

(2023) 07 CAT CK 0056

In the Central Administrative Tribunal

Case No : Original Application No. 203, 641 Of 2020

Abhisekh Jain & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 28-07-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 227

Citation : (2023) 07 CAT CK 0056

Hon'ble Judges : Akhil Kumar Srivastava, Member (J); Kumar Rajesh Chandra, Member (A)

Bench : Division Bench

Advocate : Ajay Mishra, Siddharth Rathod, Shaleem Singh Baghel, Chetan Singh Chouhan

Final Decision : Allowed

Judgement

Kumar Rajesh Chandra Member (A)

1. The applicants, five in number, have filed this Original Application (OA) under Section 19 of Administrative Tribunals Act, 1985 seeking a direction upon the respondents to consider the case of the applicant for providing employment as per MoU dated 11.12.2007 followed by notification dated 8.4.2011.

2. The facts of the case, as projected by the applicants, are that the Indian Railways signed a Memorandum of Understanding (MoU) on 11.12.2017 with the State of Chhattisgarh for acquisition of villagers' land for development of railway projects viz. railway line between Dalli Rajhara and Rowghat (95 Kms.) and from Rowghat to Jagdalpur (140 Kms). In the year 2009, the land was acquired for the aforesaid project and promised to provide employment to the land affected family for which notification has been issued in the year 2011 and the same was published in the newspaper. It is averred in the O.A. that MoU was also signed with SAIL BSP and NMDC for considering and providing employment to the project affected family.

2.1 It is stated in the O.A. that the villagers who lose their land, were supposed to fill the application form and send to the General Manager, SERC Deputy Chief Personnel Officer construction before 16.5.2011. The applicants were required to submit an application duly certified by the local MP/MLA or any gazetted officer and the candidates shall also submit an affidavit fulfilling the eligibility criteria stipulated in the notification duly certified by the competent authority/land acquisition officer. It is claimed that the applicants fulfilled the eligibility and other conditions prescribed for the posts against direct recruitment quota and in special case, General Manager of the Railway can relax the condition.

2.2 It is pleaded in the O.A. that the land of the applicants has been acquired by the Railways for their project and as such one person of each family, whose land has been acquired, shall be offered appointment and when the grievance of the applicants has not been remedied, they approached this Tribunal by filing O.A. No. 620 of 2017, that was disposed of with a direction to the applicants to make an appropriate representation to the concerned respondents within two weeks and on receipt of the same the competent authority shall consider and dispose of the same within a period of 90 days from the date of receipt of such representation by passing a reasoned and speaking order vide order dated 23.8.2017. Thereafter Deputy Chief Personnel Officer (Construction) wrote a letter dated 6.4.2018 to the Collector, Uttar Baster Kanker stating therein that the claim of land affected family be decided on the same terms & conditions as decided in District Balod. However, the claim of the applicants has been rejected observing therein that the applicants therein are grandson, nephew, daughter-in-law, which is against the terms & conditions of MoU. Hence, this O.A.

3. Per-contra, the respondents contested the claim of the applicant by filing a detailed Reply wherein they have stated that as per MoU dated 11.12.2007 mentioned by the applicants before the new policy dated 2.5.2018 came into existence and almost all the beneficiaries had been provided jobs and the applicants, who had any dispute regarding the same, were referred to Steel Authority, Bhilai under the guidelines of MoU. The respondents have also averred that the applicants wrongly mentioned the said MoU because as per guidelines of MoU, the concerned Sr. Divisional Personnel Officer/SEC Railway had considered for employment, but they do not fulfill the criteria under the provisions of Estt. Srl. No. 183 of 2010 dated 13.10.2010, hence the same has been rejected by Raipur Division.

3.1 The respondents also took the plea that the notification dated 8.4.2011 was issued by the Deputy Chief Personnel Officer, when the new policy dated 2.5.2018 did not come into existence and as soon as this policy came into existence, the concerned Division has provided employment as per the guidelines of Railway Board as well as entitlement of the applicants. Pursuant to policy dated 2.5.2018, all the applicants were invited for employment by Raipur Division, but according to Estt. Srl. No. 183/2010 dated 13.10.2010, their candidature have been rejected. The respondents have also quoted para 1 of RBE

No. 99 of 2010 for justifying their action. The same reads as under:-

"The applicant shall be a person (sole owner of land or son/daughter/ husband / wife of the sole owner), whose land or a portion thereof has been acquired for the project. In case the land is owned by more than one person, the competent authority, as defined in the Railway (Amendment) Act, 2008/Land Acquisition Officer will decide who shall be considered as applicant. Only one job shall be offered to an applicant from the land loser family."

