

Central Administrative Tribunal
Patna Bench, Patna.

O.A 21/2015

Order Reserved on :- 17.01.2019

Date of Order:- 29.01.2019

C O R A M

Hon'ble Shri J. V. Bhairava, Member [J]
Hon'le Shri Dinesh Sharma, Member A)

1. Chandan Kumar , son of late Kulo Singh, resident of village-Bhelwa, Post & P.S. -Hisua, District- Nawada.
2. Manju Dev, wife of late Kulo Singh, resident of of village-Bhelwa, Post & P.S. -Hisua, District- Nawada.

....Applicants

By Advocate : Shri S.K.Bariar

Vs.

1. Union of India through the Chairman, Railway Board, New Delhi.
2. The General Manager, East Central Railway, Hazipur.
3. The chief Administrative Officer/Construction. Mehendru Ghat, Patna
4. The Superintending Engineer, Construction/Land, Mehendru Ghat, Patna.
5. The District Land Acquisition Officer, Nawada.

..... Respondents.

By Advocate : Shri B.K. Choudhary
Shri D.K.Verma

O R D E R

Per J.V. Bairavia, M [J] :- In the instant O.A the applicant has sought relief for issuance of direction upon the respondents to appoint him against the Group-'D' posts.

2. To substantiate the claim for appointment to the post of Group 'D' post, the applicant has mainly submitted as under :-

[2.1] It is contended that the father of the applicant no.1 namely late Kulo Singh died in the year 1999 leaving behind three children and wife thus he could not pursue his studies due to indigent condition.

- [2.2] That the family member of late Kulo Singh was having some land against which they were surviving as it was the main source of their livelihood.
- [2.3] In the year 2002, the respondent Railway Department had proposed a new Rail Line Project between Rajgir and Tilaya, thus they had acquired 47 decimal lands of applicant for their new Railway Line Project. The said acquired land was in the name of applicant no.2 i.e Manju Devi and due to acquisition of land of the applicants, they became landless which is causing very difficulty in survival of the applicants as the said land in question was the only source of their livelihood. It is further contended that the District Land Acquisition Officer, Nawada had also forwarded the application of the applicant vide its communication dated 24.04.2004 to the Deputy Chief Engineer (Construction), E.C. Railway, Rajgir stating therein that due to acquisition of land for railway project, the applicant become landless. (Annexure A/2 refers).
- [2.4] It is further contended that vide circular dated 19.04.2006, the Railway Board informed the General Manager (P), All India Railways/Pus including the General Manager, E.C. Railway, Hazipur whereby the Railway Board had decided that no cognizance by way of offering employment to displaced person should be given wherein only a strip of land (viz), for construction of a line) has been acquired but the same can be considered in Group 'D' posts only wherein large area, house or substantial livelihood has been taken away/snapped in the process. Since the applicant had lost their substantial livelihood by way of

acquisition of their land by the respondents the case of the applicant for appointment in Group 'D' post ought to have considered by the respondents but they have not given any heed to the same. (Annexure A/2 refers).

- [2.5] It is further contended that substantially the Superintending Engineer. Construction/land, Mahendrughat, Patna had called the applicant no.2 vide their letter dated 16.10.2009 to appear before him on 20.10.2009 alongwith relevant documents of land. (Annexure A/3 refers).

In response to it, the applicant no.2 appeared alongwith the relevant/required documents and thereafter the said Superintending Engineer vide its letter dated 21.10.2009 sought details of income of the family from the District Land Acquisition Officer, Nawada. (Annexure A/4 refers).

- [2.6] The Circle Officer, Hisua Nawada vide letter dated 18.01.2010 submitted a report wherein it is stated that the applicant no.2 is the widow and her land was acquired by Railway for new Railway Line Project between Rajgir and Tilaya. Annexure A/5 refers). The said report was forwarded to the Superintending Engineer, Mahendru Ghat, Patna (Annexure A/6 refers.) Since the applicant was minor and subsequently he had completed 19 years of age and the applicant no.1 had completed more than 50 years of age the respondent had conveyed that it is difficult to provide appointment to her on ground of being over aged. Thereafter, applicant no.2 had nominated her first son

name for appointment against the acquisition of her land for Railway Project.

