

OA No. 291/58/2020

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/58/2020

Order reserved on 05.04.2021

DATE OF ORDER: 15.04.2021

CORAM

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

1. Jagdish Narayan S/o Shri Narayan aged about 59 years, R/o Chak No. 1, Nayali Dhani, Gram Pachunda, Shivdaspura, Tehsil Chaksu, District Jaipur, presently working as Point Man under S.S. Shivdaspura, Jaipur. Group-D MOB. 8426036369.
2. Madan Lal Meena S/o Shri Jagdish Narayan, aged about 23 years, R/o Chak No. 1, Nayali Dhani, Gram Pachunda, Shivdaspura, Tehsil Chaksu, District Jaipur. Group-D. MOB. 9887863249.

....Applicants

Shri R.D. Meena, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through General Manager, North Western Railway, Headquarter Office Jawahar Circle, Jagatpura, Jaipur-302018.
2. Divisional Railway Manager, Jaipur Division North Western Railway, DRM Office Power House Road, Jaipur-302006.
3. C.M.D. North Western Railway, Headquarter Office Jawahar Circle, Jagatpura, Jaipur-302018.

OA No. 291/58/2020

4. Divisional Railway Manager (P), Jaipur Division,
North Western Railway, DRM Office Power House
Road, Jaipur-302006.

....Respondents

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

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by
the applicants under Section 19 of the Administrative
Tribunals Act, 1985 for the following reliefs:-

- “(i) quash and set aside the impugned order dated 29.11.2019 (Annex. A/1) and orders dated 28.12.2016 / 10.01.2017 & 14.8.2017 (Annex. A/2 & A/3);
- (ii) The respondents may kindly be directed to constitute the Medical Board of any Govt. Hospital and conduct the re-medical examination of the applicant No. 2 and if he found fit in the re-medical examination, he may be given appointment vice applicant No. 1 under the scheme of LARSGESS with all consequential benefits.
- iii) Any other directions and orders, which are, deem proper in the facts and circumstances of the case may kindly be allowed to the applicant. ”

2. The brief facts of the case, as stated by the applicants, are that the respondents had issued notification dated 16.06.2016, (Annexure A/4),

OA No. 291/58/2020

inviting applications from employees of various departments in respect of getting voluntary retirement from June 2016 to December 2016 under the Scheme known as Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS). In pursuance of the said Scheme, applicant No. 1 applied for voluntary retirement and sought for appointment of his ward i.e applicant No. 2. After scrutiny, respondents published list of employees dated 28.11.2016, (Annexure A/6), who were found eligible or ineligible for extending the benefit of LARSGESS Scheme. Applicant No. 1 was declared eligible to get voluntary retirement under the said scheme and his name was inducted at Sl. No. 1 in the list of eligible persons. Subsequently, in the process of selection, applicant No. 2 was called for medical test in which he was declared medically unfit for A/2 Medical category vide impugned order dated 28.12.2016/10.01.2017 (Annexure A/2). Thereafter, applicant No. 2 himself got examined in Govt. Medical College, SMS Jaipur as well as Anand Hospital and Eye Centre wherein examination was conducted by the Eye specialist who has found his vision as 6/6 and 6/6 and, therefore, there is doubt as well as suspicion with

OA No. 291/58/2020

respect to the medical certificate issued by Railway Doctors on basis of which he was declared medically unfit for A/2 Medical Category. Therefore, it is clear that he was fit in A/2 Medical Category which was required to get an appointment vide applicant No. 1 under the LARSGESS Scheme. Thereafter, he moved an Appeal dated 24.01.2017 (Annexure A/7) with a request for re-medical examination. The certificate, which has been issued by the Doctors of the private hospital to CMD, NWR, Jaipur by the office of respondent No. 4. Subsequently, respondent No. 4 served a letter dated 10.07.2017 to the applicant No. 1 by which he was directed to get issued D.D. of Rs. 1000/- prepared in the name of Sr. DFM, NWR, Jaipur for the purpose of medical re-examination. In pursuance of the same, applicant No. 1 did the needful and vide letter dated 11.07.2017, office of DRM wrote a letter to CMD, NWR, Jaipur, wherein a reference of earlier letter dated 14.06.2017 was made by which CMD, NWR, Jaipur was asked to get the applicant No. 2 medical examined and by this letter dated 11.07.2017 the CMD, NWR Jaipur informed that applicant deposited DD of Rs. 1000/- and get the certificates of Doctors of both Govt. as well as private

