

21


CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 427 of 2012
Cuttack, this the 20th day of April, 2015

Gautam Behera		Applicant
	Versus		
Union of India & Ors.		Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(A.K.PATNAIK)
Member (Judl.)

22

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 427 OF 2012

Cuttack, this the 20th day of April, 2015

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)

.....

Gautam Behera,
Aged about 30 years,
S/o Sri Gopinath Behera,
Resident of Village Arugul,
PS- Jatni, Dist- Khurda.

.....Applicant

Advocate(s)... M/s. S.S.Das, R.K. Sahoo, K.C.Mohapatra)

VERSUS

Union of India represented through

1. The General Manager (P),
East Coast Railways, Khurda Road,
At/PO-Chandrasekharpur, Bhubaneswar,
P.S.- Mancheswar, Dist-Khurda.
2. Divisional Railway Manager,
East Coast Railways, Khurda Road,
At/PO- Khurda Road, P.S.- Jatni, Dist-Khurda.
3. Divisional Personnel Officer,
East Coast Railways, Khurda Road,
At/PO- Khurda Road, P.S.- Jatni, Dist-Khurda.

..... Respondents

Advocate(s)..... Mr. R.Agarwal

.....

ORDER

A.K.PATNAIK, MEMBER (JUDL.):

The applicant, Gautam Behera, Aged about 30 years, S/o Sri Gopinath Behera, Resident of Village Arugul, PS- Jatni, Dist- Khurda, has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking direction to the Respondents to consider his case for appointment under the Railways as



23

land belonging to his family was acquired for the purpose of construction of Khurda Road-Bolangir New B.G. Rail Link Project in the year 2002. Consequently, land acquisition case No. 70 of 2002 was registered before the Land Acquisition Officer pertaining to the landed property of his family and similar other persons of the locality. On 26.07.2002 compensation amount of Rs. 24,718/- was paid in favour of the family of the applicant in lieu of the land acquired for the purpose of the said project.

2. On 16.07.2010 a notification issued by the Railways No. (NG) 11/2010/RC-5/1 for providing employment assistance to one of the family members of land oustees. It is the specific case of the applicant that after notification dated 16.07.2010 he made several representations requesting employment assistance as per the notification dated 16.07.2010. Alleging non-consideration of his case, he has filed this O.A. with the following prayers.

- A) Let the Respondent Authorities be directed to consider the case of the applicant for appointment under the Rehabilitation Assistance Scheme as referred to by the applicant vide Annexure-2 as a land loser, whose family has been affected by the Land Acquisition made for the Railway project namely Khurda Road-Balangir New B.G. Rail Link Project;
- B) Let the Respondent Authorities be further directed to issue necessary orders of appointment in favor of the applicant against any available vacancy commensurate to his qualification within a stipulated time frame, while disposing of his application made in the regard;
- C) Any other order

3. Respondents have filed counter opposing the prayer of the applicant on the ground of law of limitation and non-applicability of the notification issued on 16.07.2010 as well. Further it has been stated that the issue raised in this O.A. is no more res integra as this Tribunal has already dismissed the O.A. No. 1032/2012 and O.A.No. 1031/2012 on 15.01.2013 and T.A.No. 02/2013 on 19.02.2013 filed

Alles

24

by other Applicants whose lands were acquired by the Railways for the above project on the ground of non-applicability of the notification dated 16.07.2010. Accordingly, the Respondents have prayed for dismissal of this O.A.

4. Mr. S.S.Das, Ld. Counsel for the applicant, at the outset, by placing reliance on the orders of the Hon'ble High Court of Orissa dated 14.04.2014 in W.P.(C) No. 5102/2013 (Krushna Chandra Nayak Vs Union of India & Ors.) has submitted that the fact of the present case is covered by the case before the Hon'ble High Court of Orissa and in that case after taking the objection now raised by the Respondents in their counter, the Hon'ble High Court of Orissa was pleased to set aside the order of this Tribunal dated 15.01.2013 in O.A. No. 1032/12. Therefore, it was strongly contended by him that in view of the Hon'ble High Court of Orissa the applicant is entitled to the relief claimed in this O.A.

