL)

MS BIDISHA BANERJEE, MEMBER(J)

The applicants 22 in number have preferred this O.A to seek the following reliefs.

(a) An order to cancel and/or withdraw and/or rescind of the order dated 17th March, 2016 passed by the Learned Tribunal.

(b) To direct the respondents to issue letter of appointment to the applicants forthwith without any further delay.

(c) An order holding that the denial of consideration of the applicants for employment under the land loser's scheme is totally arbitrary, discriminatory and illegal.

(d) An order directing the respondents to grant employment to the applicants in terms of the scheme and in the manner other similarly placed land losers have been granted employment vide Annexure A-9 to this application.

(e) An order directing the respondents to produce/cause production of all relevant records.

(f) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper.

(g) An order leave may be granted Rule 4(5)(a) of the CAT(Procedure) Rules 1987 to move this application jointly."



2. An M.A bearing No.213/2017 arising out of this O.A has been filed by the applicants praying for liberty to jointly pursue this application under Rule 4(5) (a) of CAT (Procedure) Rules, 1987. On being satisfied that the applicants share common interest and are pursuing a common cause of action, they are permitted to jointly pursue this O.A. subject to payment of individual court fees. The M.A is disposed of accordingly.

3. The applicants claim that pursuant to a notification dated 27th August, 2010 for acquiring land for Bowaichandi – Arambag New Railway Line Project, their lands were acquired by the Railway Administration and a meager compensation was awarded to them. Many land owners including the family of the applicants of the present original application have lost their land for construction of the Railway Project. In terms of the Railway Board's Circular, RBE 99 of 2010 dated 16th July, 2010, the applicants were entitled to employment in addition to compensation, but employment was not provided to them. Aggrieved as such, they approached this Tribunal by filing O.A.No. 711 of 2015 which was disposed of by an order dated 17.06.2015 to screen them for employment. Since the order was not complied with, the applicants served a notice for contempt, whereafter their claim was turned down by a communication dated 17.03.2016. Being aggrieved thereby the applicants filed a contempt application which was dismissed as a Speaking Order issued to them, granting liberty to file proceeding as per law before appropriate forum. A Writ Petition was filed before the Hon'ble High Court at Calcutta against the order but the same was dismissed and, as such, the applicants

beg to approach this Hon'ble Tribunal by filing the instant application for the ends of justice.

4. The respondents while admitting their claim have averred as under :

In order to execute Bowaichandi Arambag Special New B.G.Line Project under the provisions of Railway (Amendment) Act, 2008, Railway administration acquired land from the owners. But as per Railway Board's Circular No.E(NG)II/2011/RC-5/1 dated 28.09.2010, the applicants of instant OA have not been extended employment assistance under Land Loser Scheme. The Bowaichandi -Arambag Special New B.G.Railway Line project was sanctioned long back. In order to execute the project, land was acquired by the Railway Administration and Compensation in enhanced market rate was paid to the land losers, the present applicants at the material time. However, progress of land acquisition work involved with project was stalled at that stage as State Government of West Bengal refused to carry out land acquisition work. Consequently, no further advancement of the project could be achieved. As a result, returns from the project are not justified.

The respondents have emphatically admitted that although the project was stalled "the General Manager, South Eastern Railway accorded approval for extending employment assistance to the 28 Land Loser candidates under Land Loser Scheme in Group - 'D' category at the material time. Those land losers have been appointed and posted other than Bowaichandi Arambag Project area, since, the project is fully stopped due to land acquisition problem on the part of State Government of West Bengal and other administrative constraints."





They have further averred that "in compliance with the CAT, Kolkata Bench order dated 17.06.2015 in O.A.No.350/00711/2015, the Railway respondents, i.e. the Chairman, Railway Recruitment Cell, South Eastern Railway on behalf of respondent No.4, had issued a Speaking Order dated 17.03.2016 to the applicants. The allegations of the petitioners that the Order was not complied are fully baseless and hence denied. The Tribunal also agreed and accordingly they disposed of the Contempt Petition(Civil) No.350/0093/2016 arising out of O.A.350/00711/2015 vide order dated 31.05.2016. The Bowaichandi - Arambag Special New B.G.Railway Line Project was sanctioned by the Central Government as a Special Railway Project in the year 2010-2011 under Railway (Amendment) Act, 2008, vide Gazette Notification S.O.No.1009(E) dated 04.05.2010. 80% of actual market value of acquired land were paid to the applicants whose lands were acquired by the Railway. The applicants accepted the said amount without any protest at the material time. It is evident that the petitioners were satisfied in accepting the amount towards compensation."

