

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00292/2020

**Date of CAV : 14.10.2020
Date of Pronouncement : 22.10.2020**



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

G.Venkatamallu S/o Chandriah,
Aged about 60 years, Occ : Track Maintainer Gr.IV,
O/o Senior Section Engineer/Permanent Way,
South Central Railway, Secunderabad Division,
Lingampally, Telangana State.Applicant

(By Advocate : Mr.M.C.Jacob)

Vs.

1. Union of India,
Represented by General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Principal Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.
4. The Senior Divisional Personnel Officer,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.Respondents

(By Advocate : Mrs.Vijaya Sagi, S.C for Raiways)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. OA is filed in regard to appointment of the ward of the applicant under LARSGESS scheme.



3. Brief facts of the case are that the applicant while working as Gangman applied for considering the appointment of his son under LARSGESS scheme against notification dated 19.1.2016 issued by the respondents. When applicant applied, a discrepancy in regard to his date of birth in the service records was noticed and the applicant was asked to get it reconciled. Applicant filed an affidavit dt.19.07.2017 claiming that his date of birth as 25.8.1960 instead of 25.8.1968, which was approved by the competent authority on 22.11.2017. In the meanwhile, the LARSGESS scheme was kept on hold due to Court orders. Subsequently, Railway Board vide letters dated 12.7.2019 & 6.1.2020 has directed to consider processing of LARGESS applications received before 27.10.2017 based on the factual matrix of the case. As the case of the applicant was not considered by the applicant, OA 84/2020 was filed which was disposed on 24.01.2020 directing respondents to dispose of the representations filed. Respondents complied with the Tribunal order by rejecting the request made on 12.5.2020 and hence, the OA.

4. The contentions of the applicant are that the issue of the impugned order dated 12.5.2020 on the ground that the ward of the applicant had not completed the medical examination by 27.10.2017 relying on the Board



letter dated 5.3.2019, without considering the subsequent letters dated 29.5.2019, 6.6.2020 & 6.1.2020 on the subject, wherein the factual matrix of the case was directed to be considered, is not tenable. Respondents have issued the impugned order contravening the Board letters cited. At the time of preferring the application, applicant's case was fully covered by the scheme with the date of birth shown as 25.8.1960 and the mistake of the respondents should not be thrust upon the applicant depriving him of the benefit of the scheme. Documents issued by the respondents from the date of regular entry into the service till the date of notification in Jan 2016 the date of birth was shown as 25.8.1960 and subsequently applicant stuck to the same date by filing the required affidavit. Service register was in the custody of the respondents and it is scrutinised at regular intervals by them. Applicant was not informed about the discrepancy earlier. It came to his notice only when the application under LARSGESS scheme was preferred in January 2016.

5. Respondents in the reply statement confirm that the applicant did apply under LARSGESS scheme against notification dated 19.1.2016. LARSGESS scheme was declared invalid by the Hon'ble Punjab and Haryana Court and confirmed by the Hon'ble Apex Court. There is delay of nearly 3 years in filing the OA and hence, limitation clause applies to the OA since the cause of action arose when 20 candidates were called for screening on 16.12.2016. Applicant's case was not processed as there were two dates of births mentioned in his service record. Respondents cited the judgment of Hon'ble Apex Court in C.Jacob v Director of Geology and

Mining and Anr. [2009(10) SCC 115]; State of Uttaranchal and Anr v Sri Shiv Charan Singh Bhadari and ors [2013 (6) SLR 629]; and Union of India v M.K. Sarkar, CA No.8151 of 2009, in support of the contention of limitation. The LARGESS notification issued on 19.1.2016 specifies that service register of any employee which contains any alteration in regard to date of birth, caste etc shall not be forwarded to Sr.DPO till the discrepancy is resolved. The applicant's date of birth was shown as 25.8.1960 and 25.8.1968 in the service register. To resolve the same, applicant filed an affidavit on 19.7.2017 declaring his date of birth as 25.8.1960 and the same was confirmed by the competent authority on 14.11.2017. By the time the correction in date of birth could be rectified, the scheme was put on hold on 27.10.2017 and hence, applicant's application could not be considered. Railway Board in its letter dated 5.3.2019 has made it clear that no further appointments under LARSGESS Scheme after 27.10.2017 should be granted and the processing of those applications received prior to the cut off date where formalities including medical examination were completed with the employee still in service, were directed to be kept pending till the disposal of the issue by the Hon'ble Apex court. Late the Hon'ble Supreme Court directed to consider cases where petitions were received when the scheme was in operation and the concerned can make appropriate representations. Reproducing the directions of the Hon'ble Apex Court, Railway Board issued the letter dated 12.7.2019. Thus based on the letters dated 5.3.2019 and 12.7.2019, in respect of 48 applications, where all formalities including medical examination were completed, offer of appointments were released. In respect of the applicant, since there was a discrepancy in regard to the date of birth, no formalities were completed