3.2 Basing upon the aforesaid RBE no. 99 of 2010, the claim of the applicants have been considered and rejected by the Sr. Divisional Personnel Officer, SEC Railway, Raipur, hence no further consideration is needed. Lastly, the respondents have stated that the O.A. has no merit and the same is liable to be dismissed.

5. The applicants have not filed any Rejoinder to the Reply as filed by the respondents refuting the contentions made in the Reply. However, the applicants have filed M.A. No. 40 of 2023 by means of which certain judgments have been brought on record, which are as follows:

(i) South East Central Railway & Another Vs. Yashwant & Others in Writ Petition No. 1349 of 2018 decided by Hon'ble High Court of Chhattisgarh, Bilaspur on 3.4.2018.

(ii) South East Central Railway & Another Vs. Jivrakhan Rathore in Writ petition No. 1712 of 2020 decided by Hon'ble High Court of Chhattisgarh, Bilaspur on 13.3.2020.

6. We have heard the learned counsel for the parties at length, perused the pleadings available on record and also considered the decisions as cited by learned counsel for the applicants.

7. The issue involved in this O.A whether the action of the respondents in not providing job to the applicants, who happens to be nephew, grandson and daughter-in-law etc. of the land losers is justified or not? The facts as narrated by the applicants have not been disputed. The issue, in hand, has already been adjudicated by Hon'ble High Court of Chhattisgarh in the case of Yashvant (supra) which has now attained finality. The relevant portion of the order of Hon'ble High Court of Chhattisgarh reads as under:-

"It is not in dispute that no member of the family of the person from whom the land was acquired was appointed as among the land losers. The Railways also do not dispute the fact that the 1st Respondent is the grandson of the primary owner of the land, which was acquired. Revised instructions dated 16.07.2010 issued by the Railway Board says that the Applicant shall be a person whose land or a portion thereof has been acquired for the project. It is the provision therein that in case of sole owner of land, the applicant shall be the sole owner or son/ daughter/husband/wife of the land. The said clause further elaborates to say that if the land is owned by more than one person, it would be for the competent

authority to decide as to who shall be considered as applicant. This clause itself shows that there is a fair amount of discretion available to the Railway Authorities in the matter. The ultimate requirement is that there should not be any appointment, of more than one person referable to one owner of an item of land which is acquired by the Railways. A purposive approach in understanding the Railway Board's Notification would definitely lead to the conclusion that in cases where situation of the nature in hand occur, it will be within the authority of the Railways to make the appropriate choice; even down in the probable line of succession; particularly when all the three persons are still alive and are shown to have been carrying out agricultural operations over land that they lost as a result of requisition by the Railways.

4. In the aforesaid view of the matter, we do find that there is any illegality or injustice done to the Railways, in the manner in which the Tribunal has dealt with the application filed by the 1st Respondent before it. The Tribunal acted well within its jurisdiction in terms of the provisions of the Administrative Tribunal Act, 1985. The conclusions on facts have been rendered on the basis of materials on record. Inferences drawn by the Tribunal are fair and reasonable. They cannot be treated as unjust and unavailable. Balancing the right of the Railways and their obligation to provide employment to land losers on the one hand and the eligibility of atleast one person to get employment on account of land acquisition, we do not see any that injustice has been cause to the Railways by the impugned verdict. We, therefore, do not find any ground visit the decision of the Tribunal by exercising authority under Article 227 of the Constitution of India. The writ petition thus fails.”

8. The law laid down in the aforementioned case has been reiterated by Hon’ble Chhattisgarh High Court in the case of Jivrakhan Rathore (supra) and as such there is no room to deviate from this view, which has now attained finality.

9. Further, in the instant case, the applicants happens to be grandson, nephew and daughter-in-law of the land holders whose land was acquired by the Railways for their project. The applicants claim the benefit of rehabilitation scheme applicable to the subject project and sought employment in lieu of acquisition of land.

10. The aforementioned decisions of Hon’ble High Court are squarely applicable in the case, in hand, and as such the instant O.A. is liable to be allowed on the same lines.

11. In view of the above, O.A. is allowed. Order dated 11.10.2018, contained in Annexure no.1 is quashed. The respondents are directed to reconsider the claim of the applicant afresh in the light of ratio laid down by Hon’ble Chhattisgarh High Court in the case of Yashvant (supra) within a period of 90 days from the date of receipt of copy of this order. No costs.