

(2006) 09 CAL CK 0033
In the Calcutta High Court
Case No : W.P.C.T. No. 481 of 2006

General Manager, S.E. Rly.

APPELLANT

Vs

Badal Kumar Pradhan and Others

RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Citation : (2007) 1 CHN 194

Hon'ble Judges : V.S. Sirpurkar, C.J.;Patherya, J

Bench : Division Bench

Advocate : Sarajit Sen, for the Appellant; Kanika Banerjee and Himadri Kumar Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, C.J.—This is a very unusual writ petition. Some facts are as under.

2. One Badal Kumar Pradhan and his son had filed original application before the Central Administrative Tribunal. They pleaded in that original application that their land to the extent of 1.20 acres was acquired for the railway project. They were paid the compensation of fifty-nine thousand rupees. However, they claimed that there was a notification bearing No. Estt. Srl. No. 297/89 dated 8th December, 1989 which provided that those who have been displaced by the acquisition of land would be entitled to an employment. The railway, the present petitioner opposed this original application on various grounds but mainly on the ground that in fact there was no fresh recruitment from outsiders and the S.R.D.P.O., South-Eastern Railway, Kharagpur has already been advised to consider the appeal by the original applicant for the employment whenever there would be a recruitment from open market. The railways pointed out that they had also given such a reply by their letter dated 17th August, 1992. The Tribunal did not find favour with the defence of the railway and came to the conclusion that as per the aforementioned notification dated 8th December, 1989 the original applicant was entitled to be employed. The Tribunal also disbelieved the case pleaded that there was no recruitment in the Kharagpur Division after 1989.

The Tribunal recorded its finding on the basis of an admission made by the Counsel for the railways. We would quote the Tribunal's order:

On my queries, Mr. Chatterjee, learned Counsel for the respondents stated that no notification has been made by the official respondents in pursuance of the instructions contained in para 2 of Railway Estt. Srl. No. 297/89 dated 8.12.89 and no appointment has been made till date which is unbelievable. On the face of the written reply it is found that the respondents made evasive statement regarding recruitment in the railways. Finally learned Counsel for the respondents admitted that in the meantime there had been some recruitments in the South-Eastern Railway, Kharagpur Division but the case of the applicants was not considered. In view of the said admitted fact, I find that such recruitments have been made after giving assurance to the applicant regarding appointment on compassionate ground vide letter dated 17.8.92 and thereby the department is duty-bound to consider the case of the applicant No. 2 by relaxing his age.

3. This judgment of the Tribunal is dated 29th July, 1999. In that the railways had successfully avoided to appoint the original applicant for good long seven years in spite of their assurance in 1992. To add to this the railway never challenged this order nor did it in any manner contradict the admission made by their Counsel regarding the filling up of Group "C" and Group "D" posts in South-Eastern Railway and more particularly the Kharagpur Division. The original applicant, therefore, filed a contempt application. That contempt application was entertained by the Tribunal and the petitioner/railways was directed to give its reply. The railway pointed out that in pursuance of the direction of the Tribunal, the General Manager had considered the matter afresh and had found that since there was no fresh recruitment from a particular sector in Kharagpur Division, there was no question of giving appointment to the original applicant. The railways seem to have passed the following order:

In obedience to the order of the Hon"ble Tribunal, Calcutta, I, the General Manager, S.-E. Railway (respondent No. 1) have examined the case of applicants keeping in view the observations made by the Hon"ble Tribunal and in reference to the policy guidelines laid down by the Railway Board. Applicant has claimed employment on the basis of the Estt. Srl. No. 297/89, which, in effect, is not a notification for the recruitment. In fact, Estt. Srl. No. 297/89 lays down the procedure for extending the employment assistance to an eligible member of the family, whose land has been acquired.

As per paper available in this office, I find that no open market recruitment has been made to meet up requirement of staff in the Tamluk-Digha Project. In fact, no permanent posts have been created against this project. The scanty requirement of casual labour was met by diverting the existing project casual labour from other project. For this reason the claim of the applicant could not be considered.

However, his case would be considered, along with other similarly placed

persons, as and when the first recruitment is done to fill up the vacancies of the Tamiuk-Digha section from amongst the eligible family members of the land oustees. This will be subject to his fulfilling the prescribed criteria for direct recruitment from open market.

4. When this order was pointed out to the Tribunal in the contempt application by way of defence, the Tribunal observed that this precisely was the defence raised in the original application also and it was rejected as not believable particularly in the light of the admission made by the Counsel for the railways to the effect that there were certain appointments made in Group "C" and Group "D" posts, but the case of the applicant was not considered while those appointments were made. In this view the Tribunal rejected the defence and came to the conclusion that the so-called consideration by the General Manager was merely an eye-wash and the General Manager could not have in fact rejected the claim of the original applicant on the spacious ground that he has quoted in his order. In that view the Tribunal held in the following words:

We are, therefore, satisfied that a prima facie contempt has been committed by the General Manager. However, keeping in view the observations made by the Hon'ble Supreme Court in the case of Suresh Chandra Poddar reported in AIR SCW 5048, we give another chance to the General Manager (respondent No. 1) to comply with the direction at least now, in letter and spirit, of order dated 29.7.1999 within a period of two months from the date, copy of this order is received (keeping in view the observations made by the Tribunal in its order dated 29.7.1999. Applicant would be entitled to get age relaxation as already observed in the earlier order).

5. It is this order which is now sought to be challenged by way of a writ petition before us. We are afraid that we cannot entertain this writ petition now.

6. Firstly, the original order passed by the Tribunal was never challenged. It was allowed to remain as it is for a good long period of seven years till today, thereby the admission made by the railway's Advocate before the Tribunal was also not controverted or contradicted. Even in the present petition that admission has not been controverted or contradicted. Under such circumstances, we must accept the observations by the Tribunal that though the appointments were made in the Kharagnpur Division of South-Eastern Railways in the Group "C" and Group "D" posts the case of the applicant was never considered and when in pursuance of the direction of the Tribunal applicant's case was considered, it was merely an eye-wash. The General Manager then while considering the case of the original applicant found out an escape route by saying that there was no employment in "Tamluk-Digha Sector". Such was not the import of the Tribunal's order. The Tribunal's order was very clear that the employment was liable to be given in South-Eastern Railway and particularly in the Kharagpur Division. In our opinion, the Tribunal is right in observing that the General Manager has actually not complied with the order by properly considering the case of the applicant. We also find that the General Manager gravely erred in commenting upon the nature

of notification 297/89 which was considered by Tribunal in favour of the original applicant.

7. In our opinion, the present petition which is filed against the subsequent order of the Tribunal is nothing but a very poor attempt to challenge the order passed by the Tribunal in the year 1999 which order unfortunately for the railway remained unchallenged. The railways had lost the war in 1999 and they can not start a fresh war now in the garb of challenging the order passed in the contempt jurisdiction by the Tribunal. We also observe that the General Manager had failed to comply with the order of the Tribunal in its letters and spirits and, therefore, we do not find any justification in this writ petition. The writ petition has no merits and must be dismissed with costs of Rs. 3,000/- against the railways.

Patherya, J.

8. I agree.