

UNION OF INDIA & ORS.

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v.

SHANKAR PRASAD DEEP ETC.ETC.

(Civil Appeal Nos. 3030-3044 of 2019)

MARCH 14, 2019

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**[DR DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Rehabilitation – Of land oustees, whose lands were acquired for Sambalpur-Talcher Rail Link Project – Railway Board formulated policy for offering employment to persons displaced by the acquisition of land for railway projects – Employment notice for recruitment of Gangmen in Group ‘D’ posts in the Engineering Department of the Sambalpur Division – O.As filed before the Central Administrative Tribunal, Cuttack Bench by displaced persons – Tribunal found fault with the Railway for initiating selection process for filling up 511 vacancies in Group ‘D’ posts, holding that recourse to direct recruitment was not justified without accommodating all the land oustees and observed that it would be enough if they are found suitable for the post by recruitment committee – Affirmed by the High Court – On appeal, held: Though the policy of the Railway Board provided for the grant of preferential treatment to the land oustees, this was subject to the fulfillment of all other terms and conditions – View of the Tribunal that the land oustees were not required to undergo the process of selection, not accepted – Tribunal exceeded its adjudicatory authority by substituting its own directions for the policy – Out of 9,036 families which were covered by the Sambalpur-Talcher Rail Link Project, 2,805 persons applied for employment – Applications of 2,153 land oustees were rejected – Inter alia the reasons for rejection were insufficient proof of being land losers in the land acquisition – It would be extremely technical to reject the applications without sufficient opportunity to the land oustees to comply with the terms and conditions, including the submission of proof of being land oustees – Policy contemplated that as land acquisition is done through the civil authorities, the village sarpanch/tehsildar should be associated with the verification of the claim of the oustees – Placing the entire burden on the land

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- A *oustees would result in deprivation of the benefit of the policy – Judgments of the High Court and the Tribunal set aside – Notwithstanding the rejection of the claims of 2,153 land oustees, steps be taken for re-verification of the claims of persons rejected – Applications submitted be reconsidered as against the 82 vacancies (out of 511 vacancies, 429 posts were filled) and in addition, against any other vacancies that may presently exist in respect of the Sambalpur Division and those which may arise in the next two years.*
- B *Lands were acquired between 1984-85 and 1992-93 for Sambalpur-Talcher Rail Link Project. The Railway Board formulated policy for offering employment to persons displaced by the acquisition of land for railway projects. Employment notice for recruitment of Gangmen in Group ‘D’ posts in the Engineering Department of the Sambalpur Division. Land oustess of the Sambalpur-Talcher Rail Link Project allowed to apply, if otherwise eligible. O.As were filed before the Central Administrative*

- C *Tribunal, Cuttack Bench by the displaced persons. The Tribunal found fault with the Railway for initiating selection process for filling up 511 vacancies in Group ‘D’ posts, holding that recourse to direct recruitment was not justified without accommodating all the land oustees and observed that it would be enough if they are found suitable for the post by recruitment committee. In challenge by the Union of India, the High Court affirmed the said decision. Hence, the present appeals.*
- D *Allowing the appeals, the Court*
- E *HELD: 1.1 The policy of the Railway Board envisaged that appointments are to be made only on the fulfillment of the conditions specified in the instructions (Clause 1 of the letter dated 8 December 1989). The instructions stipulated that the dispensation to give preferential treatment to land oustees in employment is to be limited to recruitments made from outside in direct recruitment categories, subject to the terms and conditions stipulated. The instructions also stipulated that candidates must fulfill the qualifications for the post and should be found suitable by the appropriate recruitment committees. In view of the terms and conditions, stipulated in the relevant*