5. The applicants in support of their claim as land loser and that they have a right to seek employment as such, have placed the following :

(i) The Railway (Amendment) Act 2008 whereby Clause 37 A special railway project have been inserted and the manner in which land acquisition its notification and award of compensation is to be executed have been provided by inserting Chapter IV A to the existing Railways Act 1989 ;

(ii) The Land Loser Certificates issued to the applicants as land looser in accordance with RBE 99 (supra) one of such certificate is extracted hereunder for clarity :



SOUTH-EASTERN RAILWAY					
Camp Office of the Competent Authority / LA Dy. Chief Engineer/Construction/GRC For Bowaichandi-Arambagh New Railway Line project. Scharabazar Rly. station, Scharabazar, Distt.: Burdwan 713423.					
LAND ACQUISITION UNDER RAILWAYS (AMENDMENT) ACT, 2008					
LAND LOSER CERTIFICATE					
SRP/BOW-ARA/1/3/KHURSI-3/472				Date: 02/01/2013	
Project: Bowaichandi - Arambagh new B.G. railway line					
Notification No. & Date u/s 20A(1)		: 1948 dt. 17.09.10, S.O. 2299(E)			
Newspaper publication of Gazette u/s 20A(1)		: 25.10.10 & 29.01.11			
Notification No. & Date u/s 20E(1)		: 1270, S.O. 1539 (E) dt. 06.07.2011			
Public notice u/s 20F(4)		: 13.09.11 & 26.10.11			
Certified that the plot(s) of land detailed below owned and possessed by <u>SHAMBHU</u> <u>SAH KHAN, S/o. H. SIDDHESWAR KHAN.</u> of village <u>KHEHPUKUR</u> <u>TORKONA</u> , P.S. <u>—</u> , District <u>BANKURA</u> . Has/have been acquired by the Govt. for execution of Bowaichandi - Arambagh new B.G. railway line Special Railway Project under provision of the Railways (Amendment) Act, 2008.					
Market value of the land together with the 60% of the market value as additional amount has been duly valued and determined as the compensation for the said land and has been paid to the land owner as detailed hereunder					
Total amount of compensation Rs.		75,273/- (Rupees <u>Seventy five</u> <u>thousand two hundred and seventy three Only</u> -) only.			
Amount of compensation paid to the land owner Rs.		60,219/- (Rupees <u>Sixty thousand</u> <u>two hundred and nineteen Only</u> -) only as the <u>80</u> %			
BANKURA		Gram Panchayat: <u>AKULI-II.</u>			
Mouja: <u>KHURSI</u>		Sheet no. <u>3</u>			
121					
Sr. No.	R.S. plot no.	L.R. plot no.	Acquired area of the plot (Decimal)	Share of the owner	Area acquired from the owner (Decimal)
1	2075	2075	39.2	6.25%	2.45
2	1497	1497	66.6	80.85%	20.55
Dy. CE/C/GRC & Competent Authority / LA (U/s 7A of the Railway Act, 1989) For Bowaichandi - Arambagh New B.G. Railway Sd/- Dy. Chief Engineer/Construction/GRC South Eastern Railway					

(iii) RBE 99 of 2010, the Board's Circular that lays down the following :

"R.B.E. No. 99/2010

Subject: Appointment of land losers affected by land acquisition for railway projects.

(No.E(NG)II/2010/PC-5/1, dated 16.7.2010)

In supersession of all previous instructions on the subject, it has been decided that Railways may call and consider applications for employment to PB-I Pay Band of Rs.5220-20,200 with grade pay of Rs.1,800/-only, from land losers on account of acquisition of land for the projects on the Railways (excluding those for Deposit works). Applications shall be invited, by Personnel Branch of Zonal Railways, from the land losers fulfilling the screening criteria as enumerated in para 2 below.



