

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JA BALPUR

CCP Nos. 14/2006, 16/2006, 10/2007 & 11/2007
(in OA Nos. 420, 431, 588 & 432 of 2004 respectively)
[40001406 1207]

Jabalpur, this the 13th day of December, 2007

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

(1) CCP No. 14 of 2006
(in OA No. 420 of 2004)

1. Rajeev Kumar Sharma S/o Shri Bhole Ram Sharma
age 34 years, Occupation- None, Resident of Village
Khajuri, Shivpuri. Presently Resident of 82, Rajendra
Bhawan, Tarkeshwari Colony, District Shivpuri.

2. Mahesh Kumar Sharma, S/o Shri Krishna Gopal
Sharma, Age 34 years, Occupation None, R/o Bachhora,
District Shivpuri, presently residing at Chhota Loharpura,
Old Shivpuri, Shivpuri.

-Petitioners

(By Advocate – Shri Neelesh Tomar)

VERSUS

1. Shri Budd Prakash, General Manager, North Central
Railway, Allahabad.

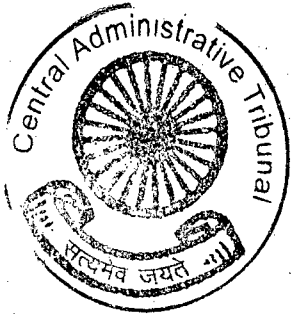
2. Shri A.K.Singh, Deputy Chief Engineer
(Construction), North Central Railway, Gwalior.

3. The General Manager, North Central Railway,
Allahabad.

4. The Deputy Chief Engineer (Construction), North
Central Railway, Gwalior.

-Respondents

(By Advocate – S/Shri Vinod Bharadwaj & Anil Singh)

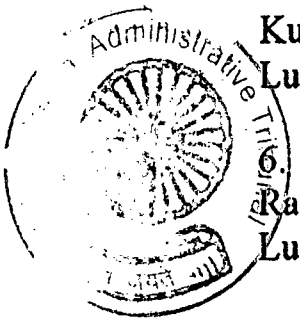


An

2 CCPS 14&16/06 and 10&11/07

(2)CCP No. 16 of 2006
(in OA No.431 of 2004)

1. Santosh Kumar Sharma S/o Shri Badri Prasad Sharma, Age-35 years, Occupation- Agriculture R/o Chandanpura, Teh & Distt. Shivpuri (M.P.)
2. Chandrabhan Singh Raghuvanshi, S/o Shri Ganesh Ramsingh Raghuvanshi, Age-38 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)
3. Bhanau Prakash Raghuvanshi S/o Shri Man Singh Raghuvanshi, Age-34 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)
4. Mahendra Singh Raghuvanshi, S/o Shri Amol Singh Raghuvanshi, Age-45 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)
5. Ram Swaroop Kushwah, S/o Shri Shyam Lal Kushwah, Age-39 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)
6. Lakhn Singh Raghuvanshi, S/o Shri Ram Singh Raghuvanshi, Age-34 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)
7. Ashok Raghuvanshi, S/o Shri Kamal Singh Raghuvanshi, Age-38 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)
8. Arvind Raghuvanshi, S/o Shri Keshav Singh Raghuvanshi, Age-35 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)
9. Nagraj Singh Raghuvanshi, S/o Shri Madhav Singh Raghuvanshi, Age-38 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)
10. Hariram Jatav S/o Shri Chetu Ram Jatav, Age-36 years, Occupation- Agriculture R/o Digodh Teh, Kolaras Distt. Shivpuri (M.P.)



11. Bhagwan Lal Rajak S/o Shri Mishri Lal Rajak, Age-35 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)

12. Ghasi Lal Rajak S/o Shri Sukha Ram Rajak, Age-36 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)

13. Brij Mohan Jatav, S/o Shri Mantoo Ram Jatav, Age-33 years, Occupation- Agriculture R/o Lukwasa Teh Kolaras Distt. Shivpuri (M.P.)

