

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/472/2019**

Order reserved on 31.07.2020

**DATE OF ORDER:** 07.08.2020

**CORAM**

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**  
**HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

1. Ganga Sahai s/o Shri Nanga 61 years, Sr Helper (Retd.) Signal department Gr.D Ministry of Railways NWR Bandikui, R/o V&P Abhaneri Bandikui, Distt Dausa.
2. Hans Raj Bairwa S/o Shri Ganga Sahai aged about 33 years, R/o V & P Abhaneri Bandikui, Distt Dausa.

....Applicants

Shri S.K. Bhargava, counsel for applicants (through Video Conference).

**VERSUS**

1. Union of India through General Manager North Western Railway Jagatpura Jaipur.
2. Divisional Railway Manager, (Estt.) North Western Railway, Jaipur Division PH Road, Jaipur.

....Respondents

Shri P.K. Sharma, counsel for respondents (through Video Conference).

**ORDER**

**Per: Hina P. Shah, Judicial Member**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:

- “8.1 To quash and set aside the impugned order dated 26.08.2016 & dated 22.04.2019 (ANN. A/2 & A/1)
- 8.2 The respondents may be directed to consider the candidature of the Applicant No. 2 and if found fit give him the appointment with retrospective effect along with all the consequential benefits.
- 8.3 Any other relief which the Hon’ble Tribunal deem fit and proper in favor of the Applicants.
- 8.4 Cost of the O.A. may kindly be awarded.”

2. The brief facts of the case, as stated by the applicants, are that the applicant No. 1 being eligible had submitted his application to the respondents with all requisite documents through proper channel, which was duly forwarded vide office letter dated 24.01.2011. The respondents vide circular No. 817/E/EP/0 dated 23.03.2011 changed the name of the Scheme to “Liberalized Active Retirement Scheme For Guaranteed Employment For Safety Staff (LARSGESS)”. As per the impugned order dated 23.09.2011 (Annexure A/2), respondents have shown the name of the applicant in “Not Eligible Candidates List –S&T Gr. D Helper”. In the remark column, it was mentioned as “more than prescribed age”. It is further stated that date of birth of applicant No. 1 is 08.05.1954. As on 01.01.2011, applicant No. 1 was 56

years 7 months and 23 days old and he was to attain 57 years only on 08.05.2011. Also applicant No. 2 was 22 years and was possessing ITI Certificate in 'Electrification Trade' and had also passed 'Senior Secondary Examination' with first division. It was stated that both the applicants were eligible and are entitled for the benefits under the LARSGESS Scheme. The respondents have illegally, arbitrarily and in unjustified manner rejected their claim and, therefore, they are deprived from getting benefits of the said Scheme. Therefore, the respondents be directed to consider the candidature of the applicant No. 2 and if found fit give him appointment from retrospective effect with all consequential benefits.

3. The respondents after issue of notices have filed their reply and stated that the present Original Application is barred by limitation. The actual cause of action arose way back in 2011 when the name of applicant No. 1 was mentioned in 'Not Eligible Candidates List' dated 23.09.2011 due to over age. The present Original Application is filed after eight years of the said order dated 23.09.2011. As per Section 21 of the Administrative Tribunals Act 1985, the present Original Application is suffering from delay and laches and, therefore, deserves to be dismissed on

this ground itself. The earlier Original Application of the applicant being OA No. 282/16 was disposed of by this Tribunal without considering the delay and the same was decided only on merits without making any observation on delay. Also the Hon'ble Rajasthan High Court, Jaipur Bench in DB CWP No. 12610/2018 challenging the order of this Tribunal dated 23.03.2018 had granted liberty to the applicant vide order dated 11.01.2019 to file a fresh representation to the respondents and directed the respondents to decide the same and the said order was ex-parte. Therefore, though liberty was granted by the Hon'ble High Court but the order dated 22.04.2019 is only reply to the fresh representation of the applicant wherein he is informed that he was not found eligible under the LARSGESS Scheme and was already informed way back by order dated 23.09.2011. Also the grounds raised in his fresh representation dated 21.01.2019 were again considered but his case cannot be accepted as per letter dated 28.09.2018 issued on LARSGESS. Even on merits, it is stated by the respondents that as per the letter dated 23.03.2011, the cut off date was 30<sup>th</sup> June for counting eligibility of a candidate under the LARSGESS Scheme. The applicant No. 1 had applied on 24.01.2011, but did not submit any application in pursuance of the Scheme thereof and,

therefore, on 30.06.2011, the applicant had crossed the prescribed age of 57 years as his date of birth was 08.05.1954. As per the LARSGESS Scheme, the employees between the age of 50 to 57 years were only eligible. It was clarified that date of checking eligibility under the Scheme will be 30<sup>th</sup> June for the Railway Employee seeking retirement and seeking appointment for his ward. It is further stated that the applicant retired from railway service on 31.05.2014. As the applicant No. 1 attained the age of 57 years on 08.05.2011 that is before 30.06.2011, hence, he was rightly declared as ineligible under the LARSGESS Scheme and was informed of the same vide order dated 23.09.2011. Therefore, the respondents have rightly rejected the claim of the applicant.