and hence, his case was not considered. Aggrieved, applicant filed OA 84/2020, which was disposed of directing the respondents to dispose the representations made and accordingly, representations made were considered and rejected based on the Railway Board orders referred to. A case of similar nature on being considered in OA 1056/2019 by the Tribunal, the same when challenged, Hon'ble High Court direction was in favour of the respondents. In fact, Railway Board in its letter dated 29.5.2019 has directed individual representations to be disposed in the light of the Apex Court orders dated 6.3.2019, 26.3.2019 and 22.4.2019 based on the factual matrix of the case which includes medical examination, adjudication about suitability by the committee and approval of recommendations of the committee. Applicant did represent to the DRM citing Railway Board order dated 29.5.2019 which was examined and in the background of Court directions/ Railway Board orders referred to, the representation was rejected. Applicant is due to retire on 31.8.2020 on superannuation. A similar case, which fell for consideration in OA 119/2016 was dismissed by the Tribunal and upheld by the Hon'ble High Court at Hyderabad in WP No.38487 of 2016 and the said decision applies even to the case of the applicant. Respondents affirm that the decision of the Hon'ble Principal Bench of this Tribunal in OA No.3308 of 2015 equally applies to the case of the applicant.

Applicant filed a rejoinder stating that the assertion of the respondents that the case of the applicant does not come under the factual matrix, is incorrect. Respondents issued orders granting appointments under the scheme after the Hon'ble Supreme Court orders were issued.





Similarly placed employee Anjaiah, S/o. Kashaiah was extended the benefit (Annexure A-XII filed with the rejoinder). Limitation clause is not attracted as the applicant has been responding to the directions of the respondents continuously after the discrepancy about the date of birth was brought to his notice. Different Railway records like labour card, medical certificate issued by the respondents were only showing the date of birth as 25.8.1960 and that the applicant did not seek any change in the date of birth or the changes made in respect of date of birth were informed to the applicant. Only when his case under LARSGESS was taken up, he came to know about the wrong date of birth and thereafter, necessary steps to correct it were taken. Affidavit was filed on 19.7.2017 before the cut off date and it was the respondents' fault for having caused delay in confirming the date of birth after the cut off date. None of the wards of the 2016 1st cycle were appointed before the cut off date. 124 awards were given appointment on 10.6.2019 and some more by order dated 13.6.2019 based on Railway Board orders dated 29.5.2019. Hence the stand of the respondents that the applicant's application could not be processed after 27.10.2017 is liable to be rejected. Only those candidates who completed the medical examination were considered is incorrect since the 1st respondent allowed a candidate to appear in the medical examination by order dated 7.6.2019 based on Railway Board order 29.5.2019 and appointment orders given (Annexure A-XV filed along with Rejoinder). Nowhere in the Railway Board letters, was it mentioned that only those cases where all formalities were completed are to be considered. OA 1056/2019 was remitted back to the Tribunal by the Hon'ble High court on the grounds that it was decided without awaiting a reply (Annexure A-XVI). Respondents are acting on Board letter dated

5.3.2019 ignoring the orders of the Hon'ble Supreme Court in WP (C) 219/2019. Employees who figured in the order dated 10.6.2019 and 13.6.2019 continued even after the cut off date and that their wards were considered, before they retired. The Hon'ble Supreme Court order was to consider cases during the period of the operation of the scheme and it was not stated that no appointment has to be made after the cut off date. Applicant represented before his retirement and the delay is on the part of the respondents. OA No.3308 of 2015 decided by the Hon'ble Principal Bench of the Tribunal is not applicable, as the applicant therein, retired from service and then sought the relief. Respondents have been silent about considering the circumstances stated in the Railway Board letters dated 29.5.2019, 12.7.2019 and 6.1.2020. Factual matrix would mean looking into all the circumstances of the case. Applicant has relied on the judgment of the Hon'ble Supreme Court in Nirmala Chandra Bhattacharjee & Ors vs. U.O.I. & Ors in JT 1991(5) SC 35 delivered on 19.9.1990 to support his contentions.

