6

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

...

O.A.NOS.74 of 2001, 75 of 2001, 82 of 2000, 524 of 1999, 644 of 2000, 144 of 2000, 650 of 1999, 483 of 1999, 459 of 1999, 466 of 1999, 453 of 1999, 434 of 1999, 117 of 2001, 399 of 2001 and 67 of 2001.

....

Cuttack, this the 20th February,2002

....

CORAM:

HON'BLE MR.S.A.T.RIZVI,MEMBER(ADMN.)
AND
HON'BLE MR.M.R.MOHANTY,MEMBER(JUDL.)

.....

In OA No.74/2001

Sanjaya Sahoo .... Applicant

Vrs.

Union of India and others .... Respondents

For applicant - M/s B.K.Sharma, G.K.Dash, K.A.Guru, S.R.Mohanty

For respondents - Mr.P.K.Mishra.

....

In OA No.75 of 2001

Prasanta Kumar Sahu .... Applicant

Vrs.

Union of India and others .... Respondents

For applicant - M/s B.K.Sharma, G.K.Dash,K.A.Guru S.R.Mohanty.

For respondents - Mr.P.K.Mishra.

....

In O.A.No.82 of 2000

Suniti Behera and others .... Applicants

Vrs.

Union of India and another .... Respondents

For applicants- M/s A.K.Rath & M.K.Biswal

For respondents - M/s R.Sikdar, A.Sikdar, S.Dutta

2

In OA No.524/99

Ramesh Chandra Dehury & others ... Applicants

Vrs.

Union of India and another .... Respondents

For applicants - M/s S.C.Mishra & A.K.Rath

For respondents - M/s P.K.Misra & B.Pal.

...

In O.A. No.644 of 2000

Shankar Prasad Deep ... Applicant

Vrs.

Union of India and others .... Respondents

For applicant - M/s Ashok Mishra, S.C.Rath.

For Respondents- M/s D.N.Misra,S.K.Panda, S.Swain.

....

In O.A.No.144 of 2000

Prasanta Kumar Dash and others ... Applicants

Vrs.

Union of India and another ... Respondents

For applicants - M/s S.C.Misra
A.K.Rath

For respondents - M/s D.N.Misra
S.K.Panda
S.Swain.

.....

In O.A.No. 650 of 1999

Niranjan Jena and another ... Applicant

Vrs.

Union of India and another ... Respondents

For applicants - M/s S.C.Misra
A.K.Rath

For respondents - M/s R.Sikdar
A.Sikdar
S.Ghosh

.....

In O.A.No.483 of 1999

Abani Kumar Sahu and three others ... Applicants

Vrs.

Union of India and others ... Respondents

Advocate for applicants - Mr.I.C.Das & Mr.D.Rath

Advocate for respondents - M/s D.N.Misra, S.K.Panda, S.K.Swain & B.Pal.

....

In O.A.No.459 of 1999

Srikanta Sahu and 5 others ... Applicants

Vrs.

Union of India and others ... Respondents

For applicants - M/s Ajit Hota
A.N.Upadhayaya

For respondents - M/s D.N.Misra,
S.K.Panda,
B.Pal.

...

In O.A.No.466 of 1999

Binod Ku.Biswal and others ... Applicants

Vrs.

Union of India and others ... Respondents

For applicants - Mr.I.C.Das

For respondents - M/s D.N.Misra,
S.K.Panda &
S.K.Swain
&
Mr.B.Pal

....

In O.A.No.453 of 1999

Purna Chandra Pradhan and another.... Applicants

Vrs.

Union of India and others .... Respondents

For applicants - M/s Ajit Hota
A.N.Upadhayaya

For respondents - M/s D.N.Misra &
B.Pal.

.....

In O.A.No.434 of 1999

Pramod Kumar Biswal and others .... Applicants

Vrs.

Union of India and others .... Respondents

For applicants - M/s S.C.Misra & A.K.Rath

For respondents - M/s D.N.Misra,S.K.Panda & B.Pal.

....

In O.A.No.117 of 2001

Kandarpa Kumar Pradhan and two others.... Applicants

Vrs.