instructions and circulars, it is not possible to accede to the view of the Tribunal that the land oustees are not required to undergo the process of selection. Though the instructions provided for the grant of preferential treatment, this was subject to the fulfillment of all other terms and conditions, stipulated in the instructions. While laying down a policy for preferential treatment, the Union Government was entitled to stipulate the conditions subject to which a claim for appointment in Group ‘C’ and Group ‘D’ posts for the land oustees could be considered. The Tribunal exceeded the limits of its adjudicatory authority by virtually substituting its own directions for the policy which was formulated by the Union Government. Such an exercise, by its very nature, is impermissible. The terms on which a policy of offering employment to the land oustees should be framed is a matter to be decided by the Ministry of Railways. Once this exercise has been carried out, it was neither appropriate nor proper for the Tribunal to trench upon that area. Out of 9,036 families which were covered by the Sambalpur-Talcher Rail Link Project, 2,805 persons had applied for employment. 652 persons were shortlisted, out of whom 553 persons appeared for the written test. 110 persons cleared the written test, out of whom 76 were offered employment. 66 persons joined service. [Paras 18-20] [480-G-H; 481-A-E]

1.2 It would be extremely technical to reject the applications without sufficient opportunity to the land oustees to comply with the terms and conditions, including the submission of proof of being land oustees. As a matter of fact, the policy which has been formulated by the Ministry of Railways contemplated that as land acquisition is done through the civil authorities, the village sarpanch or tehsildar should be associated with the verification of the claim of the oustees. Placing the entire burden on the land oustees would result in a deprivation of the benefit of the policy. Having laid down a salutary policy, it is necessary that the Ministry of Railways must coordinate its activities with the local administration so as to ensure due verification of the claims made by the applicants. Notwithstanding the earlier rejection of the claims of 2,153 land oustees, steps should be taken for re-

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- A verification of all the claims of persons who were rejected in the past. Sufficient opportunity shall be granted to them to submit applications afresh along with requisite certificates. Fresh applications be called within a period of three months. An advertisement shall be issued for that purpose with due publicity in the area. The applications submitted in pursuance to the advertisement by land oustees of the Sambalpur-Talcher Link Rail Project shall be reconsidered as against the 82 vacancies and in addition thereto, against any other vacancies that may presently exist in respect of the Sambalpur Division and those which may arise in the next two years. The selection process shall be completed within the next six months.
[Paras 22, 23] [482-B-G]

- 1.3 Applicants would be entitled to an age relaxation of 15 years. The applications of other land oustees apart from 2,153 land oustees reflected in the tabulated chart shall also be duly considered by the Divisional Manager. However, applicants would be required to fulfill all other prescriptions, including educational qualifications, appearing at the written test, minimum age requirements and medical fitness. The written test shall be held exclusively for the applicants from among the land oustees. It is clarified that there shall be no displacement of the candidates who were appointed in the process of direct recruitment. The judgments of the High Court and the Tribunal are set aside.
[Paras 24, 25] [482-G-H; 483-A-B]

- CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3030-3044 of 2019.

F From the Final Judgment and Order dated 21.06.2010 of the High Court of Orissa, Cuttack in OJC Case Nos.6154-6168 of 2002

G A.N.S. Nadkarni, ASG, Ms. V. Mohana, Sr. Adv., Salvador Santosh Rebello, Akshay Amritanshu, Ms. Ankita Sharma, R.B. Yadav, Mrs. Anil Katiyar, Advs. for the Appellants.

H R.P. Bhatt, Sr. Adv., Devansh A. Mohta, Nilakanta Nayak, Amit Yadav, Kaushal Navoyan Mishra, A.P. Mayee, Tejaswi Kumar Pradhan, Kumar Gaurav, Robin Khokhar, B.N. Dubey, P. Dayal, Ms. Ritu Renitval,

Rameshwar Prasad Goyal, Aniruddha P. Mayee, Sibo Sankar Mishra, Ms. Nidhi, Garvesh Kabra, Ms. Poga Kabra, Ms. Maithili Shubhangi, Shibashish Misra, Chandan Kumar Mandal, Somanatha Padhan, Ashok Anand (for Ms. Anagha S. Desai) Advs. for the Respondents. A

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J B

1. Leave granted.

2. The issue in the present appeals pertains to the rehabilitation of land oustees, whose lands were acquired between 1984-85 and 1992-93 for the Sambalpur-Talcher Rail Link Project. C

3. The Union Government in the Ministry of Railways formulated certain policies on which the claim in the present appeals rests.

