

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 14th OF AUGUST, 2023

WRIT PETITION No. 1619 of 2023

BETWEEN:-

**SHOBHIT PATEL S/O DEENDAYAL PATEL, AGED
ABOUT 21 YEARS, OCCUPATION: STUDENT R/O
SONASWARI, POST SAKET, TEHSIL ITARSI,
DISTRICT NARMADAPURAM (MADHYA
PRADESH)**

....PETITIONER

(BY SHRI DESHHIT SOUBHRI - ADVOCATE)

AND

- 1. UNION OF INDIA THROUGH THE
SECRETARY MINISTRY OF RAILWAYS
GOVT. OF INDIA NEW DELHI (DELHI)**
- 2. COLLECTOR NARMADAPURAM DISTRICT
NARMADAPURAM (MADHYA PRADESH)**
- 3. THE LAND ACQUISITION OFFICER CUB
SUB DIVISIONAL OFFICER ITARSI
DISTRICT NARMADAPURAM (MADHYA
PRADESH)**

....RESPONDENTS

(RESPONDENT NO.1 BY SHRI DEVESH BHOJNE – STANDING COUNSEL)

*This petition coming on for admission this day, the court passed
the following:*

ORDER

- 1. This writ petition under Article 226 of the Constitution of India has
been filed seeking the following reliefs :-**

- i) That, by issuance of a writ, direction or order be issued commanding the respondents to provide an appropriate employment to the petitioner as per the qualifications of the petitioner as per the qualification of the petitioner with all the consequential benefits thereof.
 - ii) That, any other relief which this Hon'ble court may deem fit in the facts and circumstances of the case may also be awarded together with awarding the cost of these proceedings.
2. It is submitted by counsel for the petitioner that this Court by order dated 16.6.2023 passed in W.P.No.2293/2023 in the case of **Ashok Shrivastava Vs. Union of India and others**, as well as by order dated 10.7.2023 passed in the case of **Geeta Dey Vs. Union of India decided on 10.7.2023 in W.P.No.3469/2023** has disposed of similar writ petition and, therefore, this petition is also covered by the said order.
3. Per contra, it is submitted by counsel for the respondents that the petitioner is seeking appointment in the Department of Railway, therefore, this Court has no jurisdiction to entertain this petition and the matter is exclusively triable by the Central Administrative Tribunal. It is further submitted that in the light of judgment passed by the Supreme Court in the case of **L.Chandra Kumar Vs. Union of India and others**, reported in **(1997)3 SCC 261** the Tribunal shall continue to act as the only court of first instance in respect of the areas of law for which they have been constituted, therefore, it is clear that it is not open for the litigants to directly approach to the High Court by overlooking the jurisdiction of the concerning Tribunal.
4. Heard the learned counsel for the parties.

5. Section 3(q) of the Administrative Tribunals Act reads as under :-

3(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation ⁷[or society] owned or controlled by the Government, as respects--

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

6. From the aforesaid section it is clear that the Central Administrative Tribunal has a jurisdiction to deal with the remuneration, pension, other retirement benefits; tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation; leave of any kind; disciplinary matters; or any other matter whatsoever. Therefore, the use of word 'any other matter whatsoever' has to be read in connection with the aforementioned aspect.

7. Section 14 of the Administrative Tribunals Act reads as under :-

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.- (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court ^{1***}) in relation to--

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning--

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation ²[or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation ²[or society] or other body, at the disposal of the Central Government for such appointment.

²[Explanation.--For the removal of doubts, it is hereby declared that references to Union in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations ¹[or societies] owned or controlled by Government, not being a

local or other authority or corporation ¹[or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations ¹[or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation ¹[or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court ^{5***}) in relation to--

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation ¹[or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation ¹[or society] and pertaining to the service of such person in connection with such affairs.

8. Thus, it is clear that the Central Administrative Tribunal has jurisdiction to consider the matters in relation to the recruitment and matters concerning recruitment to any All India service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian; and all service matters.
9. Now, the only question for consideration is as to whether the present writ petition can be treated as a matter concerning recruitment and

whether the Central Administrative Tribunal is competent to deal with the same.

10. The facts of the case are that the land was acquired and in the acquisition policy there was a provision that apart from compensation, job will be provided to a family member of the owner whose land has been acquired. The controversy arose only when a new acquisition policy was formulated with a condition that the condition of providing recruitment can be withdrawn at any stage.
11. By this writ petition the petitioner is challenging the validity of the acquisition policy. The validity of the acquisition policy will certainly not fall within the definition of recruitment and matters concerning recruitment. Although recruitment has not been defined in the Administrative Tribunal's Act but the general meaning of recruitment is the act or process of selecting the candidates for an organization or Army and persuading them to join. It is not the case of respondents that for providing job in the light of the acquisition policy the availability of sanctioned post, minimum qualifications, etc. were to be considered. It is not their case that the family members of the land owners were entitled for any preference in the recruitment process. The acquisition policy provided for giving job to a family member of the land owner without any further requirement.
12. Accordingly, counsel for the respondents was directed to argue as to whether the Central Administrative Tribunal has jurisdiction to adjudicate the correctness of the acquisition policy. It was fairly conceded that the Central Administrative Tribunal has no jurisdiction

to adjudicate the correctness of the acquisition policy. In the present case, the person is claiming the benefit of acquisition policy. Under these circumstances since the basic foundation of the controversy is beyond the jurisdiction of the Central Administrative Tribunal, therefore, the Central Administrative Tribunal has no jurisdiction to decide the controversy which is the subject matter of this petition.

13. At this stage, it is fairly conceded by counsel for the respondents that under these circumstances the case in hand will be covered by the judgment passed by this Court in the case of **Geeta Dey Vs. Union of India decided on 10.7.2023 in W.P.No.3469/2023**.
14. This court in the case of Geeta Dey (supra) has held as under :-

“This petition under Article 226 of the Constitution of India has been filed seeking following relief(s):-

(i) That the Hon’ble Court be pleased to set aside the impugned order dated 22.12.2022 (**Annexure P/1**) passed by Senior Divisional Personnel Officer, Western Central Railway, Jabalpur rejecting the Representation of the Petitioner.

(ii) That the Hon’ble Court be pleased to direct the Respondents to consider the Representation of the Petitioner strictly in view of the policy dated 14.10.2016 of the Western Central Railway (**Annexure P/5**) and grant appointment to the Petitioner as per the conditions of the policy.

(iii) That the Hon’ble Court be pleased to direct the Respondents to consider the Representation of the Petitioner in parity to other land losers (**Annexure P/14**) who have lost and equal/ or lesser land area to that of the Petitioner, without

any discrimination, in a just, fair and reasonable manner.

(iv) Any other order/ direction which the Hon'ble Court deems just and proper in the facts and circumstances of the case, along with costs, in the interest of justice.”

2. It is fairly conceded by the counsel for the parties that the controversy involved in the present case is duly covered by directions given by this Court in the case of **Ashok Kumar Shrivastava Vs. Union of India and Others** in **W.P. No.2296/2023** by order dated **16/06/2023**. However, it is submitted that there appears to be some typographical error in the said order.

3. Heard the learned counsel for the parties.

4. In the case of **Ashok Kumar Shrivastava (supra)**, this Court has held as under:-

2. This Court by order dated 01.02.2023 had granted 4 weeks time to the respondents to file return. However, the respondents instead of filing the return on merits, have preferred to file an application for dismissal of this petition on the ground of that the CAT has jurisdiction as well as for deleting the name of the Secretary/respondent no.1.

3. So far as the question of jurisdiction of this Court is concerned the petitioner is not seeking recruitment in his independent right. He is seeking recruitment as provided in the acquisition proceedings, therefore, this Court is of the considered opinion that since the petitioner is seeking the enforcement of the acquisition policy, thus the petition is maintainable before this Court.

4. So far as the deletion of the name of Secretary, Ministry of Railways is concerned, this Court does not find it appropriate to delete his name as he is the Master of the ship and he

must know that what is going on in his subordinate office.

5. Be that whatever it may be.

6. It is the case of the petitioner that the land bearing Khasra Nos. 37 and 97 area 0.373 hectares belonging to the petitioner was acquired for Rewa-Sidhi Rail Line Project. Accordingly, a compensation of Rs.4,20,959/- was paid by Cheque No.176236 dated 19.09.2011.

7. It is submitted by the counsel for the petitioner that on the date of payment of compensation for acquisition, a policy was in force, which was to the effect that apart from the compensation one of the family members of the effected person shall be given job in the Railways. Although the other similarly situated persons were granted recruitment but the petitioner was not granted recruitment and accordingly W.P.No.26762/2021 was filed, which was decided by order dated 24.11.2022 and a direction was given to the General Manager West Central Railways to decide the case of the petitioner in accordance with the policy of age relaxation in regard to land oustees and shall decide the issue in terms of the rules and regulations applicable in the matter within 30 days from the date of communication of that order.

8. It is submitted that in compliance of the said order, the respondents have rejected the representation by order dated 28.12.2022. It is submitted that the basic reason for rejection of the representation is that subsequently i.e. in the year 2019 the policy for giving recruitment to one of the family members of the effected person was withdrawn and, therefore, the petitioner is not entitled for recruitment. It is further submitted by the counsel for the petitioner that

the policy, which was in force on the date of acquisition of the land of the petitioner will be the relevant policy and not any other policy, which came in force at a subsequent stage.

9. Per contra it is submitted by the counsel for the respondents that it is clear from the impugned order dated 28.12.2022 that the petitioner had filed an application for grant of appointment in the light of the policy dated 14.10.2016, which was issued much after the acquisition, therefore, the application for appointment in the light of the subsequently issued policy was not maintainable and even otherwise the case of the petitioner has been considered on merits and it was decided that the petitioner is not entitled for relaxation in age as well as the fact that by letter dated 11.11.2019 the policy to provide recruitment to the dependents of the effected persons has already been withdrawn.

10. Heard the learned counsel for the parties.

11. The moot question for consideration is as to whether the policy, which was in force on the date of the acquisition, would apply or the policy, which was subsequently floated.

12. Since the respondents had decided not to file the return on merits, therefore, it is not clear that what was the policy for acquisition on the date of acquisition.

13. So far as the submission made by the counsel for the respondents that the petitioner had filed an application for grant of appointment on the basis of the policy dated 14.10.2016 is concerned, the counsel for the petitioner has drawn the attention of this Court towards the letter dated 21.07.2017 (Annexure P-2) in which it was mentioned that a repeat application was filed by the petitioner in the light of the policy

dated 14.10.2016. Thus, from the contents of letter dated 21.07.2017 it is not clear as to whether there was any provision for grant of appointment to the family members of the effected persons in acquisition policy, which was in force till then the land of the petitioner was acquired and compensation was paid. It is also not known that what was the necessity for the petitioner to file a fresh application in the light of subsequently issued policy. It is also not known as to whether any such application filed by the petitioner on earlier occasion was ever rejected by the respondents or not? It is also not clear that when similar application was filed by the petitioner.

14. There are several disputed questions of facts, which cannot be decided by this Court in the present petition. But one thing is clear that the petitioner is entitled for the benefit of the policy which was in vogue on the date of acquisition of his land and he cannot take advantage of any policy, which might have been issued at a later stage unless and until it is specifically made enforceable with retrospective effect. Neither the policy in vogue on the date of acquisition is on record nor the policy which was issued on 14.10.2016 is on record.

15. Under these circumstances the order dated 28.12.2022 passed by the Senior Divisional Personnel Officer, West Central Railway, Jabalpur is hereby **quashed** and the matter is remanded back with the following directions :-

1. The respondents shall re-reconsider the case of the petitioner in the light of the acquisition policy, which was in force on the date of payment of compensation to the petitioner.