OA No. 291/58/2020

Hospital and according to them applicant No. 2 is medically fit in the required medical category of A/2. But respondent No. 3 instead of calling applicant No. 2 for re-medical examination, rejected his Appeal vide order dated 14.08.2017 stating that distant vision is below prescribed standard for A/2 medical category and the said order was communicated to the applicant vide order dated 24.08.2017 (Annexure A/3). Being aggrieved by the said orders, applicants had preferred OA No. 669/2017 and the said OA was disposed of by this Tribunal vide order dated 23.03.2018, (Annexure A/10), along with bunch of cases relating to LARSGESS Scheme without giving any finding. Thereafter, applicants submitted representation dated 15.05.2018 along with copy of order dated 23.03.2018 as well as certificates of Govt. Hospital and private Hospital as well as copy of judgment of the Hon'ble Apex Court in the case of NTPC vs. Nakul Das, reported in (2014) 9 SCC 385 for re-medical examination of the applicant No. 2 and for giving appointment to applicant No. 2. The Ministry of Railways instead decided to terminate the LARSGESS Scheme w.e.f. 27.10.2017 i.e the date on which the said scheme was put on hold vide letter dated

OA No. 291/58/2020

26.09.2018, (RBE No. 150/2018), Annexure A/12. Applicants thereafter filed Misc. Application No. 673/2018 before this Tribunal for recalling of the order dated 23.03.2018 to the extent of O.A. filed by the applicants and decide the same on merit. This Tribunal vide order dated 20.08.2019, (Annexure A/14), observed that it has no jurisdiction to recall its order and, accordingly, the said M.A. was withdrawn by the applicants to avail remedy by filing a representation. The respondents have rejected the said representation dated 24.09.2019 vide impugned order dated 29.11.2019 (Annexure A/1). The applicants have also challenged the order dated 23.03.2018 before the Hon'ble High Court by way of filing D.B. Civil Writ Petition No. 15656/2019 and the Hon'ble High Court vide its order dated 02.12.2019 observed that applicants have to challenge order dated 29.11.2019 before the Tribunal and, accordingly, applicants withdrew the said Writ Petition on 02.12.2019. Being aggrieved by the said order dated 29.11.2019, order dated 28.12.2016 / 10.01.2017 and order dated 14.08.2017, applicants have filed the present O.A. for redressal of their grievance.

OA No. 291/58/2020

3. After issue of notices, respondents have filed their reply wherein facts are not in dispute and that name of applicant No. 1 was included in the list of eligible candidates vide office order dated 28.11.2016. In the said office order, in Note-1, it was clarified that the above eligibility list was completely provisional, and after the inspection of the Screening Committee, amendment can also be done, and it does not mean that if the name of the employee is in the eligibility list, then he is eligible for Retirement and Appointment. Thereafter, proceedings of retirement and appointment are to be initiated after recommendations of the screening committee and after approval of the competent authority and as per Railway Board's policy considering age limitations, etc., candidates are to be considered for appointment. Accordingly, applicant No. 2 was sent for medical examination in which he was declared unfit in medical category A/2 for the post of Traffic Khalasi and he was informed through the Station Superintendent vide letter dated 28.12.2016 / 10.01.2017. Thereafter, applicant preferred an Appeal to Chief Medical Director against his unfit medical report in A/2 category and the said Appeal of the applicant was rejected on