Union of India and another .... Respondents

For applicants - M/s S.C.Misra & A.K.Rath

For respondents - Mr.P.K.Mishra.

....

In O.A.No.399 of 2001

Aditya Nayak and others .... Applicants

Vrs.

Union of India and another .... Respondents

For applicants - M/s S.C.Misra & A.K.Rath

For respondents - M/s R.Sikdar, A.Sikdar & S.Datta.

.....

In O.A.No. 67 of 2001

Debenanda Pradhan .... Applicant

Vrs.

Union of India and others ... Respondents

For applicant - M/s K.A.Guru, B.K.Sharma, S.R.Mohanty

For respondents - M/s D.N.Misra, S.K.Panda & S.K.Swain

.....

O R D E R

(ORAL)

MR.S.A.T.RIZVI, MEMBER(ADMINISTRATIVE)

Heard the learned counsel on either side at length. Records have also been perused by us.

2. Common issues of law and fact have been raised in all these O.As. We are, therefore, proceeding to pass this common order in these O.As.

3. A total of 146 applicants are involved in these fifteen O.As. with details as follows. O.A.No. 74 of 2001 involves only one applicant. Similarly, O.A.No. 75 of 2001 also involves only one applicant. The other O.As., namely, O.A.Nos.82 of 2000, 524 of 1999, 644 of 2000, 144 of 2000, 650 of 1999, 483 of 1999, 459 of 1999, 466 of 1999, 453 of 1999, 434 of 1999, 117 of 2001, 399 of 2001 and 67 of 2001 respectively involve 9, 33, 1, 9,2,4,6,5,2,65,3,4 and 1 applicants.

4. The facts of this case, briefly stated, are that large tracts of land were acquired during the period from 1984-85 to 1992-93 for the execution of the project known as Sambalpur Talcher Rail Link Project. As a result, a large number of persons were deprived of their land assets thereby affecting their livelihood. While they were looking for possible sources of employment, an Employment Notice, dated 31.7.1998, was issued by the S.E.Railway notifying 280 vacancies of Group-D category to be filled by SC (42),ST (21), OBC (76) and OC (144)

candidates.

5. Besides the other qualifications laid down in the aforesaid notice, the one relating to educational qualification provided that the candidates should have passed a minimum of VIII (Eighth) standard from a recognised school. The selection procedure notified included a written test, followed by a practical test and a viva voce test. The practical test was to be in conformity with the job requirement. In regard to medical fitness, the selected candidates were to be declared fit by the designated medical authority in the appropriate category. The description of job requirement provided in the aforesaid notice reads as follows: "Selected candidates will have to perform the job as per absorption in Civil Engineering Department. They should be able to perform Hard Physical Labour. They are required to carry heavy tools and track fittings/weighing approximately 50 Kgs. and do packing of all types of sleeper, handling rail and sleeper etc. in all weathers and open field.(Emphasis supplied).

6. It appears that wishing to be considered as candidates in the aforesaid selection, they approached higher authorities, and on their intervention, a supplementary notification, dated 5.2.1999, was issued by the S.E.Railway enabling the present applicants, land

oustees of Sambalpur Talcher Rail Link Project (for short, "S.T.R.L.Project") to file applications within an extended time frame. In terms of the facility thus granted, the applicants filed applications which have been considered. The applicants have been tested in accordance with the prescribed procedure and ultimately only three of them, namely, Dillip Kumar Pradhan and Sitaram Rahana (applicant nos. 30 and 31 in O.A.No. 434 of 1999) and Tusharkanta Pradhan (applicant no.4 in OA No. 399 of 2001) were found fit and have been appointed. All others have failed to clear the prescribed tests. Hence the present O.As.

7. Before we proceed to examine the various important issues raised, we will like to note in passing that while only 280 vacant posts had been notified by the Employment Notice in question, the respondents have finally selected and appointed 511 candidates in all. The increase of 231 vacancies, which took place apparently after the aforesaid notice, dated 31.7.1998, had been issued, was not duly and properly notified by a supplementary public notice.