1. Screening Criteria:

- (i) The applicant shall be a person (sole owner of land or son/daughter/husband/wife of the sole owner) whose land or a portion thereof has been acquired for the project in. in case the land is owned by more than one person, the Competent Authority, as defined in the Railway (Amendment) Act 2008/Land Acquisition Officer, will decide who shall be considered as applicant. Only one job shall be offered to an applicant from the land loser family.
- (ii) It must be ensured that the displaced person has not received any land from the State Government in lieu of his/her land acquired/being acquired for the project.

2. Railway administration should request the concerned Competent Authority/Land Acquisition Officer to issue certificate/s to those persons whose land has been acquired to facilitate proper verification of the claims.

3. An applicant claiming appointment shall be required to submit the application with his/her signatures and photos duly certified by local MP, MLA or any Gazetted Officer. Candidates shall also submit affidavits fulfilling eligibility criteria stipulated in para 2 above, duly certified by the Competent Authority/Land Acquisition Officer. This shall be co-ordinated by respective Divisional Railway Managers.

4. The applicant should normally fulfill the eligibility and other conditions prescribed for the post against direct recruitment quota from open market. In special cases, General Manager of the Railway can relax these conditions, and in respect of educational qualifications, applicant with read/write only capability shall also be considered.

5. General Manager of the Railway in whose jurisdiction of the land acquisition is to be undertaken, shall be responsible for ensuring a fair and transparent selection of candidates.

6. Once the offer of appointment has been made, no further application claiming appointment on ground of acquisition of the same piece of land shall be entertained.
7. These instructions normally will not be applicable in those cases where land acquisition process has been concluded by way of possession of land by Railway."

(iv) The Call Letters for screening issued to the applicants that speaks as under :



Sub: Screening of Land Losers affected by land acquisition for Special Railway Project in Gr.'D' Category.

Ref: (1) Dy. Ch.Engineer(Construction)/SER/GRC & CA/LA's Letter No. SER/CA/SRP/BOW-ARA/Appt./16 dated 04.02.2013.
 (2) Chairman/RRC/GRC's Letter No. SER/P-HQ/RECTT/565/OA No. 350/00711 of 2015/204 dated 29.07.2015 in obedience to Judgement Order dated 17.06.2015 passed by the Hon'ble CAT/CAL in OA No. 350/00711 of 2015.

With reference to the above cited letters, you are provisionally allowed to appear in the Screening Test before Screening Committee to be held as detailed below:-

Venue:-	Office of the Sr. Divl. Personnel Officer South Eastern Railway / Adra Post: Adra, Dist: Purulia
Date:-	28.10.2015 (Wednesday)
Time:-	10:00 hrs.

(v) The decision in **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others**, reported in AIR 1978 SC 851 to contend that "when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

(vi) They have also further relied on a judgment in **State of Karnataka & Ors. vs. C. Lalitha reported in (2006) 2 SCC 747**, wherein it was held that *"all persons similarly situated should be treated similarly irrespective of the fact that only one person has approached the court."*



6. The Ld. counsel for the applicant would vociferously plead that if 28 land losers could be accommodated against other projects as emphatically admitted and declared by the respondents, there is no reason why the present applicants should be deprived, more so, as they have been directed already in terms of the earlier order in O.A. 711 of 2015 that *"the respondents should do well to see that the case of the applicants are screened and considered as per the scheme and if found suitable legally then necessary benefits may be accorded, as otherwise, they may be informed of their unsuitability, within a period of 4 months from the date of receipt of this order."* Whereas, the impugned speaking order dated 17.03.2016 that says

"However, progress of Land Acquisition work involved with Project has been stalled at this stage as State Govt. of West Bengal has refused to carryout land acquisition work. Consequently, no further advancement of the Project can be achieved as on date. In view of that facts since project itself is not progressing, the employment against land loser can not be processed."