4. The applicants have filed a rejoinder denying the submissions of the respondents and added that they had submitted their application on 24.01.2011 in terms of Circular dated 11.09.2010 and, therefore, they cannot be denied benefits under the Scheme. Also that he had applied much before the issue of the Circular dated 23.03.2011, which is not relevant and applicable in the present matter. Also that his eligibility has to be considered as on 01.01.2011 and not 30.06.2011 and,

therefore, the respondents have wrongly rejected his application under the Scheme.

5. Heard learned counsels for the parties through Video Conference and perused the material available on record.

6. The applicants, besides reiterating their stand taken earlier, have stated that the applicants were very much eligible to get benefits under the Scheme as he did not cross the age of 57 years as on 01.01.2011 on the stipulated date of eligibility as per the policy / circular prevalent at that time. Therefore, the respondents have wrongly, illegally and arbitrarily disqualified them from getting benefits under the Scheme. They have relied on the order of Central Administrative Tribunal, Lucknow Bench, Lucknow in OA No. 499/2012 (**Ram Yash Pandey vs. Union of India & Ors.**), decided on 20<sup>th</sup> September 2013, wherein the Tribunal allowed the OA with a direction to the respondents to consider the claim of the applicant taking the relevant date as 1<sup>st</sup> January 2011, on which date, the applicant was admittedly eligible. Also the said order of the Tribunal was upheld by the Hon'ble High Court in the case of Union of India and two others vs. Ram Yash Pandey

and even the R.P. (C) No. 2664/2018 filed in S.L.P. (C) No. 6343/2018 by Union of India & Ors. was dismissed on delay as well as on merits. As the said matter covers the present case of the applicants, respondents be directed to consider the candidature of the applicant No. 2 and if found fit, give him the appointment under the Scheme with retrospective effect.

7. On the other hand, respondents stated that the case of the applicants in hand is different from case of Ram Yash Pandey. In the said case, applicant had not retired at the time of filing of Original Application, but in the present case, applicant No. 1 had already retired in 2014 and facts are also different. Also it was pointed out that Railway Board had revisited the policy as per the directions of the Hon'ble Apex Court and issued a fresh Circular on LARSGESS Scheme dated 26.09.2018 subject to the following terms :-

"In compliance with the above directions, Ministry of Railways have revisited the scheme duly obtaining legal opinion and consulted Ministry of Law & Justice. Accordingly it has been decided to **terminate the LARSGESS Scheme w.e.f. 27.10.2017 i.e. the date from which it was put on hold. No further appointments should be made under the Scheme except** in case where employees have already retired under the LARSGESS Scheme before 27.10.2017 (but not normally superannuated) and their wards could not be appointed due to the Scheme having been put on hold in terms of Board's letter dated 27.10.2017 though they had successfully

completed the entire process and were found medically fit. All such appointments should be made with the approval of the competent authority."

It is further stated that the applicants were informed that Hon'ble Supreme Court and the Hon'ble High Court allowed only those candidates for submitting their representations, who had completed the formalities regarding appointments under the LARSGESS Scheme, but due to the judgement of the Hon'ble Court, appointments were not given to them. It was further clarified that in the present case, applicant No. 1 was declared ineligible under the Scheme way back in 2011 itself. Therefore, he has no right to claim appointment under the Scheme. Also the action of the respondents is as per the policy and rules of the Scheme and there is no injustice caused to the applicants. Because as per the LARSGESS Scheme, the age of the employee, who applied under the Scheme, should not exceed 57 years as on 30<sup>th</sup> June, but in the present case, the applicant No. 1 had crossed age of 57 years on 08.05.2011, which is before 30<sup>th</sup> June. Therefore, he was rightly declared as ineligible under the Scheme. Hence, present Original Application deserves to be dismissed.



