

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/367/2014

Date of Reserve:04.09.2019

Date of Order:30.09.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sagar Kumar Sahu, aged about 28 years, S/o. Gangadhar Sahu, At/PO-Balaramprasad (Amantapur), PS-Nalco Nagar, District-Angul.

...Applicant

By the Advocate(s)-M/s.R.Mohapatra
N.M.Sarkar
S.Mohanta

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Steel & Mines, Sastri Bhawan, New Delhi.
2. Chairman-cum-Managing Director, National Aluminium Company Ltd., Nalco Bhawan, P/1, Nayapalli, Bhubaneswar-751 061.
3. Executive Director, Mines & Refinery Complex, Nalco, At/PO-Damanjodi, Dist-Koraput, Orissa.
4. R.D.C., Sambalpur, At/PO/Dist-Sambalpur.
5. Collector-cum-District Magistrate, Angul, At/PO/Dist-Angul.

...Respondents

By the Advocates(s)-M/s.M.K.Mishra
D.K.Pattnaik
J.Pal

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, the applicant challenges the action of the Respondent-NALCO in not providing him appointment as Junior Operative Trainee (Fitter) as a land oustee in pursuance of personal interview held on 3.01.2011. Hence, in this O.A. he has sought for the following reliefs:

- i) To quash the order dated 31.01.2014 which is marked as Annexure-A/8.

- ii) To direct the Respondents to give appointment to the applicant under Rehabilitation Scheme as a Land Affected Person (LAP).
- iii) And pass any other appropriate order/orders, direction/directions which would be deemed fit and proper in the facts and circumstances of the case.

2. It reveals from the record that the applicant had earlier approached this Tribunal in O.A.No.889 of 2014 for direction to Respondent-NALCO to declare the result of personal interview held on 03.01.2011 with a further direction to give him appointment under Rehabilitation Scheme as a land affected person on the ground that Government of Odisha had acquired land of the applicant for construction of National Aluminium Company at Angul. This Tribunal disposed of the said O.A. vide order dated 08.01.2014 in the following terms:

- "4. Mr.Mishra submitted that in the meantime result of the selection has been declared and the posts have already been filled up and as the applicant could not be selected he was not appointment. Further it was submitted by him that if the applicant has any grievance of his non-selection he may challenge the same in separate OA and with the present prayer this OA is not maintainable. This apart, we find that the applicant has approached this Tribunal without availing of the opportunity, at the first instance, available to him by way of making representation to the competent authority as exhaustion of departmental remedies prior to filing the OA is a pre condition, in terms of the provisions made in the A.T.Act, 1985.
- 5. On being confronted, Mr.Bhutia has prayed liberty to withdrawn this OA so as to remedy his grievance by way of making representation to the Competent Authority at the first instance. We feel that nobody will be prejudiced in the event the above prayer is allowed at this stage. Hence this OA is disposed of as withdrawn with direction to the Respondents that if the applicant makes a representation venting his grievance, the same should be considered/disposed of and the result thereof be communicated to the applicant in a well reasoned order within a period of four weeks from the date of receipt of such representation".

3. Complying with the above direction the applicant submitted a representation dated 16.01.2014 (A/7) to the Executive Director (M&R), NALCO (Respondent No.3) for consideration of his grievance for appointment as Junior Operative Trainee (in short JOT) under the Respondent-NALCO being a land affected person as well as in pursuance of the personal interview held for the post in question. The Respondent-NALCO disposed of the applicant's representation vide communication dated 31.01.2014 (A/8), which is impugned and called in question in the instant O.A. For the purpose of clarity, the contents of the said communication is extracted hereunder.

"A reference is invited to your representation dated 16.01.2014 as per the order against the petition filed by you before Central Administrative Tribunal, Cuttack in Case No.889 of 2013 in connection with your joining at NALCO, M&R Complex as JOT(Fitter). In this connection, we have verified our records and found that along with many others, you were also not found suitable by the Selection Committee and thus were not selected to join the company. However, as per the order of the Hon'ble CAT, the said representation dated 16.01.2014 was examined and we would like to inform you as under:

With regard to the recruitment of JOTs during 2010/11, it may be noted that the Advertisement No.2/2010 for 240 posts of JOTs and 06 other posts was released on 1.9.2010 in the local dailies and also the Employment News. Apart, the above was hosted in NALCO's website for wide circulation. As per the approved policy of the Company, Land Affected Persons other than LDPs whose land was acquired for NALCO project were extended certain relaxation in age and qualifications against a declaration that non of his/her family members are employed in NALCO and this was one of the conditions published in our aforesaid Advertisement also. However, the recruitment drive was open for all eligible candidates as per the said Advertisement. You must be aware that the identified LDPs are considered for jobs in NALCO as per the respective rehabilitation policies of the Company.

