

(2023) 10 CHH CK 0032
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 8087 Of 2023

South East Central Railway	Vs	APPELLANT
Om Prakash Rathore		RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Citation : (2023) 10 CHH CK 0032

Hon'ble Judges : Sanjay K. Agrawal, J; Radhakishan Agrawal, J

Bench : Division Bench

Advocate : Ramkant Mishra, Y.C. Sharma, Mohan Lal Kaushik, Ashish Tiwari

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. This writ petition filed by the South East Central Railway is directed against the impugned order dated 28/06/2023 (Annexure P/1) passed by the Central Administrative Tribunal, Jabalpur, Circuit Bench, Bilaspur by which original application filed by respondent No. 2 has been allowed and the petitioners herein have been directed to consider the case of respondent No. 2 for employment against the land loser's scheme.

2. The aforesaid challenge has arisen on the following factual backdrop :-

2.1. The subject land was originally owned by Late Shri Janakram and Shri Malik Ram bearing Khasra No. 2269/2 total area 0.105 hectares which was acquired for construction of Champa bypass railway line, the project of Indian Railways and the land acquisition certificate was granted by the Sub-divisional Officer (Revenue) and Land Acquisition Officer, Champa.

2.2. In lieu of the land acquired, Shri Om Prakash Rathore (respondent No. 1 herein), son of original land owner Shri Janak Ram was nominated by the State Government for the job on the basis of which employment assistance case for providing job to him was further processed and his necessary medical test was

done in which he was found unfit for the job, hence, he was unable to secure employment assistance.

2.3. Thereafter, respondent No. 2 herein moved an application claiming appointment, however, it was rejected by petitioner No. 2 herein by order dated 11/08/2021 which was then challenged by respondents No. 1 and 2 herein before the Central Administrative Tribunal.

2.4. By the impugned order, learned Central Administrative Tribunal has relied upon the decision rendered by this Court in the matter of South East Central Railway v. Yashwant WPS No. 1349/2018 decided on 03/04/2018 wherein it has been held that grandson would be entitled for employment under notification dated 02/09/2011 and has held that respondent No. 2 herein, being the granddaughter of the land loser, would be entitled for employment as per the relevant policy and allowed the application of the respondent No. 2 (applicant).

3. Mr. Ramakant Mishra, learned counsel for the petitioners, would submit that the Central Administrative Tribunal is absolutely unjustified in granting the application filed by respondent No. 2 as according to the notification dated 02/9/2011 (Annexure P/2), land loser himself or his son/daughter/husband/wife would be entitled for employment but respondent No. 2, being the granddaughter of original owner of the land, would not be entitled for appointment. Accordingly, impugned order (Annexure P/1) is liable to be set aside.

4. Mr. Y.C. Sharma, learned senior counsel for respondents No. 1 and 2, would submit that original owner of the land was late Janak Ram, who was the father of respondent No. 1 and grandfather of respondent No. 2 and since respondent No. 1 was found unfit in medical test, he was not granted employment and none in the respondent No. 1's family has been granted employment, therefore, South East Central Railways is obliged to grant employment to respondent No. 2, who is land loser's granddaughter and as such, the Central Administrative Tribunal is absolutely justified in granting employment to respondent No. 2 herein.

5. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

6. Admittedly, South East Central Railways has promulgated notification dated 02/09/2011 in which following four class of persons have been held entitled for appointment on account of acquisition of their land :-

"2. As per the policy of Ministry of Railways/Railway Board, Railway may call and consider applications for employment to PB-1 □ 5200-20200/- with Grade Pay of □ 1800/- from land losers on account of acquisition of land for the projects on the Railways who fulfills the criteria given below.

I. 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 (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.”

7. A careful perusal of the aforesaid notification dated 02/09/2011 would show that South East Central Railway has held that land loser himself or his wife/son/daughter would be entitled for appointment on account of acquisition of land. It is the case of respondent No. 2 that sole owner of the land late Shri Janak Ram has already died and her father Shri Om Prakash Rathore (respondent No. 1 herein) was found unfit for employment in medical test. Respondent No. 2 is claiming employment under the notification dated 02/09/2011 on the ground that she is the granddaughter of the sole owner whose land has been acquired.

8. The object of notification dated 02/09/2011 is to grant employment to one member of the family whose land has been subjected to acquisition and the said person has lost his source of livelihood and in order to provide employment to one member of the land loser's family, four persons have been nominated in the notification dated 02/09/2011, the land loser or son/daughter/husband/wife of the land loser. However, in cases where none of the said persons are available for employment either because of bar of age or non-availability/death, the object of giving employment to the land loser's family would be fulfilled even if grandson/granddaughter of the land loser is granted employment whose land has been acquired and they have no means to sustain themselves.

9. The Division Bench of this Court in the matter of Yashwant (supra) has held in paragraphs 2 and 3 as under :-

“2. It is not in dispute that an item of land which was acquired by the Railways belonged to the grandfather of 1st Respondent. That person was more than 72 years of age and his son was around 58 years of age. That family, therefore, projected the 1st Respondent, who is the grandson in the line, as the one who may be appointed in consonance with the ameliorative provision for appointment of land losers affected by the land acquisition for Railway projects. The dispute before the Tribunal was as to whether a person who is, admittedly, the grandson of the owner of the land could be appointed at least in a situation where the original owner of land and even his son had become age barred for appointment. The Applicant before the Tribunal who is the 1st Respondent before us, we found to have established before the Tribunal that the Railways had given appointment to two other similarly situated persons, who were, acutally, a grandchildren of the respective land losers. The Tribunal ultimately handed down the verdict in favour of the 1st Respondent, thereby requiring the Railways to consider their proposal to refuse appointment of the 1st Respondent.

3. 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. "

10. Considering the object of notification dated 02/09/2011 and further considering that in the present case, the persons named in the said notification for grant of employment i.e. land loser or his/her son/daughter/husband/wife are not available for employment and the Division Bench of this Court has already extended the benefit of notification dated 02/09/2011 to the grandson of the land loser in Yashwant (supra), in that view of the matter, we are of the considered opinion that respondent No. 2 herein, being the granddaughter of sole owner Late Shri Janak Ram whose land has been subjected to acquisition, she is entitled for employment as per notification dated 02/09/2011. Accordingly, the Central Administrative Tribunal is absolutely justified in granting the application filed by respondent No. 2 herein and in directing the petitioners to grant appointment to her in accordance with law. We do not find any merit in this writ petition.

11. Accordingly, this writ petition stands dismissed. No cost.