

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
OA. No. 060/00337/2014**

(Reserved on 28.10.2014)

Chandigarh, this the th 5 day of November, 2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER(A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J)**

1. Amar Nath, aged 60 years, S/o late Sh. Sukh Ram, retired Loco Pilot Mail under Senior Section Engineer, Loco, Ambala, resident of House No. 24/14, Chanderpuri, Kuldeep Nagar, Ambala Cantt (Haryana).
2. Harish Kumar, aged 31 years S/o Sh. Amar Nath, resident of House No. 24/14, Chanderpuri, Kuldeep Nagar, Ambala Cantt. (Haryana).

...Applicants

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Ambala Division, Ambala Cantt.
3. Senior Divisional Personnel Officer, Northern Railway, Ambala Division, Ambala Cantt.

.....Respondents

Present: Sh. R.K. Sharma, counsel for the applicant.
Sh. R.T.P.S. Tulsi, counsel for the respondents.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

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- “(i) Quash order No. 220-E/LARSGESS/Recruitment/MPP/Ambala/Loose dated 27.02.2014 (Annexure A-1) whereby respondents have declined to grant second chance to the applicant for appearing in the written examination for appointment under Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) on the plea that the opportunity of second chance for appearing in the written examination can be given only in case both the Railway employee and his ward continue to fulfil the eligibility condition on the date of written examination or 30 June of respective and that since applicant No. 1 has already superannuated on 31.5.2013, his ward (applicant No. 2) cannot be considered for second chance and quashing thereof.
- (ii) Issue directions to the respondents to consider the claim of applicant No. 2 for appointment to the post of Loco Assistant Pilot, Northern Railway, Ambala by giving him one more chance under the Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) in terms of policy dated 06.01.2004 as amended vide letter dated 11.9.2010.”

2. This is the second round of litigation involving the applicants. Earlier, the applicants had filed OA No. 86/HR/2013 praying for the following relief:-

- “(i) That the impugned orders dated 31.1.2012 and 16.8.2010 (A-1 and A-2/A) qua applicant may be quashed and set aside.
- (ii) That it be declared that the applicant being eligible as on 30.6.2009 to retire under the LARSGESS and the respondents be directed to appoint the son of applicant w.e.f. he becomes eligible on the basis of eligibility date 30.6.2009 on the post of Assistant
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This OA was allowed on 24.9.2013 (Annexure A-9) in the following terms:-

“13. Considering the factual as well as legal aspect of the matter as discussed above, we have no hesitation in our mind that the action of the respondents in rejecting the claim of applicant for benefits under the Safety Related Retirement Scheme vide Annexure A-1 and A 2/A is invalid as the same is based on wrong facts and as such the impugned orders are quashed and set aside. The applicant has already been screened in pursuance of interim orders passed by this Tribunal. The respondents are directed to consider the case of the applicant for extending him benefit of Scheme as per rules and law and provisions of the Scheme and the principle of deemed fiction propounded by Hon'ble High Court, within a period of two months from the date of receipt of certified copy of this order. No other point was argued. No costs.”

3. It is claimed that since the respondents failed to comply with the orders of this Tribunal, applicant filed CP No. 060/00021/2014 before this Tribunal on 01.02.2014. The respondents filed reply dated 05.03.2014 and attached order dated 27.02.2014 (Annexure A-1) mentioning therein that applicant No. 2 could not qualify the written examination held on 08.09.2013 and that opportunity of second chance for appearing in the written examination can be given only in case both the Railway employee and his ward continue to fulfil the eligibility condition on the date

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of written examination or 30th June of respective year. Keeping in view the order dated 27.02.2014, this Tribunal closed the contempt petition vide order dated 10.03.2014(Annexure A-10) observing that the directions of this Tribunal stand complied with and the view taken by the respondents cannot be adjudicated upon in a Contempt Jurisdiction and thus giving liberty to the applicants to challenge the view taken by the respondents as per rules and law.