M/s.HP, Kolkata, a professional agency was authorised by the company to conduct the above recruitment activity. Accordingly, written test for the posts was conducted on 31.10.2010.

Subsequently, the personal interview for the written examination qualified candidates was held by the company at Damanjodi between 20.12.2010 to 12.1.2011 category wise and post wise respectively. The interview for selection of trainees was conducted by a duly constituted Selection Committee as per the extant rule of the Company including the member representative from the State Government which looked into the matter meticulously for selection of candidates for the post trade wise and category wise. It is worth mentioning here that the total number of candidates called for the personal interviews were 1598. The number of candidates appeared for the personal interview as 1496 and finally 183 got selected for appointment. You were one amongst the candidates called for the interview. The Selection Committee did not find you suitable and thus you were not selected for the post of JOT".

4. Aggrieved with this, the applicant has approached this Tribunal seeking for the reliefs as mentioned above.

5. The grounds on which the applicant has mainly based his claim are that his land has been acquired by the State Government of Odisha for the purpose of setting up of NALCO Project and therefore, he comes within the scope and ambit of displaced person. He has assailed the action of the respondents in not providing him appointment in pursuance of personal interview under Rehabilitation Assistance Scheme as arbitrary and whimsical. It has been contended by the applicant that after acquisition of land in the year 1982, the Land Acquisition Officer, Angul declared him as Land Affected Person (LAP) category. According to him, none of his family members is employed in NALCO under the Rehabilitation Assistance Scheme. It has been pointed out that the applicant on completion of ITI(Fitter) in the year 2006, submitted several representations to the Collector, Angul citing his distressed condition, inter alia, with a prayer to take steps for his appointment in NALCO under the Rehabilitation Scheme as a land oustee. In the above backdrop, the representation of the

applicant having been forwarded to the NALCO authorities, the latter sent a letter dated 30.12.2009 indicating therein that NALCO is not constrained to consider his case for regular employment and in case, the applicant having the requisite qualification and age, he may compete along with other candidates as and when recruitment action would be initiated by the Company through Advertisement. In the instant case, grievance of the applicant is that even though he had submitted an application as a land oustee in pursuance of advertisement issued by the Respondent-NALCO and attended personal interview, but he was not considered for appointment, which, according to him is illegal, arbitrary and colourable exercise of powers.

6. Opposing the prayer of the applicant, Respondents, viz., NALCO authorities and the State Government authorities have filed counters separately.

7. In the counter filed by the State Government of Odisha (Respondent Nos. 4 & 5), it has been submitted that land measuring Ac.0.02 decimal was acquired out of the share of Chain Sahu measuring Ac.0.07 decimal in the year 1982. Chain Sahu died leaving behind him two sons viz., Gangadhar Sahu & Goutam Sahu. Applicant is the son of Goutam Sahu, as reported by the R.I. concerned. In the above background, the name of Chain Sahu was placed at Sl.No.107 in LAP register prepared during acquisition of land. It has been pointed out that according to R & R Policy, 1984 for NALCO, there is no provision for service benefit to the family of LAP category. The applicant is not coming under the Local Displaced Person (LDP) nor his family has been displaced. In view of this, there is no question of giving appointment to the applicant as a member of displaced family. According to Respondent Nos. 4 & 5, the relevant provision under definition 1(i) reads as follows:

"Local Displaced Person:

A local displaced person is defined as a person or a nominee of a family whose land has been acquired for National Aluminium and who has been paid due monetary compensation and whose vacant possession of land has been taken over by the Government/National Aluminium for its projects".

8. It has been submitted that the grandfather of the applicant and seven other recorded members of Khata No.420 did not receive the compensation money for which Rs.407.22 has been deposited in Form-E vide Treasury Challen No.23 dated 30.01.1987 as revenue deposit. In the end, it has been submitted that the applicant being a member of LAP family does not deserve any relief as sought for in this O.A.

9. In the counter filed by Respondent-NALCO, it has been submitted that as per the initial Rehabilitation Policy and the subsequent guidelines laid down by RPDAC of S&P Complex, Angul, Substantially Affected Persons (SAPs) or their nominee, as the case may be, of Angul Sector having Matriculation or Higher qualifications are eligible to be considered for regular employment after following the laid down criteria for selection, subject to availability of vacancies. The present applicant being a nominee of a Less Affected Person (LAP) is not eligible for the rehabilitation assistance. As regards NCLO, Damanjodi is concerned, Land Displaced Persons (LDPs), who have lost both homestead and agricultural land are eligible for rehabilitation assistance. According to respondent-NALCO on both the counts, applicant is not eligible to be considered for rehabilitation assistance. It has been pointed out that as per the approved policy of the Company, Land Affected Persons, other than LDPs, whose land has been acquired for NALCO project are extended certain relaxation in age and qualifications on the basis of a declaration that none of his/her family members are employed in NALCO.

