

MA No. 770/2019 & MA No. 771/2019 in OA No. 413 of 2017

Dilip Kumar Behera

vs.

Union of India represented by General Manager (P), East Coast Railway &N Others

Order reserved on 29.09.2020

Date of Order: 07.10.2020

For applicant: Mr. S. S. Das, counsel.

For respondents: Mr. T. Rath, counsel.

ORDER

The applicant has filed the OA No. 413 of 2017 claiming appointment under the respondent-railway as a land loser as per the policy of the Railway Board vide the circular RBE No. 99/2010 dated 16.7.2010 (Annexure-A/2 of the OA). The applicant has averred in the OA that his family's land was acquired by the respondent-railway for construction of Khurda Road-Boalngir Railway link project vide Land Acquisition case no. 5 of 1999 and though his family was paid compensation for the said land acquired by the respondents, but the benefit of appointment under the Rehabilitation Assistance Scheme as per the circular dated 16.7.2010 (A/2) has not been extended to the applicant or to his family. After filing of the OA in March, 2017, when the matter was listed on 24.7.2017 no one was present for the applicant. Thereafter, the matter was listed on 12.3.2018 when no one for applicant was present, for which the OA was dismissed on default of the applicant. Thereafter in September, 2019, the applicant has filed the MA No. 770/19 for restoration of the OA under the rule 15(2) of the CAT (Procedure) Rules, 1987 with the MA No. 771/19 for condoning delay in filing the MA No. 770/19.

2. It is stated in the MA No. 771/19 that on 12.3.2018 the OA was dismissed since the applicant's counsel inadvertently missed the list and could not attend on the date it was listed. When the status of the case was inquired by the applicant in September, 2019 it came to his knowledge and thereafter, the MAs were filed. It is stated that the delay on the applicant's part was not deliberate.

3. In MA No. 770/19 for restoration, it is stated that on 12.3.2018 the applicant's counsel inadvertently failed to attend the Tribunal and that the order dated 12.3.2018 was not communicated to the applicant as required under the rule 22 of the CAT (Procedure) Rules, 1987. Hence, it is prayer to recall the order dated 12.3.2018 has been made in the MA.

4. Learned counsel for the applicant and respondents were heard on the matter. The applicant's counsel emphasized the point that the order dated 12.3.2018 was not communicated to the applicant for which, there was delay in filing the MA for restoration of the OA. The respondents' counsel objected to the MAs on the ground that no satisfactory explanation for the delay in filing the MA No. 770/19 has been furnished.

5. It is noticed from the record that the order dated 12.3.2018 of the Tribunal dismissing the OA for non-prosecution, was not communicated to the applicant there is no note of the Registry to show that the order dated 12.3.2018 was communicated to the applicant. It is also seen that the final order dated 12.3.2018 was not uploaded in the Tribunal's website although it was uploaded as a daily order on 12.3.2018. Hence, the submission of the applicant that he came to know about the said order in September, 2019 after which he took necessary steps, has some force. The rule 22 of the CAT (Procedure) Rules, 1987 provides for communication of final order to the parties or to their counsels.

6. It is submitted that the fact that the OA was dismissed vide order dated 12.3.2018 was known to the applicant in September, 2019 after which the MAs were filed. Due to fault on the part of the counsel, the applicant's claim should not be rejected without considering merit for default on the part of his counsel.

7. For the reasons mentioned above, the MA No. 771/19 for condoning delay in filing the MA No. 770/19 is allowed and the delay is condoned. The MA No. 770/19 for restoration of the OA is also allowed and the OA is restored to its original number.

8. On restoration of the OA, list it on 20.10.2020 for admission. Respondents may file their objection if any on maintainability of the OA, giving a copy to the applicant's counsel 3 days before the next date.

9. Registry is to hand over a copy of this order to counsels for both the parties.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)