4. It is claimed in the OA that the respondents Northern Railway, Ambala Division, had again issued notification for holding written test for appointment under LARSGESS to be held on 27.04.2014, but since the respondents have declared applicant No. 2 as ineligible for the benefit under the scheme, so they have not granted any chance to the applicant No.2, whereas as per orders dated 29.3.2011 (Annexure A-11) issued by the Railway Board, respondents were duty bound to allow the applicant second chance and second chance after failure in written test in first chance is required to be given by giving a gap of 20-30 days. Respondent No. 2 had issued letter dated 17.4.2014 (Annexure A-12) for holding written test on 27.4.2014 in which second chance is

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being given for selection to the post of Assistant Loco Pilot under LARSGESS in which dependents of persons who are still working have been allowed to appear but claim of the applicants has been rejected on the ground that applicant No. 1 has already retired. Thus action of the respondents is discriminatory. Hence this OA.

5. By way of interim relief, through order dated 29.4.2014, the applicant No. 2 was allowed to appear in the written test scheduled on 3.5.2014 or thereafter, but his result has not been declared so far.

6. In the short reply filed on behalf of the respondents, it has been stated that the applicants are not entitled to the relief as sought in the OA in view of para 4 of RBE No. 98/2006 (PS No. 13191) (Annexure R-2) wherein it is specifically stated that "the candidate who failed to qualify the written examination may be given one more chance to qualify the suitability test, wherever such requests are received, subject to the condition that both railway servant and his/her ward availing the benefit available under the scheme continue to fulfil the eligibility conditions as on the date of examination or 30th June of the respective year whichever is earlier". Further, the Ministry of Railways letter No. E(P&A)I-

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2012/RT-1 dated 18.4.2013 also clarified that "time schedule has been prescribed for conducting retirement/recruitment process for each cycle, instructions have also been issued to the railways to ensure that all retirement/recruitment pertaining to a particular cycle are completed strictly within the prescribed time schedule of the cycle (Board's letter dated 14.2.2012, 8.10.2012 and 14.2.2013 refers in this regard). Failure to complete the entire process within the time schedule would tantamount to extending undue benefit to the employees as the employee would then retire closer to his superannuation which would be a serious deviation from the prescribed policy of Railway Board on LARSGESS and hence not permissible." The applicant No. 1 having already superannuated on 31.5.2013 was not entitled to any relief under the LARSGESS Scheme and the OA deserved to be dismissed.

7. In the detailed reply filed on behalf of the respondents, it has been stated that the Madras Bench of this Tribunal in the case of Arumugam & Others Vs. Chairman Railway Board vide its order dated 18.6.2012 held that the doctrine of legitimate expectation cannot be invoked in respect of the scheme and the applicants have no legal right to be offered an appointment to their

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wards under their scheme when they do not fulfil the eligibility criteria. This judgement had been relied upon by this Tribunal in a bunch matter – Ganpat Vs. UOI decided on 17.1.2014. Further, the applicants do not fulfil both the mandatory conditions prescribed in para 2(xi) of the scheme at Annexure A-2. Applicant No. 1 had already attained the age of 60 years and superannuated from the Railway service on 31.5.2013. Thus, he was ineligible and giving second chance to applicant No. 2 would be a violation of the Railway Board instructions at Annexure R-1 as well as mandatory para 2(ii), (iii), (x), (xi), (xiii) and (xiv) of the Scheme at Annexure A-2. This would ^{also} be in violation of para 4 of the Scheme at Annexure A-5 which requires that “Retirement of the employee and appointment of the ward should take place simultaneously” which is now an impossibility. Applicants are therefore not entitled to invoke the doctrine of deeming fiction in the facts of the present case.