However, they have to compete along with others for selection. The applicant was one of such candidates along with many other candidates called for the interview in response to an open advertisement, but, the Selection Committee did not find him suitable and therefore, he was not selected for the post of JOT.

10. Applicant has filed a rejoinder to the counter in which, it has been pointed out that one land oustee, namely Shri Anil Kumar Guru, a similarly situated person had approached the Hon'ble High Court of Orissa by filing a writ petition registered as W.P(C) No.18510 of 2013 and the Hon'ble High Court disposed of the said writ petition by observing that having framed the scheme to provide employment to the family members or nominee of the land displaced persons LAP and SP to rehabilitate, it is not open to the Nalco to turn back and contend that the petitioners have no right for employment which is contrary to the scheme and the object of the rehabilitation scheme framed by Nalco at the instance of the State Government. Having regard to the undisputed fact that the petitioners have obtained ITI training in the Institutions maintained by the State Government and the land displaced persons were considered as LAP, the Hon'ble High Court directed the Nalco authorities to consider the case of the petitioner Shri Guru in the light of the order dated 12.01.2011 passed in W.P.(C) No.17407 of 2010 along with the batch as expeditiously as possible. Therefore, it has been submitted that in the light of the aforesaid decision, the applicant being a similarly situated person, he is entitled to reliefs sought for in the O.A.

11. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission filed by both the sides.

12. In the written notes of submission, the applicant has brought to the notice of this Tribunal Paragraph-19 of the judgment dated 17.08.2011 of the Hon'ble High Court of Orissa in W.P.(C) No.19622 of 2010, which reads as follows:

"Accordingly, we allow the writ petition in same line as indicated by this Court in W.P.(C) No.17407 of 2010 disposed of on 12.01.2011 which order is upheld by the Hon'ble Apex Court and issue mandamus to the Opp.Parties Nalco to give employment to the petitioner within eight weeks from the date of receipt of this order".

13. It is submission of the applicant that while the Respondent Nos. 2 and 3 have abided by the judgments of the Hon'ble High Court in WP(C) No.19622 of 2010 and in W.P.(C) No.17407 of 2010, in the instant case, their action is quite contrary, which is not sustainable in the eye of law.

14. On the other hand, the Respondent-NALCO in the written notes of submission have relied on the decision of Hon'ble High Court of Orissa in O.J.C.No.4150/90 & batch of cases (Pratap Behera vs. NALCO Ltd. & Ors.) in which it has been held that by giving employment to the persons whose lands were acquired ignoring the case of more meritorious candidates on the ground that they are neither family members or nominee of persons whose land was acquired for the company will tantamount to ignoring merit and efficiency in employment of the public sector undertaking. Such practice will not only be unfair, improper but also discriminatory and against the public interest...Further, the respondent-NALCO have pointed out that the facts in the present O.A. are not similar to Pabitra Naik and Govinda Chandra Naik. They have submitted that challenging the judgment dated 12.01.2011 passed in WP(C) No.17407 to 17410 of 2010, Review Petition Nos.89 to 92 of 2011 had been filed by the Respondent-NALCO. The Hon'ble High Court vide common order dated 29.06.2011 rejected those Review

Petition. In the circumstance, the Respondent-NALCO challenged the common order dated 29.06.2011 in Review Petition Nos.89 to 92 of 2011 (arising out of common judgment dated 12.01.2011 of the Hon'ble High Court of Orissa in WP(C) Nos.17407, 17408, 17409 and 18410 of 2010 (Pabitra Naik & Other batch of cases) and the judgment dated 17.08.2011 in W.P.(C) No.18622 of 2010 (Govinda Chandra Naik vs. Collector, Angul & Ors) by filing SLP(C) Nos.23550, 23609, 23612, 23615 of 2010 and SLP(C) No. 27744 of 2011 respectively, before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 12.10.2012 while dismissing those SLPs directed as follows:

“Question of law is kept open. However, we make it clear that the judgment of the High Court or of this Court shall not be treated as precedent”.