Respondents did file an additional reply wherein they have affirmed that under LARGESS the applicant has to seek voluntary retirement leaving 3 years of service i.e. by the age of 57 years. Further, factual matrix has many inbuilt elements to be considered. Once the applicant's name did not figure in the select list of candidates on 16.12.2016, it would imply that the cause of action commenced from this date. The very fact that the applicant's name did not figure in the list where 20 employees cases for LARGESS was indicated to be taken up would mean that applicant was ineligible to be considered for LARGESS and therefore there is no need for



any further communication about his non selection under LARGESS. Taking the date cited, limitation clause in respect of delay in filing the case will apply. Employees whose wards were selected under LARSGESS took voluntary retirement from service whereas applicant retired normally. In respect of Sri Anjaiah, he completed the formalities before the cut off date. The 124 employees/wards referred to have completed formalities including the medical examination before the cut off date and hence, were eligible. Applicant's case did not come under the purview of the Supreme Court order or the Railway Board orders dt. 5.3.2019 & 12.7.2019. In respect of orders issued under LARSGESS on 13.6.2019, medical certificate was issued before 27.10.2017 as mentioned in the last column of the memorandum. Respondents averred that the Hon'ble Supreme Court directives read with Railway Board order dated 29.5.2019 has allowed the petitioners in the Supreme Court in WP (C) 219/2019 to give representations to the concerned authorities who shall consider the same and dispose them. The petitioners were those who completed all formalities including medical examination prior to 27.10.2017. When the application of the applicant was not even processed, the question of completion of formalities would not arise. In case of Shri L. Nageswar Rao, he belongs to the Loco Pilot category where the rules applicable are different, factual matrix is different and his case was considered on the basis of the approval given by the General Manager for conducting medical examination after the cut off date. Applicant retired on superannuation with full retirement benefits. Respondents relied on the judgments of superior judicial fora to further their cause.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about not considering the ward of the applicant for appointment under LARSGESS scheme against notification 19.1.2016. The important features of the scheme which are relevant to the dispute are extracted hereunder:



"Applicants are invited in the format enclosed as Annexure A-1 & Annexure A-II from the willing and eligible staff of under mentioned safety categories seeking voluntary retirement with simultaneous appointment of eligible ward under LARSGESS for 1st half of 2016 i.e. Jan – June, 2016 in the GP of Rs.1800 and Rs.1900. Such of the employees who have volunteered for retirement under LARSGESS are required to render total qualifying service of 33/20 years out of which the employee should have rendered at least the last ten years in the following concerned safety category post are only eligible to apply."

I) ELIGIBILITY CRITERIA:

A. EMPLOYEES

Sl. No.	Category	Grade Pay	Qualifying Service	Age limits
1.	<i>Loco Pilots (excluding Shunters) & Pointsman</i>	<i>Rs.1900 & above</i>	<i>Minimum 33 years incl. last 10 yrs in safety category</i>	<i>55-57 years</i>
2	<i>Pointsman</i>	<i>Rs.1900</i>	<i>Minimum 33 years incl. last 10 yrs in safety category</i>	<i>55-57 years</i>
3	<i>Other Safety Categories</i>	<i>Rs.1800</i>	<i>Minimum 20 years incl. last 10 yrs in safety category</i>	<i>55-57 years</i>

"IV. ASPECTS TO BE CHECKED BY SUPERVISORS BEFORE FORWARDING THE APPLICATIONS.

Before forwarding the applications to Sr. DPO's office, every Supervisor shall ensure that the employee/ ward fulfils the eligibility criteria for becoming eligible for consideration against LARSGESS. Applications where the employee/ ward does not fulfil the eligibility criteria shall not be forwarded to Sr. DPO's Office. Service Register that contains alterations in employee data viz., Date of Birth, Caste status, Date of Appointment etc., shall not be forwarded to Sr. DPO's Office unless there is a connected and authorised document in support of the correction.