[2.7] The applicant no.1 had submitted a duly filled up application to the respondents for appointment against the acquisition of land for railway project on 24.10.2011 (Annexure A/7 refers). Subsequently, the applicant had submitted his representation on 06.06.2014/09.09.2014 and requested the concerned authority to consider his claim for appointment. (Annexure A/8 refers).

[2.8] It is further contended that the respondents had provided employment to 277 persons against Acquisition of Land in the year 2002 for Railway Project of Rail Ganga Bridge Project against the Railway Board Circular No. RBE No.99/2010 dated 16.07.2010 but the applicant no.2 has not been provided the employment against acquisition of land in the year 2002. (Annexure A/10 refers). It is contended that the applicant no.1 is fulfilling the criteria for providing employment against acquisition of land as the District Land Acquisition Officer, Nawada had issued the certificate that applicant no.2 is widow and landless and she has not received any land from state government in lieu of her land acquired for the Railway Project and she remained without source of income. The applicant no.2 is having no financial support and due to indigent condition she is not able to maintain her family and to give proper education to her children and she is entitled for appointment as per the policy of Railway since the applicant no1 is eligible to get appointment in Group 'D'

post but respondents have not issued any order in their favour; hence the present O.A.

3. In response to notice, the respondents have filed their reply denying the contention of applicant and further contended as below:-

[3.1] That the Railway Board letter dated 16.07.2010 i.e RBE NO. 99/2010 which is relied upon by the applicant to substantiate her claim is in fact not applicable to the Project Rajgir –Tilaya New Line since land for this project was acquired in the year 2002 and the guidelines of Railway Board RBE 99/2010 dated 16.07.2010 only applies for the land acquired on or after 16.07.2010 hence the claim of applicant is not tenable.

[3.2] It is further contended by the I/c for respondents that the Railway Board had made special dispensation for appointment of the persons in lieu of their land acquisition in Mega Project such as "Ganga Rail cum –Road bridge" between Digha-Paleja. Certain guidelines for giving employment to the families displaced on account of land acquisition in connection with Rail Ganga Bridge Project decided during the meeting held with Chairman, Railway Board on 30.04.2006. In fact, there is no specific dispensation /policy of Railway Board to provide job/employment in lieu of acquisition of land for Rajgir – Tilaya New Line Project.

The issue with regard to whether there is no policy for providing the job/employment in lieu of land acquired was considered extensively by Hon'ble High Court, Patna in CWJC 23015/2012 in the case of Surya Bhushan Kumar vs

The Union of India through Secretary, Ministry of Railway, New Delhi & ors decided on 30.01.2012 inter alia held that ***"A persons whose lands are acquired has a statutory right to receive compensation only. There is no vested right in the person to simultaneously seek other mode of rehabilitation much less employment as a matter of right."***

The LPA 399/2012 filed against the said order was also dismissed vide order dated 18.06.2014. (Annexure R/1 series refers).

- [3.3] It is further contended that even after acquisition of 17 Decimal of Land for railway project, the applicant still have substantial land in their name as per the Circle Officer, Nawada dated 18.07.2006. (Annexure R/2 refers). Therefore, it is not correct on the part of applicant that they become landless. It is further contended that even as per the RBE No. E(NG)II/89/RC-2/38 dated 10.11.1989 and 19.04.2006 of Railway Board it is very categorically stated by the respondents that no cognizance by way of offering employment to displaced person should be given wherein only a strip of land has been acquired but the same can be considered in in Group 'D' post wherein large area, house or substantial livelihood has ben taken away/snapped in the process. The I/c for respondents submits that the land of applicant acquired for railway project from Rajgir to Tilaya is not covered under any policy or scheme for appointment in lieu of acquisition of land. The appointment offered by the respondents wherein the land acquired for the mega project "Ganga-Rail-cum-

Road Bridge" between Digha –Paleja project. (Annexure R/4 refers). As per the report submitted by the Circle Officer, Hisua, the applicant has 48 ¼ acre of land left with her even treated as landless. The land was acquired in the year 2002 as such the applicant has no right/entitled to claim for appointment in lieu of acquisition of land. Therefore, the claim of the applicant in this OA may be rejected.

