

GAHC010035372017



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

Case No. : WP(C)/4974/2017

SHIBEN CHANDRA ROY

S/O- LATE RABINDRA NATH RAY @ RABIRAM RAY, VILL- JINKATA PART-II,
P.O- MAHAMAYAHAT, P.S- GOLAKGANJ, DIST- DHUBRI, ASSAM, PIN-
783335

VERSUS

THE UNION OF INDIA and 5 ORS.
MIN OF RAILWAYS, REP. BY THE SECRETARY TO THE GOVT OF INDIA,
DEPTT., OF RAILWAYS, NEW DELHI- 1

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
REVENUE DEPTT
DISPUR
GUWAHATI-6

3:THE RAILWAY BOARD
REP. BY ITS SECRETARY
RAILWAY BHAWAN
NEW DELHI

4:THE GENERAL MANAGER
NF RAILWAY
HQ MALIGAON
GUWAHATI
ASSAM
PIN- 781011

5:THE DEPUTY COMMISSIONER CUM COLLECTOR
DHUBRI
DIST- DHUBRI

ASSAM

6:THE DEPUTY CHIEF ENGINEER/CON
N F RAILWAY
JOGIGHOPA
ASSA

Advocate for the Petitioner : MRS M ROY

Advocate for the Respondent : MR.D J DAS

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

10.05.2024

Heard Mr. S.K. Roy, learned counsel for the petitioner. Also heard Mr. H.K. Das, learned counsel for the Railways who appears for the respondent nos.1, 3, 4 & 6 and Mr. G. Bokalia, learned Government Advocate, Assam, for the respondent no.2 & 5.

2] The petitioner's grievance is that the petitioner has not been considered for appointment to a post having PB-1 Pay Band of Rs.5,200-20,200 with grade pay of Rs.1,800/- only, in terms of the Railway Board circular dated 16.07.2010, for those persons whose lands had been acquired for the project carried out by the Railways.

3] The petitioner's case is that the land of the petitioner's father had been acquired in the year 2005 and possession of the same had been taken in the year 2007, besides the compensation for the same being given for construction of Railway line on the land of the petitioner's father. Thereafter, the Railway Board issued a circular dated 16.07.2010, whereby the persons whose land had been acquired for Railway projects would be considered for appointments to the

Government post. As the petitioner had not been considered for appointment to a Government post in terms of the circular dated 16.07.2010, the petitioner approached this Court vide WP(C) no.2916/2016.

4] WP(C) No.2916/2016 was disposed of vide order dated 22.07.2016, by giving liberty to the petitioner to make an application to the General Northeast Frontier Railway, Maligaon to consider him for appointment in terms of the Railway Board Circular dated 16.07.2010. The General Manager, NF Railway, thereafter, issued a speaking order dated 25.01.2017, rejecting the petitioner's application for appointment, on the ground that the land of the petitioner's father had been acquired by the Railways in the year 2005 i.e. prior to issuance of the Railway Board Circular dated 16.07.2010. Further, as per the Land Acquisition Certificate dated 16.11.2016 issued by the Additional Deputy Commissioner and Land Acquisition Officer, Dhubri, it was seen that the compensation money had been paid to one Sri Rabiram Roy, the father of the petitioner, who was the land owner.

5] Learned counsel for the petitioner submits that as the petitioner's father's land has been acquired, the petitioner case comes within the four corners of the Railway Board Circular dated 16.07.2010 and as such, the Speaking Order dated 25.01.2017 should be set aside.

6] Mr. H.K. Das, learned counsel appearing for the Railways submits that the petitioner's father land having been acquired prior to the year 2010, the petitioner's case cannot be considered for appointment to a Government post in terms of the Railway Board Circular dated 16.07.2010. He submits that similar cases were rejected by the Single Bench of this Court vide order dated 28.02.2018 passed in a batch of writ petitions, the lead case being WP(C) no.44/2017. The said Order of the Single Bench has also been upheld by the

Division Bench of this Court, vide Judgment and Order dated 14.03.2018 passed in W.A. no.55/2018. Accordingly, Mr. H.K. Das submits that the writ petition should be dismissed.

7] I have heard learned counsels for the parties.

8] The operative part of the Judgment and Order dated 28.02.2018 passed in WP(C) no.44/2017 and other connected writ petitions are reproduced below as follows:

“7. The facts regarding the completion of the acquisition proceedings in the year 2005 is an admitted fact. Clause 8 of the Circular dated 16.07.2010 states that “these instructions normally will not be applicable in those cases where land acquisition process has been concluded by way of possession of land by Railway.” As per Clause 8 of the circular dated 16.07.2010, the case of the petitioners is not covered by the scheme for appointment of land losers, as the possession of the acquired lands by the Railways had been taken in the year 2005. Even if clause 8 of the Circular dated 16.07.2010 is assumed to be not applicable, this Court finds that the said circular cannot be made applicable to the petitioner’s case, as the circular does not have retrospective effect. The above writ petitions are also hit by delay and laches as the cases have been filed 11 and 12 years after the acquisition proceedings have been completed in all respects.

8. In view of the reasons stated above, this Court does not find any merit in the Writ Petitions and they are accordingly dismissed.”

9] The operative part of the Judgment and Order 14.03.2018 passed in W.A. no.55/2018 are reproduced below as follows:

At the very outset we place on record our complete agreement with the findings and decision of the learned Single Judge. It clearly appears that the appellant is trying to take undue advantage of the Notification dated 16.07.2010 without in any manner being entitled to any benefit. A perusal of the said Notification goes to show that although the

same propounded a scheme for appointment of land losers, which is defined to mean the sole owner of land or son/daughter/husband/wife of the sole owner, the same categorically excludes its application to those cases where land acquisition process have stood completed by way of possession of land by the Railways. This exclusion is engrafted at Clause-8 of the said Notification. Without doubt, the entire land acquisition transaction, in the instant case, was completed way back in the year 2005.

Having regard to the above, this present appeal is more frivolous in nature and does not require any consideration. Accordingly, the present appeal being devoid of merits, stands dismissed and the findings and decision of the learned Single Judge stands affirmed. No cost.

10] As can be seen from the Judgment and Order dated 28.02.2019 passed in WP(C) no.44/2017 and Judgment and Order dated 14.03.2018 passed W.A. no.55/2018, the Railway Board Circular dated 16.07.2010 cannot be made applicable to cases where land acquisition process had stood completed prior to 2010. The petitioner's case cannot be considered in terms of the Railway Board Circular dated 16.07.2010 due to the reason that the land acquisition process pertaining to the petitioner's father's land was completed prior to year 2010.

11] In view of the petitioner's case being a covered case, this Court does not find any merit in the writ petition.

12] The writ petition accordingly stands dismissed.

JUDGE

Comparing Assistant