2. In case if there was any provision for grant of appointment apart from payment of compensation in lieu of acquisition, then the respondents shall also verify as to whether any such application was ever moved by the petitioner or not ?
3. If such an application was moved and the said application was already rejected, then the Senior Divisional Personnel Officer is not required to pass any fresh order as the successive representation for the similar cause will not give rise to any fresh cause of action.
4. If the application was filed and it was never decided, then the same shall be decided in accordance with the policy which was in vogue on the date of the payment of compensation in lieu of acquisition. The Senior Divisional Personnel Officer, West Central Railways, Jabalpur shall also verify as to whether the policy dated 14.10.2016 was made retrospective in operation or not and shall specifically decide as to whether the said policy would apply to the case of the petitioner or not ?
5. In case if it is found that there was a provision for grant of appointment, in lieu of acquisition apart from payment of compensation, then the said application filed by the petitioner shall be decided strictly in accordance with the policy which applicable to the petitioner. However, the application shall not be dismissed only on the ground that subsequently by circular

dated 11.11.2019, the policy to grant appointment in addition to the compensation in lieu of acquisition was withdrawn for the reason that once the application was already pending and it was not taken up and decided by the respondents, then the petitioner cannot be placed in a disadvantageous position merely by saying that subsequently the policy was withdrawn.

6. The Supreme Court in the case of *Indian Bank and others Vs. Promila and another* reported in *(2020) 2 SCC 729* while deciding the question as to whether the policy for appointment on compassionate ground, which was in vogue at the time of death of the employee or which was in vogue at the time of consideration of the application, would apply has observed as under :-

“19. We may also notice that though the subsequent Schemes were not applicable, even if benefit was sought to be given of those Schemes, initial non-disclosure and subsequent disclosure by Respondent 1, of her employment and her emoluments would disentitle her under those Schemes, too. Thus, when the appellant was calling upon the respondents to apply under the subsequent Schemes, that could have been beneficial to the respondents only if they were entitled to any of the benefits under that

Scheme. That could not happen because the benchmark provided in those subsequent Schemes took the emoluments of respondents beyond the prescribed limit, so as to disentitle them from both, compassionate employment and ex gratia payment.”

7. It is also the case of the petitioner that similarly situated persons were granted appointment apart from compensation. The respondents cannot treat the similarly situated persons differently without there being any reasonable classification. However, the petitioner will not be entitled for the benefit of negative equality.
8. Let the entire exercise be completed within a period of 3 months from today by passing a speaking order.

16. With aforesaid observation, the petition is finally **disposed of.**”

5. It is submitted that in **paragraph 14** of the aforesaid order, it has been held by this Court that the policy which was in force on the date of acquisition of land is relevant. However, in **paragraph 15.1** it has been held that the respondents shall re-consider the case of the petitioner in the light of the acquisition policy, which was in force on the date of **payment of compensation**. It is submitted that the “date of payment of compensation” appears to be a typographical error and prayed that the respondents be directed to re-consider the case in the light of policy which was in force on the date of acquisition of land.

6. Considered the submissions made by the counsel for the petitioner.

7. In paragraph 14 of the order passed in the case of **Ashok**

Kumar Shrivastava (supra), it was held that the policy which was in force on the date of acquisition of land is relevant. Thus it appears that the “date of payment of compensation” in paragraph 15.1 of the said order was a typographical error. Even otherwise, the date of payment of compensation may vary from case to case. In case, compensation is paid to a beneficiary after a considerable long time, then the policy which will be in force on the date of payment of compensation would apply and if compensation is paid without any delay to another beneficiary then he would be governed by different policy. Therefore, if the date of payment of compensation is treated as relevant date for determining the policy which would apply, then it would result in treating two similar persons in a different manner, therefore **date of payment of compensation** mentioned in paragraph **15.1** of the order was a typographical error.

8. Accordingly, it is directed that in place of “date of payment of compensation” in paragraph 15.1 of the order passed in the case of **Ashok Kumar Shrivastava (supra)**, the respondents shall re-consider the case of the petitioner in the light of acquisition policy which was in force on the **date of acquisition**. (Date of award as held by the Supreme Court in the case of **Land and Building Department Through Secretary & Anr. Vs. Attro Devi & Ors.** Decided on 11/04/2023 in **Civil Appeal No.2749/2023**). Rest of the terms and conditions as directed by this Court in the case of **Ashok Kumar Shrivastava (supra)** shall remain the same.

9. With aforesaid observation, the petition is finally **disposed of.**”

15. Accordingly, this petition is allowed in the terms and conditions of order passed in the case of **Geeta Dey (supra)**.

(G.S. AHLUWALIA)
JUDGE

HS