

(2010) 06 OHC CK 0027

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 6156, 6154, 6155, 6157, 6158, 6159, 6160, 6161, 6162, 6163, 6164, 6165, 6166, 6167 and 6168 of 2002

Union of India (UOI) and Another

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 110 CLT 458

Hon'ble Judges : V. Gopala Gowda, C.J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—Union of India, represented by the General Manager, S.E. Railways and two others have filed these writ applications, inter alia, praying to quash the common Judgment dated 20.2.2002 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 74 of 2001 and 14 other cases. The subject matter of controversy as well as the point of law involved in all these writ applications being one and the same, as requested by Learned Counsel for both the parties, they are heard together and disposed of by this common Judgment.

2. Bereft of unnecessary details, the short facts, which are necessary for effectual adjudication are as follows:

For execution of Sambalpur-Talcher Rail Link Project, large patches of land were acquired during the period 1984-85 to 1992-99.

Consequent upon such acquisition, number of persons and families were deprived of their ancestral properties and lost all their landed property which affected their livelihood. While the matter stood thus, the Petitioner-Railways needed lot of man power for successful completion of the project in question. Consequently, steps were taken for recruitment.

3. In order to mitigate the inconvenience and harassment caused to the persons/families, whose properties were acquired and consequently they had become landless, it was decided that steps would be taken for providing employment to the families of displaced persons. Following the said principle, guidelines (Annexure-1) were framed. Clause-2 of the said guideline stipulated that Zonal Railways and productions Units and also project authorities may consider the applications received from persons displaced on account of large-scale acquisition of land for projects on the Railways for employment in Group-C or Group-IV posts in their organization including engagement of casual labour and give them preferential treatment for such employment, subject to certain conditions. Some of the important clauses are quoted here-in-below:

(i) The individual concerned should have been displaced himself or he should be the son/daughter/ward/wife of a person displaced from land on account of acquisition of the land by the railways for the Project.

(ii) Only one job on such preferential treatment should be offered to one family. In accordance with the policy, recruitment process commenced and advertisements were issued inviting applications for filling up the posts in question. The applicants before the Tribunal applied for the posts, but then giving a go-by to the principles settled under Annexure-1, their cases were considered along with other outside candidates. Being aggrieved by the said action, the applicants approached the Tribunal alleging that the action taken by the Petitioner-Railways was not just and proper and that it has not followed the principles formulated in the policy.

4. After receiving notice, a counter affidavit was filed by the Railways before the Tribunal taking the stand that the policy did not stipulate that a member of the displaced family would be given appointment. On the other hand, it stipulated that their applications shall be treated on preferential basis. In other words, if all other conditions are same between a direct recruit and the son/daughter of a land oustee, preference shall be given to the latter.

5. The Tribunal after discussing the facts and circumstances, by a well discussed Judgment came to the conclusion that the Railways have not acted fairly and without following the terms of the policy stipulated under Annexure-1, acted illegally and with material irregularity in directing the applicants before the Tribunal to compete along with outsiders. Such action it was held was not justified. The Tribunal further held that the procedure adopted by the Railways being contrary to the policy, the same cannot be sustained and allowed all the Original Applications. While doing so, the Tribunal framed a guideline as to how preference should be extended to the land oustees, so far as appointing them in different posts which are lying vacant.

6. The said common Judgment (Annexure-2), is assailed in these writ applications mainly on the ground that the Tribunal misdirected itself and illegally held that the persons displaced are entitled to be appointed in several vacant

posts, whereas that was not the intention of the policy, Annexure-1 It is stated that the policy only stipulated that preference should be given to the land oustees. The said clause does not mean that they will be appointed irrespective of their capability. It is stated that in consonance with the policy, preference was given to the applicants, i.e. the land oustees, to take part in the interview and as and when the land oustees and outside candidates are placed in similar position, preference was given to the land oustees and he/she was selected. It is further averred that the Tribunal acted illegally and with material irregularity in framing the guideline for selection and appointment. It is stated that it is the prerogative of the employer to lay down the criteria and the Tribunal should not have done so.

7. We have heard Mr. Pal, Learned Counsel for the Petitioner and Mr. Dash, Learned Counsel appearing for Opposite Party No. 2 diligently. We have also perused the pleadings meticulously as well as the documents annexed thereto.

8. Admittedly, the lands belonging to the applicants (before the Tribunal) or their family were acquired by the Railways for the purpose of the project. As a result of such acquisition, the land owners lost their valuable properties, which they were enjoying for generations. They also lost their livelihood. The land oustees are invariably poor persons belonging to lower strata of the society. In order to protect their rights and mitigate their helpless condition, the Railways rightly framed a policy for giving appointment to the land oustees on preferential basis. Annexure-1, the policy clearly stipulates that one job on preferential treatment should be offered to one family. This condition of the policy was not kept in mind by the Railways while taking steps for filling up of the vacant posts. Perusal of the records further reveals that out of 511 vacancies, 508 were filled up by outsiders, i.e., other than the land oustees and only three posts were filled up by the land outstees. The said action reveals that the Railways did not act in accordance with the provisions of the policy. As has been stated earlier, the policy required that jobs on preferential treatment should be offered to one member of the family. The word "offered" has not at all been considered by the Railways.

9. In the case in hand, in fact no job was offered to any of the family members of the land oustees as per the scheme. The selection process adopted by the Petitioner-Railways for filling up 511 vacancies of Group-D posts was only confined to outsiders and without giving any appointment to the applicants before the Tribunal the posts were sought to be filled up. The Tribunal has discussed the materials available on record in extenso and has arrived at a cogent finding that the action of the Railways cannot be sustained. After going through the records, this Court is satisfied that the order does not suffer from any infirmity. Learned Counsel for the Petitioner also failed to bring to our notice any error apparent on the face of the record. Law is well settled that while exercising power of certiorari, this Court do not act as an Court of appeal, but exercises the power of superintendence. Thus, it should not alter the conclusions reached by the competent Tribunal if the same are not found to be unreasonable.

(See: Union of India and Others Vs. Himmat Singh Chahar,).

10. It is also well settled that power under Article 227 being that of judicial superintendence should not be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: Mrs. Rena Drego Vs. Lalchand Soni, Etc.,).

11. The Supreme Court in the case of D.N. Banerji Vs. P.R. Mukherjee and Others, held that the High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. It is also held that for interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal etc. has resulted in grave injustice.

12. In the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , the Supreme Court held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

13. Analysing the facts and circumstances of the case in hand, in the light of the aforesaid settled authoritative pronouncement, this Court finds that the Tribunal has not committed any error and it is a case where the order passed by the Tribunal needs no interference in exercise of the extraordinary jurisdiction.

14. The writ applications are accordingly dismissed. No costs.

V. Gopala Gowda, C.J.

15. I agree.