8. In the present case, the main question, which requires consideration is whether the applicant No. 2 is eligible to be considered for appointment under LARSGESS Scheme now when the applicant No. 1 was already declared as 'Ineligible' way back in 2011 itself. The applicants had submitted an application for grant of benefit under the LARSGESS Scheme on 24.01.2011 when no application was called for from them. As per the letter / circular dated 23.03.2011 (Annexure A/3), it was clarified that the cut off date for checking eligibility under the Scheme will be 30<sup>th</sup> June for the Railway Employees, who are seeking retirement and are seeking appointment for his ward. According to the applicants, said Railway Board's circular is not relevant as application has been made by them as per Circular dated 11.09.2010 and, therefore, they cannot be declared ineligible. Eligibility has to be considered as on 01.01.2011 and not on 30<sup>th</sup> June 2011.

9. Reliance has been placed by the applicants on the order of the Tribunal in the case of Ram Yash Pandey (supra) and that as their case is on similar footing, they have a fit case to be considered eligible under LARSGESS. Now if the case of Ram Yash Pandey is considered, facts are different from the present case as at the time of issuance of the circular dated

11.09.2010, Ram Yash Pandey was eligible and entitled to seek benefit under the Scheme as he had submitted his application in December 2010. Processing of his application remained pending for his no fault and, thereafter, circular dated 29.03.2011 was issued. Railway Board neither considered his case nor took a final decision on his application and ultimately he retired on superannuation. Ram Yash Pandey had attained maximum age of 57 years and he became ineligible on 01.07.2011. Before retirement, applicant had filed the said OA and knocked the doors of the Tribunal for justice. In the present case, applicant No. 1 retired on 08.05.2011 and was informed on 23.09.2011 that he is not eligible under the Scheme due to his being overage, but he had for the first time filed OA in 2016 being OA No. 291/282/2016 before this Bench of the Tribunal seeking benefit under LARSGESS Scheme. The said OA was disposed by this Tribunal vide its order dated 23.03.2018 stating that after re-visitation of LARSGESS Scheme by the Railways in terms of the directions issued by the Hon'ble Supreme Court , if any party feels aggrieved , the matter can be re-agitated in accordance with law before the competent forum having jurisdiction over the matter. As it is clear that respondents had informed the applicant No. 1 way back in 2011 that he

is not found eligible under LARSGESS Scheme as he is found to be overage because on 30.06.2011, he has already crossed the prescribed age of 57 years. He kept quiet for few years and slept over his rights and then woke up suddenly from deep slumber and filed OA in 2016. The said OA was disposed of on 23.03.2018 along with bunch of cases filed under LARSGESS Scheme. The applicant challenged the said order of the Tribunal before the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur in DB CWP No. 12610/2018 and the Hon'ble High Court disposed of the said Writ Petition vide its order dated 11.01.2019 requiring the petitioner to make a fresh representation and respondents were directed to decide the same within six weeks thereof with a liberty to the petitioner to approach the Central Administrative Tribunal by filing a fresh O.A., if he is not granted the appointment pursuant to the said policy. Accordingly, in the present Original Application, the applicants have challenged the decision on his fresh representation, which was rejected by the respondents vide letter dated 22.04.2019 (Annexure A/1).

10. It is important to mention that the relevant year of appointment in the case of applicants was in 2011 and at that time when applications were called as per

circular dated 23.03.2011, applicants were required to apply. They had applied on 24.01.2011 but as per Railway Board's circular dated 23.03.2011, they did not make any fresh application and the applicant No. 1 found ineligible, which was also informed to him in 2011 itself. Now the said issue cannot be decided, because at present the Scheme of LARSGESS itself is declared as unconstitutional and no appointments can be made under the said Scheme. The case of the applicants was rejected on 23.09.2011 and they were satisfied by the decision but took a chance and had approached the Tribunal in 2016 only after 1<sup>st</sup> applicant's retirement. Since then much water has flown and matter has travelled upto Supreme Court after the Policy was declared unconstitutional by the Hon'ble Punjab and Haryana High Court. Finally, after the SLP was dismissed on 08.01.2018, Railway Board issued Circular on 26.09.2018. It is clear from the terms laid down in the said circular that the applicants' case does not fall under the same. Now the case of the applicants cannot be re-opened under the guise of Railway Board's circular dated 26.09.2018 as they are not eligible for the same nor the applicant No. 2 can be given any appointment on the ground of circular dated 11.09.2010 as at that relevant time circular dated 23.03.2011 was in existence. Therefore, the orders

dated 22.04.2019 & 23.09.2011 in challenge by the applicants cannot be interfered.

11. Accordingly, in view of the discussions made above, the orders dated 22.04.2019 & 23.09.2011 (Annexure A/1 and Annexure A/2, respectively) in challenge by the applicants cannot be interfered as the same are just and proper and require no interference. Hence, the present Original Application is dismissed with no order as to costs.

**(HINA P. SHAH)**  
**JUDICIAL MEMBER**

**(DINESH SHARMA)**  
**ADMINISTRATIVE MEMBER**

Kumawat