14. Dasrath Rawat S/o Shri Ratanu Rawat, Age-38 years, Occupation- Agriculture R/o Gram Mudkheda, Distt. Shivpuri (M.P.)

15. Ashok Suman, S/o Shri Haricharan Suman, Age-33 years, Occupation- Agriculture R/o v Badarwas, Teh. Kolaras Distt. Shivpuri (M.P.)

-Petitioners

(By Advocate – Shri Dharmendra Nayak)

VERSUS

1. Shri Buddh Prakash, The General Manager, North Central Railway, Allahabad (U.P.).

2. Shri Anil Kumar Singh, The Deputy Chief Engineers (Constructions), Central Railways, Gwalior.

-Respondents

(By Advocate – S/Shri Vinod Bharadwaj & Anil Singh)

(3)CCP No. 10 of 2007
(in OA No.588 of 2004)

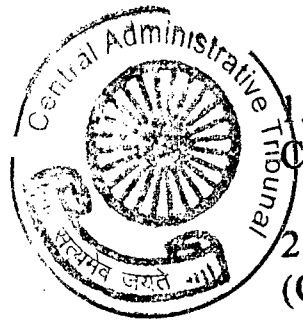
1. Ghambheer Lal, S/o Shri Shankar Lal, Age 34 years, Occupation-Agriculture, R/o Near Govt. Hospital, A.B.Road, Badarwas, Distt. Shivpuri.(M.P.).

-Petitioner

(By Advocate – Shri Dharmendra Nayak)

VERSUS

1. Shri Buddh Prakash, The General Manager, North Central Railway, Allahabad (U.P.).



2. Shri Narendra Kumar, The Deputy Chief Engineers(Constructions), Central Railways, Gwalior (M.P.).

-Respondents

(By Advocate – S/Shri Vinod Bharadwaj & Anil Singh)

(4)CCP No. 11 of 2007
(in OA No 432 of 2004)

Rajesh Kumar Satyarthi S/o Shri Hori Lal Satyarthi,
Age 32 years, Occupation-Agriculture, R/o Village &
Post Badarwas, A.B.Road, Distt. Shivpuri.(M.P.).

-Petitioner

(By Advocate – Shri Dharmendra Nayak)

VERSUS

1. Shri Buddh Prakash, The General Manager, North Central Railway, Allahabad (U.P.).

2. Shri Narendra Kumar, The Deputy Chief Engineers (Constructions), Central Railways, Gwalior (M.P.).

-Respondents

(By Advocate – S/Shri Vinod Bharadwaj & Anil Singh)

COMMON ORDER

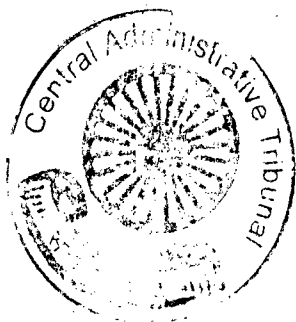
By Dr.G.C.Srivastava, VC.-

This order shall dispose of aforementioned 4 petitions filed under section 17 of the Administrative Tribunals Act, 1985 alleging non-compliance and willful disobedience of the common order passed by this Tribunal in OA Nos. 420, 431, 588 & 432 of 2004 on 28.7.2005. Since in all the aforesaid CCPs similar grounds have been raised, these are being decided by this common order for the sake of convenience.

2. The petitioners have been claiming employment in the railways on the ground that their land was acquired in 1992 for construction of Guna-Etawah B.G.Line and it was promised that at



least one member of the family would be employed by the railways. They initially approached this Tribunal in the year 2002 through OA nos. 87/2002, 497/2002 and 506/2002 for redressal of their grievance that they were not given appointment despite acquisition of their land and despite a general decision of the Railway Board in this regard communicated through letter dated 1.1.1983. These OAs were disposed of by a common order dated 30.10.2003 directing the respondents to consider the case of the petitioners in the light of the decision in OA no.801/1995 (Manoj Kumar Dwivedi Vs. Union of India and others) decided on 4.7.1998. The respondents considered the case of the petitioners, but rejected it on the ground that their claim was time barred. Aggrieved by this order, the petitioners approached the Tribunal again through the OAs, which are the subject matter of these CCPs. These OAs were also disposed of by a common order dated 28.7.2005 (annexure P-1) by issuing the following directions:-



“7....in view of the notification dated 1.1.1983 issued by the respondent Railways, they are directed to re-consider the case of the applicants for appointment against Group-C or Group-D posts as and when vacancies are available and if they are found suitable for appointment they be appointed in accordance with the rules and law. The General Manager, North Central Railway is directed to look into the matter personally”.

The respondents considered these cases and gave the following reply individually to all the petitioners (annexure P-2):

“In compliance of the Hon'ble Central Administrative Tribunal Jabalpur Bench at Gwalior order dated 28.07.05, General Manager NC Railway has looked into the matter personally and passed the following order:

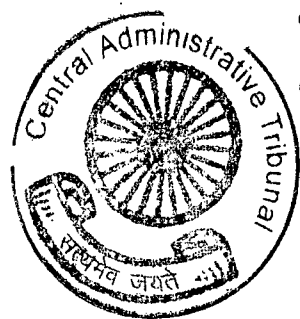
You have claimed for appointment on suitable post on account of acquisition of land in the year 1990-91 for the construction of BG Line on Guna-Etawah Section.

General Manager NC Railway has examined your case sympathetically. However, it is noted that NCR has at present liability of absorbing 298 wards of deceased staff on

compassionate grounds, 93 surplus employees awaiting redeployment and 148 medically decategorised staff awaiting adjustment, in addition to a large number of casual labours whose name are listed on live casual labour register.

It has been recently decided by Railway Board that all Group 'C' recruitments will continue to be done by RRB's and Zonal Railways will now undertake all Group 'D' recruitments. Therefore, you are advised to apply for Group 'C'/ Group 'D' posts depending on your eligibility through RRB/Zonal recruitment by Railway respectively whenever notifications are issued. The notification for Group 'D' will be issued shortly by NCR".

Dissatisfied by the above response of the respondents, the petitioners have filed these petitions alleging that the action of the respondents is contemptuous and that they have no respect for the mandate of the Tribunal. Accordingly, the petitioners have prayed for issuing rule nisi in the matter and to direct the respondents to cause their appearance before the Tribunal and to show cause as to why they should not be punished in the matter of contempt of the order of this Tribunal and they be suitably punished so that non-compliance may not recur and that they may be further directed to comply with the order in toto forthwith.

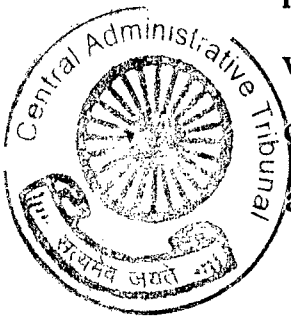


3. Notices were issued to the respondents and in their return they have denied the allegations by stating that they have complied with the Tribunal's order by passing speaking orders. They have also stated that the case of the petitioners was also considered earlier consequent to the orders passed by this Tribunal in OA Nos.506/2002 and 497/2002 and their cases were rejected vide order dated 4.3.2004 (annexure R-1) as they had not applied within time.

4. In their rejoinder, the petitioners have submitted that the instant OAs were filed against the order passed by the respondents on 4.3.2004. It was further submitted that although the later request

of the petitioners was rejected on the ground that there are no vacancies, the respondents have issued advertisements for filling up several group-D posts. It was, therefore, alleged that the averments made by the respondents in their return are contrary to facts. The petitioners have annexed copies of the advertisements ^{as and vacancy position} as annexure P-3.

5. The respondents have filed a supplementary counter affidavit stating that the vacancies available with the railways are to be utilized for discharging the liabilities of the railways for absorption of 304 wards of deceased employees on compassionate grounds, 57 surplus employees awaiting redeployment, ^{and} 44 medically decategorised staff awaiting adjustment, and 21,006 casual labours awaiting absorption as per the directions of the Hon'ble Supreme Court in the case of Indra Pal Yadav. The respondents have denied issuing of any advertisement for filling up vacancies stating that there has been only an internal correspondence for redeployment of staff from one division to another.




6. The petitioners filed an additional rejoinder again alleging that the respondents have not complied with the order of the Tribunal in toto. The respondents thereupon filed a compliance affidavit on 21.8.2007 stating that the General Manager has passed the speaking and reasoned order on 29.5.2007 in compliance of the directions of this Tribunal in the afore-mentioned OAs. Copies of these orders were annexed with the affidavit. It has been stated in the speaking order that the petitioners did not satisfy the criteria laid down for giving employment to those whose land had been acquired. Accordingly, the request of the petitioners was rejected.

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7. The petitioners filed another additional detailed rejoinder alleging that the claim of the petitioners has been rejected on evasive grounds thus making mockery of the mandate of this Tribunal. The petitioners also tried to show through their submissions that they were eligible to get employment according to the criteria which have been followed in this regard in the past. The respondents also filed another reply on 4.12.2007 asserting that the petitioners' case has already been considered in accordance with the Railway Board's instructions dated 1.1.1983 and suitable reply has been sent to them and, therefore, the contempt proceedings be dropped.

8. We have heard the arguments advanced by the learned counsel of both the parties. We have also heard the respondents who appeared in person on 10.5.2007.



9. The position which emerges from lengthy counter replies and rejoinders submitted by the respondents and the petitioners is that the respondents considered the cases of the petitioners for appointment, but they have found them ineligible for appointment as per the latest speaking order dated 29.5.2007 mainly on the ground that much less than 50% of their land was acquired by the railways. The case of the petitioners is that on an earlier occasion one Manoj Kumar Dwivedi who had approached this Tribunal through OA No.801/1995 was given employment even though in his case also less than 50% of his land was acquired. This was done consequent to the order of this Tribunal passed on 4.7.1998 in the aforesaid OA and the case of the petitioners should also be considered on the same basis. The learned counsel for the respondents admitted that employment was given to Manoj Kumar Dwivedi even though less than 50% of his land was acquired by

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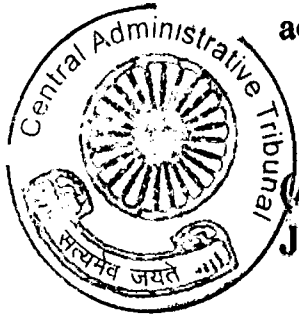
the railways, but he also confessed that it was a mistake and the general policy is that cases of only those applicants, who have lost at least 50% of their land, is required to be considered. In support of his contention, the learned counsel for the respondents drew our attention to the Railway Board's circular dated 1.1.1983 in which it has specifically been mentioned that "applications received from persons displaced on account of large scale acquisition of land" should be considered for employment of the "displaced persons or his son/daughter or wife". It was further argued by the learned counsel that if only a small percentage of the total holding of a person is acquired, he can not be termed to be a displaced person.

10. The learned counsel for the petitioners, on the other hand, disputed this contention by stating that there have been many cases in which employment has been given despite acquisition of only a small portion of the applicants' holding. From these arguments and submissions made by the two parties, it is clear that the charge of contempt has been brought out against the respondents on the ground that they have not passed correct order in compliance of the Tribunal's order, which implied that the petitioners were to be given employment even if less than 50% of their land was acquired.

11. It is a settled principle that "rightness or wrongness of the order cannot be urged in contempt proceedings" [Union of India and others vs. Subedar Devassy PV, AIR 2006 SC 909]. It is clear that the rival contentions of the two parties involve an interpretation of the order of this Tribunal as well as the correctness of the orders passed by the respondents in compliance of these orders. In a contempt case, we can not decide about the correctness of the interpretation put forward by the respondents or

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the petitioners. A similar issue was examined by the apex court in the case of **Indian Airports Employees Union Vs. Ranjan Chatterjee and another**, AIR 1999 SC 880 and it was held that such a question if raised has to be decided in appropriate proceedings and not in a contempt case. The respondents have passed orders in compliance of the directions of this Tribunal based upon their own interpretation and perception of these orders and can not be said to have committed willful disobedience of the orders of this Tribunal. The contempt petitions are, therefore, dismissed without expressing any opinion on the correctness or otherwise of the various orders passed by the respondents. It is open to the petitioners to resort to appropriate remedies in accordance with law.




(A.K. Gaur)
Judicial Member

rkv


(Dr. G.C. Srivastava)
Vice Chairman