8. Arguments advanced by the learned counsel for the parties were heard. The learned counsel for the applicant recapitulated the background of the matter as narrated in the OA and stated that since one chance had been availed on 8.9.2013 by

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the applicant No. 2 for appearing in the selection test under SRRS/LARSGESS and he had unfortunately failed to qualify in the same, he was entitled to a second chance in this regard as per the instructions applicable to the scheme. Since the Tribunal through its order dated 24.9.2013 had allowed the applicant No. 2 to appear for selection under the SRRS/LARSGESS taking into account the fact that the application of the applicant No. 1 had wrongly been rejected in 2009, the second opportunity to appear in the selection could not be denied to the applicant. Learned counsel also placed reliance upon the judgement of this Tribunal in Om Parkash Vs. UOI in OA No. 743-PB-2008 decided on 23.09.2013 where also the applicant's claim under SRRS/LARSGESS had earlier been wrongly rejected by the respondents. The OA was allowed and the ward of the applicant was allowed to appear in the examination and on selection, he was eligible to be appointed provided the difference in the salary and pension of the applicant's father who was an employee with the Railways, was refunded. Learned counsel sought similar treatment in the present matter. Learned counsel also relied upon CWP No. 77-CAT-2012 stating that even though the judgement in Om Parkash, (supra) had been

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stayed by the Hon'ble High Court, but the judgement would not be non est since the jurisdictional High Court had held in this matter as follows:-

"Though against this judgement, the SLP has been filed in which the operation of the impugned order has been stayed by the Supreme Court, but we are, prima-facie, of the view that even if an appeal against the judgement of the High Court has been admitted and the operation of the order has been suspended during the pendency of the appeal, it does not have the effect of rendering the said judgement non-est till the disposal of the appeal."

9. Learned counsel for the respondents drew attention to the content of paras (vii), (xi) and (xiv) of the Safety Related Retirement Scheme – Drivers and Gangmen (Annexure A-2) that reads as follows:-

- (vii) Applications from those who propose to retire under this scheme will be taken once in a year. The cut off date for reckoning the eligibility of employees for seeking retirement under this scheme will be 30th June of the respective year. All conditions of appointment for the ward of such retirees such as age limits, educational qualifications etc. will also be determined with reference to that date.
- (xi) Those who have completed 33 years of qualifying service and are in the age group of 55 to 57 year would be considered in the first phase of the scheme to be followed by those in the age group of 53 years onwards but less than 55 years.
- (xiv) Since the Safety Related Retirement Scheme is a package having no nexus with any of the existing scheme, no weightage towards qualifying service will be admissible to the employee who seeks retirement under this scheme. The

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wards appointed under this scheme will not be allowed to change their category, except as is being allowed under the already existing rules.

He also referred to para 4 of RBE No. of RBE No. 98/2006 (PS No. 13191) (Annexure R-2) that reads as follows:-

“The issue has, accordingly, been examined by the Board and it has been decided that the candidates who fail to qualify the written examination may be given one more chance to qualify the suitability test, wherever such requests are received, subject to the condition that both Railway servant and his/her ward availing the benefit available under the Scheme continue to fulfil the eligibility conditions as on the date of the examination or 30th of June of the respective year, whichever is earlier.”

Learned counsel stated that since the applicant No. 1 had already retired from service when the second selection test following the first test held on 8.9.2013 took place on 27.4.2014, the applicant No. 2 was ineligible to appear in the test. Learned counsel also relied upon Ram Asre Vs. UOI, OA No. 694/HR/2013 decided on 3.7.2014 where the issue regarding eligibility of wards of over-age employees has been discussed in detail and such persons had been held to be ineligible for appearing for selection under LARSGESS.

10. We have given our thoughtful consideration to the matter. While it is true that the respondent No. 2 was allowed to appear in the selection test under LARSGESS held on 8.9.2013 as

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per the directions given in OA No. 86/HR/2013, but the next test was scheduled in February, 2014 when the applicant No. 1 had already superannuated from service. Since as per para 4 of RBE No. 98/2006 (Annexure R-2), candidates who failed to qualify the written examination are to be given one more chance to qualify the same subject to the condition that both the Railway servant and his ward availing benefit available under the Scheme continue to fulfil the eligibility conditions as on the date of examination, when applicant No. 1 had already superannuated before the date on which the applicant No. 2 could have availed the second chance to appear in the suitability test, he was clearly ineligible for the same. The observations made in Ram Asre (supra) are also relevant to this matter and hence the OA is rejected. No costs.


(RAJWANT SANDHU)
MEMBER(A)


(DR. BRAHM A. AGRAWAL)
MEMBER(J)

Dated: November 5, 2014.
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