The applicants have argued that it is highly discriminatory and offends Articles 14, 16, 21 and 300A of the Constitution of India as well as the mandatory direction of this Tribunal in O.A.711 of 2015. Ld. counsel would thus pray for a direction to consider the applicants for employment against other projects in relaxation of their age and educational qualification as RBE 99/2010 that was prevalent at the material time when their lands were acquired, guaranteed to them.

7. The Ld. counsels were heard and materials on record were perused.

8. From the records we discern the following :

(i) That inarguably the applicants are the land losers, whose lands have been acquired by the Railways to construct Bowaichandi Arambag Special New B.G.Project Railway line. They were dispossessed of their land for construction of Railway Project.



(ii) That their right to employment under Railways' land loser scheme flows from RBE 99 of 2010, extracted supra, that was prevalent at the material time. It was under a clear assurance of employment ^{that} when they agreed to partake with their source of livelihood.

(iii) That the respondents were already directed in the earlier O.A, to screen the applicants and consider them as per scheme, and if found suitable legally, to accord necessary benefits to them.

(iv) The respondents had never sought for any liberty to not follow the direction on the ground that the project for which land was acquired, did not turn out viable. The respondents are therefore in clear contempt.

(v) Moreover, 28 identically circumstanced land land losers who have been dispossessed due to proposed construction of Bowaichandi Arambag New BG Line and had supposedly lost their source of livelihood have been appointed/accommodated against other viable projects in compliance of the provision in RBE 99 of 2010. Therefore, the respondents are estopped by their conduct to deny employment to the present land losers on the ground that the project in question has been stalled.

(vi) Admittedly, the project got stalled, but even after the project got stalled, 28 land losers under the same project were accommodated,

elsewhere and therefore respondents have arbitrarily meted out discrimination against the present applicants. They have attempted to create a class within a class, which is not permissible in law.



(vii). The applicants right to employment is fortified by the RBE 99 of 2010 as well as the decision in the previous OA to screen them and consider them as per scheme and to accord them necessary benefits, as also the fact that employment has been provided to identically placed land losers. Hence they are entitled to identical relief.

(viii). We further discern that the Railways are conspicuous by their silence on the reason why the present applicants, when others have been accommodated already, that too, after the project in question was stalled, cannot be accommodated against similar other viable projects of the Railways. Railways are resorting to macrocompartmentalisation on the basis of a micro distinction or no distinction at all, which is grossly unfair.

(ix) The respondents have not rejected the claim after screening. They have simply refused to screen them as the project has been stalled.

9. In WPCT 74 of 2016 Hon'ble High Court while considering a matter relating to a land loser who was denied employment on the ground of age bar has directed as under :

"21. It is evident from the materials-on-record that even land losers, who were 47 years old, have been offered appointment. The respondent no. 1 was 46 years old on the date he approached the tribunal for the first time. When his claim was rejected by the first order dated July 15, 2014, age-bar was not cited as a ground therefor. What we find is that there was absence of certain documents/papers for which the claim of the respondent no.1 could not be put up before the screening committee for screening. If indeed that was the reason for regretting his prayer, the petitioners ought to have asked the respondent no. 1 to supply the documents, which were not there in

the file, instead of closing his right to claim appointment. We, therefore, propose to pass the following further directions to close the breach:

(i) within a period of seven days from date of receipt of a copy of this judgment and order, the Chief Personnel Officer shall intimate the respondent no.1, which of the documents are required from his end for ensuring placement of his claim before the screening committee;

(ii) within a month of receipt of such intimation, the respondent no.1 shall produce the necessary documents/papers before the Chief Personnel Officer and upon receipt of such documents/papers, the claim of the respondent no.1 shall be placed before the screening committee for an appropriate decision;

(iii) bearing in mind the fact that other land losers have been offered appointment even upon attaining 47 years of age, we hope and trust that the screening committee shall not cite age-bar as a ground for not considering the claim of the respondent no.1 and if a power of relaxation is indeed available to consider invocation of such power if the merits of the case so warrants; and

(iv) the entire exercise shall be completed as early as possible but not beyond June 30, 2019."

We direct the authorities to undertake identical exercise and pass appropriate order in regard to the present applicants within 4 months.



(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)