8. Railways, who are the largest commercial public sector undertaking of the Central Government, have been acquiring large tracts of land from time to time for the execution of various projects. The problems of land oustees are, therefore, well known to the Railway

Administration. Amongst others, the Railways have been operating a scheme for giving appointment in Group C and D posts to the members of the families displaced as a result of acquisition of land for the establishment of their projects. The relevant instructions issued by the Railway Administration have been placed on record at Annexure R/1 containing copies of letters, dated 1.1.1983, 9.6.1983, 22.3.1985, 11.2.1988 and 10.11.1989, all issued by the Railway Board. These contain all possible details for implementing the Railway Board's directive of providing employment to land oustees at the rate of one per family and also lay down the principles to be followed.

9. The earliest letter, dated 1.1.1983, though by no means the first issued by the Railways, forms the basis of all the instructions subsequently issued. It is worthwhile to note that the principles laid down in this letter represent a kind of consensus within the Central Government in as much as a reference has been made in the aforesaid letter to a certain letter received from the Ministry of Agriculture (Department of Agriculture) regarding implementation of the recommendations made by the Land Acquisition Review Committee on the question of Government's responsibility for the rehabilitation of the families evicted as a result of acquisition of land for projects. A further reference has been made in the same

letter to a D.O. letter which had been received by the Railway Administration from the Secretary, Rural Development, Government of India. The guidelines laid down in the aforesaid letters received from the Ministry of Agriculture and Secretary, Rural Development have been duly taken into account at the time of issuance of the policy letter in question, dated 1.1.1983. Viewed thus, the instructions laid down in this letter would seem to be clothed with an authority most relevant and appropriate in the matter.

10. During the course of hearing, the various provisions made in the aforesaid policy letter of 1.1.1983 were interpreted by the learned counsel appearing on either side in different ways leading to different results. We have, therefore, bestowed sufficient care in trying to understand the true import of the instructions contained in this letter and we proceed to record our views in this regard in the following paragraphs.

11. The foremost provision made in the aforesaid policy letter of 1.1.1983 relates to giving of preferential treatment to the land oustees in the matter of employment. One job is to be offered to each family of the land oustees. The post against which the family member of the land oustees could be appointed should

belong to that part of the direct recruitment quota which is to be filled by outsiders. The claims of the members of the land oustees are to be considered against the very first recruitment to be made. A period of two years has been laid down for the purpose computed after the acquisition of land. The aforesaid arrangement is supposed to be limited to the very first recruitment implying that if such first recruitment is made within two years from the date of acquisition of land, further opportunities would remain available until the expiry of the period of two years. However, if within the aforesaid period of two years, no such first recruitment is made, then the relevant period will be co-terminus with the date of holding of such first recruitment. In relation to the qualifications to be fulfilled by the family members of the land oustees, all that is laid down is that the concerned person should fulfil the qualifications for the post and should also be found suitable by the appropriate Recruitment Committee. The implication herein clearly is that such of the candidates as fulfil the educational qualification and are also found to be within the age limit prescribed for the post, will not have to undergo the selection procedure laid down in the Employment Notice, dated 31.7.1998. Instead, it will be enough if they are found suitable for the post by an appropriate Recruitment Committee.The indication clearly held out is tat suitability adjudged by such a

Committee need not conform to the standard assessed according to the selection procedure contemplated in the employment notice.

12. In the subsequent policy letter, dated 9.6.1983, it has been clarified that notwithstanding the cash compensation received by the land oustees, the members of their families could still be considered for employment, taking into account the extent of land acquired, amount of compensation paid, size of family to be supported, etc. In deserving cases, employment at the rate of one job per family is to be offered. As to who could be termed as deserving is to be found out by listing out the land oustees in the order envisaged in Annexure-3 beginning with those who might have been deprived of the entire land asset possessed by them.

