

ANIL KUMAR

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v.

UNION OF INDIA & ORS.

(Civil Appeal No.1958 of 2019)

FEBRUARY 22, 2019

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**[DR. DHANANJAYA Y. CHANDRACHUD AND
NAVIN SINHA, JJ.]**

Circulars/Notices – Appellant’s father constructed a residential house – Land over which the house was constructed was acquired for a Railway Project – List of persons displaced in consequence of the project undertaken by the Railways – Recommendation of the appellant’s case for appointment in service in terms of policy circular of the Railway Board dated 19th April, 2006 offering employment to displaced persons – Writ petition filed by the appellant before the High Court seeking benefit of the said circular – High Court directed that the claim of the appellant be considered for the grant of Group ‘D’ employment – Appellant submitted representation – Rejected – Second Writ Petition filed by the appellant – Rejected by Single Judge – Order affirmed by the Division Bench – On appeal, held: Initially by circular dated 1st January, 1983, the Railway Board dealt with appointment to Group ‘C’ and ‘D’ posts in the Railways, of members of families displaced as a result of the acquisition of land for the establishment of projects – Said Policy circular was specifically adverted to in the subsequent circular dated 19th April, 2006– As per the subsequent circular the Railway Board decided that the policy to offer employment to displaced persons should not cover displaced persons where only a strip of land had been acquired – At the same time, it also stipulated that the claim can be considered for appointment against a Group ‘D’ post where a “large area, house or substantial livelihood has been taken away/snapped in the process” – Case of the appellant fell within the ambit of paragraph 2 of the circular dated 19th April, 2006 – Entire house of the appellant was demolished – Rejection of the appellant’s claim was contrary to the terms of the binding policy circular formulated by the Union of India in the Ministry of Railways – Undoubtedly, the grant of appointment to persons displaced as a

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- A *result of acquisition is a matter which is within the purview of the policy discretion – No mandamus can lie in the absence of a policy – However, where a policy has been laid down by the Union government as in the present case, the terms of the policy can be enforced – Impugned judgment set aside – Appellant’s claim for appointment to a Group ‘D’ post be implemented within a period of two months from today by granting an age relaxation, if required.*
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Father of the appellant constructed a residential house. The land over which the house was constructed was acquired for the Ara-Sasaram Railway Project. Name of the appellant’s father occurred in a list of the persons displaced in consequence of the project undertaken by the Railways. Appellant’s case was recommended for appointment in service in terms of policy circular of the Railway Board dated 19th April 2006. After the appellant’s father died, writ petition was filed by the appellant before the High Court seeking benefit of the said circular. The High Court directed the claim of the appellant to be considered for the grant of Group ‘D’ employment. Appellant submitted representation, which was rejected. Second writ petition filed by the appellant was rejected by the Single Judge. Order affirmed by the Division Bench. Hence, the present appeal.

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E **Allowing the appeal, the Court**

HELD: 1.1 The policy circular dated 1 January 1983 was specifically adverted to in the subsequent circular dated 19 April 2006. The subsequent circular stipulates that the Railway Board had decided that the policy to offer employment to displaced persons should not cover displaced persons where only a strip of land had been acquired. At the same time, it stipulated that the claim can be considered for appointment against a Group ‘D’ post where a “large area, house or substantial livelihood has been taken away/snapped in the process”. The case of the appellant fell within the ambit of paragraph 2 of the circular dated 19 April 2006. In rejecting the application of the appellant, the ground which weighed with the Railway Authorities was that only a strip of land belonging to the appellant had been acquired. This is not a correct reading of the circular. The circular contemplates that when a large area, house or substantial livelihood have been taken away, the case for providing alternative employment in a Group

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‘D’ post would be considered. Those phrases are disjunctive. The entire house of the appellant was demolished. It was stated that there was no specific guideline from the Railway authorities to provide a job in lieu of acquisition of land in Ara-Sasaram project. This was not a valid ground to reject the claim, once there was a general policy circular dated 19 April 2006 which held the field. In the counter affidavit that was filed before the High Court, an additional ground was sought to be urged namely that it was only if an exception is granted by the Ministry of Railways that the application would be considered for appointment in accordance with the prevailing norms. There is no justification for this submission since it would result in the exercise of a pick and choose approach, contrary to the policy circular dated 19 April 2006. [Paras 17, 18][1161-B-G]

