

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 872 OF 1996
Cuttack, this the 16th day of October, 2000

Nila Dei

Applicant

Vrs.

Union of India through
G.M., S.E.Railway and others....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

16.10.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 872 OF 1996
Cuttack, this the 16th day of October, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

Nila Dei, w/o Narayan Majhi,
At-Jaynagar, P.O-Jeypore,
District-Koraput

.....Applicant

Advocates for applicant - M/s C.A.Rao
S.K.Behera
P.K.Sahoo

Vrs.

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Chief Engineer (Construction),
S.E.Railway, At/PO-Laxmipur,
Dist.Koraput
3. Special Land Acquisition Officer (Railway),
At/PO/Dist.KoraputRespondents

Advocate for respondents-Mr. Ashok Mohanty

.....
O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for a direction to the respondents to provide appointment to her son keeping in view the circulars at Annexures 2 and 3.

2. The applicant's case is that she belongs to Scheduled Tribe and Ac.9.24 of land in Khata No.114/277 in village Tikiri recorded in her favour have been acquired by South Eastern Railway for construction of Koraput-Rayagada Line. Besides getting compensation for the acquired land, a member of the family of the applicant is

entitled to get employment on rehabilitation ground under the guidelines at Annexures 2 and 3. The Land Acquisition Officer has given a certificate on 18.4.1996 certifying that Ac.9.14 out of total Ac.10.36 of land of the applicant have been acquired for construction of Koraput-Rayagada Railway Line and the name of Somnath Majhi, son of the applicant has been recommended to Chief Engineer (Construction), S.E.Railway, Laxmipur for providing employment to the son of the applicant. The applicant has stated that she along with her son requested the Chief Engineer (Construction), S.E.Railway, Laxmipur (respondent no.2) for getting appointment, but no consideration was shown to their request. A legal notice issued at Annexure-4 has also not yielded any result. That is why she has come up in this petition with the prayer referred to earlier.

J Jm

3. Respondents in their counter have opposed the prayer of the applicant. They have stated that when construction of Koraput-Rayagada Railway Line was undertaken, it was decided in a meeting of the Chief Minister of Orissa with the Chief Engineer (Construction), S.E.Railway, Waltair, to provide job to 200 land losing families subject to availability of work and fulfilment of terms and conditions as provided under the rules and instructions. In furtherance of the above decision, the District Magistrate, Koraput, on behalf of Government of Orissa from time to time sent nine separate lists of families at different times till the end of the year 1988 recommending the names of 1411 persons. A duly selected committee after scrutinising the nine lists received on or before 17.12.1988, recommended 188 persons who were appointed as casual labourers. The remaining 12 posts were

not filled up due to failure on the part of the persons to produce land records during scrutiny. The Sub-Collector, Koraput was a member of the Selection Committee which selected 188 persons. Thus the State Government was fully associated with the selection and appointment of members of land losing families. Later on the State Government in their letter dated 8.6.1989 once again submitted a revised list of families categorising them as those who had lost 100%, 75%, 50% and 20% of their land through acquisition and recommended some more cases like that of the son of the applicant. The respondents have stated that the applicant's case is that from Khata No.114/277 of village Tikiri recorded in her name, an area of Ac.9.24 of land was acquired. The respondents have pointed out that as against Khata No.114/277, out of total area of Ac.10.36, in an earlier recommendation it has been mentioned by the District authorities that Ac.5.91 of land have been acquired from the present applicant and the name of the applicant's brother Harsa Naik was recommended in respect of this acquisition in letter dated 86.1989. Once again in letter dated 4.10.1991 the name of the applicant's son Somnath Majhi has been recommended. The respondents have stated that as the District authorities have submitted contradictory reports not only in case of this applicant but in respect of several other persons who had already been given appointment, Chief Administrative Officer(P) wrote to the Collector, Koraput on 29.12.1992 referring to the aforesaid facts and requested the District Magistrate to submit a list of persons who are required to be discharged as they were not entitled to get employment under the category of land losing families even though

J Jm

their names were earlier recommended by the District authorities. The respondents have further stated that in the Establishment Serial No.322/87 at Annexure-3 of the O.A. it has been provided to give preferential treatment to land losers subject to availability of work. As work on Koraput-Rayagada Seection is already on the verge of completion and the number of casual labourers engaged in the Project has been reduced, there is no scope for engagement of further casual labourers. It is further stated that cause of action in this case has arisen in 1986-87 when the land of the applicant was acquired. After passage of more than ten years the applicant has approached the Tribunal and therefore the claim is barred by limitation.