OA No. 291/58/2020

14.08.2017 by the Chief Medical Director with remarks, "Distance vision below prescribed standard for A/2 category". The said order was communicated vide letter dated 24.08.2017 (Annexure A/3) to the applicant through Station Superintendent, Shivdaspura. Thereafter, Railway Board vide letter dated 05.03.2019 has terminated the LARSGESS Scheme w.e.f. 27.10.2017. As regards the case where ward had completed all formalities including medical examination under the 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 duration before the Hon'ble Supreme Court and further instruction could be issued as per the direction of the Hon'ble Supreme Court. The same was upheld by the Hon'ble Supreme Court vide its order dated 06.03.2019 stating that the said Scheme stands terminated and is no longer in existence, therefore, no steps to be taken further in the matter. As applicant No. 2 has been declared unfit in medical A/2 category and his Appeal is also rejected by the CMD being unfit and as the post of Traffic Khalasi comes in safety category where the candidate should be fit in Medical Category A/2, therefore, the matter of applicants

OA No. 291/58/2020

cannot be considered for appointment under LARSGESS Scheme as at this point of time also the Scheme is not in existence as per the guidelines issued by the Railway Board. Since applicants are not entitled for any relief, the present Original Application deserves to be dismissed.

4. The applicants have filed rejoinder denying the contention of the respondents. The applicants further stated that applicant No. 2 had participated in the process of medical examination and was fit in all respects but Medical Authority without properly conducting medical of applicant No. 2 has declared him unfit in medical category A/2 and, therefore, he filed an Appeal to the Chief Medical Officer (CMD) against his unfit medical report in A/2 category and the CMD also wrongly dismissed the appeal of applicant No. 2 without considering the documents i.e. fit certificate issued by competent authority of SMS Hospital and, thus, the applicant is deprived from his legitimate claim of appointment under the LARSGESS Scheme. It is further stated that the Medical Authority declared the applicant unfit on 24.01.2017 and the applicant challenged the said order before the

OA No. 291/58/2020

Appellate Authority and the same was dismissed on 14.08.2017. The applicants have challenged the said orders before the Tribunal prior to the termination of the Scheme and the matter of applicant regarding unfit in medical Category A/2 was subjudice and, therefore, the letter dated 05.03.2019 issued by Railway Board is not applicable in the present case. The applicants have also relied on the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Corporation vs. Nakul Das & Ors. reported in (2014) 9 SCC 385, wherein the NTPC was directed to constitute another medical Board for re-examination of appellants and as his case is identical, the respondents be directed to take his re-medical examination. In these facts and circumstances, applicant are entitled for re-medical and appointment under the LARSGESS Scheme.

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

OA No. 291/58/2020

6. The applicants as well as respondents have reiterated the facts stated earlier.

7. The only point which requires our consideration is whether case of the applicants can be re-opened in the light of Railway Board letter dated 27.10.2017 and the Hon'ble Apex Court order dated 06.03.2019, when applicant No. 2 was declared medically unfit in A/2 category by Medical Authority on 10.01.2017 and his Appeal was also rejected by CMD, NWR, Jaipur on 14.08.2017.

8. The factual matrix of the case is that notification was issued on 16.06.2016 inviting applications from the employees for getting voluntary retirement under LARSGESS Scheme period from July 2016 to December 2016, under which the applicant No. 1 submitted application on 04.07.2016 for voluntary retirement and appointment vice him for applicant No. 2. After inspection of documents, name of applicant No. 1 was found in list of eligible candidate dated 28.11.2016 to get voluntary retirement under the LARSGESS Scheme. Subsequently, applicant No. 2 was called for medical test in which he was declared