15. Besides the above, the respondent-NALCO have submitted that the case of the present applicant is different from that of Govinda Chandra Naik [WP(C) No.19622 of 2010]. According to them, in that case the applicant before the Hon'ble High Court was a member of Scheduled Caste community for whom separate policy is adopted and he had been given ITI training by NALCO whereas, in the instant case, the applicant is neither a Scheduled Caste person nor NALCO had ever given ITI training. Respondent-NALCO have also pointed out that the judgment of the Hon'ble High Court in W.P.(C) No.18510/2013 in Anil Kumar Guru's case is not applicable to the case of the applicant herein inasmuch as, the judgment rendered therein was based on the earlier decision in Pabitra Naik & other batch of cases, which is contrary to the order passed by the Hon'ble Supreme Court dated 12.01.2012 in SLP(C) No.23550/2011. The representation of Anil Kumar Guru has already been rejected by NALCO on 01.04.2014 and no engagement has been given to the said Anil Kumar Guru in NALCO.

16. We have considered the rival submissions threadbare. In this connection, we would like to note that it is an admitted fact that the applicant herein is neither LDP nor SAP nor by the acquisition of land, the applicant's family has been displaced. It is also not in dispute that by the acquisition of any agricultural land, the source of applicant's family has been taken away by the NALCO. It reveals from the record that the land measuring Ac.0.02 decimal of the applicant's grandfather had been acquired for the establishment of NALCO project, against which, although due compensation had been tendered, but the same was not accepted by the applicant's grandfather, as a result of which, the amount in question has been deposited in the Government Exchequer. It is also borne out from the record that in response to his appeal for regular employment in NALCO, the applicant had been communicated a letter dated 30.12.2009 (A/3), the relevant portion of which reads as follows:

"01. As per the guidelines laid down by RPDAC, Substantially Affected Persons (SAPs) or their nominees, as the case may be, having Matriculation or higher qualifications are eligible to be considered for regular employment after following the laid down criteria for selection subject to availability of vacancies.

02. From the grievance petition, it is understood that you have been identified as LAP by the Government and you do not fit into the above criteria.

In view of the facts already explained, we are constrained not to consider your case for regular employment in the Company. However, in case of your having requisite qualification and age, you may compete along with other candidates as and when recruitment action will be initiated by the Company through advertisement".

17. The applicant accepted this position without demur. However, the fact remains that in pursuance of an advertisement issued by the Respondent-NALCO, he had submitted an application for the post of JOT(Fitter) and he, having come

out successful in the written test, was subjected to personal interview that was held on 03.01.2011, but the Selection Committee did not find him suitable for the post in question. Applicant has not assailed any discrimination or unfair assessment of his performance by the Selection Committee, which found him not suitable. He has solely, relied on the decisions of the Hon'ble High Court, as already mentioned and discussed above in order to buttress his claim. Since the Hon'ble Supreme Court vide order dated 12.10.2012, while dismissing the SLPs (cited supra) made it clear that the judgment of the High Court or of this Court shall not be treated as precedent, the applicant cannot gain any support on those decisions. As already mentioned above, it is the emphatic stand point of the State Government of Odisha that the applicant being a member of LAP family is not eligible to be considered under the Rehabilitation Scheme and this position, as it appears, stands uncontroverted. It is the specific stand taken by the Respondent-NALCO that as regards NALCO Damanjodi is concerned, Land Displaced Persons (LDPs), who have lost both homestead and agricultural land are eligible for rehabilitation assistance, which is also not in dispute. At this juncture, we would like to note that the Hon'ble Supreme Court in National Aluminium Company Limited & Ors. Vs. Bharat Chandra Behera & Anr. Reported in [(2013) SCC 622] , while analyzing the provisions of Rehabilitation Policy of 1984 of Nalco observed as follows:

“Under 2.4 there is a further condition to the effect that the said benefit should be availed within a period of one year from the date of commissioning of the unit and the said assistance would be confined to unit concerned and not to any other unit of the Company”.

18. In the instant case, the applicant belongs to Angul, whose land has been acquired for the NALCO project at Angul, whereas, he had made an application for

consideration to the post of JOT(Fitter) in pursuance of an advertisement issued by the NALCO, M & R Complex, Damanjodi in the District of Koraput. In view of verdict of the Hon'ble Supreme Court in National Aluminium Company Limited & Ors. Vs. Bharat Chandra Behera (supra), the claim of the applicant for appointment under the Rehabilitation Assistance Scheme in respect of NALCO, Damanjodi appears to be not maintainable inasmuch as it has started commissioning long since and it is farfetched on the part of the applicant to confine his claim in respect of NALCO, Damanjodi, which is an unit other than the concerned Unit of the Company.

19. In view of discussions held in the preceding paragraphs, we are of the view that the applicant is not entitled to any relief sought for and accordingly, this O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS