

GAHC010200332017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5059/2017

CHAMPAK SING RAY
S/O. SRI JYOTISH CHANDRA RAY, R/O. VILL. BAHALPUR BAROPARA,
PART-II, P.O. BAHALPUR, P.S. CHAPAR, DIST. DHUBRI, ASSAM, PIN-783371.

VERSUS

THE UNION OF INDIA and 6 ORS.
MINISTRY OF RAILWAYS, REP. BY THE SECY. TO THE GOVT. OF INDIA,
DEPTT. OF RAILWAYS, NEW DELHI-1.

2:THE STATE OF ASSAM
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
REVENUE DEPTT.
DISPUR
GUWAHATI-6.

3:THE RAILWAY BOARD
REP. BY ITS CHAIRMAN
RAIL BHAWAN
RAISINA ROAD
NEW DELHI-110001.

4:THE GENERAL MANAGER
NORTHEAST FRONTIER RAILWAY

HEAD QUARTER
MALIGAON
GUWAHATI
ASSAM
PIN-781011.

5:THE GENERAL MANAGER P

NORTHEAST FRONTIER RAILWAY

HEAD QUARTER
MALIGAON
GUWAHATI
ASSAM
PIN-781011.

6:THE DY. COMMISSIONER CUM COLLECTOR

DHUBRI
DIST. DHUBRI
ASSAM.

7:THE DY. CHIEF ENGINEER/ CON
NORTHEAST FRONTIER RAILWAY

JOGIGHOPA
ASSAM

Advocate for the Petitioner : MRS M ROY

Advocate for the Respondent : MS.M ACHARYYA

Linked Case : WP(C)/4958/2017

RAJIB RAY
S/O LT. CHAKRADHAR RAY R/O VILL- BAHALPUR TAATPARA P.O.
BAHALPUR P.S. CHAPAR DIST. DHUBRI
ASSAM
PIN - 783371.

VERSUS

THE UNION OF INDIA and 6 ORS.
MINISTRY OF RAILWAYS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
DEPARTMENT OF RAILWAYS
NEW DELHI-1.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

REVENUE DEPARTMENT
DISPUR
GUWAHATI-6.
3:THE RAILWAY BOARD
REP. BY ITS CHIRMAN
RAIL BHAVAN
RAISINA ROAD
NEW DELHI-110001.
4:THE GENERAL MANAGER

NORTH FRONTIER RAILWAY
HEAD QUARTER
MALIGAON
GUWAHATI
ASSAM
PIN - 781011.
5:THE GENERAL MANAGER P
NORTHEAST FRONTIER RAILWAY
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DHUBRI
DIST. DHUBRI
ASSAM
7:THE DEPUTY CHIEF ENGINEER/CON

NORTHEAST FRONTIER RAILWAY
JOGIGHOPA
ASSAM

Advocate for : MR.S K ROY

Advocate for : MRS.U CHAKRABORTY appearing for THE UNION OF INDIA and
6 ORS.

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

24.05.2024

1. Heard Mr. S.K. Roy, learned counsel for the petitioner in both the writ

petitions and Mrs. U. Chakraborty, learned Special Senior Railway Counsel appearing for the NF Railway and Mr. S.R. Barua, learned counsel for the Deputy Commissioner, Dhubri.

2. Since issue involved in both the writ petitions are similar they are being disposed of by a common order.

3. For the purpose of convenience facts set out in WP(C) No.5059/2017 shall be referred to. It is the case of the petitioner Shri Champak Sing Ray that his father Sri Jyotish Chandra Ray @ Jyotish Kumar Ray was in possession of certain piece of land which came to be acquired by the NF Railway through LA Case No.1/2006-2007. The acquisition of land was done in a phase manner and the land of the petitioner's father is covered by Phase No.49. Although the acquisition took place in 2006-2007 but handing over the land has not taken place until a notice was issued by the Additional Deputy Commissioner and Land Acquisition Officer, Dhubri on 21.10.2014 informing the petitioner's father that a date has been fixed for handing over the land to the NF Railway Engineer, i.e. 07.11.2014 at 11:00 a.m. Further, an intimation was also made in the said notice that the compensation money has been completely received from the Railway Department and was deposited in the State Bank at Dhubri. According to the petitioner, the money has been disbursed to the petitioner's father in terms of the Award. The Government of India in the Ministry of Railways, Railway Board has come up with a Scheme for "appointment of land losers affected by land acquisition for railway projects" through a Circular dated 16.07.2010 and according to the petitioner, the same is a policy decision of the Government of India for giving an opportunity to appoint persons whose land have been acquired by the Railway Authorities. According to the petitioner,

qualified to apply for appointment as per the circular and accordingly he submitted his application before the General Manager, NF Railway, Maligaon, Guwahati which was received by the said authority on 05.06.2017. Despite the application, petitioner has not been considered for appointment in any post covered by the Circular dated 16.07.2010. Aggrieved, he is before this Court. Similar is the narration of the petitioner in WP(C) No.4958/2017 as well.

4. The learned counsel for the petitioners submits that since the lands belonging to the fathers of the petitioners have been acquired and none of their family members have applied for any post under the Railways and therefore, the petitioners being the lone applicants they are entitled to be considered for appointment as per the Circular dated 16.07.2010. The learned counsel submits that a similar scheme was also introduced by the Government of India, vide Circular dated 19.04.2006 to grant appointment to land losers, who had lost their lands due to the acquisition of their lands for the Railways. In this connection a dispute arose and the matter came up before the Apex Court in *Anil Kumar vs. Union of India & Others*, reported in (2019) 5 SCC 591. The Apex Court upon considering the policy decision of the Government of India directed the Respondent authority concerned to grant the benefit of appointment to the petitioner in that case. The learned counsel thus submits that a similar direction may be given in the present case to the respondent authorities to consider the petitioners for appointment in terms of the Circular dated 16.07.2010.

5. Per contra, learned Special Senior Railway Counsel for the NF Railway submits that the policy of the Government of India in the Ministry of Railways is to grant the benefit of appointment to persons who have been affected by the acquisition of their lands. However, the grant of appointment is in lieu of the

amount of compensation as may be entitled to the land losers concerned. In the instant case, the petitioners have clearly admitted of having received the compensation in terms of the acquisition proceedings made by the Collector concerned through LA Case No.1/2006-2007. Therefore, the petitioners cannot claim appointment in terms of the Circular dated 16.07.2010. In support of her submission, learned Special Senior Railway Counsel has relied upon the order dated 28.02.2018 passed by a Coordinate Bench of this Court in WP(C) No.44/2017 (Sushanta Sarkar vs. The Union of India & 7 Others). The learned counsel submits that the claim made by the writ petitioners in that case was rejected and on further appeal filed by the petitioner before the Division Bench of this Court through Writ Appeal No.55/2018, the decision of the leaned Single Judge was upheld vide order dated 14.03.2018. Since the case of the petitioner is squarely covered by the said judgments/orders, the petitioners cannot have any legitimate grievance and the writ petitions should be dismissed.

6. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials on record.

7. There is no dispute with regard to the fact that the land of the father of the petitioners were acquired by the Land Acquisition Officer on behalf of the NF Railway through LA Case No.1/2006-2007. The process was in a phase manner and the petitioner's father was asked to handover possession of the land through the Notice dated 20.10.2014 issued by the Land Acquisition Officer, Dhubri and for which payment of compensation was accordingly arranged as well. The question which needs to be considered now is whether the petitioners can claim for appointment in terms of the Circular dated 16.07.2010 despite having received the compensation amount through the acquisition proceedings.

The relevant portion of the Circular dated 16.07.2010 is being abstracted hereunder for ready perusal :-

“Sub: Appointment of land losers affected by land acquisition for railway projects.

In supersession of all previous instructions on the subject, it has been decided that Railways may call and consider applications for employment to PB-1 Pay Band of Rs 5,200-20,200 with grade pay of Rs 1,800/- only, from land losers on account of acquisition of land for the projects on the Railways (excluding those for Deposit works). Applications shall be invited, by Personnel Branch of Zonal Railways, from the land losers fulfilling the screening criteria as enumerated in para 2 below.

1. Screening Criteria:

(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, as defined in the Railway (Amendment) Act 2008 / 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.

(ii) It must be ensured that the displaced person has not received any land from the State Government in lieu of his/her land acquired/ being acquired for the project.”

8. From the above abstract, it may be seen that the Railways may call and consider applications for employment to a post covered by PB-1 with Grade Pay of Rs.1,800/- from land losers on account of acquisition of land for the project of the Railways. The applicant shall be a person whose land or a portion thereof has been acquired for the project. In case more than one owner, the competent authority will decide who should be considered as the applicant and only one

job shall be offered to an applicant from the land loser family. It is therefore seen that nowhere in the circular has it been provided that once a land loser is compensated, he is not eligible to apply for the post mentioned in the Circular dated 16.07.2010. It is the case of the petitioners as well that none of the family members have applied for the post except they themselves and therefore they fulfill the criteria laid down by the Circular dated 16.07.2010.

9. The decision relied upon by the learned Special Senior Railway Counsel is clearly distinguishable in view of the fact that the claim was made in terms of the Circular dated 16.07.2010 after the land was acquired and possession already taken over by the Railway Authorities which was way back in the year 2005. Therefore, it was held that the circular will not be made applicable retrospectively but prospectively only. In the present case as already noticed, the petitioners were notified to vacate their respective plot of land on 20.10.2014 in respect of petitioner in WP(C) No.5059/2017 and 29.04.2016 in respect of petitioner in WP(C) No.4958/2017 and therefore it cannot be said that they are debarred from claiming appointment in terms of the policy decision of the Government of India as circulated vide the Circular dated 16.07.2010.

10. Thus upon due consideration, I find the grievance projected by the petitioners to be legitimate and accordingly both the writ petitions are disposed of with a direction to the Railways Authorities, more particularly respondent nos.4 & 5 to consider the applications submitted by the petitioners for their appointment in terms of the Circular dated 16.07.2010 within a period of 2 (two) months from the date of receipt of a certified copy of this order. It is also made clear that the claim of the petitioners will have to be considered subject to

they being qualified for the posts in question.

JUDGE

Comparing Assistant