

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3715/2015

M.A. No.3373/2015

Reserved on : 23.11.2016

Pronounced on : 28.11.2016

HON'BLE MR. P.K. BASU, MEMBER (A)

Arjun, Aged 58 years,
S/o Shri Sitabi,
Working as Gangman under
Sr.Sec. Engineer, Gurgaon,
R/o Railway Quarters, Railway Station,
Khalilpur, Gurgaon.

.. Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Delhi Division,
State Entry Road,
New Delhi.
3. The Assistant Personal Officer,
Divisional Railway Manager's Office,
Northern Railway,
Delhi Division,
State Entry Road,
New Delhi.
4. The Assistant Divisional Engineer,
Northern Railway,
Delhi Sarai Rohilla,
L-21, Hemilton Road,
New Delhi-06.

.. Respondents

(By Advocate : Shri S.M. Arif)

ORDER

This Application has been filed by the applicant seeking benefit of appointment to his son under the Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) of the Railways. In brief, the LARSGESS Scheme of the Railways is that Drivers and Gangmen, who have completed 20 years of service and are in the age group of 50-57 years, may seek voluntary retirement and employment to a suitable ward of the employee.

2. The learned counsel for the applicant states that the applicant filed his application for voluntary retirement and appointment of his son, Shri Sudin Mandal, on 02.02.2012. Unfortunately, this application was not considered at that time. When request of another person, viz. Shri Ramkishan S/o Shri Ghisa Ram, who retired only on 25.10.2014, was considered, the respondents sought fresh application from the applicant in 2014 and based on that, his case was considered in 2014. Vide order dated 02.07.2015, the applicant's prayer for benefit under LARSGESS Scheme was rejected on the ground that the employee was overage, taking into account the cut off date as 01.01.2014.

3. The applicant has challenged this order dated 02.07.2015, primarily on the ground that the cut off date of the applicant should

be taken as 01.01.2012, as per the Railway Board's instructions.

The specific prayer made in the O.A. is as follows:

“That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 2.7.15 (A/1), declaring to the effect that the whole action of the respondents rejecting the request of the applicant for his Vol. retirement under Liberalized Active Retirement Scheme for Guaranteed Employee for Safety Staff is totally illegal, arbitrary, against the scheme and discriminatory and consequently, pass an order directing the respondents to consider the case of the applicant for extending the benefit of Liberalized Active Retirement Scheme for Guaranteed Employee for Safety Staff on the basis of his 2012 application, by taking into account the cut of date as on 1.1.2012, as done in the case of similarly situated person namely Shri Ramkishan s/o Shri Ghisa Ram, with all the consequential benefits.”

4. The applicant has also placed reliance on the following judgments in support of his claim:

(a) Order of Chandigarh Bench of the Tribunal in O.A. No.743-PB of 2008 – Om Prakash vs. Union of India & others, dated 23.09.2013. However, the facts in this case are different and the issue was whether the applicant had completed 33 years of service on the relevant date, i.e. 30.06.2004. The relevant date was not under challenge. Therefore, this cannot act as precedence in the present case.

(b) Full Bench judgment of Calcutta Bench of the Tribunal in O.A. No. 1540/2013 - R. Krishna Rao vs. Union of India & others, dated 07.08.2015, which was on the following issues:

(i) Whether the LARSGESS Scheme of the Railways is ultra vires the Articles 14 and 16 of the Constitution of India?;

- (ii) Whether Railway Board has power to frame such Scheme limiting employment avenue to one section of the employees and if so, then provisions of statute for such vesting of power whether ultra vires to the Articles 14 and 16 of the Constitution of India?;
- (iii) What are grounds justifying reasonable classification to earmark posts for special group of candidates under Scheme?

The Full Bench held that the LARSGESS is not a Scheme in violation of Articles 14 and 16 of the Constitution of India; the Railway Board had the powers to frame rules; and that there is reasonable classification involved in the Scheme.

(c) Order of this Tribunal in O.A. No.1620/2015 – Sita Ram & others vs. Union of India & others, dated 09.09.2016. This matter relates to the LARSGESS Scheme and the grievance of the applicants therein was that though they had applied well in time in 2011 and 2012 but the department had held the process for selection only in May, 2014. The finding of the Tribunal in this O.A. is reproduced below :

“8. The Circular dated 30.08.2013 provides for retirement/recruitment cycle from July to December 2013 onwards only. The applicants have questioned the decision of the respondents, whereby they have been disallowed second opportunity of Aptitude Test to them as they belonged to retirement/recruitment cycle prior to July - December 2013. The fact is that written test was held in May 2014 after issuance of circular dated 30.08.2013 and it was the fault of the respondents railways that they had not hold the process prior to May 2014, though they were required to hold this process every six months as per the Original Scheme. This cannot be a ground in view of the judgment in case of **Om Prakash** (supra) to deny second opportunity of Aptitude Test to the applicants as their case had been delayed by the railways and it was not their fault.”

It is, therefore, contended that in view of the above finding, the applicant should not be penalised for the delay in consideration of his case in 2014, while the application was filed in February, 2012.

5. According to the respondents reply, the applicant applied for voluntary retirement and also for appointment of his ward under LARSGESS in the 1st cycle of 2014, which was received in the respondents' office on 12.02.2015. According to RBE No.131/2010, the age limit for Trackman/Gangman seeking benefit under LARSGESS is 50-57 years. It is stated that it is clearly mentioned in the LARSGESS Notification that the employee working in Grade Pay of Rs.1800/- and the date of birth between 01.01.1957 to 01.01.1964 can only be eligible for the Scheme. Since the date of birth of the applicant is 30.11.1956, he was overage for taking the benefit of the Scheme as he was more than 57 years. Therefore, he could not be given the benefit of LARSGESS Scheme. In this regard, RBE No.131/2010 dated 11.09.2010 has been filed, which stipulates the condition of cut off date of 57 years.

6. The learned counsel for the respondents also stated at the bar that he has been instructed by the respondents that the Railways have decided not to go ahead with the LARSGESS Scheme. However, no such order is placed before us. The learned

counsel for the applicant explained that the Railways have not withdrawn the LARSGESS Scheme and there is no such order to this effect.

7. Heard the learned counsel for the parties and perused the pleadings.

8. The only difference between the two parties is on the question of when did the applicant apply for the LARSGESS Scheme. According to the applicant, he had applied on 02.02.2012 in the prescribed form and, in this regard, he has filed the original application form at Annexure A/4, which bears the date of 02.02.2012 and is also endorsed by the Railway Authority. On the other hand, the respondents say that the applicant had applied only in 2014. Admittedly, if the date of application is taken as 02.02.2012, the applicant was within the outer cut off age of 57 years. The applicant has mentioned about his application dated 02.02.2012 in para 4.5 of the O.A., in reply to which the respondents state that the only application they received was of 2014 and no other application for VRS under LARSGESS Scheme was received in their office except this.

9. It seems from Annexure A/4 that the applicant had indeed applied in 2012 as that application was endorsed by the respondents themselves. The benefit of doubt has to be clearly in

favour of the applicant. In the event, the O.A. is allowed and the respondents are directed to accept the VRS application of the applicant under LARSGESS Scheme and appoint his son as per the Scheme, within a month from receipt of a certified copy of this order. Since the applicant would be retiring on 30.11.2016 on attaining the age of superannuation, it is made clear that the appointment of his son under LARSGESS Scheme would not be rejected on the sole ground that the applicant has retired, as the delay has happened not because of the applicant's fault but because of the fault of the respondents in not taking action against his original application dated 02.02.2012. No order as to costs.

(P.K. Basu)
Member (A)

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