

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1299 of 2019

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Ram Chandra Bhagat, son of Late Jugul Bhagat, Resident of Village and Post-
Kolhua Paigambarpur, P.S.- Ahiyapur, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The Union Of India through Secretary, Department of Railway, Railway Bhawan, New Delhi
2. The Chief Engineer (Construction), East Central Railway, Hajipur (Bihar)
3. The Deputy Chief Engineer (Construction), East Central Railway, Sonapur Division, Hajipur
4. The Chief Manager, E.M. Railway, Hajipur (Bihar)
5. The Divisional Railway Manager, East Central Railway, Samastipur
6. The District Magistrate, Sitamarhi
7. The District Land Acquisition Officer, Muzaffarpur
8. The District Land Acquisition Officer, Muzaffarpur
9. The S.D.O., Muzaffarpur, District- Muzaffarpur
10. The Circle Officer, Kanti, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Diwakar Prasad Karn Mr. Chandra Shekhar Anand
For the Respondent State:		Mr. Rishi Raj Sinha, SC-19
For the Railways	:	Mr. Shekhar Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 22-01-2019 Heard learned Counsel for the parties concerned.

This writ application has been filed seeking direction to the respondents to consider appointment of the petitioner's son in Railways in lieu of acquisition of petitioner's land for the purpose of construction of railway line from Muzaffarpur to Sitamarhi.

It is the petitioner's case that it was under the scheme of the process of acquisition itself that one member of the



family, whose land was subject matter of acquisition, would be given employment under the Indian Railway.

Learned Central Government Counsel for the Railways has raised a preliminary objection over maintainability of the writ application with reference to Section 14 of the Administrative Tribunal Act, 1985 (hereinafter referred to as 'the Act'). He has submitted that the petitioner is seeking employment of his son under the Union against a civil post, which is covered by Section 14 of the Act.

Learned Counsel appearing on behalf of the petitioner, in reply, has relied on certain orders passed by this Court in similar situation, in the cases of Amod Kumar and Others Vs. The Union of India and Others, dated 27.02.2012 (**CWJC No. 8283 of 2005**) and Sanjay Kumar and Others Vs. The Union of India and Others, dated 10.08.2016 (**CWJC No. 22632 of 2013**), to submit that this application can be maintained.

There is force in submission advanced on behalf of the respondent-Union of India in view of the law laid down by the Supreme Court in the case of **L. Chandra Kumar Vs. Union of India**, reported in (1997) 3 SCC 261. In the case of **L. Chandra Kumar** (supra), the Supreme Court, while holding



Clause 2(d) of Article 323-A of the Constitution of India and Clause 3(d) of 323-B of the Constitution of India, to the extent they excluded the jurisdiction of the High Courts under Articles 226/227 of the Constitution of India and of Supreme Court, under Article 32 of the Constitution of India, unconstitutional, has held Section 28 of the Act as unconstitutional to the same extent. The Supreme Court has, however, held that Central Administrative Tribunal will, nevertheless, continue to act like Courts of first instance in respect of areas of law for which they have been constituted. The Supreme Court has clearly held, in the case of **L. Chandra Kumar** (supra), that it will not be open for the litigants to directly approach the High Courts by overlooking the jurisdiction of the Tribunals. Paragraph 99 of the Supreme Court's decision, in the case of **L. Chandra Kumar** (supra) is relevant and is being quoted hereinbelow:-

“99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction



conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

Similar view has been taken in the case of **Chini Thakur and Others Vs. The Union of India and Others,**



reported in **2014 (3) PLJR 724**, the relevant portion of which reads as follows:-

“6. The Courts have consistently held that if the matter is covered by the provisions of the Administrative Tribunals Act, 1985, this Court should not exercise its jurisdiction under Article 226 of the Constitution of India at the first instance.”

In view of the above, this application stands dismissed as not maintainable.

It goes without saying that the petitioner shall have the liberty to approach Central Administrative Tribunal and raise the grievance which he has raised in the present writ application in accordance with law. It is made clear that I have not gone into the merits of the petitioner’s claim.

(Chakradhari Sharan Singh, J.)

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