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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 839& 840 of 2005
Cuttack, this the 17th day of February, 2009

Pratap Kumar Sahu .... Applicants
Versus
Union of India & Ors. .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?

2. Whether it be circulated to all the Benches of the CAT or not?

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

(C.R.MOHAPATRA)
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No 839&840 of 2005
Cuttack, this the 17th day of February, 2009

C O R A M:
THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

O.A.No. 839 of 2005

Pratap Kumar Sahu, 38 years, /o. Sri Suresh Chandra Sahu, At-Sardola, Post-Harianta, Via-Choudwar, Dist. Cuttack.
.....Applicant.

Legal practitioner :M/s.P.R.Jiban Dash, J.Sengupta

- Versus -

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43, W.B.
2. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist. Khurda.
3. Chief Engineer (HQ), Construction, E.CO.Railways, Rail Vihar Chandraekahrpur, Bhubaneswar, Dist. Khurda.
4. Divisional Railway Manager, E.Co.Railway, Khurda Road Division, Jatni, Khurda.
5. State of Orissa represented through its Land Acquisition Officer, Collectorate Building, Cuttack-2.

....Respondents

Legal Practitioner : Mr.P.C.Panda, for Res.Nos.2&4
Mr.A.K.Bose, GA(State) for Res.5

O.A.No. 840 of 2005

Malaya Kumar Nayak, aged about 37 years, Son of Sri Arakhita Nayak of village Sardola, Post-Harianta, PS- Tangi, Cuttack.
....Applicant

Legal practitioner :M/s.P.R.Jiban Dash, J.Sengupta

- Versus -

1. Union of India represented through its Chairman, Railway Board, Ministry of Railways, Government of India, New Dehlhi.
2. General Manager, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist. Khurda.
3. General Manager, South Eastern Railway, Garden Reach, Kolkata, West Bengal-43.
4. Divisional Railway Manager, E.Co.Railway, Khurda Road Division, Jatni, Khurda.

....Respondents

Legal Practitioner : Mr.R.S.Behera, for Res.2.

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):-

Claim for appointment due to acquisition of lands belonging to the family of the Applicants having been rejected . Applicants have approached this Tribunal in this second round of litigation filed under section 19 of the A.T. Act, 1985 seeking to quash the orders of rejection under Annexure-A/4 dated 5.4.2005 (in OA No. 839 of 2005) and under Annexure-A/9 dated 5.4.2005 (in OA No. 840 of 2005) with direction to the Respondents to provide them appointment as land oustee.

2. Respondents relying on the instructions of the Railway Board on the subject have supported the orders of rejection passed in both the cases and have stated that there has been absolutely no ground to provide employment to the Applicants. They have also stated that there being no injustice in the decision making process, this OA is liable to be dismissed in limine.

3. Arguments advanced based on the respective pleadings were heard and materials placed on record were also perused.

4. The short question for consideration in these OAs is that as to whether the orders of rejection of the prayer of the applicants for providing employment as land oustee is within the frame work of the policy issued by the Railway Board vide Estt. Srl.No.322/87. The following is the policy guidelines:

> "Estt. Srl.No.322/87 dated 24th November, 1987.
>
> Appointment to Group 'C' and 'D' posts on the Railways of members of families displaced as a result of acquisition of land for establishment of Projects.
>
> (1) Your attention is invited to Boards letter No 71/W2/12/7 dated1.5.1973 enclosing

copy of letter dated18.11.1972 received from the Ministry of Agriculture (Department of Agriculture) regarding implementation of recommendations made by the Land Acquisition Review Committee on the question of the Government's responsibility for rehabilitation of evicted families as a result of acquisition of land for project s and also letter No.82/W2/12/15 dated 7.8.1982 enclosing a copy of D.O. letter dated 18th June,1982 received from Secretary, Rural Development, Govt. of India. In these letters certain guide lines have been laid down in regard to offer of employment to persons displaced as a result of acquisition of land for projects. Since certain references are being received from some of the Railways with regard to the exact scope of these instructions regarding employment of displaced persons on the Railways, the following guidelines are being issued.

(2) The Zonal Railways and Production Units and also project authorities may consider applications received from persons displaced on account of large-scale acquisition of land for projects on the Railways for employment of the displaced persons, or his son/daughter or wife for employment in Group "C' or Group IV posts in their organization including engagement of casual labour and give them preferential treatment for such employment, subject to the following conditions:-

1. The individual concerned should have been displaced himself or he should be the son/daughter/ward/wife of a person displaced from land on account of acquisition of the land by the Railways for the Project.
2. Only one job on such preferential treatment should be offered to one family.
3. This dispensation should be limited to recruitments made from outside in direct recruitment categories and to the first recruitment or within a period of two years after the

acquisition of the land whichever is later;

4. It must also be ensured that the displaced persons did not derive any benefit through the State Government in the form of alternative cultivable land etc.