13. The learned counsel appearing on behalf of the respondents has strenuously urged that for giving preferential treatment in terms of the aforesaid policy letter of 1.1.1983, it should be considered enough and sufficient that the applicants in these O.As. were allowed to file applications within an extended period compared to the others (non-land oustees). He has pointed out that besides the above concession, a further concession has been given to the applicants by allowing them to be tested for physical stamina and endurance

prior to the non-applicants/outsiders. Preferential treatment, according to him, cannot mean anything more nor anything different from the above. The applicants have to undergo the very same selection process, which is required to be undergone by the others (non-land oustees). They have to compete with others and only on the basis of such a competition that their claims can be considered. In the event, according to him, only three applicants have emerged successful and have been given appointments. The learned counsel has also submitted that appointments in Railways are required to be made in accordance with rules and that the relevant rules providing for appointment in Group D posts will have to be followed. This is what has been done by the respondents by making the applicants go through the entire selection procedure laid down in the Employment Notice, dated 31.7.1998. In our judgment, having regard to the degree of seriousness attached to the problems of the land oustees by the Central Government, no argument could be more specious than advanced by the learned counsel appearing for the Railways.

14. The learned counsel appearing on behalf of the applicants has, contrary to what has been urged on behalf of the respondents, pointed out that preference, contemplated in the policy letter of 1.1.1983, can be given only in the following way. All vacancies, arising

after the acquisition of land, must necessarily be earmarked for the family members of the land oustees and without exposing them to competition with the outsiders, they should be selected on the basis of fulfilment of qualifications for the post, and on being found suitable by an appropriate Recruitment Committee. He has stressed that the element of preference will be rendered illusory, if a different approach is adopted by exposing the applicants to competition with the outsiders and also by subjecting them to the seemingly somewhat more rigorous procedure of selection provided in the Employment Notice of 31st July 1998. On a careful consideration of the rival contentions raised in this regard and on the basis of our own appreciation of the letter and the spirit of the policy of the Central Government, we are inclined to view the arguments advanced on behalf of the applicants with favour. In the circumstances, the selections already made, in our judgment, stand vitiated on the ground of improper application of the principles laid down in the policy letter of 1.1.1983. The same also stands vitiated on the ground noted by us in paragraph 7 above stems as it does from the judgments rendered by the Apex Court as also the others on the question of public notice conveying full and correct information about the number, etc. of vacancies to be filled.

15. During the course of arguments, it was submitted on behalf of the applicants that the policy of

providing employment to land oustees at the rate of one per family is reported to have been properly and effectively followed in relation to Koraput Rayagada Rail Link Project and also in respect of Mancheswar Project. It was accordingly urged on their behalf that the same policy, provided it is found to be in consonance with the various pleas advanced on their behalf herein, should be followed in the present case. Instead of providing details of the manner in which the aforesaid policy was implemented in relation to the aforesaid two Projects, the respondents have in the counter reply filed on their behalf, sought to sidetrack the issue by pointing out that while the aforesaid two projects involved acquisition of land on a much larger scale, a comparison with those projects will not be justified. In our judgment, the aforesaid argument advanced on behalf of the respondents is misleading, to say the least. Be that as it may, we will desist from making any further observation on this point as we have not been made aware of the fact and circumstances relating to the implementation of the policy in question in relation to the aforesaid projects.

16. The respondents have, in their bid to disown the claim made by the applicants, also stressed a trivial issue by submitting that the S.T.R.L.Project could not be termed a project implying thereby that the provisions of

the policy letter, dated 1.1.1983, cannot be made applicable to the land oustees of the said Project. In support of this contention, the respondents have placed reliance on the judgment of the Supreme Court made in the case of L.Robert D'Souza v. Executive Engineer, S.E.Railway, wherein the Court has held as under:

> "Every construction work does not imply project. Project is corelated to planned project and the workman is treated as workcharged."

Since the fact and circumstances in which the aforesaid observation was made by the Supreme Court have not been placed before us, we can only conclude that the same argument is quite as specious as the other arguments we have just referred to in the previous paragraph as also the one referred to in para 13 above.

