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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH, NIZAM PALACE

O. A. NO. 350/350 OF 2018

IN THE MATTER OF:

The Administrative Tribunals Act, 1985;

-And-

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Soumyabrata Maity, Son of Jyotirmoy Maity, residing
at Village and Post Office Rankinipur, Police Station
Nandigram, District Purba Medinipur, Pin Code No.
721650; Applicant;

-VERSUS-

1. Union of India, service through the General Manager, South Eastern Railway, Office at 11, Garden Reach Road, Kolkata-700 043;
2. The General Manager, South Eastern Railway, 11, Garden Reach Road, Kolkata-700 043;

3. The Chairman, Railway Recruitment Cell,
South Eastern Railway, Bungalow No. 12A, 11,
Garden Reach Road, Kolkata, Pin Code No. 700043,

4. The Divisional Railway Manager, Kharagpur
Division, South Eastern Railway, Kharagpur, District
Paschim Medinipur, Pin Code 721302;

5. The Divisional Personal Officer I, South
Eastern Railway, Kharagpur, Office at Kharagpur,
Paschim Medinipur, 721302; Respondents;

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

OA 350/350/2018

Date of Order: 29.01.2021



Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Soumyabrata Maity.....Applicant

Vrs.

Union of India & Ors.Respondents

For the Applicant(s): Mr. T.D.Maity & Mr. P.K.Ghosh, Counsel

For the Respondent(s): Mr. R.K.Gupta, Counsel

ORDER (ORAL)

BIDISHA BANERJEE, MEMBER (J):

Heard Ld. Counsels for the parties.

2. Brief facts of the case, leading to filing of the present O.A., are that the land belonging to applicant's father was acquired by the Railways for implementation of Deshpran-Nandigram Special Railway Project during 2010-11. Since the appointment under land loser category was not extended to the applicant in terms of the notification, he moved this Tribunal in O.A. No. 484/2017, which was disposed of on 24.11.2017 with the following directions:

"5. The O.A. is disposed of with a direction upon the respondents authorities i.e. the Respondents no. 6 or any other competent authority to consider the representation strictly in accordance with law to pass a reasoned and speaking order within 3 months from the date of receipt of a copy of this order and to communicate the decision to the applicant immediately thereafter."

Subsequently, the representation was disposed of the Railway Recruitment Cell rejecting the prayer of the applicant as under:

"The project had been sanctioned long ago and no progress of work has been made due to paucity of funds for the reason that returns from the project are not justifiable. In view of this, employment assistance under land loser ground can not be processed in this matter. Hence your claim is not viable."

This disposes of your representation dated 24.02.2016."



3. When the matter was taken up on 29.01.2021, Ld. Counsel for the applicant submitted that this matter can be disposed of in the light of the decision of this Tribunal in O.A. Nos. 350/1313/2019 & Ors. taking into account the order passed by the Hon'ble High Court in WPCT No. 74/2016.

4. In a batch of similar matters, i.e. O.A. Nos. 350/1313/2019 and others, this Tribunal after hearing the parties and upon perusal of the records disposed of all the O.As. vide a common order dated 16.03.2020 with the following direction:

"The applicants in all these O.As. claim to have lost their land to the Railways for construction of various Railway Projects, namely Dankuni-Furfura Sharif, Arambag-Bowai Chandi, Nandigram etc. Their claim for employment assistance as land loser in terms of Board's Policy as in RBE 99 of 2010, have been turned down under various pretexts. Due to parity in the nature of grievance, facts pleaded, relief claimed, these cases heard out upon due notice and with consent of all the sides to be disposed of by a common order."

For the sake of brevity, O.A. No. 1823/2016 is being delineated and discussed hereunder.

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The respondents have, however, 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 Bowai Chandi 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."

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8. *From the records we discern the following :*

(i) *That, inarguably and indubitably the applicants are the land losers, whose lands have been acquired by the Railways to construct a Railway Project (here Bowaichandi Arambag Special New B.G.Project Railway line). They were thus dispossessed of their land to facilitate construction of a 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 when land was acquired. It was under a clear assurance of employment flowing from the Railway Policy that they agreed to part 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 losers who were 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 rendered 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 its other similar viable projects. Railways by depriving the present applicants their right flowing from RBE 99 of 2010, due to subsequent circular introduced with prospective effect, 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 of the applicant upon due screening. They have simply refused to screen them as the project, in question, has been stalled.

9. In WPCT 74 of 2016, the Hon'ble High Court at Calcutta while considering an identical matter of a land loser who was denied employment by Railways 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 were 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."

10. *In view of the direction of the Hon'ble High Court supra, and our revelations as indicated above, we feel it appropriate in the interest of justice, to direct the respondents to undertake an identical exercise as directed by the Hon'ble High Court in WPCT 74 of 2016 and issue appropriate order in regard to the present applicants within 4 months."*

(with added emphasis)

5. In view of the orders passed in O.A. Nos. 350/1313/2019 and others (supra) and as prayed by the Ld. Counsel for the applicant for a direction to consider his case in the light of the decision of the Hon'ble High Court in WPCT No. 74/2016, we dispose of the present O.A. directing applicant to represent before the appropriate authority to that effect within four weeks and if such representation is preferred the said authority will consider the same in the light of the orders passed in O.A. Nos. 350/1313/2019 and others (supra) within a period of 2 months therefrom and issue necessary orders.

6. O.A. is accordingly disposed of. No costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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