5. The person concerned should fulfill the qualifications for the post in question and also be found suitable by the appropriate recruitment Committees. In the case of Group C posts for which recruitment is made through the Railway Service Commission the Chairman or the Member of the Railway Service Commission should be associated in the Recruitment."

5. The land belonging to the family of the Applicants was acquired by the Railway for construction of Railway doubling line/track between Salagaon-Nirgundi some time in the year 1999. The family was also paid the compensation by the Railway in lieu of the land occupied for the above purpose. Alleging non-consideration of their cases for providing employment they have approached this Tribunal in the year 2003 and as per the directions of this Tribunal the Respondents considered and disposed of their representations by holding that they are not entitled to appointment by way of further compensation. Reasons assigned by them in the order of rejection filed in OA No. 839 of 2005 read as under:

> "6(a) The land acquired under the specific Khata No./Plot Nos. of Sardola Village mentioned by the applicant was a **total of 36 decimals and belonged jointly to four owners** of whom Shri Suresh Chandra Sahu is one on the date of land acquisition;
>
> (b) This land has been acquired by the STATE Government of Orissa through the Land Acquisition

Officer on payment of compensation commensurate with the price of the land at the time of acquisition and handed over to the Railways for the purpose of doubling of the existing track between Salgaon-Nirgundi of Khurda Road Division. The allegation made by the applicant that the land was acquired by the Railways from the owners by paying a meager/marginal compensation is not true. **The compensation was paid to the full amount of the value of the land as fixed by the Land Acquisition Officer of the State Government.** No concession was made to the Railways in the amount of compensation paid to the owners as fixed by the Land Acquisition Officer. To this extent Board's instructions regarding payment of adequate compensation commensurate with the value of the land has been completely fulfilled.

(c) The applicant mentioned that the land so acquired was the only source of income for the family and that by acquiring the land their source of livelihood has been removed. **The documents furnished as annexures under the OA revel that the acquired land referred to by the applicant belonged to not only his father Shri Suresh Chandra Sahu but also to three others. This shows that the small pieces of land acquired spread over several plots from the four owners could not have been the only source of income for the four families and that they were fending for themselves through other sources also even prior to the acquisition of the land.** Therefore the claim that this acquisition ha removed the particular family's only source of livelihood is apparently not acceptable. The applicant has quoted Railway Board's letter No. E(NG)II/89/RC-2-38 dated 10.11.1989 and mentioned that this Board's letter has "promised" appointments to an eligible member of the family, whose land has been acquired for large scale Railway projects. This letter does not extend any such

unconditional "promise" or "right" for such appointment. It is also to be noted that the same letter mentions "it need hardly be stated that appointments can be made only on fulfillment of the conditions specified in these instructions" (instructions as contained in Board's letters No.E(NGII/89/RC-1/95 dated 01.01.1983, 09.06.1983, 22.03.1985 and 11.02.1988). **The said 10.11.1989 letter quoted by the applicant neither confers a right nor promises to afford unconditionally such appointment to all families whose land has been acquired by the Railways.** On the other hand, the said Railway Board's letter lays down certain procedural guidelines to be followed while contemplating and processing such appointments where justified as per available instructions.

(d) As per extant instructions, one of the important conditions to be fulfilled is that the applicants should be "displaced" **on account of large scale acquisition of land**. The inference being that any person who has not been displaced from his place of residence is ab-initio ineligible for such benefit of appointment in the Railways. From the residential address submitted by the applicant, **it appears that Shri Suresh Chandra Sahu and his family including Shri Pratap Kumar Sahu continue to reside at the same address in Sardola village, Cuttack District**. The fact that they continue to reside at the same address before and after the said land acquisition by the Railways shows that Shri Suresh Chandra Sahu and his family including Shri Pratap Kumar Sahu have not been "displaced" on account of the land acquisition, and any person who has not been displaced from his place of residence is ab initio ineligible for such benefit of appointment in the Railways.