17. The learned counsel appearing on behalf of the respondents has next proceeded to rely on the contents of the letter of the Minister of Railways, dated 1.11.1994 (Annexure R/11) to contend that ever since the work of land acquisition for the S.T.R.L.Project started in 1984-85, no appointment could at all be made from amongst the family members of the land oustees due to the reason that the Railways could manage with the help of the existing/retrenched casual labour available in the

project organisations of the Railways. A different position, however, emerges from what has been stated by the respondents in their counter reply. It is clearly stated therein that no recruitment has been made for the maintenance of the track of the S.T.R.L.Project as the Railway line in question was being maintained by the Contractor in view of the agreement between them and the Railways stipulating therein that the Contractor would maintain the Railway line in question for a period of six months after the completion of the project. It is also stated therein that the S.T.R.L.Project has already been inaugurated and the line has become operational. Carefully considered, the aforesaid submission made in the counter reply clearly implies that outsiders have been engaged as Gangmen by the Contractor for the maintenance of the Railway line in question. This, in our view, is not only contrary to what the Railway Minister has said, but is wholly at variance with the compulsive and the obligatory stipulations made in the policy letter of 1.1.1983. Since that letter having been issued by the Railway Board is in the nature of a statutory order, the Railways have themselves contravened the said order by letting the Contractor engage outsiders as Gangmen. After all, the agreement, if any, entered into between the Railways and the Contractor could not be permitted to supersede the statutory orders contained in the policy letter of 1.1.1983. A whisper of mala-fide

is, therefore, writ large on the face of the respondents' action in letting an agreement prevail over a policy letter having statutory effect.

18. Since the S.T.R.L.Project has admittedly been inaugurated, it is presumed that the agreement referred to in the previous paragraph has come to an end or might be in the process of being terminated. Following the termination of the aforesaid agreement, it should become possible for the Railways to induct the applicants for looking after the maintenance of the Railway track forming part of the S.T.R.L.Project. In this view of the matter, we are tempted to direct the respondents to take steps to induct the family members of the land oustees of the S.T.R.L. Project. To this end, the respondents should initiate action not by following the detailed selection procedure laid down in the Employment Notice, dated 31.7.1998, but instead by following a different procedure to which we have already made a reference in paragraph 13 above. Furthermore, for the same purpose, the respondent-authorities should refrain from inviting applications from persons other than family members of the land oustees.

19. In support of the contention raised on behalf of the applicants that a suitably reformed procedure should be applied to them in place of the

meticulous procedure prescribed in he Employment Notice, dated 31.7.1998, reliance has been placed on the case of Prakash Kumar Debata v. The Executive Engineer (Gridco), decided by the Orissa High Court at Cuttack, on 3.2.1999 and reported in 87(1999) CLT 573. We have perused the aforesaid judgment and find that though that case did not deal with the problem of land oustees, the petitioner therein had sought relief under the Orissa Civil Services Rehabilitation Assistance Rules, 1990. The petitioner's father had died and he was to be appointed in his place. While dealing with the matter, the High Court held as follows:

"Person seeking employment under the rehabilitation assistance scheme under no circumstance shall be subjected to any competitive test to judge his suitability though such suitability should be judged only to the extent of finding out whether one is eligible for the post and capable to discharge the nature of work attached to the post."

In making the aforesaid observation, the High Court had in turn relied on what had already been held by them in the case of Smt.Sabi Bewa v. Gridco, OJC No. 1845 of 1996, disposed of on 10.9.1998. On consideration, we find that though the circumstances of that case are materially different from the circumstances

obtaining in the present case, the ratio of the aforesaid judgment will still apply in as much as the issue of deprivation of livelihood was involved in that case in the same way in which the same is involved in the present case. Since the High Court had occasion to reiterate its views as above, it should be taken that the law in this regard has settled down and that what we have stated in paragraph 10 above should be taken as the correct position, and accordingly, the applicants in the present case cannot be subjected to the meticulously worked out selection procedure contemplated in the Employment Notice, dated 31.7.1998.

20. The job description contained in the Employment Notice, dated 31.7.1998, also came to be noticed during the course of arguments. The contents of job description have already been reproduced by us in paragraph 4 above. Looking at the same, it is not difficult to conclude that subject to proper and fair testing, the applicants should not be found, as a rule, inferior to the outsiders. What is really involved therein is that the candidates should have adequate physical stamina. We do not quite see why the applicants in the present case should be found having lesser physical stamina again, as a rule, compared to the outsiders. Subject to fairplay and justice, the applicants should , therefore, stand a good chance of being selected.