1.2 The rejection of the claim of the appellant was contrary to the terms of the binding policy circular formulated by the Union of India in the Ministry of Railways. Undoubtedly, the grant of appointment to persons displaced as a result of acquisition is a matter which is within the purview of the policy discretion. No mandamus can lie in the absence of a policy. However, where a policy has been laid down by the Union government as in the present case, the terms of the policy can be enforced. The rejection of the claim of the appellant was for extraneous reasons and based on irrelevant considerations. Government in the Ministry of Railways formulated a policy. The failure of implementation results in a failure of social justice. The policy circulars were substantive attempts to enhance social welfare. Denial of benefits to the appellant has led to a long and tortuous road to justice. The impugned judgment of the High Court is set aside. The claim of the appellant for appointment to a Group ‘D’ post shall be implemented within a period of two months from today by granting an age relaxation, if required. [Paras 19, 20][1161-G-H; 1162-A-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.1958 of 2019.

From the Judgment and Order dated 03.01.2018 of the High Court of Judicature at Patna in Letters Patent Appeal No.1929 of 2016 in Civil Writ Jurisdiction Case No.25313 of 2013.

A Uday Gupta, Ms. Shivani Lal, Hiren Dasan, M.K. Tripathi, Sulalit Sisodia, Mrs. Sarla Chandra, Advs. for the Appellant.

Ms. Vibha Datta Makhija, Sr. Adv., Dhruv Pall, Ms. Aprajita Mukherjee, Samarth Khanna, Bharat Singh, Raj Bahadur, M.P. Gupta, Mrs. Anil Katiyar, Advs. for the Respondents.

B The Judgment of the Court was delivered by

DR. DHANANJAYA Y. CHANDRACHUD, J.

1. Leave granted.

C This appeal arises from the judgment of a Division Bench of the High Court of Judicature at Patna dated 3 January 2018 in a Letters Patent Appeal¹.

D 2. The father of the appellant, Lalan Pandey, had constructed a two storied house together with a part of a third floor on Plot No. 1844, appurtenant to Khata No. 228, ad-measuring 0.06 acres, situated at Mauza-Pakri, Ara in the District of Sasaram in Bihar. The land over which the residential house was constructed was acquired in 2006 for the Ara-Sasaram Railway Project.

E 3. On 7 June 2008, the Collector Bhojpur, Ara submitted a list of persons displaced in consequence of the project undertaken by the Railways. The name of the appellant's father occurred at serial no. 8 in the list of persons whose residential houses had been fully demolished. A communication was issued on 8 August 2008 by the Executive Engineer (Construction), East Central Railway, Ara to the Deputy Chief Engineer recommending the case of the appellant for appointment in service in terms of a policy circular of the Railway Board dated 19 April 2006.

F 4. Since the letter dated 7 August 2008 contains a statement of relevant facts, the letter is extracted below:-

G "The house of Sh. Lalan Pandey s/o Late Ram Naresh Pandey of village Jagdeo Nagar, Pakri, Ara is coming centrally in the alignment of Ara-Sasaram New Railway line with following land details:

Khata No. 228
P.S. No. 236

Khesara No. 1844/32
Pakri (ARA)

H ¹Letters Patent Appeal No. 1929/2016 in Civil Writ Jurisdiction Case No. 25313/2013

The complete demolition of the house is required for construction of new line at this location. A

Sh. Lalan Pandey s/o Late Ram Naresh Pandey has demolished about 90% part of the house constructed in a two kattha land with covered area approximate 1110 sq. feet. He had two-storied building with part construction in third story. B

Sh. Lalan Pandey, s/o Late Ram Naresh Pandey is a completely displaced person due to construction of new line and his livelihood has suffered due to displacement. A report on assessment by DLAO/Ara office regarding size and facilities available at his demolished house is enclosed for reference. C

Vide this office letter under reference above the application was forwarded for consideration for job in Railway as per the extant provisions.