(e) **A very significant procedural condition, as laid down in Railway Board instructions justifying**

appointments on account of large scale land acquisition is that such appointments will not be made on the basis of individual applications but will be processed by calling for applications from eligible candidates through open recruitment notification issued locally in the areas in which the land acquired is situated. **Besides, the dispensation regarding appointments in Railways will be limited to open market recruitments in direct recruitment categories and to the first such recruitment or within the period of 2 years after the acquisition of land whichever is later.** In case there has been no recruitment against specific project, there will no question of claim of employment on this ground.

The land acquisition for doubling of the existing single line track in Salgaon-Nirgundi section of the Khurda Road Division was done for the Railways through the Land Acquisition Officer appointed by the Orissa State Government. The construction work continued upto 2004 when the second line was opened for traffic. The construction of second line along the existing track in the section meant that there were already established stations and other offices with existing employees along the track. As a result, the laying of the second line has not necessitated immediate increase in the number of employees and therefore has not resulted in any open market recruitment on this account till date. **Therefore, there were no grounds justifying any open market recruitment for this section and hence no notification was issued for appointments to those whose land has been acquired for the doubling of track in the section**. The applicant stated that the Railways have promised to provide employment to those whose land has been acquired and that till date he has not been provided with the employment in Railways. **Nowhere in the land acquisition notification issued through the**

Land Acquisition Officer of the State Government or at the time of payment of compensation has any such promise for giving appointment to the applicant been made by the Railways. Therefore, this statement of the applicant is totally untrue.

(f) The applicant has drawn attention to the fact that a recruitment notification calling for applications for appointment from eligible members of families whose land was acquired by the Railways in the newly laid line between Sambalpur-Talcher sections was issued by Sambalpur division in 1999. The applicant has suggested that the land losers on account of the doubling of track in Salgaon-Nirgundi section of Khurda Road division are similarly placed as those land loses of Sambalpur-Talcher section in Sambalpur division. Here, it is to be noted that while the Sambalpur-Talcher line was an entirely new Railway line, giving rise to immediate requirement of manning the new section where there were no Railway stations and other officers at all prior to the construction of that line in that section. Therefore, the significant condition that such recruitment is to be notified against the specific project through open recruitment notification has been fulfilled in the Sambalpur Project. On the other hand, given the fact that there was an already existing Railway line in Salgaon-Nirgundi section of Khurda Road division with the full complement of Railway stations, offices and employees did not necessitate immediate requirement of fresh manpower on account of the laying of second track along the existing railway line in that section. **Hence the need for recruitment on this account did not arise in this doubling project.** Therefore, the comparison between the recruitment on account of the newly laid line in Sambalpur-Talcher section in Sambalpur division and the lack of recruitment on account of doubling of an existing line in Salgaon-

Nirgundi section of Khurda Road division has to be made with reference to the need for additional manpower requirement and not with reference to acquisition of land in itself. This factual position shows that the Railways has never been averse to conduct such recruitment to offer appointments to eligible members whose land has been acquired by the Railways where all prescribed conditions exist for such recruitment and appointments. While conditions necessitated fresh manpower to man the entirely new Railway section that was not at all existing earlier in Sambalpur-Talcher section, the already existing Railway line in Salgaon-Nirgundi section with the full complement of Railway Stations, offices and employees did not necessitate immediate requirement of manpower on account of the laying of second track along the existing Railway line. Therefore, the conditions in the two situations are entirely different and not comparable and hence no discrimination has been shown to the applicant nor any promise broken or a right violated as contended by the applicant in the said OA. **(Emphasis added)**

6. During arguments learned Counsel for both sides led much emphasis on the pleadings taken in the OA and having heard them we have perused the materials placed on record. We find that impugned order in OA Nos. 839 and 840 of 2005 has been passed based on the ~~laying~~ laid down policy of the Respondents. The counter in both the cases also speaks of the grounds based on which the Respondents have rejected the case of the Applicants. Going through the entirety of the matter, we find no ground whatsoever in favour of the applicants so as to interfere in the matter by directing the Respondents to provide the applicants employment as land oustee. The orders of rejection were absolutely justified and leave no scope for

this Tribunal to interfere in it. The Respondents while passing orders impugned in both the cases, have taken all aspects of the matter, including various instructions available on the subject into consideration and ultimately came to the conclusion that the Applicants have no right to claim such appointment. In addition to the above, we also hold that at this distance of time, such prayer of the Applicants is not at all sustainable.

7. In the light of the discussions made above, we find no merit in these OA. Both the OAs stand dismissed by leaving the parties to bear their own costs.

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

(C.R.MOHAPATRA)
MEMBER (ADMN.)

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