OA No. 291/58/2020

medically unfit for A/2 Medical category for the post of Traffic Khalasi vide impugned order dated 28.12.2016/10.01.2017 (Annexure A/2). Thereafter, applicant No. 2 got himself examined by S.M.S. Hospital, Jaipur and Anand Hospital and Eye Centre, Jaipur and his vision is found as 6/6 and 6/6 and, therefore, he states that as he is medically fit under A/2 category, he made an Appeal to Chief Medical Director (CMD) against his unfit medical report in A/2 medical category. The said Appeal was rejected vide order dated 14.08.2017 by CMD with remarks "Distance vision below prescribed standard for A-2 category (candidate), hence appeal rejected". This was communicated to the applicant vide letter dated 24.08.2017 (Annexure A/3) through Station Superintendent, Shivdaspura. Applicants challenged the said order by way of filing OA No. 669/2017 for re-medical examination and appointment under the LARSGESS Scheme and the said O.A. was disposed of with bunch of similar OAs vide order dated 23.03.2018 with directions. As per RBE No. 39 dated 05.03.2019, Railway Board terminated the LARSGESS Scheme w.e.f 27.10.2017 and it was clarified that as regards the cases where the wards had completed all

OA No. 291/58/2020

formalities including Medical Examination under LARSGESS Scheme prior to 27.10.2017 and were found fit, but the employees are yet to retire, the matter is pending consideration before the Hon'ble Supreme Court and further instructions would be issued as per directions of the Hon'ble Supreme Court. The said directions were upheld by the Hon'ble Apex Court and vide its order dated 06.03.2019 observed that the said scheme stands terminated and is no longer in existence.

9. We have observed that the applicant No. 2 was declared unfit in Medical Category A/2 by Medical Board vide its order dated 28.12.2016/10.01.2017. Thereafter, his Appeal was also rejected vide order dated 14.08.2017. The directions of the Hon'ble Apex Court is very clear that only those cases to be considered where the wards had completed all formalities including medical examination, etc. under LARSGESS Scheme prior to 27.10.2017 whose medical examinations are over and the wards are found medically fit but the employees are yet to retire. As applicant No. 2 is found medically unfit not only by Medical Board but also by CMD, NWR, Jaipur and as

OA No. 291/58/2020

seen it is safety related post i.e. Traffic Khalasi and vision of applicant No. 2 even if we accept private doctors/hospital certificate/report, which is 6/6 and 6/6 and the said vision is with glasses, therefore, it is clear that the applicant No. 2 cannot be said to be fit in Medical Category A/2 as observed by Medical Board as well as by CMD, NWR, Jaipur. Hence, when the Railways do not feel the ward to be medically fit on the basis of his vision for a safety related post, then this Court cannot sit in Appellate jurisdiction to decide that the applicant is medically fit for A/2 medical category. It is pertinent to mention that the post of Traffic Khalasi comes in safety category, therefore, it is obvious that the candidate should be fit in medical category A/2.

10. 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 No. 2 was already declared medically unfit prior to 27.10.2017, it is clear that his case cannot be re-opened as the same was not covered by the order of the Hon'ble Apex Court. Now coming to the question of the applicants again demanding for medical re-examination of

OA No. 291/58/2020

applicant No. 2, the said question cannot be considered every now and then when already his case was not only considered by Medical Board but also by CMD and both the reports are clear that the ward i.e. applicant No. 2 is medically unfit for A/2 medical category. Being a safety related post, it is highly impossible to keep a person on such post where it is clear that the vision of the said person is not perfect for the post in question. Therefore, there arises no question of sending applicant No. 2 again for re-medical examination merely when some private Hospitals have declared his vision to be 6/6 and 6/6 with glasses. Also the case relied upon by the applicants are not applicable to the facts and circumstances of the present case.

11. In our considered view, from what has been discussed by us in the above paras, it is clear that the impugned order dated 29.11.2019 (Annexure A/1), orders dated 28.12.2016/10.01.2017 (Annexure A/2) and order dated 14.08.2017, annexed with letter dated 24.08.2017 (Annexure A/3), do not deserve any interference as the same are just and proper and the Original Application filed by the applicants being

OA No. 291/58/2020

devoid of merit deserves to be dismissed.
Accordingly, the present Original Application is
dismissed. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat