

OA No. 291/53/2020, OA No. 291/54/2020,
OA No. 291/55/2020, OA No. 291/56/2020 & OA No. 291/57/2020

CENTRAL ADMINISTRATIVE TRIBUNAL
 JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/53/2020,
 ORIGINAL APPLICATION NO. 291/54/2020,
 ORIGINAL APPLICATION NO. 291/55/2020,
 ORIGINAL APPLICATION NO. 291/56/2020
 &
 ORIGINAL APPLICATION NO. 291/57/2020**

Order reserved on 07.04.2021

DATE OF ORDER: 06.05.2021

CORAM

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

OA No. 291/53/2020

Satya Narayan Son of Shri Kishan Lal, aged about 54 years, resident of House No. 1129/38, Near Nandni School, Gali No. 4, Panchwati Colony, Adarsh Nagar, Ajmer and presently working as Helper Khallasi, (Ticket No. 94821), under Senior Section Engineer, Train Lighting, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.

....Applicant

(Group-D, Mob. 94603-61260)

Shri C.B. Sharma, counsel for applicant (through Video Conferencing).

VERSUS

OA No. 291/53/2020, OA No. 291/54/2020,
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1. Union of India, through General Manager, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Railway Board through its Chairman, Rail Bhawan, New Delhi-110001.
3. Chief Works Manager, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.
4. Deputy Chief Electrical Engineer, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

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Prabhu Singh son of Shri Mangu Singh, aged about 53 years, resident of Village Rail ka Bariya, Post Sendara, Via Mokhupura, Ajmer and presently working as Helper Khallasi, (Ticket No. 93567), Under Senior Section Engineer, Train Lighting, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.

....Applicant

(Group-D, Mob. 98879-34647)

Shri C.B. Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India, through General Manager, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Railway Board through its Chairman, Rail Bhawan, New Delhi-110001.
3. Chief Works Manager, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.

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4. Deputy Chief Electrical Engineer, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

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Sohan Lal son of Shri Prabhu Lal, aged about 55 years, resident of Bajrang Colony, Gaddi Maliyan, Near Balaji Mandir, Ajmer and presently working as Helper Khallasi, (Ticket No. 91777), Under Senior Section Engineer, RAC (Refrigeration and Air-condition), Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.

....Applicant

(Group-D, Mob. 99833-02377)

Shri C.B. Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India, through General Manager, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Railway Board through its Chairman, Rail Bhawan, New Delhi-110001.
3. Chief Works Manager, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.
4. Deputy Chief Electrical Engineer, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer – 305001.

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

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OA No. 291/56/2020

Mohan Lal son of Shri Baktawar Lal, aged about 55 years, resident of C/o Sanjay Pathak, Mata Mandir Wali Gali, Johns Ganj, Ajmer and presently working as Helper Khallasi, (Ticket No. 91832), under Senior Section Engineer, RAC (Refrigeration and Air-condition), Carriage Workshop, North western Railway, Ajmer Division, Ajmer-305001.

....Applicant

(Group-D, Mob.82909-93635)

Shri C.B. Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India, through General Manager, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Railway Board through its Chairman, Rail Bhawan, New Delhi-110001.
3. Chief Works Manager, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.
4. Deputy Chief Electrical Engineer, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer – 305001.

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

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Tej Singh son of Shri Ladu, aged about 54 years, resident of Village and Post Palra, District Ajmer and presently working as Helper Khallasi, (Ticket No. 92137), Under Senior Section Engineer, Train

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Lighting, Carriage Workshop, North Western Railway,
Ajmer Division, Ajmer-305001.

....Applicant

(Group-D, Mob. 87697-63152)

Shri C.B. Sharma, counsel for applicant (through
Video Conferencing).

VERSUS

1. Union of India, through General Manager, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Railway Board through its Chairman, Rail Bhawan, New Delhi-110001.
3. Chief Works Manager, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer-305001.
4. Deputy Chief Electrical Engineer, Carriage Workshop, North Western Railway, Ajmer Division, Ajmer – 305001.