5. Per contra, the contention of the Respondents is that the applicant has approached this Tribunal after a lapse of 10 years from the date of acquisition of land and after 10 years from taking over the possession and, therefore, he is not entitled to the relief as claimed in this O.A. It has been submitted that the Land was acquired in the year 2002 and compensation was also paid in 2002 and, therefore, the notification dated 16.07.2010 having no retroactive application, the applicant is not entitled to the relief claimed in this O.A. and thus the O.A. is liable to be dismissed. Respondents have also placed reliance on the orders of this Tribunal dated 15.01.2013 passed in O.A. Nos. 1032/2012 and 1031/2012 and order dated 19.02.2013 passed in T.A.No. 02/2013. Further, reliance has also been placed on the order of this Tribunal dated 27.06.2014 passed in O.A. No. 260/00497/2014, which was dismissed by this Tribunal on the ground of limitation as well as in the line of the order passed in O.A. No. 1032/2012.

Alles

25

6. Having considered the rival contentions of the parties, I have perused the materials placed on record. I have also gone through the order dated 15.01.2013 in O.A. No. 1032/2012 and the order of the Hon'ble High Court of Orissa dated 14.05.2014 in W.P.(C) No. 5102/2013. I have also gone through the order dated 27.06.2014 in O.A. No. 497/14 (Santanu Kumar Barik Vrs Union of India). I find that in the case of Krushna Chandra Nayak (Supra) land belonging to his family was acquired for the purpose of construction of Khurda Road-Bolangir New B.G. Rail Link Project in the year 1999. Consequently, land acquisition case No. 05 of 1999 was registered before the Land Acquisition Officer pertaining to the landed property of his family and similar other persons of the locality. Thereafter, Krushna Chandra Nayak made representation seeking employment assistance on the strength of the Railway Board Notification dated 16.07.2010 and alleging no action he has approached this Tribunal in O.A. No. 1032/12, which was considered by this Tribunal and rejected holding therein that this notification dated 16.07.2012 having come into force much after the land was acquired, the same is not applicable to the case of Mr. Nayak. He challenged the said order of this Tribunal before the Hon'ble High Court of Orissa in W.P(C) No. 5102/2013 and the Hon'ble High Court of Orissa allowed the Writ Petition vide order dated 14.05.2014. Relevant portion of the order is quoted herein below:

“9. A bare reading of the first paragraph of the notification dated 16.07.2010 extracted above makes it clear that applications for employment were called for from the land losers on account of acquisition of land “for the projects on the Railways”. The use of the expression “land has been acquired in Clause 3” of screening criteria unambiguously covers the land losers whose land has already been acquired for a Project. Therefore, it cannot be said that the said notification has no retrospective effect and it will apply prospectively. There is no reason to give a narrow interpretation to a benevolent circular/notification. Beneficial

Allee

26

circular should be liberally interpreted. The Hon'ble Supreme Court in the case of Commissioner of Customs (Preventive), Mumbai- vs- M.Ambalal and Company, (2011) 2 SCC 74, observed that the beneficial notification providing the levy of duty at a concessional rate should be given a liberal interpretation. It is needless to say that the object of issuing notification dated 16.07.2010 is a social welfare measure to rehabilitate the land losers whose land has been acquired for the Project on the Railways. The primary duty of the Court while interpreting the provisions of such benevolent notification is to adopt a constructive approach to achieve the purpose of such notification. Any other interpretation that would defeat the very purpose of the notification is not permissible under law. In case of providing employment to the family members of the land losers under Rehabilitation Assistance Scheme, technicalities cannot have preference over the substantive justice. Clause-8 of the said notification provides that the instructions contained in the notification dated 16.07.2010 normally will not be applicable in those cases where land acquisition process has been concluded by way of possession of land by Railway. Clause-3 and Clause-8 operates in two different sets of circumstances. When Clause-3 operates for un-going Projects, Clause-8 operates in completed projects where land acquisition process has been concluded by way of possession of land by Railway. Therefore, Clause-8 cannot restrict/circumvent/block the benefits flowing under Clause-3 to land losers whose land has been acquired for an ongoing project.

10. The matter can be looked at from a different angle.

According to the opposite parties- Railway Authorities, the petitioner is not entitled to get the benefit under the notification in question as by the time the notification was issued, his land has been acquired. This contention of opposite parties is not tenable as the same project is going on and the persons of neighbouring districts will get the benefit under the notification dated 16.07.2010, the petitioner and similarly situated persons would be deprived of getting such benefit merely because their lands were acquired earlier to the date of notification for the self-same project. Such an act is definitely discriminatory.

