

(540)

प्र.स. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत नि: शुल्क प्रारंभ

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

...  
(Reserved on 28.09.2016)

Date of decision- 30.9.2016

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)  
HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A)**

...

**1). OA No.290/00383/2016**

Raj Kumar S/o Sh. Hans Raj aged about 30 years, R/o Village and Post Dabli Rathan, Ward No. 13, Bass Molvi, District Hanumangarh, Rajasthan. Presently working on the post of Trackman in the office of SSE PWAY, North Western Railway, Hanumangarh.

**...APPLICANT**

**VERSUS**

1. Union of India, through the General Manager, North Western Railway, Jaipur.
2. Senior Divisional Personnel Officer North Western Railway, Bikaner Division, Bikaner.
3. Assistant Divisional Engineer I, North Western Railway, Hanumangarh Junction, Hanumangarh.

**RESPONDENTS**

**2). OA No.290/00384/2016**

Vikas Singh Yadav S/o Sh. Mahandar Singh aged about 22 years, R/o Quarter No. C, Block No. E-3, Railway Colony Pilibanga District Hanumangarh, Rajasthan. Presently working on the post of Trackman in the office of SSE PWAY, North Western Railway, Hanumangarh.

**...APPLICANT**

**VERSUS**

1. Union of India, through the General Manager, North Western Railway, Jaipur.

2. Senior Divisional Personnel Officer North Western Railway,  
Bikaner Division, Bikaner.

3. Assistant Divisional Engineer I, North Western Railway,  
Hanumangarh Junction, Hanumangarh.

### RESPONDENTS

**Present:** Sh. S.K. Malik, counsel for the applicant in O.As  
Sh. Vinay Jain, counsel for the respondents in O.As.

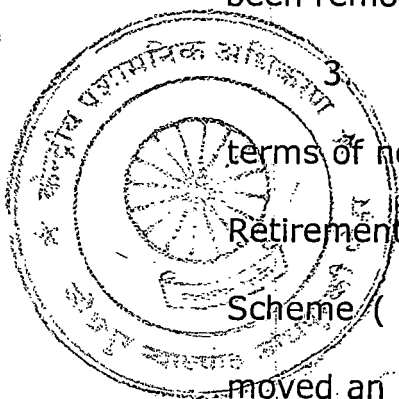
### ORDER

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-**

Both the cases involve identical facts and points of law and the impugned order is identical and as such these have been taken up for final disposal by a common order. For the facility of convenience, facts have been taken from OA No. 290/00383/2016 (**Raj Kumar Vs. U.O.I & Ors.**).

2. The applicant is aggrieved against the order dated 18.08.2016 and order dated 20.08.2016 whereby the applicant has been removed from service.

3. The facts which led to filing of the present O.A are that in terms of notification dated 22.07.2015 issued under 'Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff Scheme' (in short 'LARSGESS Scheme'), the father of the applicant moved an application on 01.08.2015 seeking voluntary retirement and appointment of his son under the above scheme. The same was considered by the respondents and the father of the applicant was retired from service vide order dated 04.07.2016 in the grade pay of Rs. 2400 and simultaneously, case of his son for appointment was approved by the competent authority and accordingly, he was offered appointment as Trackman vide order dated 05.07.2016. Subsequent to that the respondents issued a show cause notice dated 18.08.2016



and thereafter, passed the impugned order dated 20.08.2016 removing the applicant from service. Hence, the present O.A.

4. The respondents resisted the claim of the applicant by filing detailed reply wherein they have submitted that under LARSGESS Scheme as notified on 22.07.2015, an employee who is in Grade Pay of Rs. 1900 and has completed 33 years of service and is in between the age of 55 to 57 years is eligible. Thereafter a clarification was issued on 06.10.2015 clarifying that eligibility in respect to employee will be seen on cut off date i.e. 01.07.2015 or the last date of submission of application i.e. 31.07.2015. Since, vide order dated 14.08.2015, father of the applicant was promoted and his pay was fixed in the grade pay of Rs. 2400/-, therefore, in terms of LARSGESS Scheme, his case could not be considered under the relevant scheme and by mistake his application dated 01.08.2015 was considered and his son was offered appointment. He was also allowed to take retirement on 04.07.2016. Subsequently, when this fact came to the notice of the respondents that father of the applicant was in Grade Pay of Rs. 2400/- and could not be considered under relevant scheme, firstly show cause notice was issued and thereafter authority passed the impugned order removing the applicant from services. The authorities also asked the father of the applicant to rejoin the duty if he wants as his son was wrongly given appointment. Accordingly, he accepted the offer and rejoined on 21.08.2016. He accepted that impugned order was nothing but an act to rectify their administrative mistake.

