

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/99/2020
M.A./100/1243/2020
With
O.A./100/4459/2018



New Delhi, this the 9th day of September, 2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

O.A./100/99/2020

Ashish Dhiman, Aged – 24 years,
S/o Late Shri Suresh Kumar,
Helper Khallasi (Coaching)
Northern Railway, Hazrat Nizammudin
R/o House No.341, Man Colony, Jyoti Nagar,
Karnal, Haryana

...Applicant

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India
Through the General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
State Entry Road, New Delhi
3. The Senior Divisional Personnel Officer,
Northern Railway, Delhi Division,
State Entry Road, New Delhi

4. The Divisional Personnel Officer,
Northern Railway, Delhi Division,
State Entry Road, New Delhi
5. The Senior Section Engineer/Electric
Electric Coaching Depot,
Northern Railway, Hazrat Nizammudin ...
Respondents

(Through Shri S.M. Arif, Advocate)

O.A./100/4459/2018

Suresh Kumar, Aged – 60 years,
S/o Shri Jaishi Ram,
Retired Helper Khallasi/Chg.
From Northern Railway, Hazrat Nizammudin
R/o Vill. Kadana, PO Rehan, Tesh. Nurpur,
Distt. Kangra (HP) ...Applicant

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India
Through the General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
State Entry Road, New Delhi
3. The Divisional Personnel Officer,
DRM's Office, Northern Railway, Delhi Division,
State Entry Road, New Delhi
4. The Senior Divisional Finance Manager,
DRM's Office, Northern Railway, Delhi Division,
State Entry Road, New Delhi ...
Respondents

(Through Shri A.K. Srivastava, Advocate)



ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman



Both the OAs are interconnected. Hence they are disposed of by a common order. The applicants herein are referred to as applicants 1 and 2 respectively.

The 1st applicant was employed as Substitute Khallasi in the Northern Railway on 26.04.1988. His services were regularized in the year 1996. There existed a scheme known as LARSGESS for providing employment to the dependents of certain categories of Railway employees, mostly connected with the safety aspect, in case they take Voluntary Retirement on completion of 20 years of service or on completion of 50 years of age. He availed the benefit thereof and was permitted to take Voluntary retirement through

order dated 02.06.2016. On the same day, his son, the 2nd applicant was appointed as Khallasi.



2. A show cause notice was issued to the first applicant, on 09.09.2016 stating that the actual service to his credit, as on 02.06.2016 was only 19 years 8 months 24 days and a mistake has crept in, in the context of reckoning his leave without pay. He was required to explain as to why, the order of VRS be not withdrawn.

3. Challenging the show cause notice, the 1st applicant filed OA No. 4293/2016. During the pendency of OA, several developments have taken place. The Hon'ble Punjab and Haryana High Court has taken a view that the LARSGESS Scheme is unconstitutional and directed the Railway Board to take a decision in that behalf. Referring to this and other developments, the Tribunal disposed of the OA



through order dated 23.12.2016 directing that till Railway Board takes a final decision, no adverse steps shall be taken against him. Before that, an order was passed on 22.11.2016 by the respondents holding that the first applicant did not qualify for VRS. It was also directed that steps be taken to withdraw the appointment issued to the second applicant.

4. The first applicant filed OA No. 4459/2018 with a prayer to direct the respondents to release the retirement benefits. He is said to have expired on 07.11.2019. Applicant No. 2 filed OA No.99/2020. According to him, the order dated 23.12.2016 was not communicated to his father. On the basis of the said order, the respondents relieved him from service on 19.12.2019. In his OA, the applicant No.2 has challenged the Show Cause Notice dated 09.09.2016, the order dated 20.11.2016 and the one dated

19.12.2019. He has also come on record as legal representative of his father by filing an MA.



5. The applicant contends that the order of VRS was passed after verifying the relevant records and there was absolutely no basis for issuing Show Cause Notice dated 09.09.2016. It is stated that the Show Cause Notice dated 09.09.2016 was received by his father on 29.11.2016 and the reply was submitted by him on 21.12.2016. He contends that the order dated 22.11.2016 was passed without taking the explanation into account. He submits that the withdrawal of his appointment through order dated 19.12.2019 is without any basis.

7. The respondents filed separate counter affidavits in the OAs. According to them, the Hon'ble Punjab & Haryana High Court has found fault with the Scheme and as of now it is not in force. It is also stated that

the acceptance of the request for VRS was found to be factually defective and accordingly a Show Cause Notice dated 09.09.2016 was issued. It is stated that the explanation was not received by the time the order dated 22.11.2016 was passed and accordingly no reference was made to it.



8. We heard Shri Yogesh Sharma, learned counsel for the applicants, Shri S.M. Arif, learned counsel for the respondents in OA No.99/2020 and Shri A.K. Srivastava, learned counsel for the respondents in OA 4459/2018.

9. The first applicant was extended the benefit of VRS and his son i.e. the second applicant was appointed under the LARSGESS scheme as a consequence of acceptance of VRS by the first applicant. Both the events occurred on 02.06.2016. About three months later, a Show Cause Notice was



issued to the first applicant alleging that the qualifying service, to his credit was only 19 years 8 months and 24 days and on account of wrong calculation of leave without pay, the order of VRS was passed. He was required to explain as to why the order of VRS may not be withdrawn.

10. According to the applicant the Show Cause Notice was received only on 29.11.2016 and promptly the explanation was submitted on 21.12.2016. By that time, the order dated 22.11.2016 was passed. Naturally, there is bound to be no reference to the explanation submitted on 21.12.2016.

11. The issue would have been slightly different, in case any mention was made in the order dated 22.11.2016 to the effect that despite receiving the Show Cause Notice dated 09.09.2016, the first applicant did not submit his explanation. For all



practical purposes, it is nothing but reproduction of the Show Cause Notice. Various steps, including the one of relieving the second applicant from service are referable to the order dated 22.11.2016. There is no reference to the explanation from the concerned employee. We are of the view that the same needs to be set aside and the respondents be directed to pass orders afresh, duly taking into account, the explanation dated 21.12.2016. Depending on the orders that may be so passed, the manner in which the second applicant can be treated, needs to be decided. At the same time, the respondents cannot withhold the pensionary benefits of the first applicant. As a first step, they must release the benefits as though he retired under VRS. In case his explanation is not found satisfactory, the benefits must be extended on his attaining the age of superannuation which would be on 31.01.2018, and the differential amount needs to be paid.



12. We therefore, dispose of the OAs

(i) directing the respondents __

(a) To forthwith release the retirement benefits payable to the applicant in O.A.No.4459/2018 on the basis of his VRS, within four weeks, pending passing fresh orders in pursuance of the show cause notice dated 09.09.2016.

(b) In case his explanation to the Show Cause Notice is not accepted and the order of voluntary retirement is withdrawn, the differential amount between the one already paid and the one payable on retirement on superannuation shall be released.

ii) Setting aside the order dated 22.11.2016 and directing the respondents to pass fresh orders, taking into account his explanation dated 21.12.2016, submitted to the Show Cause Notice dated

09.09.2016, within six weeks from the date of receipt of a certified copy of this order; and

(iii) Directing that the status of the applicant in OA.99/2020, under the LARSGESS scheme shall depend upon the nature of orders which the respondents may pass, as indicated above.

There shall be no order as to costs.



(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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