4. The applicant in her rejoinder has stated that the brother of a married woman does not come within the definition of "family" and therefore it was illegal and arbitrary to ignore the claim of the son of the applicant and consider the name of her brother. Moreover, the brother of the applicant has also not been given employment. Only his case has been recommended. The applicant has further stated that out of a total area of Ac.10.36, an area of Ac.9.24 has been acquired as per the report of the Land Acquisition Officer and therefore her son's case comes under the category of 75% land losers. On the above grounds, the applicant has reiterated her prayer in the OA.

5. We have heard Shri C.A.Rao, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Panel Counsel for the respondents and have also perused the records.

6. The petitioner has relied on Annexure-2 which is a letter from Secretary, Rural Development, Government of India, addressed to Secretaries of all Central Ministries about rehabilitation of persons displaced as a result of land acquisition. In this circular it has been stated that a Committee set up for the purpose suggested that such persons should be given preference in the matter of employment opportunities in the project. It has been advised that this suggestion should be kept in view in cases where large scale acquisition of land is taking place. The relevant circular, so far as the present case is concerned, is the circular issued by the Railways.. This is Establishment Serial No.322/87 issued by the Railway Board. In this letter it has been stated that the instructions regarding giving preferential treatment should be kept in view. Certain conditions have also been put in respect of such employment. The important conditions are that only one job should be offered to each family. The displaced person himself or his wife, son or daughter should be considered for being provided with employment. Such employment should be limited to only those posts which are filled up by direct recruitment and this should be provided at the time of first recruitment or within a period of two years after the acquisition of land whichever is later. Where the displaced persons have been provided with alternative cultivable land by the State Government they will not be entitled for such employment. The person concerned must have necessary qualification for the post to which he is proposed to be appointed. In the context of the above instructions, it is clear that the instructions have

J. J. M.

been issued only for giving preference in employment to such oustee families. In the instant case, considering the nature of the project, 200 jobs were to be provided as per the decision in the meeting between the Chief Minister of Orissa and Chief Engineer (Construction), S.E.Railway. The Railways have already provided 188 jobs to persons recommended by the District administration, some of whom have been later on found to be not entitled to such employment. To the reference of the Railways to make out the list of such persons, the District administration has chosen to keep silent. Moreover, from time to time the District authorities have recommended 1411 families prior to 17.12.1988 out of which 188 persons were appointed. Later on they have sent some further names including the name of the son of the applicant. As regards the applicant's case, in the earlier recommendation, which is at Annexure-R/1 it has been shown that out of Khata No.114/277 having Ac.10.36 of land standing in the name of the applicant, an area of Ac.5.91 has been acquired. Later in the certificate at Annexure-1 of the O.A., the Land Acquisition Officer has certified that Ac.9.14 have been acquired out of Ac.10.36. Initially the name of the applicant's brother Harsa Naik had been recommended. Even accepting the latest certificate of the Land Acquisition Officer that Ac.9.14 of land out of Ac.10.36 of land of the applicant under Khata No.114/277 have been acquired, the applicant has come up after 10 years of acquisition of land. According to the Railway Board's circular referred to by us earlier, such employment should also be given within a period of two years after acquisition of land in order to rehabilitate the oustee families. It is also seen that the District administration had recommended the name of the

J. Jom.

brother of the applicant. As the petitioner has not approached the Tribunal for the last 10 years, the claim for providing employment to her son is not maintainable as it is not a vested right which can be enforced at any time in future. In view of this, we hold that the application is without any merit.

6. The other aspect of the matter is that even though the applicant's brother was recommended for employment, the respondents have not stated that the brother of the applicant has been actually provided employment. The applicant in her rejoinder has stated that no appointment has been given to her brother. Thus, in effect, no employment has been provided to the family of the applicant, more than 75% of whose land has been acquired for construction of Koraput-Rayagada Railway Line. The respondents have stated that at present the work of Koraput-Rayagada Railway Line is on the verge of completion and number of casual labourers is going to be reduced and there is no scope for future employment. While this be so, in case the respondents decide to engage casual labourers for Koraput-Rayagada Railway Line, then the applicant's son whose case has been duly recommended should be given preferential treatment moreso because out of 200 posts which were to be thrown open to land oustees, 12 posts are yet to be filled up.

7. In the result, the Original Application is disposed of with the observation and direction above. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath
(SOMNATH SOM)

VICE-CHAIRMAN

16.10.2000