

Original Application No.762 of 2010

This the 03<sup>rd</sup> day of March, 2021.

Present.

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)**

**Hon'ble Mr. Tarun Shridhar, Member (A)**

1. Ram Chandra –III son of Late Munna Lal, E/o Loco Pilot, under Sr. Chief Controller Kanpur R/o P. No. 32 –A, New Azad Nagar, Satwar Road, Kanpur.
2. V.K. Sharma S/o Janki Prasad, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur R/o 230/5, Juhi Lal Colony, Kanpur.
3. Mohd. Yameen S/o Late Mohd. Yaseen, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 133/181-82 T.P Nagar, Canal Road, Kanpur.
4. D.N. Pandey S/o Late R.P Pandey, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 33, Gopal Nagar, Kanpur.
5. Muneshwar Prasad S/o Ram Deen, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/ 94/4, New Labnour Colony, Babu Purwa, Kanpur.
6. Bhairo Prasad S/o Parasa Nath, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 102, Ram Puram,, Shyam Nagar, Kanpur.
7. R.P. Mishra S/o R.B. Mishra, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o Bungalow No. 13, ABC, Loco North Colony, Kanpur.
8. Phool Chandra III S/o Late Himanchal, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 83/129, Chhoti Juhi, Kanpur.
9. Raja Ram S/o Sompat E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 353/E, Diggi Colony, Old Station, Kanpur.
10. Keshava Nath S/o Late Pooran Chandra E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 101 'A' Block Shyam Nagar, Kanpur Nagar.
11. Amaresh Kumar S/o Late V.D Prasad E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o T/15-A, Railway Quarter, Coperganj, Kanpur.
12. Ram Prasad –III S/o Shitla Prasad E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 634/B, Railway Colony, Govind Nagar, Kanpur.
13. Ahmadullah S/o Late Mohd. Yusuf, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 131/307, Begum Purwa, Kanpur.
14. Satish Chandra Srivastava, S/o Late Indra Bahadur Lal, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 489/A, Railway Janmashtami Colony, G.R. Road, Kanpur.
15. Ram Asrey –II S/o Tulsii E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o Vill. Rampur Moon, P.O. Hath Gaon (Rajpur Muwery) Fatehpur.
16. Brijendra Kumar Sharma, S/o Pyarey Lal Sharma, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 22/5, Babu Purwa Colony, Kanpur.
17. Shanker Lal S/o Dhooni, E/o Loco Pilot, Under Sr. Chief Controller, Kanpur, R/o 45 'O' Block, Yashoda Nagar, Kanpur.

.....Applicants

By Advocate:        Shri Sameer Srivastava

Versus

1. Union of India through the General Manager, North Central Railway, Subedarganj, Allahabad.
2. General Manager, North Central Railway, Subedarganj, Allahabad.
3. Divisional Railway Manager, North Central Railway, Allahabad.

.....Respondents

By Advocate: Sri Pramod Kumar Pandey

### **ORDER**

**By Hon'ble Mr. Tarun Shridhar, Member (A)**

The applicants by way of present O.A. seek a direction to the respondents' authority for consideration of their appointment in the lowest recruitment grade of Electric Drivers under a scheme titled 'SAFETY RELATED RETIREMENT SCHEME (Drivers and Gangman)'. For the sake of clarity, the reliefs sought by the applicants in the O.A. are reproduced verbatim:-

- “(i) *To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 01.02.2010 passed by the respondent No.2, as communicated by the Divisional Personnel Officer, North Central Railway, Allahabad vide its letter dated 17.02.2010 to the petitioners rejecting their claim of appointment of their wards under the Scheme as formulated by the Railway Board vide its letter dated 02.01.2004 (Annexure A-1).*
- (ii) *To issue a writ, order or direction in the nature of mandamus directing the respondents No.1 and 2 to consider the candidature of the wards of the petitioners for appointment in the lowest recruitment grade of Electric Drivers where upon the petitioners are working and to retire the petitioners under the SAFETY RELATED RETIREMENT SCHEME (Drivers and Gangman) dated 02.01.2004, issued by the Railway Board, within the period as may be fixed by this Hon'ble Tribunal.*
- (iii) *To issue any other and further suitable writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

*(iv) To allow this petition with costs in favour of the petitioner”.*

2. The aforesaid scheme introduced by the Railway Board stipulated that Drivers and Gangmen falling in the age group of 55 to 57 years, may seek retirement from service and a suitable ward of such employees, will be considered for appointment in the lowest grade. Another requirement was that such employees should have completed 33 years of service. The applicants claim that they will fulfill all the requisite eligibility conditions under the said scheme. However, their applications were not considered and vide the impugned order, the respondents' authority rejected their candidature on the ground that their applications were not in accordance with requirement of the scheme and further these applicants did not meet the technical qualifications and standards for the post of Assistant Loco Pilot.

3. Learned counsel for the respondents points out that the scheme is no longer in an operation and hence the prayer of the applicants deserves to be rejected outrightly.

4. On the other hand, learned counsel for the applicants strongly argues that the said scheme is still in vogue and there is no order on record or even produced by the respondents to show that the scheme has been discontinued. Since the scheme is still in operation, he argues that therefore, the application of the present applicants deserves to be favourably considered. He further argues that the decision of the respondents rejecting the claim of the applicants is arbitrary and without any cogent reason.

5. Learned counsel for the respondents, on the other hand, points out that the scheme was later-on amended and introduced in its expanded form as

Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (in short LARSGESS), which has now been discontinued on account of various pronouncements by the Hon'ble High Courts, further affirmed by the Hon'ble Supreme Court with clear directions that no further action in consequence to the applications already pending is to be taken pursuant to discontinuation of LARSGESS Scheme.

6. Without going into the technicality of whether these two schemes are independent of each other or stand merged into one scheme, it is evident from the documents and records that both the schemes are identical and by way of their provisions entitled the wards of the Railway employees an assured job without going through the competitive route of selection. Therefore, even assuming that the scheme titled Safety Related Retirement Scheme stands on its own legs, the pending claims under said scheme will have to be examined applying the same yardstick as applicable in the LARSGESS scheme.

7. Learned counsel for the respondents draws attention to the judgment passed by Hon'ble Punjab and Haryana High Court in **CMP No. 7714/2016** wherein the Hon'ble High Court has categorically held that LARSGESS Scheme is in contravention of Article 14 and 16 of Constitution of India. The Hon'ble High Court had directed the Railway Board to review the scheme in the context of these observations. The Railway Board had chosen to context this judgment of Hon'ble Punjab and Haryana High Court before the Hon'ble Supreme Court in SLP (C) No. 508 of 2018 and the Hon'ble Apex Court had declined to interfere in the said order of the Hon'ble High Court. As a result, Railway Board had discontinued the scheme w.e.f. 27.10.2017.

8. Recently in an O.A. No. 260/2020- Baikunth Lal and others Vs. Union of India and others we had passed orders on the LARSGESS scheme wherein we had observed and directed as under:-

*“7. It would be worthwhile to briefly quote from the Judgments/Orders referred to in the preceding paragraphs. The issue of the LARSGESS Scheme was meticulously examined by the Hon’ble Punjab and Haryana High Court in CWP No.7714/2016. This CWP was the outcome of the orders passed by the Chandigarh Bench of this Tribunal in the case of Kala Singh and Ors. Vs. U.O.I. & Ors. While disposing of the above referred CWP the Hon’ble High Court in its Judgment dated 27.04.2016 unambiguously mentioned that the LARSGESS Scheme fails the test of Article 14 and 16 of the Constitution of India. It further directed the Railway Board to review the said Scheme in view of these observations. The Railway Board chose to assail this order before the Hon’ble Supreme Court vide SLP (C) 508/2018 and the Hon’ble Apex Court through its order dated 08.01.2018 declined to interfere in the order of the Hon’ble High Court. As a consequence, the Railway Board discontinued the Scheme and gave categorical directions to all its sub-ordinate offices that; “no further appointments should be made under the scheme” which stood terminated w.e.f. 27.10.2017.*

*8. Although the above referred Judgments and orders made the position abundantly clear the observations of Hon’ble High Court of Delhi dated 11.01.2019 in WP (C) 13597/2018 in the case of SH. Ram Sevak and Ors. Vs. U.O.I. & Ors. are also pertinent especially in the light of the arguments adduced by the learned counsel for the applicant that his client had made the applications much earlier whereas some appointments were made on the basis of applications made much later. While dismissing the petition the Hon’ble High Court of Delhi stated that:-*

*“The submission of learned counsel for the petitioners is that his application under the said scheme had been made earlier, and those who made the application later were granted the benefit of the LARSGESS Scheme. In our*

*view, that is no ground to claim the relief sought by the petitioners. There is no vested right in the petitioners to claim the benefit of an illegal scheme. Merely because some others may have got away with the benefit under the scheme before being declared illegal, does not justify perpetuation of the illegality by granting benefit under the said scheme to the petitioners.”*

9. *As is abundantly clear from the position stated above, there is absolutely no ambiguity or doubt about the facts that the LARSGESS Scheme having been terminated w.e.f. 27.10.2017 and the pronouncements made by the Hon’ble High Courts of Punjab and Haryana and Delhi, there are no grounds to provide any relief to the applicants, and the OA is accordingly, dismissed”.*

9. In view of the categorical and unambiguous position as is obtained in the above quoted order further supported by the latest order of Hon’ble Supreme Court of India in Writ (C) No. 78/2021 wherein the Court has similarly held that:-

*“In view of the above factual background, we are not inclined to entertain the petition under Article 32. The grant of reliefs to the petitioners would only enable them to seek a back door entry contrary to the orders of this Court. The Union of India has correctly terminated the Scheme and that decision continues to stand”*

10. There is no merit in the present O.A. and is accordingly dismissed. No order as to costs.

**(Tarun Shridhar)**

Member (A)

**(Justice Vijay Lakshmi)**

Member (J)

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