

(2010) 04 OHC CK 0019
In the Orissa High Court
Case No : OJC No. 24 and 26 of 2002

Chintamani Sahoo

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Citation : (2010) 110 CLT 167

Hon'ble Judges : Sanju Panda, J; L. Mohapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sanju Panda, J.—Since common questions are involved in both the Writ Petitions, heard together & are being disposed of by this common Judgment. Challenge has been made in these two writ applications to the Order Dated 28th September, 2001 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in OA No. 167 of 1996 & OA No. 404 of 1997 dismissing the original applications of the Petitioners for providing them employment assistance on account of the land acquisition.

2. The facts as narrated in the writ applications are as follows:

To establish Carriage Repair Workshop at Mancheswar, State Government acquired some land in the year 1989. In September, 1993, the State Government sponsored names of fifteen families to the Railway authorities for employment assistance to one of the members of the said families whose land had been acquired. However, Railway authorities did not consider the same in accordance with the Railway Board's instruction for which one Babaji Sahoo approached the Tribunal in OA No. 257 of 1994 for a direction to the Railways to consider his case for employment assistance. The Tribunal on contest directed the General Manager, South Eastern Railways to consider the case of the applicant-Babji Sahoo taking into consideration the Railway Board Circular dated 10.11.1989 even though the Scheme was deemed to have been closed since January, 1988.

However, the Railway authorities challenged the said direction of the Tribunal in a review application which was dismissed. Challenging the same, the Railway authorities filed OJC No. 18357 of 1997 which was also dismissed by this Court on 20.9.1999 & thereafter the Railway authorities carried out the diction of the Tribunal by providing employment to said Babaji Sahoo. In the appointment letter, the Railway authorities mentioned that in obedience to the order, passed by the Tribunal, the Railway authorities decided to engage Babaji Sahoo as a substitute against Group-D poet in terms of the Railway Board's instructions contained in their letter No. E(NG)II/92/RCI/95 dated 31/12/82-1/01/83 that grant of employment assistance to the member of families of displaced was subject to certain conditions.

2.1 The Petitioners' case is that though they were similarly situated as that of said Babaji Sahoo, their case was not considered by the Railway authorities. Therefore, they approached the Tribunal for redressal of their grievance. However, the Tribunal did not consider their case & dismissed the original applications. Therefore, the present writ applications have been filed. It is also averred in the writ applications that the Railway authorities-contested the case & filed the counter affidavit in the original applications stating therein that for smooth coordination between the Railways & the State Government, the State Government appointed an officer designated as Deputy Commissioner, Rail Coordination & ex-officio Deputy Secretary to Government of Orissa in the Commerce & Transport Department. The Deputy Commissioner, Rail Co-ordination in his letter dated 11.5.1982 furnished a list of persons whose land had been acquired for establishment of Carriage Repair Workshop at Mancheswar. A Selection Committee was constituted by the Railways for the said purpose where the Sub-Divisional Officer, Bhubaneswar & Railway Officials were members. Selections were made on four occasions i.e. on 29.11.1982, 16.10.1984, 17.10.1984 & 16.10.1985. Altogether 175 candidates appeared in the interview out of which 97 candidates were selected & offered employment assistance. After the fourth selection, the file relating to the Scheme for providing employment assistance to displaced persons was closed.

2.2 Thereafter on 14.7.1988 the Land Acquisition Officer, Puri again sent a list of 22 persons & the Deputy Commissioner, Rail Co-ordination vide his letter dated 17.9.1993 also sent a list of 15 persons to the Railway authorities.

2.3 The Railway authorities took a stand that after appointment of 97 persons in the fourth selection, the file was closed. In July, 1988, General Manager assured the Chief Minister to make a proposal for absorption of 200 people out of the pending 4000 applications/The State Government in their letter dated 6.1.1989 while mentioning that the Railways had taken all the eligible displaced persons for appointment wanted the Railways to take urgent action with regard to those 200 people. The State Government wrote a letter on 6.1.1989. But, since all the eligible persons had been given appointment, the question of giving further employment assistance did not arise. The Land Acquisition Officer, Puri was not

authorized to sponsor again 37 (22+15) persons directly to the Chief Workshop Manager & the Scheme was in the nature of giving employment assistance to the displaced persons & did not confer any vested right on the persons to get them absorbed in the Railways.

2.4 The Tribunal considering the Scheme & the materials produced by the parties & their pleadings held that Babaji Sahoo's case was clearly distinguishable as because the applicants had taken a stand that no public notice as envisaged under the 1989 Circular was issued even though the land was acquired in the year 1989. The case of the Petitioners was rejected on the ground that they had not approached the Tribunal before 1996 & sponsoring the names of 15 persons on 17.9.1993 was beyond two years period as the Project had already been established & the first recruitment had been made. Therefore, the Railways were not obliged to consider the case of the Petitioners for employment assistance.

3. Learned Counsel appearing for the Petitioners submitted that the State Government had sponsored the names of the Petitioners in the year 1993 & as per the Scheme the Petitioners had applied along with others. Since in the present case the Petitioners had got the State Government recommendation in the year 1993 & thereafter they approached the Tribunal, the case of the Petitioners should have been considered by the Railway authorities. But the Tribunal did not consider that fact & illegally dismissed their original applications. Therefore, the impugned order is liable to be set aside.

4. Learned Counsel appearing for the Railways supported the impugned order passed by the Tribunal & stated that since the Scheme was closed in the year 1988, there was no scope to absorb the Petitioners under the employment assistance scheme. Hence, the Tribunal rightly dismissed the applications of the Petitioners which need not be interfered with by this Court.

5. From the rival submissions of the parties & on perusal of the records, it appears that the Scheme was formulated by the Railway authorities & it was specifically stated therein that the Scheme was for a period of two years after the land acquisition. It is not in dispute that though the Scheme was formulated for employment assistance to the displaced persons, the authorities issued further instructions from time to time. The Railway authorities also issued a letter on 26.11.1987 for appointment to Group "C" & "D" posts on the Railways of members of the families displaced as a result of acquisition of land for establishment of the Projects. For better appreciation, the relevant portions of the said letter are quoted below:

Estt. Srl:No.323/87 No. P/R & R/Land/Acq./4141 Dated: 26th November, 1987

A copy of Board's letter No. E(NG)II-82/RCI/95 dated 9.6.1983 is published for information, guidance & necessary action. The Railway Board's letter as referred to therein has been circulated vide this Office Circular letter No. P/R&R/Land/Acq./4138 dated 24.11.1987 (Estt. Sri. No. 322/87).

Copy of letter No. E(NG)II-82/RCI/95 dated 9.6.1983 from Shri H. R. Bhagat, Deputy Director Establishment (N), Railway Board New Delhi to the General Manager, All Indian Railways including all Production Units.

Appointment to Group "C" & "D" posts on the Railways of members of families displaced as a result of acquisition of land for establishment of Projects. Ministry of Railways in their letter of even number dated 1.1.1983 had issued certain guidelines for employment on Railways of the persons displaced as a result of acquisition of land for Projects.

2. A question has been raised as to whether such persons of their wards who get cash compensation through State Government on account of acquisition of land should be considered for employment in the Railways when it has been stipulated in the above quoted letter that the displaced persons should not derive any benefit from the State Government in the form of alternative cultivable land etc. The matter has been considered & it has been decided that the Railways may take decision on individual request taking into account the extent of land acquired, amount of compensation paid, size of family to be supported etc., employment at the rate of one job per family being offered in cases deserving support.

xxx xxx xxx

5.1 Learned Counsel for both the parties admitted that the aforesaid letter dated 26th November, 1987 was issued further clarifying the criteria for employment at the rate of one job per family on account of acquisition of land. In the present case, admittedly the land was acquired phase-wise & in the Scheme there was a provision that the name of the applicants must be sponsored by the State Government as the displaced persons. It is the case of the Opp. Parties that even though the State Government stated that the Petitioners were the displaced persons & sponsored their names for employment assistance in the year 1993, the Petitioners did not approach the Railway authorities earlier for redressal of their grievance. They only approached the Tribunal for the said purpose at a belated stage for which their applications had been rejected by the Tribunal.

5.2 No doubt the Scheme was formulated to settle the displaced persons whose land had been acquired by the State Government for the Railways to develop its spheres for public interest. In India, 90% people depend on agriculture & land is the only source of their livelihood. Therefore, when lands were acquired, compensation was paid but the same was not enough for a person who was in penury without any means of livelihood. Being a welfare State, the Government & its authorities were taking steps for settlement of the persons who were being affected because of acquisition. After 1985, the Railway authorities had taken various steps to provide assistance to the persons who were affected by its Project. All are aware of the fact that the Railways have a prospective plan spreading over years & projects are waiting in the queue for execution. Yet, the affected persons (displaced) were shunted out without being considered for

employment assistance. The Railways being the biggest employer & having regard to the nature of its work, it would have to engage the displaced persons in "Group-D" & "Group-C" posts. The present Petitioners come from the lowest strata of the society who have lost their livelihood due to land acquisition. They can ill-afford to rush to Court at the earliest because of poverty & lack of awareness about legal assistance. Individually they had to collect money & rush to Court which in case of some may be beyond their reach. Therefore, it should not be denied in deserving cases for the reason that it would tantamount to denial of economic & social justice as enshrined in the Constitution & Law must be, in its adaptability & flexibility, applied depending upon the situation for the benefit of the society.

5.3 In the present case, as stated in the above paragraphs, the Railway authorities assured to absorb 200 persons. However, admittedly only 97 persons were absorbed which is less than 50%. Therefore, this Court directs the Opp. Parties to consider the case of the Petitioners for employment assistance as they are displaced persons.

5.4 Since the State Government had sponsored the names of the Petitioners in the year 1993 as displaced persons for employment assistance, the Tribunal should have taken the said fact into consideration & allowed the original applications.

6. As the Tribunal did not take note of the aforesaid facts, this Court sets aside the impugned Order Dated 28th September, 2001 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A No. 167 of 1996 & O.A No. 404 of 1997 & directs the Railway authorities to consider the case of the Petitioners for employment assistance as they are displaced persons. We make it clear that this order will not be a precedent in general.

Both the writ applications are accordingly allowed.

L. Mohapatra, J.

7. I agree