21. To buttress his argument that no option is available to the respondents in the matter of offering job opportunities to the applicants and that accordingly, they should have proceeded to select and appoint as many applicants as possible subject to fitness adjudged in accordance with a suitably reformed procedure already referred to, the learned counsel appearing on behalf of the applicants has placed reliance on the decision rendered by the Supreme Court in the case of Banwasi Seva Ashram v. State of U.P. and others, on 19.2.1992 and reported in 1992 LACC 368. The Supreme Court had in that case dealt with a contempt petition filed on behalf of Banwasi Sava Ashram. The contention raised therein was that the order made by the Supreme Court in Criminal Misc.Case Petition No. 2662 of 1986 in Writ Petition (Criminal) No. 1061 of 1982 on 20.11.1986, reported in 1987 LACC 229, had not been complied with. While dealing with the matter, the Supreme Court proceeded to lay down a series of measures required to be taken to rehabilitate the land evictees of Super Thermal Power Plant executed by the NTPC. The measures indicated by the Supreme Court, inter alia, included the following:

> "6. Unskilled and semi-skilled posts inthe project shall be reserved for the evictees subject to their eligibility and suitability.

7. The NTPC shall give preference to the oustees in employment in Class III and IV posts under its administration subject to their suitability and eligibility.

8. The evictees be offered employment through the contractors employed by the NTPC."

If one has regard to the concern shown by the Supreme Court for the rehabilitation of the land oustees by offering employment to the family members of such oustees, the conclusion is irresistible that the policy letter in question, dated 1.1.1983, must be read, understood and adhered to by offering employment opportunities to the family members of the land oustees in the manner we have held and observed in the preceding paragraphs. Right to livelihood is an important and inseparable component/facet of the right to life guaranteed under Article 21 of the Constitution of India. Thus, in Olga Tellis and others v. Bombay Municial Corporation and others, decided by the Supreme Court on 10.7.1985 and reported in AIR 1986 SC 180, the Court had occasion to hold that deprivation of right to livelihood except according to a just and fair procedure established by law can be successfully challenged as violative of Article 21. It is noteworthy that the Supreme Court felt inclined to make the aforesaid observation even though

the Court in that case was dealing with petitioners who had encroached on the Municipal land without having any legal right over that land. In the present case, the livelihood of the families of the land oustees stands threatened and they already stand deprived of their livelihood,although they had full right over the land from which they have been ousted. It is true that the land in question has been acquired by following the due procedure. But the respondents, who have acquired the land in question, have failed to adhere to the policy laid down by the Railway Board, their own apex organisation, by denying employment opportunities to the land oustees. In this view of the matter, the applicants' case would, as contended on their behalf by their learned counsel, seem to stand on an unshakeable foundation sanctified by the Supreme Court and thus not capable of being challenged with success.

22. For all the reasons mentioned in the preceding paragraphs and in the background of the discussion contained therein, we find substantial merit in the applicants' case. The selection process executed by the respondents for filling up 511 vacancies of Group D posts and appointments thereto consequentially made, in the circumstances, stand quashed and are set aside. In order that the work under way may not suffer,we find it appropriate to direct that those already appointed should be permitted to stay in their jobs on a purely temporary

basis, to be replaced in due course by the applicants/family members of the land oustees. The respondents will take steps to initiate and complete the process of selection confined to the family members of the land oustees expeditiously and in any event, within a maximum period of six months from the date of receipt of a copy of this order. The selection procedure to be followed will have to be in accordance with the reformed process indicated by us clearly in para 11 and also elsewhere in the body of this order.

23. The main relief sought in the present O.As. having been granted in the preceding paragraphs, we now proceed to record our disappointment, and we feel constrained to do so, about the totally unhelpful attitude exhibited by the respondent-authorities by insisting, on each conceivable occasion, that the law and the rules do not contemplate any preferential relief being given to the applicants (land oustees), that they should necessarily compete with the outsiders (non-land oustees), and further that they should subject themselves to the rigours of the selection procedure meticulously prescribed by the respondents, the details of which are available in the employment notice, dated 31.7.1998. On their own, the respondents (Railways) never planned to extend any benefit to the applicants and that is the reason why

why no reference was made to the applicants' case in the Employment Notice. Their intention appeared to be to recruit people by ignoring the applicants, and unusually large number of 511 vacancies had been notified. The applicants missing the bus on such an occasion were obviously likely to prove decisive in so far as their search for employment is concerned. Nevertheless, the intention clearly was to ignore their claims. Fortunately, for them, the applicants became aware of the Employment Notice and started chasing the powers that be in their effort to gain advantage therefrom. They succeeded, but as the events showed, actual success did not come their way. Time was extended to enable the applicants to file applications. They did so. Their claims were considered by exposing them to unfair competition from outsiders and by subjecting them to the selection procedure in its entirety. Only three of them succeeded. The rest failed. Out of 511, 508 vacancies were thus filled up by outsiders, other than the land oustees. This abysmal performance has to be understood in the context of the direct responsibility of the Government to accommodate land oustees in such jobs on a preferential basis. Government's anxiety, in

this regard, permeates through the various circulars issued for offering jobs to the family members of the land oustees. All this, regretfully enough, is without any impact on the minds and hearts of the respondents. The core policy letter, dated 1.1.1983, sums up the Government's policy. The policy nowhere provides, as has been contended on behalf of the official respondents, that the land oustees have to be given employment, if at all, only against the particular project for which the land might have been acquired. Such a policy, if adopted, can lead to severe distortions. For instance, in some cases the area of land acquired might be large, but the job seekers/land oustees might be few in number. Similarly, in certain other cases land acquisition for a project might result in the emergence of a large number of land oustees, but the jobs to be offered by the project might be extremely few. Such possibilities do undoubtedly exist with more and more capital intensive projects coming up all over. A land oustee, irrespective of the project, is a land oustee, and his claim for a job needs to be considered in the overall context. If the job seeker/land oustee is mobile and can travel distances, he might be willing to take up employment located far away from where his hearth and home existed. On the other hand, due to

domestic and other such problems, a number of land oustees might have to confine themselves to local areas or at best to adjacent locations. What is required, to meet the situation, is to have a national policy for giving employment to land oustees irrespective of the Departments and the Ministries to which the projects might belong. There is none yet in existence.

24. The official respondents have, as already stated, strongly resisted the applicants' claim by going to the extent of stating that when it comes to giving employment to the land oustees, the judgment of the Supreme Court relating to the regularisation of casual workers in the Railways might also stand in the way. No such judgment has, however, been placed before us. At the same time, notwithstanding the aforesaid judgment, if there is any, the official respondents themselves have opened the door of employment to outsiders, other than casual workers, in such a big number. 508 people have been recruited. Simultaneously, the official respondents have once more given a go by to the Supreme Court's judgments aforesaid by letting the contractor of the S.T.R.L.Project engage outsiders, other than land oustees, and also presumably, other than the existing casual workers of the Railways.

As if the said excuse and all other such excuses doled out by them are not enough, the official respondents have made an attempt to convince us that the workers to be engaged for the maintenance of the Railway track constructed and/or under construction in the project in question as also elsewhere are required to possess special merit in terms of physical strength and also educational qualification-wise. Thus, according to them, the workers at the lowest level need to be inducted through a rigorous selection procedure. Any let up on this might, in their view, jeopardize the efficient and effective maintenance of such modern projects executed at huge costs. Despite the aforesaid claim made on behalf of the official respondents, for the reasons we have already given earlier in this order, we have remained unconvinced. Looking at the job description of Group D employees recruited by the official respondents in this case, it is pretty easy to see that given arrangement for a proper and effective inservice training, the applicants/land oustees should be able to come up to the expectations of the official respondents. Railways have been training their own employees in large numbers in a good number of locations

and practically for all purposes. They should have been only too willing to do so in the present situation also. In that event, the body of lack of competence of the land oustees as a group could not be raised, and the official respondents would have felt obliged to select and appoint them by adopting relaxed procedures. The greatest pity is that the official respondents have not made any effort to appreciate that after a person or a family is uprooted from his hearth and home, the offer of a job is a small solace, and the same cannot be termed as a wholesome and attractive compensation. The very sensibilities of the people stand vastly disturbed when they are uprooted and divorced and separated from their traditional, ecological and environmental background. The land oustees, all invariably poor, wander in search of a modicum of comfort to which they have become used over the decades. Not all of them can take to employment. Even if they do, some of them may fail to perform. This cannot mean, however, that we should look the other way and let them grope in virtual darkness. The respondents must sit up and take notice if they have to be assisted and made to stand on their feet as best as possible and at the earliest possible. The problem of land oustees has been debated the world over in several important forums. It continues to engage the hearts and minds of the people even today. Here, we are, however,

in this hospitable land of India where less than responsible official organisations, not excluding the official respondents in the present case, choose to ignore and forget those very people/land oustees on whose lands the vast engines of development in the shape of projects operate and prosper. Such a thing cannot be allowed to continue and must not be permitted. If we are to uphold the rule of law, apart from the Constitution, the law and the rules and the regulations, we should start worrying about reasonableness, fairplay and justice. The Constitution, the law and the rules and the regulations are, in our judgment, mere instruments, and the country's executive provides the machinery for implementing and upholding the rule of law. Continued neglect of impoverished people, such as the land oustees, poses a threat to the rule of law.

25. In the above background, we find it appropriate to direct the official respondents in the following terms.

26. A comprehensive policy of rehabilitation, by way of offering employment in jobs, should be worked out by the official respondents by having regard to the needs and the requirements of the projects under execution or already executed throughout the length and breadth of this country. Amongst other

thinys, the followiny can be made components of the policy to be so evolved:

(1) A project-wise list of land oustees should be maintained in respect of each Division and Zone of the Railways, and the same should be updated every six months.

(2) Out of the aforesaid lists, sub-lists should be prepared, again Division-wise and Zone-wise containiny names of those land oustees who may have lost all the land they possessed. A similar list coveriny cases in which 75% or more of land loss might have taken place, may also be prepared, followed by a list of those who may have lost 50% or more of their lands.

(3) Out of the list of land oustees, who may have lost 100% of their land assets, further sublists should also be prepared yiviny names of those who possessed the minimum area of land, in that order. Similar sub-lists in respect of other cateyories may also be prepared.

(4) When it comes to offering job opportunities, preference may be given to those who possessed smallest areas of land and lost it all, and in that order. This is what is already indicated, though not effectively enough, in Annexure-3 placed on record.

(5) Free choice of the land oustees should be carefully ascertained through the agency of District Revenue Administration. There is an obvious advantage in doing this. The local revenue authorities are in touch with the people on day-to-day basis and are generally more aware of the problems of the people, and the ground realities concerning the assets, etc., possessed by them. Those found willing to travel large distances in search of job opportunities should be clearly identified. The others may be given such opportunities as and when these arise on the basis of preferences shown within the Division or in the Zone.

(6) Preferential treatment must be given not only in relation to regular job opportunities, but also in providing casual employment. This aspect is already covered by the existing policy letter, but presumably has not been translated into practice.

(7) The condition with regard to first recruitment and/or two years stipulated in the existing policy letter can be dispensed with as the same does not seem to be relevant. Family members of land oustees should be offered employment up to the last man and the list should be kept open for as long as necessary. There can of course be an age limit, say of 40 years, which is presently laid down in the Railway's instructions for regularisation of casual workers. Instead of only one age limit, there can be two such limits, say of 35 years and 40 years, having regard to the nature of employment.

(8) According to the existing policy letter, for giving job offers to the land oustees, only that portion of direct recruitment quota is taken into account, which is open for outsiders. Presumably, there is a separate quota forming part of direct recruitment quota, which is meant to be filled by people within the Railways. Such a distinction should be done away with and the entire direct recruitment quota should be thrown open for the land oustees.

(9) The fact that the land oustees do not have to be subjected to the rigours of the meticulously worked out selection procedures, must be made clear beyond doubt and those found deviating from such norms must be taken to task.

27. The task envisaged in the suggestions we have given in the preceding paragraph is a complex one. We, therefore, provide that a national policy, as indicated, may be evolved over a

period of one year and implemented faithfully.

28. The O.As. stand disposed of in the aforestated terms. No costs.

(M.R.MOHANTY) 20/02/2002
MEMBER(JUDICIAL)

(S.A.T.RIZVI)
MEMBER(ADMN.)

AN/PS