4. The applicants have filed their rejoinder reiterating their earlier submissions. Additionally, it is contended that the applicant had been paid very meager amount as compensation in lieu of their acquired land and placed reliance upon the order/award passed in case no. 8/99-2000, with regard to the payment of compensation. (Annexure A/11, A/12 and A/13 refer) vide certificate dated 24.08.2009. The District Land Acquisition Officer, Nawada had stated therein that total 0.47 Acre i.e 47 decimal land of the applicant was acquired at 80% compensation for the Railway Project between Rajgir and Tilaya. (Annexure A/14 refers) and now the applicant no2 is having only 18 ¼ decimal land therefore the authority had declared the applicant landless vide letter dated 18.01.2010. It is further contended that the applicant fulfill the criteria stated in railway circular dated 19.04.2006 (Annexure R/3) of the respondents therefore he is entitled for appointment in Group 'D' post. The applicant has placed reliance on the order passed by the Hon'ble Patna High Court in CWJC 15820/2007 in the case of Yadunandan Prasad and others vs The Union of India through Secretary and others and order passed in MJC No. 2158/2013 and contended that the Hon'ble High Court has directed the Chairman, Railway Board to ensure that no discrimination is practiced between the persons whose land was acquired for construction of Rail cum Road bridge across the river Ganga connecting Patna to Sonapur. The said reason for passing such order has

already been given in the said order and the rationale and reasoning given therein also applies to the present case as these petitioners have also claimed that their land has been acquired from Patna end of the bridge. The said writ petition was disposed of with a direction upon the Chairman , Railway Board that the claim of the petitioners needs to be verified and the same parameters will be applied to the present petitioners as well as has been done in the case of those persons who have lost their house and land on the Sonapur end. Therefore, in the case of applicant whose land was also acquired for railway project require to be treated equally for the purpose of appointment.

5. In this regard, l/c for respondents submits that the contention of the applicant is not tenable. The issue before Hon'ble High Court, Patna was with respect to construction of Rail cum Road bridge across the Ganga River connecting Patna to Sonapur. In the present case, the land acquired for the project of Rajgir to Tilaya where there was no policy for offering any appointment , in fact the applicant does not have vested right for appointment.

7. Heard the parties and perused the records. It is not in dispute that the applicants were possessing 0.65 Acres of land and out of which .47 Acres of land has been acquired in the year 2002 and for which admissible compensatory amount has been paid to the applicant no.2 by the Govt/respondents. On examination of letter dated 19.04.2006 as referred by the applicant at Annexure A/1 was issued subsequent to land enquired by the respondents. The Hon'ble High court, Patna, in CWJC 23015/2011 in the cases of Surya Bhushan Kumar Vs The Union of India through Secretary Ministry of Railway, New Delhi and ors has decided that the person whose land has been acquired has in fact no vested right to claim appointment. The land looser has only right to claim for compensation only. In the present case, as stated hereinabove, the applicants were awarded compensation in

lieu of acquisition of their land. There is no material on record which can be said that there was an agreement between land owner and the government with respect or provide any appointment to the land looser. It is also noticed that the rail project from Rajgir to Tilaya and there was no approval or policy in regard to offer appointment to the land looser. The reliance placed on record by the applicant is also not applicable in his case. Therefore, the O.A., being devoid of merit, is dismissed. No costs.

[Dinesh Sharma] M [A]

[Jayesh V. Bhairavia] M [J]

/mks/