Alle

27

It may be noted here that the notification dated 16.07.2010 has been issued to consider the applications of land losers whose lands have been acquired on account of acquisition of land for the Project by Railway. Further, the petitioner sought for information under the R.T.I. Act from the East Coast Railway with regard to applicability of the notification dated 16.07.2010 for land losers of Khurda Road-Bolangir New B.G. Rail Link Project. The information supplied to the petitioner reveals that the said notification pertains to land losers on account of acquisition of land for the Project of Railways. Thus, the benefit available under the notification dated 16.07.2010 is project based.

11. For the reasons stated above, it is difficult to accept the contention of the opposite parties-Railway Authorities that under the same project of the Railway, while some of the land losers are entitled to get the benefit flowing from the notification dated 16.07.2010, the others will be deprived of getting the same benefit.

12. In view of the above, we are of the considered opinion that the notification dated 16.07.2010 is applicable to the case of the present petitioner and he is entitled to the benefit flowing from the said notification.

13. So far as the Question No. (iii) is concerned, in view of the answer to Question Nos. (i) and (ii), the Tribunal is not justified in dismissing the petitioner's O.A. on the ground that the land of petitioner's family was acquired much prior to the notification dated 16.07.2010."

7. As it reveals the case of Sri Krushna Chandra Nayak before the Hon'ble High Court of Orissa was that the process of acquisition of land was initiated by the authorities of the State Government for the purpose of construction of Khurda Road-Bolangir New B.G. Rail Link Project in the year 1999 to be undertaken by the E.Co.Railways under the Ministry of Railways. Consequently, land acquisition case No. 05 of 1999 was registered before the Land Acquisition Officer pertaining to the landed property of his family and similar other persons of the locality. In the process of such acquisition of land, a sum of Rs. 78,292/- was



28

granted as compensation in favour of his family by the Land Acquisition Officer, Puri. In the instant case, the process of acquisition of land belonging to the father of the applicant was initiated in the year 2002 by the State Government for the purpose of construction of Khurda Road-Bolangir New B.G. Rail Link Project to be undertaken by the E.Co.Railways under the Ministry of Railways. Consequently, land acquisition case No. 70 of 2002 was registered before the Land Acquisition Officer pertaining to the landed property of his family and similar other persons of the locality. In the process of such acquisition of land, a sum of Rs. 24, 718/- was granted as compensation in favour of the family of the applicant. It is the specific case of the Respondents that keeping in mind the delay in approaching this Tribunal and the notification dated 16.07.2010 having no retrospective application, this Tribunal dismissed the O.A. Nos. 1032/2012 and 1031/2012 and T.A.No. 02/2013. The present case being covered by the aforesaid cases, is liable to be dismissed.


8. I find that as the said order of this Tribunal has already been set aside by the Hon'ble High Court of Orissa with the aforesaid directions, the applicant's case gains strength by the stand of the Respondents itself. I have also gone through the order dated 27.06.2014 in O.A. No. 497/14, which I find to be per incurium as the same was passed by this Tribunal without taking into consideration the decision of the Hon'ble High Court of Orissa in the case of the Krushna Chandra Nayak (supra) and, therefore, the same cannot have any application in deciding the present issue raised in the present O.A. I find sufficient force in the contentions advanced by Mr. Das, Ld. Counsel for the applicant, that the case of the applicant deserves consideration in the light of the decision rendered on 14.05.2014 by Hon'ble High Court of Orissa in W.P.(C) No. 5102/2013 and the



stand taken by the Respondents in their counter as well as in course of hearing needs to be over ruled.

9. In the light of the discussions made above, Respondents are hereby directed to consider the case of the applicant in the light of the notification dated 16.07.2010 keeping in mind the order of the Hon'ble High Court of Orissa in the case of Krushna Chandra Nayak (W.P.(C) No. 5102/2013) and communicate the result of such consideration to the applicant within an outer limiter of 90 days from the date of receipt of a copy of this order.

10. In the result, the O.A. stands allowed to the extent stated above. No order as to costs.


(A.K.PATNAIK)
MEMBER(Judl.)

RK