4. On 24 November 1987, the Railway Board formulated a policy in the context of its earlier decisions, and laid down guidelines for offering employment to persons displaced by the acquisition of land for railway projects. The letter dated 24 November 1987 stipulated that: D

“(2) The Zonal Railway and Production Units and also project authorities may consider applications received from persons displaced on account of large-scale acquisition of land for projects on the Railways for employment of the displaced person, or his son/daughter or wife 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 the following conditions: E

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 project. F

2. Only one job on such preferential treatment should be offered to one family. G

3. This 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. H

- A 4. It must also be ensured that the displaced persons did not derive any benefit through the State Government in the form of alternative cultivable land etc.
- B 5. The person concerned should fulfill the qualifications 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 Railways Service Commission, the Chairman or the Member of the Railways Service Commission should be associated in the recruitment.”
- C 5. The Railway Board issued another circular on 10 November 1989¹. The subject of the circular was:
- “Appointment to Group ‘C’ and Group ‘D’ posts on the Railways of members of families displaced as a result of acquisition of land for establishment of projects.”
- D 6. The circular laid down modalities for inviting applications from eligible persons belonging to families which were displaced as a result of the acquisition of land.
- E 7. On 8 December 1989, the Railway Board issued another letter stipulating the procedure to be followed to implement the policy of offering appointment in Group ‘C’ and Group ‘D’ posts in the Railways to one member of every family displaced as a result of acquisition. The circular, *inter alia*, contains the following stipulations:
- F “3. Incidentally, as already clarified in the aforesaid instructions, not more than one job for one family can be given, even if the other conditions are satisfied. Further, once an offer of appointment has been made, in no case should any further application claiming appointment on ground of acquisition of the same piece of land for railway project, be entertained. All the applications received should be properly registered in a register and the final disposal also indicated to keep a proper check.”
- G 8. The present dispute originates in a batch of Original Applications which were filed before the Central Administrative Tribunal at its Cuttack Bench by persons displaced by acquisition of their lands. The Tribunal, by its decision dated 20 February 2002, issued a slew of directions to ensure the rehabilitation of land oustees. The Tribunal found fault with

H ¹ No.E(NG)II/89/RC-2/38

the Railway Administration for initiating a selection process for filling up 511 vacancies in Group ‘D’ posts, holding that recourse to direct recruitment was not justified without accommodating all the land oustees. The Tribunal observed that those of the land oustees who had applied and were found to fulfill the educational qualifications and age requirement will not have to undergo the selection procedure stipulated in the employment notice issued on 31 July 1998. Instead, the Tribunal observed that it would be enough if they are found suitable for the post by recruitment committee.

9. The decision of the Tribunal was questioned by the Union of India before the High Court of Orissa in O.J.C. No.6156 of 2002. The High Court observed that the policy of the Union Government in the Ministry of Railways stipulated that one job should be offered on a preferential basis to a member of the affected family. The High Court held that out of 511 vacancies, as many as 508 had been filled up by ‘outsiders’ other than land oustees and, as a matter of fact, except for three persons, no job was offered to any of the family members. On this reasoning, the High Court dismissed the Writ Petition and affirmed the view of the Tribunal.

10. Assailing the decision of the High Court, the Union of India is in appeal before this Court.

11. During the course of the hearing, Mr. A.N.S. Nadkarni, learned Additional Solicitor General of India, assailed the judgments of the Tribunal and of the High Court on the ground that the figures which had been reflected in these judgments were erroneous.

12. In view of the submissions which were addressed before this Court, the following order was passed on 14 February 2019:

“In order to enable the Court to have a comprehensive assessment of the situation, we have requested Mr. A.N.S. Nadkarni, learned Additional Solicitor General of India to provide the following details:-

- (i) The total number of families which were covered under the Sambalpur-Talcher Rail Link Project;
- (ii) The number of persons from amongst the affected families who had applied for employment;

- A (iii) The number of persons from amongst the affected group who appeared for the written test;
- (iv) The number of persons who cleared the written test amongst the above group;
- B (v) The number of persons who have been actually engaged by the Railway Administration from amongst the group of oustees; and
- (vi) The grounds on which those who could not be accommodated were rejected.
- C 13. This Court shall also be apprised of how many of the remaining persons meet the minimum qualifications and job description (other than the age requirement) as stipulated in the advertisement dated 31 July 1998 (Annexure P-4).
- D This exercise shall be carried out and an additional affidavit shall be filed before the next date of hearing with an advance copy to the learned counsel appearing for the contesting parties.”
- E The affidavit contains the following tabulated statement:

	“S.No.	Details sought by this Hon’ble Court	Particulars
F	(i)	Total number of families which were covered under the Sambalpur-Talcher Rail Link Project	9036
	(ii)	The number of persons from amongst the affected families who had applied for employment	2805
G	(iii)	The number of persons from amongst the affected group who appeared for the written test	652 persons were shortlisted after scrutinizing the Application, but only 553 persons appeared for the written test
	(iv)	The number of persons who cleared the written test amongst the above group	110 persons cleared the written test

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(iv)	The number of persons who cleared the written test amongst the above group	110 persons cleared the written test	A
(v)	The number of persons who have been actually engaged by the Railway Administration from amongst the group of oustees	76 persons were offered employment by the Railway Administration, but only 66 persons joined service. 7 persons did not join and 3 were declared medically unfit.	B
(vi)	The grounds on which those who could not be accommodated were rejected	<p>Grounds for rejection of 2153 land oustee-applicants:</p> <p>(1) 1831 persons (No land acquisition certificate enclosed)</p> <p>(2) 215 persons (Insufficient proof of being land loser in the land acquisition certificate enclosed)</p> <p>(3) 40 persons (Under qualified)</p> <p>(4) 31 persons (Incomplete application)</p> <p>(5) 14 persons (Over aged as per Advertisement dt. 31.07.1998)</p> <p>(6) 13 persons (Under age as per Advertisement dt. 31.07.1998)</p> <p>(7) 7 persons (Photographs in applications not attested)</p> <p>(8) 2 persons (Proper caste certificate not enclosed)</p> <p>Note: Out of 2805 Applicant-land oustees who had applied, 2153 persons were rejected and 652 persons were shortlisted initially.</p>	C D E F G H

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	Number of remaining persons who meet the minimum qualifications and job description (other than the age requirement) as stipulated in the advertisement dated 31 July 1998 (Annexure P4)	586 persons other than those who joined service (652-66) meet the minimum qualification and job description and job description (other than the age requirement)"
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- B 15. It has been stated that as of date, 82 posts remain unfilled. It has been stated in the affidavit that the finding of the Tribunal and the High Court that 508 out of 511 vacancies were filled in by 'outsiders' (persons other than land oustees) is an apparent error, since 429 posts were filled in and 82 posts were kept vacant. Out of these 429 posts, 76 posts were offered to persons from the land oustees category of whom 66 joined service; 7 did not report and 3 were declared medically unfit. It has been stated that compensation of Rs 12.11 crores has been paid to the families of the land oustees.
- C 16. The dispute in the present case arose from a process of selection commenced on 31 July 1998 through an employment notice² of the then South Eastern Railway for recruitment of Gangmen in Group 'D' posts in the Engineering Department of the Sambalpur Division. The advertisement stipulated that the candidates should have passed the 8th standard besides which age requirements were set out. The advertisement stipulated that the selection procedure would be decided by the Additional Divisional Railway Manager (ADRM).

- D 17. Thereafter, on 5 February 1999, an employment notice³ was issued by the Divisional Railway Manager, Sambalpur in terms of the earlier notice so as to permit the land oustees of the Sambalpur-Talcher Rail Link Project to apply directly against the notification dated 31 July 1998, if they were otherwise eligible. However, all the terms and conditions published in the earlier notification remained unchanged.