5. We have Sh. S.K. Malik, learned counsel for the applicants and Sh. Vinay Jain, learned counsel for the respondents.

6. Sh. S.K. Malik, learned counsel for the applicants vehemently argued that impugned show cause notice and order of removal is totally illegal, arbitrary and in violation of Article 14 of the

Constitution of India, thus, impugned order be quashed and set aside and direction be issued to the respondents to allow the applicant to continue in service. He further argued that impugned order is also in violation of principles of natural justice because the applicant was not granted any opportunity to stake his claim and straightway passed the impugned order of removal. To buttress his submission, he placed reliance upon the judgment of the Hon'ble Supreme Court passed in case of **Dr. Bool Chand Vs. The Chancellor, Kurukshetra University**, AIR 1969 SC 292.

7. Per contra, Sh. Vinay Jain, learned counsel for the respondents supported the impugned order and submitted that impugned order was passed only to rectify their mistake as they have wrongly considered the case of the applicant for appointment under LARSGESS Scheme. To elaborate his argument, he submitted that since father of the applicant was not eligible in terms of LARSGESS Scheme on the cut off date as he was in Grade Pay of Rs. 2400/-, therefore, his application could not be considered but wrongly considered, therefore, to rectify their mistake, they have removed the applicant from service. He submitted that it is allowed by various judicial pronouncement that the respondents can rectify their mistake. While rectifying the mistake, they also allowed the father of the applicant to rejoin the duty vide communication dated 20.08.2016 which he accepted and was allowed to join the duty on 21.08.2016, therefore, present O.A be dismissed being devoid of merit. He also placed reliance upon the order dated 10.04.2015 passed by the Guwahati Bench of this Tribunal in O.A No. 040/00111/2015 titled **Earson Gabil Momin & Anr. Vs. U.O.I & Ors.**

8. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record with the able assistance of the learned counsel for the respective parties.

9. The solitary question arises for our consideration are as to (i) whether father of the applicant meet out the eligibility condition as stipulated under LARSGESS Scheme or not?; (ii) whether before passing of the impugned order, the respondents are required to grant an opportunity of hearing to the applicant or not?

10. Perusal of LARSGESS Scheme which was circulated on 22.07.2015 makes it abundant clear that an employee who is in Grade pay of Rs. 1900 and has completed 33 years of service and is in between the age of 55 to 57 years is eligible under the said scheme.

As per the condition stipulated therein, eligibility is to be seen from 01.07.2015 and last date of submission of application was 31.07.2015. Subsequent to that, a clarification was issued on 06.10.2015 wherein it was clarified that eligibility of an employee is to be seen on the cut off date and also on the date when committee finally takes the decision upon his application. Being relevant, the said eligibility condition of notification dated 22.07.2015 and clarification dated 06.10.2015 reads as under:-

**Eligibility:-**

XXXX XXXXXXXXXX

3. इसके अलावा ग्रेड पे 1900 में उपरोक्त कोटियों में कार्यरत कर्मचारी जिन्होंने 33 वर्ष की अर्हक सेवा तथा अंतिम 10 वर्ष की सेवा स्पेसीफाईड सेफटी कोटि में पूर्ण कर ली हो तथा जिनकी आयु 55 से 57 वर्ष हो।

**Clarification dated 06.10.2015:-**

विषय – लारजेस योजना के अन्तर्गत आश्रितों को नियुक्ति के संबंध में।

संदर्भ – आपका पत्र सं. 817ई/सेवा निवृत्ति योजना/भर्ती सैल/जन.2016/2016  
दिनांक 17.09.2015।