....Respondents

Shri Anupam Agarwal, counsel for respondents
(through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

With the consent of learned counsels for the parties, OA No. 291/53/2020, OA No. 291/54/2020, OA No. 291/55/2020, OA No. 291/56/2020 and OA No. 291/57/2020 are taken up together for disposal as

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common question of law and facts is involved in the aforesaid cases.

2. For the sake of convenience, the brief facts of OA No. 291/55/2020 (Sohan Lal vs. Union of India & Ors.) are taken up. The OA No. 291/55/2020 has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- “(i) That the entire record relating to the case be called for and after perusing the same the respondents be directed to allow benefits of Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) Scheme to the applicant by way of retirement and further appointment to his ward / son Shri Vinod Sahu taking into consideration of facts & circumstances by quashing letter dated 29.12.2019 (Annexure-A/1) with all consequential benefits.
- (ii) That the respondents be further directed to act as per procedure which provide that after due formalities i.e. medical examination, character verification such candidate cannot denied appointment and to act as per procedure and extend the benefits to the applicant as extended by the Jodhpur Division and Ajmer Division orders at Annexure-A/24, A/25 & A/26 with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

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(iv) That the costs of this application may be awarded."

3. The brief facts of the case, as stated by the applicant, are that, at present, he is working as Helper Khallasi, under Senior Section Engineer, RAC (Refrigeration and Air-condition), Carriage Workshop, North Western Railway, Ajmer Division, Ajmer and his date of birth is 01.06.1964. The Railways vide letter dated 02.01.2004, (Annexure A/4), promulgated a Scheme in the name of Safety Related Retirement Scheme to the cadre of Driver and Gangman and it has been provided under the Scheme that Driver and Gangman in the age group of 50 to 57 may seek retirement and on retirement under the scheme, suitable ward of the employee concerned will be considered for employment under the respondents-Railway. Railways vide order dated 11.09.2010, (Annexure A/5), extended the said benefits to safety category of staff with Grade Pay Rs. 1800/- by reducing qualifying service from 33 years to 20 years within age of 50-57 years and also modified the nomenclature of the scheme as Liberalized Active Retirement Scheme for Guaranteed Employment for

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Safety Staff (LARSGESS) Scheme with Grade Pay Rs. 1800/-. As per Railway Board letter dated 24.09.2010, it was clarified that the order dated 11.09.2010 will also be applicable to Gangman/Trackman. Thereafter, Railway Board issued several clarifications. As per the Scheme, the applicant applied for availing benefits of the Scheme by way of retirement and further providing appointment to his ward in the cycle July 2016 to December 2016. As the applicant was found eligible, so his ward was directed to go for medical and vide Certificate dated 25/27.10.2016 (Annexure A/12), son of the applicant was declared fit in Bee-one Medical Category and Medical Authorities vide letter dated 04.11.2016, (Annexure A/13), sent Medical Report to respondent No. 4. His character verification has also been taken place. It is stated that respondent No. 3 vide letters dated 05.06.2017, 10.07.2017, 21.07.2017 and 31.07.2017 (Annexure A/14-Colly) called the ward for screening. In the meantime, Railway Board issued order dated 27.10.2017, (Annexure A/15) as per various decisions as well as directions of the Hon'ble Supreme Court to keep the LARSGESS Scheme on hold till further

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orders. Thereafter, Railway Board vide order dated 26.09.2018, (Annexure A/16), terminated the scheme w.e.f. 27.10.2017 with direction to allow appointments to the wards in certain conditions and as per Railway Board order dated 28.09.2018, (Annexure A/17), in supersession of order dated 26.09.2018 that scheme continues to be on hold w.e.f 27.10.2017. It is the case of the applicant that though the ward of the applicant was called for screening on number of occasions, but he was not allowed appointment even prior to termination of the scheme i.e. 27.10.2017. As the applicant is eligible and all formalities regarding medical and character verification took place prior to 27.10.2017, but respondents did not extend the benefits of retirement to the applicant as well as appointment to his ward, therefore, he preferred O.A. No. 381/2019 before this Tribunal and this Tribunal vide order dated 11.11.2019 while disposing of the O.A. directed the applicant to submit representation and thereafter respondents to consider the same and pass orders within two months. Accordingly, the applicant filed representation dated 30.11.2019, (Annexure A/19), along with several judgements on