IMPORTANT NOTICE TO THE EMPLOYEES.

"1. Mere submission of application by the employee will not make him eligible for considering his VR with simultaneous appointment to his ward unless it is finally found that both of them fulfil the eligibility criteria prescribed for them separately. The ward in whose favour appointment is sought shall qualify in prescribed medical examination before considering the VR of the employee/ appointment of the ward. In case, the ward fails

to qualify in the prescribed medical examination the VR/Appointment will not be considered.”

Clause IV of the notification, cited supra, states that the case of the applicant will not be processed if in the service register there are discrepancies in the date of birth, caste etc. Applicant had two dates of birth recorded in his service record. Hence, in the list of 20 candidates issued on 16.12.2016, calling them for screening, the name of the applicant did not figure. Therefore, he was advised to reconcile the same. Applicant, after 7 months of the publication of the list of candidates for screening on 16.12.2016, submitted an affidavit on 19.07.2017 claiming that his correct date of birth is 25.8.1960, which was accepted by the competent authority on 22.11.2017.

II. In the meanwhile, Hon’ble High Court of Punjab and Haryana has held the LARSGESS scheme as invalid in CWP No. 7714/2016 vide order dt. 27.04.2016 and the Hon’ble Supreme Court also refused to interfere with the said judgment vide order dt. 06.03.2019 in SLP (C) No.508/2018. As a result, respondents decided not to make any appointments after 27.10.2017. Further, Hon’ble Supreme Court has also clarified in SLP © No.508/2018 that the applications received when the scheme was in operation can be processed as under:

“Permit the petitioner to appoint such wards whose paper work had completed and were found eligible and medically fit to be appointed under the scheme prior to 27.10.2017, being wards of second category of persons”.

Further the Hon’ble Supreme Court in WP (C) No. 219/2019, vide order dt. 26.03.2019 directed as under:



“since the petitioners are claiming benefit under the Scheme which was prevalent when applications were preferred by the petitioners, we give liberty to the petitioners to approach the concerned authorities with appropriate representation. If such representation is made, the authorities will do will to consider the matter within two weeks on preferring of the representations. With these observations, the Writ Petition stands disposed of. Pending application(s), if any shall, stand disposed of.”



Accordingly, Railway Board issued a spate of orders, which we have gone through in detail and the essence of the orders was to process the individual representations received based on the factual matrix of the case. Respondents argue that factual matrix would mean that all formalities including medical examination have to be completed before the cut off date of 27.10.2017. In contrast, applicant pleads that factual matrix would imply that the completion of formalities of cases which came up for consideration when the scheme was operational and that the cut off date has no relevance. That apart, the applicant did approach the Tribunal in OA 84/2020 where in it was directed to dispose of the representation preferred and when the same was rejected, this OA has been filed.

III. The claim of the respondents is that the since the date of birth was confirmed by the competent authority on 14.11.2017 and communicated to the applicant on 22.11.2017, which were subsequent to the cut off date of 27.10.2017, the case of the applicant could not be considered. Applicant responds by claiming that he has filed the affidavit before the cut off date which was confirmed by the competent authority after the cut off date and hence the mistake lies with the respondents. In this regard, we observe that the applicant took nearly 7 months to file the affidavit and the respondents took 4 months to decide the issue. Therefore,



the applicant is as much responsible for the delay as what he has alleged against the respondents. Besides, the claim of the applicant is that he did not seek any change in the date of birth and that if there were any discrepancies in the date of birth, then, it was the responsibility of the respondents to put him on notice. The discrepancy emerged only when the application under LARSGESS was processed. It must be remembered that when a figure is raised pointing out the inadequacies of others, equally there are 4 fingers pointing towards the individual, to be aware, that he has more inadequacies in him to be resolved. Applicant can ask the respondents to show the service book at any stage of his career and go through the same for any inaccuracies. Respondents do encourage verification of the service register, as submitted by the Ld. Counsel for the respondents, so that difficulties do not arise at the time of retirement of employees. Applicant has not made any such effort as is seen from the facts of the case. Even, assuming that he did not do so, because he was confident that the service record would carry the correct date of birth, since other railway records like labour card, medical certificate etc have been showing the correct date of birth, it is not understood nor was it explained as to why the applicant took nearly 7 months to file the affidavit showing the correct date of birth. Particularly, when clause IV of the notification made it crystal clear that the cases where discrepancies exist in regard to date of birth shall not be processed. Even after being aware of this critical provision, applicant did not take expedient steps to file the affidavit, which was expected of him. Had he submitted the affidavit early the issue would not have arisen. Respondents have nothing personal against the applicant and that they have followed a yardstick which they believed would bring transparency and