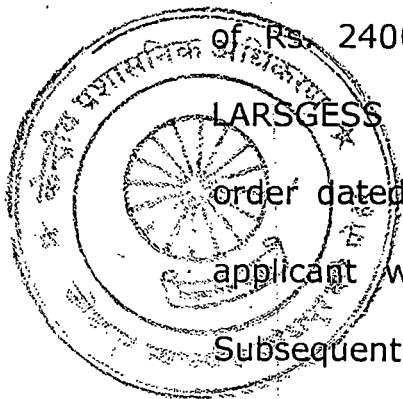
उपरोक्त सन्दर्भित पत्र दिनांक 17.09.2015 के द्वारा मार्गदर्शन चाहा गया है कि गारंटीबुदा रोजगार के लिए उदारीकृत सक्रिय सेवानिवृत्ति योजना (LARSGESS) के किसी चक्र में यदि कर्मचारी/बोर्ड पात्र है एवं उस चक्र की प्रक्रिया में कर्मचारी को पदोन्नति का अवसर मिले एवं कर्मचारी इस पदोन्नति के अवसर को नहीं लेता है (यानि promotion refuse करता है) तो उन्हें इस योजना का लाभ दिया जाना है या अन्यथा।

इस क्रम में आपको अवगत कराया जाता है कि यदि कर्मचारी/बोर्ड गारंटीबुदा रोजगार के लिए उदारीकृत सक्रिय सेवानिवृत्ति योजना (LARSGESS) के अन्तर्गत कट ऑफ डेट को पात्रता रखता है एवं गठित कमेटी द्वारा परिणाम जारी करने की तिथी को भी वह पात्रता की शर्तें पूरी करता है तो कर्मचारी/बोर्ड को इस योजना हेतु पात्र माना जा सकता है।

इसे सक्षम अधिकारी का अनुमोदन प्राप्त है।  
यह आपके सूचनार्थ प्रेषित है।

(प्रभात)  
कृते महाप्रबंधक/कार्मिक "

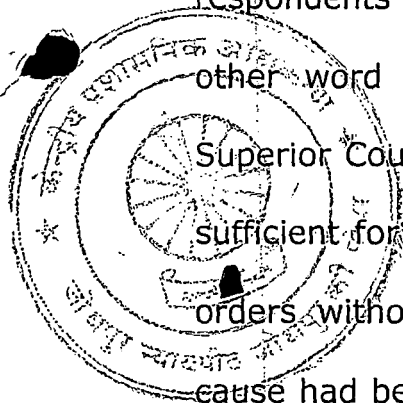
11. The father of the applicant applied and moved an application under LARSGESS Scheme on 01.08.2015 but he has not disclosed this fact that he is not in GP of Rs. 1900/- which is one of the condition, as reproduced above, and was promoted in grade pay of Rs. 2400/- vide order dated 14.08.2015 w.e.f. 17.08.2014. Though eligibility is to be seen w.e.f. 01.07.2016 as notified in the LARSGESS Scheme but as subsequently clarified vide letter dated 06.10.2015 that eligibility will be seen on the cut off date or when the committee takes final decision on pending application. The committee as per the record considered the case of the applicant on 20.05.2016 and finally approved the case of the applicant for appointment on 25.07.2016 by ignoring this fact that father of the applicant has already in higher GP of Rs. 2400, therefore, the applicant cannot be considered under LARSGESS Scheme. Under ignorance, the respondents issued the order dated 04.07.2016 retiring the father of the applicant and the applicant was offered appointment as Trackman on 05.07.2016. Subsequent to that when this fact came to notice of the respondents, they issued show cause notice and passed the impugned order of removal from service on the ground that he cannot be offered appointment under LARSGESS Scheme. The facts makes it clear that as per LARSGESS Scheme dated 22.07.2015 and clarification dated 06.10.2015, eligibility is to be seen on 01.07.2015 or on the date when the committee takes final decision on application. In present case, since committee considered the case of the case on 20.05.2016 and approval was given on 25.07.2016 and before that father of the applicant was given promotion in G.P of Rs. 2400/- on 14.08.2015,



therefore, he could not apply under said scheme. In these circumstances, we find no illegality in impugned order. Moreover, the respondents by rectifying the administrative mistake issued the impugned order dated 20.08.2016 asking the father of the applicant to rejoin the duty in view of the changed circumstances which he accepted by submitting joining on 21.08.2016.