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the issue wherein similar cases have been considered by respondents and appointments have been given. But the claim of the applicant was rejected by incompetent authority vide letter dated 29.12.2019 (Annexure A/1) on the ground that the applicant has not been retired and screening of ward has not taken place. Therefore, as the action of the respondents in rejecting the claim of the applicant for retirement under LARSGESS Scheme is arbitrary and illegal, the applicant has filed the present O.A. for redressal of his grievance.

4. After issue of notices, respondents have filed their reply admitting the facts which are matter of records. As per RBE No. 42/2011, the entire process was required to be completed as per schedule prescribed therein. Thus, cause of action, if any, accrued to the applicant on or before 31st December 2016. Merely because the Tribunal directed to decide representation vide its order dated 11.11.2019 does not overcome the hurdle of limitation. The applicant has also failed to file any application for condonation of delay. Thus, present O.A. deserves to be dismissed on the ground

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of limitation itself. On merits, respondents state that applicant and his ward applied under the Scheme for phase July 2016 to December 2016. Accordingly, his ward was directed to go through medical examination wherein he was declared fit in the category as per medical certificate (Annexure A/12). Thereafter, his character verification was done and was issued several letters for screening. It is a fact that screening did not take place. In case screening would have taken place as per schedule prescribed therein then there was no occasion to call for them again and again. Headquarters' office vide their letter dated 06.07.2017 had informed that "*no notification, screening to be done and no panel to be issued until further orders.*" The same position continued till orders dated 27.10.2017 were issued by Railway Board. It is relevant to state that in the meantime this Tribunal has quashed the scheme vide its order dated 13.12.2016 i.e. prior to the date of the closure of the cycle. Hence, no action could be taken in the intervening period. Thus, it is clear that in the case of the applicant all the formalities are not completed and, therefore, was not entitled for benefits as per

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RBE No. 39/2019 as clarified vide order dated 12.07.2019. As per letter of Railway Board dated 12.07.2019, it was directed to consider individual representation as per factual matrix of the case. The order dated 29.12.2019, (Annexure A/1), has been passed by the respondent No. 4 in compliance of the directions issued by this Tribunal vide order dated 11.11.2019 in O.A. No. 381/2019 to decide the representation of the applicant and he is competent to pass the said orders. It is further stated that as per order dated 05.03.2019, (Annexure A/20), the Railway Board terminated the LARSGESS Scheme w.e.f. 27.10.2017. Thereafter, Hon'ble Apex Court passed order dated 06.03.2019, (Annexure A/21). Admittedly, the applicant is still in service. Further, his son has not completed all formalities as per RBE No. 42/2011 i.e. the screening to adjudge the suitability of the wards for recruitment under the scheme was not done. Thus, non grant of benefit of LARSGESS Scheme by rejecting the representation of the applicant cannot be said to be illegal or unwarranted. Merely, because the applicant applied for the cycle starting from July 2016 or that his ward

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has undergone medical examination besides character verification wherein he is found fit did not held him entitled to be appointed under the scheme only because the matter remained pending before the court of law. Mere eligibility is of no substance unless the candidates are found suitable in all respects under the scheme. Even the plea of discrimination due to grant of appointment in other Divisions, in absence of the similarity with them is also misconceived. In case, the sequence of events is taken into consideration then there cannot be any illegality or arbitrariness on the part of the respondents.