uniformity in the processing of LARSGESS scheme. Therefore, in a way it was the mistake of the applicant too for not being effective, efficient and enterprising in ensuring that the official procedures that have to be complied on his behalf were completed at the earliest.



IV. In addition, one another other aspect of vital importance in the case, is that the applicant superannuated on 31.8.2020. Therefore, the question as to whether his application under LARSGESS scheme has to be considered or rejected arises. The noteworthy condition under the scheme is that the employee should seek voluntary retirement and should be in a certain age span as shown at para above. The ward of the applicant should clear the medical test. None of these were complied in the case of the applicant. Once the applicant has retired from the service in the normal course, any relief granted would go against the conditions laid down in the notification. Hon'ble Supreme Court in a cornucopia of judgments has held that the conditions laid down in the notification have to be strictly followed and that in the garb of Judicial review Courts should not interpret the conditions of a notification. The relevant portion of one such judgment in *Maharashtra Public Service Commission v. Sandeep Shriram Warade*, 2019 SCC OnLine SC 652, decided on 03.05.2019, upon which we rely upon, is reproduced hereunder:

“In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

The conditions in the notification are that the applicant should go on voluntary retirement by 57 years and his ward has to clear the medical

examination. Further, if there is any discrepancy in the service record about date of birth the case will not be processed under LARSGESS. Associated development due to the intervention of the Courts is that cases which are processed by 27.10.2017 are to be taken under the scheme. The case of the applicant does not satisfy any of the clauses cited. Therefore granting any relief to the applicant as prayed for would be contravening the observation of the Hon'ble Apex court as at above, by relaxing the clauses of voluntary retirement and thereafter allow the ward to go for medical examination, by giving a new interpretation in the context of the facts of the case.

V. Nevertheless, Ld. counsel for the applicant vigorously contested that the respondents did process a similar case of Sri Anjaiah granting appointment to the ward of the employee, where date of birth correction figured. Therefore, the applicant's case need to be considered on a similar basis. The date of birth of Sri Anjaiah was resolved on 26.9.2017 and his son was found medically fit on 17.10.2017 before the cut off date, as submitted in the additional reply. Therefore, his case was considered. Ld. Counsel did not stop at that by claiming that the respondents did issue orders granting relief prayed for 124 employees vide orders dated 10.06.2019 and some more by 13.06.2019, which was answered in the additional reply stating that the 124 employees/wards completed all formalities including the medical examination before the cut off date, therefore eligible. In respect of orders issued under LARSGESS on 13.6.2019, referred to by the Ld. Counsel for the applicant, respondents keeping in view Railway Board orders dated 29.5.2019 have considered the cases and it is seen that the medical certificate was issued before



27.10.2017 as mentioned in the last column of the memorandum. To be precise, the common running theme we see in the reference made by the applicant is that employees referred to by the applicant have retired voluntarily before the relief could be granted whereas applicant did not.

Applicant wants to have the cake and eat it too.



VI. One more contention raised by the applicant is that the 1st respondent has considered the case of Sri L. Nageswar Rao, an employee for medical examination on 7.6.2019 (Annexure A-XV) even after the cut off date and therefore, respondents could have also considered his case on similar lines. Shri L. Nageswar Rao, belongs to the Loco Pilot category where the rules are different and in that case the ward appeared in the written exam before the cut off date, failed and on appeal was allowed to reappear and he cleared the written test as well as the aptitude exam. For having cleared the written exam and aptitude test, the medical examination was allowed after the cut off date, with the approval of the General Manager. In contrast, applicant's case was not even processed because of the discrepancy in the date of birth before the cut off date and the applicant retired on superannuation. Even accepting the Ld. counsel for the applicant's version that the respondents have committed an illegality by disregarding their own instructions of cut off date in respect of Sri L. Nageswar Rao case, the Tribunal cannot force the respondents to perpetuate the illegality by directing them to consider his case, as observed by the Hon'ble Apex Court in Supreme Court of India in ***Hav (Ofc) Borgoyary vs Union Of India*** in Civil Appeal Nos.8986- 8988 of 2019, decided on 6 December, 2019 [2020 (2) SLR 637 (S.C)], as under:



If a mistake has been committed by the authorities in appointing few persons who were not eligible, a claim cannot be made by other ineligible persons seeking a direction to the authorities to appoint them in violation of the instructions. After referring to several judgments, this Court in State of Odisha & Anr. v. Anup Kumar Senapati & Anr.¹ held that there is no concept of negative equality under Article 14 of the Constitution of India. The Appellants cannot, as a matter of right, claim appointment on the basis of two ineligible persons being given the benefit and no direction can be given to the Respondents to perpetuate illegality.

VII. More over, Mr. L. Nageswar Rao was not made a party to hear him too. Therefore, the averment of the applicant on this count too suffers from the lacuna of non-joinder of parties. That apart, in case of the applicant, the whole hitch arose because of the discrepancy in the date of birth in the service record and therefore, respondents did not initiate any measures to process his case, while as they did process the 20 cases taken up along with applicant's case for fulfilling the conditions prescribed. One cannot therefore assume that the applicant was discriminated or the action of the respondents as arbitrary. The case had to be processed as per rules/instructions which they did. Applicant made a representation to the DRM, was also testing the legal waters in between by filing OAs and in the process retired on superannuation on 31.8.2020.

VIII. Coming to the benefit of LARSGESS to be extended to a retired employee, the observations of the Hon'ble High Court for the State of Telangana and the State of the Andhra Pradesh in WP No.38487/2016 are as under:

"The petitioner has now reached superannuation upon completing the age of 60 years. The very purpose of the LARSGESS Scheme is to ease out the existing employees in safety categories to enable their wards to step in. The LARSGESS Scheme contemplates the exit of the employee and the entry of the employee's ward, to take place simultaneously. This is not possible now. In view of the fact that the petitioner had the benefit of continuance

upon the completion of the age of 60 years, which is the normal date of retirement. Therefore, the writ petition is dismissed."

Another case of LARGESS was adjudicated by the Hon'ble Principal Bench of this Tribunal in OA No.3308/2015, wherein it was held hereunder:



"19. The LARSGESS Scheme has thus been already terminated w.e.f. 27.10.2017. As of now it is only those cases where the employee had already retired under LARSGESS Scheme before 27.10.2017, i.e., a case where it was a voluntary retirement under LARSGESS Scheme and not normal superannuation, and where a case could not be considered because of the order of the Railway Board to put the Scheme on hold, can only be considered now.

20. Applicant's case cannot be covered under the directions dated 05.03.2019 (para 14 supra) as he had already superannuated on 31.12.2014 prior to the cut off date of 27.10.2017. The orders dated 03.09.2015 of Hon'ble High Court of Punjab and Haryana regarding refund of salary minus pension (para 9 supra), can also not be considered in view of a later judgment of Hon'ble Apex Court in Union of India and ors. vs. Kala Singh and ors. in IA 18573/2019, in Misc. Application No. 346/2019 in Misc. Application No.1202/2018 in Petition for Special Leave to Appeal No.508/2018, dated 06.03.2019 wherein the Hon'ble Apex Court has held as under:

"Since the Scheme stands terminated and is no longer in existence, nothing further need be done in the matter. Application(s) is/are accordingly disposed of."

21. In view of the foregoing, since LARSGESS Scheme itself does not survive any more w.e.f. 27.10.2017 and applicant has superannuated earlier on 31.12.2014 and his son did not qualify in the specified examination, nothing subsists in the instant OA. The same is dismissed being without merit. No costs."

The above observations do apply to the case of the applicant since he has retired from service in the normal course. The implication of the cut off date of 27.10.2017 and the requirement of going on voluntary retirement for seeking benefit under LARGESS have been categorically emphasized in the above two judgments. Tribunal has to go along with the orders of the superior judicial fora as directed by Hon'ble Supreme Court in *S.I. Roopal v. Lt. Governor [(2000) 1 SCC 644]*.

IX. The interpretation of the factual Matrix as has been attempted by the Ld. Counsel that cut off date is not the criteria but processing of the application which were preferred when the scheme was operational, would not come to the rescue of the applicant since he has retired from service. Any relief granted as prayed for would be violated of the rules prescribed under LARSGESS scheme. Hon'ble Apex Court has observed the necessity of following the rules laid down as under:



*The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar** (1991) 1 SCC 544 held that “Action in respect of matters covered by rules should be regulated by rules”. Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that “Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.” In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “ the court cannot de hors rules”*

X. Reference to the various Board memos referred to by the applicant would not be of assistance since they state that the cases be dealt on the basis of the factual matrix. A slight elaboration on what a matrix is, would make things a little more clear. A matrix has rows and columns intersecting each other creating cells. The rows and columns represent different determinants. A study of the matrix is done by referring to the determinant in the row and the corresponding one of relevance in the column to arrive at the intersecting cell. It is this intersected cell which is taken as the reference point to interpret the feature taken up for study. For example rows present the determinants of the age of individuals and the columns depict the amount of sugar consumed. The cells so formed by the intersection of the rows and columns indicate the intensity of diabetes in an individual, if the subject of study is diabetes with determinants of age and sugar consumption. Therefore, the intersected cell chosen, explains the

features to be studied. The determinants of the factual matrix in the instant case are adjudication of the suitability of the ward/applicant by a committee, competent authority approval and issuance of medical certificate to the ward with reference the conditions of voluntary retirement, age of voluntary Retirement, qualification of the ward, tests to be cleared etc. By feeding the cited determinants of LARSGESS scheme a factual matrix was arrived at and the interactive cell of study for determining the eligibility under LARSGESS was chosen as the cut off date, which has a bearing on the case. It is in this context, we believe, matrices are studied and used to resolve problems and the usage of the word factual matrix.

XI. As was observed in paras supra, the applicant was not active enough to do his part of the job in time. Therefore, finding fault with the respondents may not be fair. The applicant has committed the mistake of not getting his date of birth corrected in time and he is trying to shift the blame on to the respondents which is not acceptable as observed by the Hon'ble Supreme Court in (a) A.K. Lakshmi Pathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

When the Ld. Counsel was questioned as to whether any retired employee was granted the relief sought, his response was that he was not aware of such cases. This is little surprising considering the research done by him on the case. However, the Ld. Counsel for the respondents made it vividly clear that the respondents have not considered granting any appointment in

the case of any retired employee. Therefore, given the topography of the case with all the relevant details, it is a hard case and hard cases make bad law. Under LARSGESS, the applicant has to seek voluntary retirement leaving 3 years of service i.e. by the age of 57 years and hence, the date of birth of the applicant and his age are critical to the LARSGESS scheme. Applicant superannuated with all the retiral benefits that are due to a normal retired employee in contrast to an employee who retires by taking voluntary retirement. Granting relief as sought by the applicant on his retirement, would be against the very essence of the LARSGESS scheme as pointed out above and hence, would be a hard case. While making the above observation, we take support of the Hon'ble Apex Court in *State of Tamil Nadu & Ors v G. Hemalathaa & Anr* in Civil Appeal No. 6669 of 2019, decided on 28.8.2019, wherein it has been observed as under:

“10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India, Venkataramiah, J., held that:

“13.... exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.”

11. Roberts, CJ. in *Caperton v. A.T. Massey* held that:

“Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: “Hard cases make bad law.”

12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be



passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.”

By applying the above principle to the case of the applicant, we would not be able to grant the relief prayed for. The applicant retired from service in the normal course and the scheme is for those who seek voluntary retirement and for doing so the ward of the employee will be considered for employment provided he clears the medical examination. It is a hard case because of the scope of extensive interpretations attempted by either side. Allowing hard cases would lead to bad law. Instructions have to be followed. Any relaxation will be doing injustice to others who would had similar difficulties but would not have not come forward considering the reality of adhering to prevailing instructions. We have to abstain from creating a bad legal precedent.