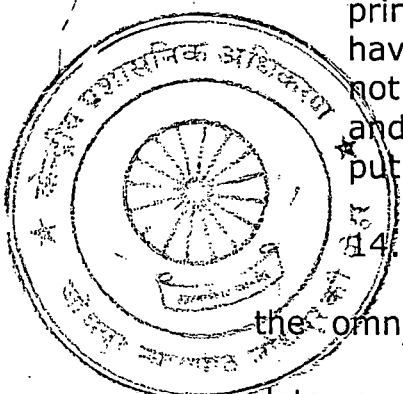
12. It is also well settled law that an administrative mistake can always be corrected in view of **Ram Awadh Prasad v. Union of India**, SCJ 1987 (3) CAT 48, where it was held that "it is well accepted maxim of law that an administrative error can always be corrected; this can be done without giving opportunity to show cause etc., if the order has not been carried out or it has not resulted in accruing any legal right".

13. Though an allegation is there that the applicant was not given opportunity of hearing, therefore, impugned order is in violation of principles of natural justice. We are of the view that in the present case, the hearing will not change the ultimate decision given by the respondents in the given facts. It will become merely a formality or in other word useless formality theory. In early 60's and 70's, the Superior Courts had treated violation of the rules of natural justice as sufficient for invalidating administrative and quasi-judicial actions and orders without requiring the applicant to plead and prove that his cause had been prejudiced on account of such violation. The theory of empty/useless formality was discarded on the premise that violation of the rules of natural justice is in itself is a prejudice. This trend has decisively changed in the recent years and, as of now, it is settled law that violation of the principle of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the applicant pleads and prima facie shows that his cause has been prejudiced. There are large numbers of decisions of the Hon'ble



Supreme Court on this issue that the principal of natural justice cannot be put in a straight jacket formula. We will refer the recent judgment on this issue in the case of **P.D. Agarwal v. State Bank of India** 2006(8) SCC 776, where the lordships of Honble Supreme Court held that the principles of natural justice cannot be put in a straight jacket formula and then observed:

Decision of this Court in S.L.Kapoor v. Jagmohan and Ors., whereupon Mr. Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in State Bank of Patiala and Ors. v. S.K. Sharma and Rajendra Singh v. State of M.P., the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula.



14. What, we have understood is that the omnipresence and the omniscience (sic) of the principles of natural justice act as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rigid and inflexible rule or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances.

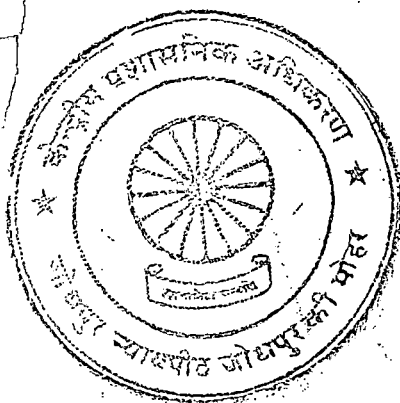
15. Before parting the judgment, we also consider the judgment as relied upon by the applicant in case of Dr. Bool Chand (supra) and we are of the view that facts of that case is entirely different, therefore, judgment will not help the applicant.

16. In the light of the law discussed above, both the questions are decided in affirmative that father of the applicant does not meet out the eligibility criteria and there is no requirement to provide an opportunity of hearing to the applicant being useless formality theory in the given facts of the case. Accordingly, we do not find any merit in the instant Original Application which is dismissed leaving the parties to bear their own costs.

*Sd*  
(PRAVEEN MAHAJAN)  
MEMBER (A)

*Sd*  
(SANJEEV KAUSHIK)  
MEMBER (J)

Dated: 30.9.2016  
Place: Jodhpur  
'jk'



COMPARED &  
CHECKED  
*Rm*

CERTIFIED TRUE COPY  
Date: 04/10/2016

*J.K. Shrivastava*  
अध्यक्ष, न्यायापीठ (जोधपुर)  
Section Officer (Jud.)  
केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
जोधपुर न्यायापीठ जोधपुर