5. The applicant has not filed any rejoinder denying the contention of the respondents.

6. Heard learned counsels for the parties through Video Conferencing and perused the material available on record including the judgments cited by the parties.

7. The applicant, besides reiterating the facts stated earlier, has raised several grounds and the main

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ground in challenge is that as the applicant was found eligible and his ward had completed all the formalities including medical examination in which he was declared medically fit in Bee-one category and that his character verification has been done, yet the respondents did not allow the benefits of the LARSGESS Scheme, which is nowhere justified. Thus, the action of the respondents is liable to be quashed and set aside. The other ground raised is that Railway Board time to time has issued orders/instructions and in pursuance to that applicant applied and was found eligible and as all his formalities were completed prior to 27.10.2017, respondents without any base kept the matter pending for the reasons best known to them and, thus, action of respondents is unjustified. Thirdly, as per provisions of IREM and further Railway Board orders/instructions, candidates who completed all the formalities cannot be denied appointment. Thus, denying appointment to the applicant is violation of their own rules and the same is not justified.

8. The respondents also besides reiterating the facts stated that in absence of any disclosure of any right or

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entitlement for retirement/appointment under the scheme does not substantiate any allegation of illegality and arbitrariness on the part of the respondents. It is further stated that the applicant was never declared suitable as per Railway Board order dated 05.03.2019. Mere completion of medical examination and character verification is of no relevance unless they are found fit in all aspects under the scheme. The applicant was never screened as per RBE No. 42/2011 and, thus, he was never adjudged suitable under the scheme. Accordingly, not allowing the benefit of the scheme is just and legal in view of the directions of the Hon'ble Apex Court. It is pertinent to mention that in the case of the applicant, all formalities pertaining to the scheme were not completed prior to 27.10.2017. Thus, applicant cannot be said to be suitable as per RBE No. 39/2019. Also applicant has failed to refer to the relevant provisions of IREM to substantiate any ground. Accordingly, any challenge by taking the said ground is devoid of merit and deserves to be rejected.

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9. The only point which requires our consideration is whether case of the applicant can be re-opened in the light of Railway Board letter dated 27.10.2017 and Hon'ble Apex Court orders dated 06.03.2019, 26.03.2019 and 22.04.2019 and further such orders.

10. The factual matrix of the case is that as applicant being eligible and had completed 20 years of qualifying service in Railways and at present working on post of Helper Khallasi under Senior Section Engineer, RAC (Refrigeration and Air-condition), Carriage Workshop, North Western Railway, Ajmer Division, Ajmer, applied for the benefits of LARSGESS Scheme by way of retirement and further providing appointment to his ward in the cycle July 2016 to December 2016. The ward of the applicant had completed his medical examination and his character verification. His screening has not been done though several letters were issued for screening by respondent No. 3 vide letters dated 05.06.2017, 10.07.2017, 21.07.2017 and 31.07.2017. Admittedly, the applicant is in service and further his son has not completed all formalities as per RBE No. 42/2011, the

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screening to adjudge the suitability of the wards for recruitment under the scheme. It is also noted that mere eligibility is of no substance unless the candidate is found suitable in all respects under the scheme.

11. Coming to the grounds raised by the applicant that his medical as well as character verification has been done before 27.10.2017, therefore, he is entitled for appointment cannot be accepted as it is clear that his screening was not done. May be several letters were issued by respondent No. 3, but Headquarters vide their letter dated 06.07.2017 had informed that *"no notification, screening to be done and no panel to be issued until further orders."* The same position continued till orders dated 27.10.2017 were issued by Railway Board. It is relevant to state that in the meantime, this Tribunal has quashed the scheme vide its order dated 13.12.2016 i.e. prior to the date of the closure of the cycle. Hence, no action could be taken by the respondents in the intervening period and, therefore, they cannot be put to fault. Thus, it is clear that as in the case of the applicant all the formalities are not completed and, therefore, was not entitled for

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benefit of the Scheme and for which the action of the respondents is just and proper. Also with regard to plea of discrimination that Ajmer Division and Jodhpur Division have given appointment in similar circumstances, cannot be a ground to seek appointment in view of several Railway Board Circulars and orders of the Hon'ble Apex Court. Therefore, considering the grounds raised by the applicant, none of them are sustainable in the eyes of law nor violations of any Article of the Constitution of India.