- E 18. The policy of the Railway Board envisages that appointments are to be made only on the fulfillment of the conditions specified in the instructions (Clause 1 of the letter dated 8 December 1989). Moreover, the instructions stipulate that the dispensation to give preferential treatment to land oustees in employment is to be limited to recruitments made from outside in direct recruitment categories, subject to the terms and conditions stipulated. The instructions also stipulate that candidates must

H ²No.SHP/3/98
 ³No.SBP/1/99

fulfill the qualifications for the post and should be found suitable by the appropriate recruitment committees. A

19. In view of the terms and conditions, stipulated in the relevant instructions and circulars which have been noted earlier, it is not possible to accede to the view of the Tribunal that the land oustees are not required to undergo the process of selection. Though the instructions provided for the grant of preferential treatment, this is subject to the fulfillment of all other terms and conditions, stipulated in the instructions. While laying down a policy for preferential treatment, the Union Government was entitled to stipulate the conditions subject to which a claim for appointment in Group ‘C’ and Group ‘D’ posts for the land oustees could be considered. The Tribunal exceeded the limits of its adjudicatory authority by virtually substituting its own directions for the policy which was formulated by the Union Government. Such an exercise, by its very nature, is impermissible. The terms on which a policy of offering employment to the land oustees should be framed is a matter to be decided by the Ministry of Railways. Once this exercise has been carried out, it was, in our view, neither appropriate nor proper for the Tribunal to trench upon that area. B

20. From the facts, which have been disclosed on affidavit, in pursuance of the previous order dated 14 February 2019, it emerges that out of 9,036 families which were covered by the Sambalpur-Talcher Rail Link Project, 2,805 persons had applied for employment. 652 persons were shortlisted, out of whom 553 persons appeared for the written test. 110 persons cleared the written test, out of whom 76 were offered employment. 66 persons joined service. C

21. We were concerned about the reasons which weighed in the rejection of 2,153 land oustees – applicants, who were not shortlisted. The tabulated statement, which has been extracted earlier, indicates the grounds for rejection, which are as follows: D

- (i) 1,831 persons had not enclosed land acquisition certificates;
- (ii) 215 persons had furnished insufficient proof of being land losers in the land acquisition; G
- (iii) 40 persons did not have the minimum qualifications;
- (iv) 31 persons had submitted incomplete applications;

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- A (v) 14 persons were over-aged;
(vi) 13 persons were reported under-age;
(vii) 7 persons had not attested their photographs; and
(viii) 2 persons had not submitted caste certificates.
- B 22. We are of the view that it would be extremely technical to reject the applications without a sufficient opportunity to the land oustees to comply with the terms and conditions, including the submission of proof of being land oustees. As a matter of fact, the policy which has been formulated by the Ministry of Railways contemplates that as land acquisition is done through the civil authorities, the village sarpanch or tehsildar should be associated with the verification of the claim of the oustees. Placing the entire burden on the land oustees would result in a deprivation of the benefit of the policy. Having laid down a salutary policy, it is necessary, in our view, that the Ministry of Railways must coordinate its activities with the local administration so as to ensure due verification of the claims made by the applicants.
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- E 23. Consequently, we direct that, notwithstanding the earlier rejection of the claims of 2,153 land oustees, steps should be taken for re-verification of all the claims of persons who were rejected in the past. Sufficient opportunity shall be granted to them to submit applications afresh along with requisite certificates. We direct that fresh applications be called within a period of three months. An advertisement shall be issued for that purpose with due publicity in the area. The applications submitted in pursuance to the advertisement by land oustees of the Sambalpur-Talcher Link Rail Project shall be reconsidered as against the 82 vacancies and in addition thereto, against any other vacancies that may presently exist in respect of the Sambalpur Division and those which may arise in the next two years. The selection process shall be completed within the next six months. The railway administration shall pro-actively engage with the State administrative machinery in ensuring proper verification of all claims.
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- G 24. Applicants would be entitled to an age relaxation of 15 years. The applications of other land oustees apart from 2,153 land oustees reflected in the tabulated chart shall also be duly considered by the Divisional Manager. However, applicants would be required to fulfill all other prescriptions, including educational qualifications, appearing at the
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written test, minimum age requirements and medical fitness. The written test shall be held exclusively for the applicants from among the land oustees. We clarify that there shall be no displacement of the candidates who were appointed in the process of direct recruitment. A

25. The appeals shall stand allowed. The judgments of the High Court and the Tribunal are set aside. There shall be an order in terms of the directions given above. B

26. Applications for impleadment/intervention are allowed. There shall be no order as to costs.

Divya Pandey

Appeals allowed.

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