His case may be considered for job in Railway in terms of Railway Board's letter No. E(NG) II/2002/RC-5/4 dated 19.04.2006 (copy enclosed)" D

5. Between 2008 and 2011, before he died, the appellant's father had an exchange of correspondence with the authorities for requesting them that the benefit of the policy circular of 19 April 2006 be granted since his entire house had been demolished. After his father died on 15 May 2011, the appellant instituted a writ petition before the High Court² seeking that relief. E

6. After a counter affidavit was filed in the proceedings, the High Court by its order dated 11 December 2012 directed that the claim of the appellant should be considered by the General Manager, East Central Railways, Vaishali at Hazipur for the grant of Group 'D' employment within a period of three months. F

7. The appellant then submitted a representation which was rejected by an order dated 20 February 2013. The reasons for the rejection were as follows:- G

"(i) As per Annexure-1 (Railway Board Circular No. E(NG)II/2002/RC-5/4 dated 19.04.2006) "...no cognizance by way of offering employment to displaced persons should be given wherein only a strip of land for construction of a line has been acquired..."

²Civil Writ Jurisdiction Case No. 4493/2012

- A (ii) In the impugned case a small piece of land measuring 0.06 acre only was acquired in the year 2006 vide Annexure-C (Case NO.01/2005-06). As such this does not conform to the requirement of above mentioned Board's Circular to entitle the applicant for job in railway.
- B (iii) The letter of Executive Engineer/ Construction No. XEN/C Ara/AS-6 dated 08.08.2008 cited as Annexure-4 is a routine forwarding letter for consideration of the claim for job in railway. It did not contain any express commitment from administration to provide job to the claimant."
- C 8. The appellant then filed a Second Writ Petition³ challenging an order of rejection. The Writ Petition was rejected by a learned Single Judge by an Order dated 31 August 2016 which has been affirmed in a Letters Patent Appeal⁴ by the Division Bench.
- D 9. The case of the appellant is based on the policy circulars of the Union Government in the Ministry of Railways. Initially by a Circular dated 1 January 1983, the Railway Board dealt with appointment to Group 'C' and 'D' posts in the Railways of members of families who are displaced as a result of the acquisition of land for the establishment of projects. Certain guidelines were framed under the policy circular under which it was envisaged that Zonal Railways and project authorities
- E may consider applications received from persons displaced on account of large scale acquisition of land for railway projects, so as to provide employment to a displaced person or a son, daughter or spouse in Group 'C' or Group 'IV' posts.
- F The guidelines are as follows:-
- G "1. 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 projects.
2. The dispensation should be limited to recruitments made from outside in direct recruitment categories and to the first recruitment or within a period of two years after the acquisition of the land, whichever is later.

³Civil Writ Jurisdiction Case No. 25313/2013

⁴LPA No. 1929/2016

3. It must also be ensured that the displaced person did not derive any benefit through the State Government in the form of alternative cultivable land etc. A

4. The person concerned should fulfil the qualification for the post in question and also be found suitable by the appropriate recruitment committees. In the case of Group C posts for which recruitment is made through the Railway Service Commission, the Chairman or the Member of the Railway Service Commission should be associated in the recruitment.” B

10. Subsequently on 19 April 2006, a circular was issued by the Railway Board in which the earlier guidelines were adverted to and the issue was revisited. The circular, insofar as it is relevant, reads thus: C

“2. The whole issue has been deliberated upon at length in the full board meeting and it has been decided that no cognizance by way of offering employment to displaced persons should be given wherein only a strip of land (viz., for construction of a line) has been acquired but the same can be considered in Group D posts only wherein large area, house or substantial livelihood has been taken away/snapped in the process. D

3. It has further been decided by the board that past cases where recruitments are already in process or where any commitment has been given to provide employment by the competent authority, such recruitment process should be finalised and employment provided in Group D posts only to eligible persons.” E

11. In the Writ Petition which the petitioner filed before the High Court, the prayer for mandamus was specifically based on the Railway Board Circular dated 19 April 2006. The relevant averments in the writ petition reads thus; F

“9. That it is submitted that the Collector, Bhojpur, Ara vide Memo No. 211 dated 07.06.2008 sent a list of persons whose house was demolished with recommendation for employment and the list finds place the name of Lalan Pandey. The Executive Engineer, Cons., E.C. Railway, Ara has written a letter dated 08.08.2008 to Dy. Chief Engineer, Con./E.C. Railway/Danapur mentioning therein that Lalan Pandey is a completely displaced person due to G

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A construction of new line and his livelihood has suffered due to displacement. It was requested for consideration of the Petitioner's case for job in Railways in terms of Railway Board's letter dated 19.04.2006."