12. It is clear that as per Railway Board letter dated 27.10.2017, the Railways were directed to keep the scheme on hold till further orders. On 08.01.2018, the Hon'ble Apex Court in SLP (C) No. 508/2018 declined to interfere with the directions of the Hon'ble High Court. On 26.09.2018, the Railway Board in compliance of the directions terminated the scheme w.e.f 27.10.2017 directing that no further appointment should be made under the scheme except in cases where employees have already retired under the scheme before 27.10.2017 (but not

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normally superannuated) and their wards could not be appointed due to the scheme having been put on hold in terms of Railway Board letter dated 27.10.2017 though they had successfully completed the entire process and were found medically fit. On 28.09.2018, the Railway Board in supersession of its earlier orders dated 26.09.2018 issued order whereby it was directed that who had already retired under the scheme and appointment of those wards were not made due to various formalities, appointments of such wards can be made with the approval of the competent authority. Thereafter, vide RBE No. 39/2019 dated 05.03.2019, the LARSGESS Scheme stood terminated w.e.f. 27.10.2017. It clearly observed that *the cases where the wards had completed all formalities including medical examination under Scheme prior to 27.10.2017 and were found fit but the employee are yet to retire, it was directed that the matter is pending consideration before the Hon'ble Supreme Court and further instructions would be issued as per the directions of the Hon'ble Supreme Court.*

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The said directions were upheld by the Hon'ble Apex Court and vide order dated 06.03.2019 observed that the said scheme stands terminated and is no longer in existence. Accordingly, Railway Board vide its letter dated 12.07.2019 relying upon the order of the Hon'ble Supreme Court in WP (C) No. 219/2019 and 448/2019 directed that *"the matter has been considered in Board's office and it is decided that if individual representations are received in the light of the Hon'ble Apex Court's orders dated 06.03.2019, 26.03.2019 and 22.04.2019, the Railways should examine and dispose of each individual representation based on factual matrix of the case."*

13. The other aspect of the said LARSGESS Scheme is that when the said scheme is no more in existence since 06.03.2019 and when applicant was already declared ineligible as on 29.12.2019 for whatsoever reasons, it is clear that his case cannot be re-opened as the same was not covered by the Hon'ble Apex Court's order. Also as per the latest judgment dated 28.01.2021 passed by the Hon'ble Apex Court in WP (Civil) No. 1407/2019 in the case of Abhishek Kumar

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Jha & Ors. vs. Union of India & Anr., it has been observed that "*once the Scheme itself was withdrawn, no benefit whatsoever including one of consideration of representation could be afforded to any of the persons*". Accordingly W.P was dismissed. In another WP (Civil) No. 78 of 2021 in the case of Manjit & Ors. vs. Union of India & Anr. vide judgment dated 29.01.2021, the Hon'ble Supreme Court has categorically held that "*the Union Government has with justification discontinued the scheme. The petitioners can claim neither a vested right nor a legitimate expectation under such a Scheme. All claims based on the Scheme must now be closed*". It was also observed that "*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*".

14. Thus, in our considered view, from what has been discussed by us in the above paras, it is clear that the impugned order dated 29.12.2019 (Annexure A/1), does not deserve any interference as the same is just

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and proper and the Original Application filed by the applicant being devoid of merits deserves to be dismissed.

15. Accordingly, all the aforesaid Original Applications i.e. OA No. 291/53/2020, OA No. 291/54/2020, OA No. 291/55/2020, OA No. 291/56/2020 and OA No. 291/57/2020 are hereby dismissed. No order as to costs.

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

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**

Kumawat