XII. Further, the order of the Hon’ble High Court of Madras on 13.6.2018 in WP No.2289 of 2018 and WMP Nos.2798 and 2799 of 2018, cited by the respondents, has held as under:

“3. The prayer of the petitioners in this writ petition is not maintainable in view of the reasoning given in paragraph-5 of the order passed by a Division Bench of this Court in WP Nos. 27691 to 27695 of 2013 and 27041 and 27042 of 2013 dated 21.11.2013, which has been passed under similar circumstances. Paragraphs-5 and 6 of the said order is extracted hereunder:

“5. From the above facts, it is evident that even after attainment of 57 years, the petitioners have not chosen to go on Voluntary Retirement and pursue the claim of appointment to their wards and they have served till the age of 60 years and earned full salary and other benefits and few of them are still in service earning salary and therefore, they are found to be hale and healthy. The petitioners, having continuously served in the Railways beyond 57 years cannot claim that their wards should be given appointment at the later stage. The Central



Administrative Tribunal has rightly dismissed the original applications.

6. *We are not in a position to interfere with the order of the Tribunal and accordingly, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.”*

Near home, this Tribunal in OA 389/2014 vide order dt. 29.11.2019, in regard to the necessity to seek voluntary retirement by the age fixed, has been dealt as under and the relief sought was rejected as under:



“5. *LARSGESS, is a typical scheme evolved by Railways for the benefit of certain categories of employees, not only permitting voluntary retirement of such employees, but also paving the way for employment of their children or dependents. In the recent past, Hon’ble Punjab and Haryana High Court and Supreme Court took serious exception to this scheme and found that it turned to be a device for back door entry into the important/ pivotal posts, that too at a time when there is heavy and still competition from the educated un-employees, for such posts.*

6. *One of the salient features of the scheme is that the employee concerned should not have crossed 57 years as on 30.06.2010. It is not in dispute that father of applicant has crossed that age limit by two months and 23 days, as on 30.06.2010. It is just ununderstandable as to how such an application was process without noticing an important aspect. Applicant was appointed on 08.02.2013 and at a later stage it was noticed that father of applicant was not qualified for voluntary retirement. The inevitable consequence is that his appointment became void ab initio and accordingly, the impugned order was issued.”*

Therefore, from the above judgments, it requires no further elaboration that the applicant without retiring voluntarily by the age of 57 is ineligible to seek relief prayed for under LARSGESS.

XIII. The applicant cited the judgment of the Hon’ble Supreme Court in Nirmala Chandra Bhattacharjee and ors v. U.O.I. and ors in JT 1991 (5) SC 35 delivered on 19.9.1990 to support his contentions. The opening remark in the said judgment was as under:

“The question that arises for consideration is more of equity and fair play than law.”

In the instant case, the question of law about the legality or illegality of LARSGESS scheme and the consequences that flowed thereupon has led to the present OA. The relevant portion of the judgment relied upon by the applicant is as hereunder:



“As no rule or order which is meant to benefit employees should normally be construed in such a manner as to work hardship and injustice specially when its operation is automatic and if any injustice arises then the primary duty of the courts is to resolve it in such a manner that it may avoid any loss to one without giving undue advantage to other.”

The respondents have applied the same rule to the employees who applied under LARSGESS. Only those who did not superannuate in the normal course, their cases were considered. The applicant was found wanting to act with the seriousness it required to get his date of birth rectified as was done by Sri Anjaiah whose case was cited by the applicant. There is no loss to the applicant as he has retired in the normal course with full retirement benefits. On the contrary, there would be violation of rules of the LARSGESS scheme if the prayer of the applicant is conceded to, which indeed is not permitted by the Hon’ble Apex Court in judgments cited in para 7(II) above. True to speak, there would be a loss to the public exchequer if the relief is granted, because had the applicant gone on voluntary retirement at the age of 57 years, the respondents would have paid 50% of the last pay drawn as pension and not the full pay and allowance, which he drew with 3 annual increments for the 3 years of service rendered by him before superannuation. Hence, the judgment cited is of no assistance to the case of the applicant.

XIV. To sum up, the applicant retired normally, which is not permitted under the LARSGESS scheme. His case was not even processed before the cut off date because of the discrepancy in the date of birth. Applicant did not take expedient steps to get the date of birth corrected in time like others referred to. We find that the case of the applicant is neither supported by law nor rules. Therefore, in view of the aforesaid circumstances, we do not find any merit in the OA and hence dismissed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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