12. The response of the Railways to the above averment contained
B no denial of the averments contained in paragraph 9. Paragraph 10 of the response reads as follows:-

"10. That with regard to statement made in paragraph 9 of the writ petition it is stated that the same is a matter of records, hence there is no comments."

C 13. The learned Single Judge rejected the writ petition, observing that a claim for appointment in service, apart from an entitlement to compensation for the acquisition of land, is by way of an exception. The High Court also held that the policy circular could not be applied since the acquisition in question was made prior to 2006.

D 14. The Letters Patent Appeal was rejected by the Division Bench relying upon the statement of the counsel for the Railways that employment had not been provided even in a single case for acquisition of land for the Ara Sasaram Railway project.

15. Learned counsel for the appellant has, while assailing these
E findings submitted that the acquisition was in year 2006 and the case of the appellant is squarely governed by the policy circular. It was urged before this Court that the grounds which weighed with the authorities in rejecting the representation are contained in the speaking order dated 20 February 2013 of the General Manager of the East Central Railway which was passed in pursuance of the direction of the High Court. It
F was urged that the policy circular, contrary to what is stated in the order, would encompass the case of the appellant since the entirety of the house belonging to the appellant had been demolished. Hence the fact that only a strip of land was involved would not disentitle the appellant for the grant of relief.

G 16. On the other hand, Ms. Vibha Dutta Makhija, learned senior counsel appearing on behalf of the respondents submitted that the policy circular dated 1 January 1983 as well as the subsequent policy circular dated 19 April 2006 must be read together. It was urged that as a matter of fact, para 3 of the policy circular dated 19 April 2006 stipulated that

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past cases where recruitments were already in process and where commitment had been given to provide employment should be finalised and employment be provided in Group 'D' posts only to the eligible persons. In the circumstances, it was urged that the appellant was not entitled to the benefit of the policy circular.

17. The policy circular dated 1 January 1983 was specifically adverted to in the subsequent circular dated 19 April 2006. The subsequent circular stipulates that the Railway Board had decided that the policy to offer employment to displaced persons should not cover displaced persons where only a strip of land had been acquired. At the same time, it stipulated that the claim can be considered for appointment against a Group 'D' post where a "large area, house or substantial livelihood has been taken away/snapped in the process". The case of the appellant fell within the ambit of paragraph 2 of the circular dated 19 April 2006. In rejecting the application of the appellant, the ground which weighed with the Railway Authorities was that only a strip of land belonging to the appellant had been acquired. This is not a correct reading of the circular. The circular contemplates that when a large area, house or substantial livelihood have been taken away, the case for providing alternative employment in a Group 'D' post would be considered. Those phrases are disjunctive. The entire house of the appellant was demolished. It was stated that there was no specific guideline from the Railway authorities to provide a job in lieu of acquisition of land in Ara-Sasaram project. This was not a valid ground to reject the claim, once there was a general policy circular dated 19 April 2006 which held the field.

18. In the counter affidavit that was filed before the High Court, an additional ground was sought to be urged namely that it was only if an exception is granted by the Ministry of Railways that the application would be considered for appointment in accordance with the prevailing norms. There is no justification for this submission since it would result in the exercise of a pick and choose approach, contrary to the policy circular dated 19 April 2006.

19. For the above reasons, we have come to the conclusion that the rejection of the claim of the appellant was contrary to the terms of the binding policy circular formulated by the Union of India in the Ministry of Railways. Undoubtedly, the grant of appointment to persons displaced as a result of acquisition is a matter which is within the purview of the

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- A policy discretion. No mandamus can lie in the absence of a policy. However, where a policy has been laid down by the Union government as in the present case, the terms of the policy can be enforced. The rejection of the claim of the Appellant was for extraneous reasons and based on irrelevant considerations. Government in the Ministry of Railways formulated a policy. The failure of implementation results in a failure of social justice. The policy circulars were substantive attempts to enhance social welfare. Denial of benefits to the appellant has led to a long and tortuous road to justice.

20. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 3 January 2018. In the facts and circumstances of the case, in consequence, we direct that the claim of the appellant for appointment to a Group 'D' post shall be implemented within a period of two months from today by granting an age relaxation, if required.

21. The appeal is, accordingly, allowed. There shall be no order as to costs.

22. Pending application(s), if any, shall stand disposed of.