

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/969/2015
Date of Order : 20-08-2018

Between :

T.Naga Raju S/o Bhanu Mitra Rao,
Aged about 36 years, Occ. Unemployed,
R/o Vadlamannadusivarukandipalem,
Gudlavalleru Mandal, Krishna District.

....Applicant

AND

1. Union of India, Rep by the Secretary,
Railway Board, Sanchalan Bhavan,
New Delhi.
2. South Central Railway, Rep by
The General Manager,
Sanchalan Bhavan, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
4. The Divisional Railway Manager (Personnel),
South Central Railway, Vijayawada.

...Respondents

Counsel for the Applicant: Mr.Siva

Counsel for the Respondents : Mr.N.Srinatha Rao, SC for Rlys

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative
Tribunal's Act, 1985, for the following relief :-

Hence, it is prayed that this Hon'ble Tribunal in the interests of justice be pleased to

- (i) Call for all the relevant and connected records relating to SCR/P-HQ/563/SPO(T)/LARGESS and No. B/P.Con.563/LARGESS (2012), dated 25.05.2015 and 1006.2015 of the 3rd and 4th Respondent respectively and quash or set aside the same holding it as arbitrary, illegal, unjust without appreciating the order of this Hon'ble Tribunal passed in Original Application No.1322 of 2014 dated 12.03.2015 and therefore violative of Articles 14 and 16 of the Constitution of India;
- (ii) Consequently, direct the Respondents to declare that the Applicant has cleared the written test for being appointed under the LARGESS Scheme and issue orders of appointment on and from the date on which persons who cleared the supplementary written test held on 22.08.2014 together with all consequential, monetary and service benefit from the said date;
- (iii) Further declare that the Applicant is entitled to exemplary costs for having thrust this unwarranted *lis* on an employed person and direct the same be paid to the Applicant from the personal fund of the officer and pass such other and further order or orders as are deemed fit and proper by this Tribunal under the circumstances of the case.

2. The brief facts of the case are that the applicant's father was appointed as Khalasi and was absorbed in the Engineering Department and was transferred to the Operating Department in 1997. Applicant's father eventually promoted as Assistant Pointsman in 2009 and retired as such on 31.12.2014. He belongs to OBC category.

3. As per the Railways LARSGESS Scheme, applicant's son applied for appointment in 2011 and was subjected to suitability / written test on 19.06.2012. As the applicant could not clear the suitability test, he again appeared in the suitability test held on 22.08.2014 and could not qualify in the said test. Vide letter dated 01.10.2014 of the 4th Respondent herein, the applicant was informed that the qualifying examination was conducted strictly in accordance with the Serial Circulars. Earlier the applicant has also filed OA No.1322/2014 and the same was disposed of by order dated 12.03.2015. Further the 4th Respondent issued the impugned proceedings rejecting the applicant's case for appointment under the scheme of LARSGESS. Hence this application.

4. Respondents have filed their reply affidavit placing reliance on Sl. Circular Nos. 126/2005, dated 09.08.2005 and No.126/2006, dated 23.08.2006. It is also stated that the applicant secured only 29 marks out of 100 and as such he was not empanelled for the Recruitment scheme for the year 2011. The Respondents also submit that in the examination conducted during the years 2010 to 2012, the question paper is for 100 marks, but without negative marking. Whereas examination conducted for the first half of 2013 is for 150 marks with negative marks. Therefore the examination conducted for the unsuccessful candidates on 22.08.2014 for all the years from 2010 to first half of 2013 is for 150 marks with negative marking, in which the applicant appeared and failed.

5. Heard counsel on both sides.

6. Identical issue fell for consideration before the Hon'ble High Court of Punjab and Haryana at Chandigarh, in Kalasing and others Vs. Union of India wherein the High Court held as follows :-

“LARSGESS Scheme does not stand to the test of Articles 14 and 16 of the constitution of India and that the policy is a device evolved by the Railways to make back-door entries in public employment and brazenly militates against equality in public employment, directed the Railway authorities that before making any appointment under the offending policy, its validity and sustainability be re-visited keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment. Further, the order passed by the Hon'ble Punjab and Haryana High Court in CWP No.7714/2016 has also been affirmed by the Hon'ble Supreme Court by dismissing the SLP No.4482/2017, at the hands of respondents-Railways. Therefore, the direction given by the Hon'ble Punjab and Haryana High Court with regard to the LARSGESS Scheme is pending adjudication before the Railway Board. Thus, we deem it appropriate to dispose of this Original Application at this stage awaiting decision to be taken by the Railway Board with regard to the LARSGESS Scheme.

5. Accordingly, this Original Application is disposed of at this stage with liberty to the applicant to file a fresh Original Application if need arises after the decision to be taken by the Railway Board.

Against the judgment of the Hon'ble High Court of Punjab and Haryana an SLP was filed in Supreme Court by the Railways and the same was

dismissed.

7. Since the LARSGESS Scheme was declared as unconstitutional by the Hon'ble High Court of Punjab and Haryana and directed the Railway Authorities that before making any appointment under the offending policy, its validity and sustainability be re-visited keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment, we are of the view that the OA is not maintainable at present and is liable to be dismissed. However, after the outcome of the decision, if any, at the instance of the Railway for validating the impugned scheme, the applicant is at liberty to file fresh O.A.

5. With the above direction, the OA is dismissed. MA No.115/2016 is also disposed of as no order is necessary in view of the final disposal of the OA.

6. No order as to costs.

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| (SWARUP KUMAR MISHRA) (B.V.SUDHAKAR) | |
| JUDICIAL MEMBER | ADMINISTRATIVE MEMBER |

Dated : 20th August, 2018.

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(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

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