

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/591/2013

DATE OF ORDER: 10.07.2018

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER

1. Pawan Kumar Sharma S/o Shri Shiv Prasad Sharma, by caste Sharma, aged about 29 years, R/o Village and Post Tiwari Mohalla, Behind Tagore School, Baswa Road, Bandikui.
2. Shri Shiv Prasad Sharma S/o Bhagwan Sahai Sharma, by caste Sharma, aged about 56 years, R/o Village and Post Tiwari Mohalla, Behind Tagore School, Baswa Road, Bandikui, presently working as Points Man O/o Station Superintendent, Railway Station, Bandikui.

....Applicants

Mr. P.N. Jatti, counsel for applicants.

VERSUS

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

....Respondents

Mr. P.K. Sharma, counsel for respondents.

ORDER (oral)

Per: Suresh Kumar Monga, Judicial Member

In the instant Original Application, the applicants are claiming the benefit of Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) formulated by the Railways.

2. An identical issue has been considered and decided by this Tribunal on 23.03.2018 in O.A. No. 291/288/2012 (Rajendra

Singh & Anr. vs. Union of India & Ors.) with 68 connected OAs. The said bunch of OAs has been disposed of with the observations that after re-visitation of Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) by the Railways in terms of the directions issued by the Hon'ble Supreme Court on 08.01.2018 in SLP No. 87470/2017, if any party feels aggrieved, the matter can be re-agitated in accordance with law before the competent forum having jurisdiction over the matter.

3. It requires to be noticed here that in one of the cases, CWP No.7714/2016 – **Kala Singh and Others vs. Union of India and Ors.**, the Hon'ble High Court of Punjab and Haryana while declining the benefit of LARSGESS had observed that the said scheme prima-facie does not stand to the test of Articles 14 and 16 of the Constitution of India and the scheme is a device evolved by the Railways to make backdoor entries in public employment, which brazenly militates against equality in public employment. While dismissing the said Writ Petition on 27.04.2016, the Hon'ble High Court of Punjab and Haryana had issued a direction to the Railways that before making any appointments under the offending policy, its validity and sustainability be revisited keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment. The operative portion of the order dated 27.04.2016 is reproduced hereasunder:-

"We have heard counsel for the petitioners and are of the view that the very foundation of their claim, namely, the Safety Related Retirement Scheme, prima facie, does not stand to the test of Articles 14 and 16 of the Constitution of India. This policy is a device evolved by the Railways to make backdoor entries in public employment and brazenly militates against equality in public employment.

Since we have not called upon the Railways at this stage, suffice it would be to dismiss the writ petition with a direction to the Railway Authorities that hitherto before making any appointment under the offending policy, let its validity and sustainability be revisited keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment."

4. The order dated 27.04.2016 passed by the Hon'ble High Court of Punjab and Haryana in the case of **Kala Singh and Others** (supra) was assailed by the Railways before the Hon'ble Supreme Court in SLP No. 4482/2017 which came to be dismissed on 06.03.2017. While dismissing the said SLP, the Hon'ble Supreme Court also observed that the Railways are not debarred from moving the High Court of Punjab and Haryana for ventilating their grievances as they were not heard while passing the order dated 27.04.2016. Thus, a Review Application was filed by the Railways before the Hon'ble High Court of Punjab and Haryana and the same was dismissed on 14.07.2017. After dismissal of the Review Application, the Railway Board issued a circular dated 27.10.2017 and decided to keep the LARSGESS on hold till further orders. It was also decided to file a Special Leave Petition before the Hon'ble Supreme Court in order to assail the validity of the order passed by the Hon'ble High Court of Punjab and Haryana. Accordingly, all the appointments under the LARSGESS have been put on hold. Simultaneously, the Railways preferred SLP No. 87470/2017 before the Hon'ble Supreme Court assailing the validity of the order passed by the Hon'ble High Court of Punjab and Haryana. The said SLP has been dismissed by the Hon'ble Supreme Court on 08.01.2018 and the Hon'ble Supreme Court has declined to interfere with the order passed by the Hon'ble High Court of Punjab and Haryana. While

dismissing the said SLP, the Hon'ble Supreme Court has also issued a direction to the Railways to take a conscious decision in the matter within a period of six weeks. It has further been observed in the said order that if any party is affected by the decision taken, such party may take remedy against the same in accordance with law. The order dated 08.01.2018 passed by the Hon'ble Supreme Court is also reproduced hereasunder:-

"Heard learned counsel for the parties.

Delay condoned.

Since the direction in the impugned order is only to re-visit the Scheme in question, no interference is called for at this stage. The petitioner(s) may take a conscious decision in the matter within a period of six weeks from today.

If any party is affected by the decision taken, such party may take remedy against the same in accordance with law.

The Special Leave Petition is, accordingly, disposed of.

Pending application(s), including application for intervention, shall also stand disposed of."

5. It also requires to be noticed here that earlier this Tribunal, while relying upon the order dated 27.04.2016 passed by the Hon'ble High Court of Punjab and Haryana and the order dated 06.03.2017 passed by the Hon'ble Supreme Court in SLP No. 4482/2017, had dismissed some of the Original Applications and validity of the said orders was assailed before the Hon'ble High Court of Rajasthan at Jaipur in different D.B. Civil Writ Petitions including DB CWP No. 3847/2017. While disposing of those Writ Petitions, the Hon'ble High Court of Rajasthan had remitted back the matters to this Tribunal by referring the orders of Hon'ble High Court of Delhi and Hon'ble High Court of Gujarat wherein it was directed to decide the matter in accordance with law. Now since the Hon'ble Supreme Court has issued directions

to the Railways to take a conscious decision after re-visiting the whole Scheme and the Railways itself has put on hold the policy which has been held to be violative of Articles 14 and 16 of the Constitution of India, no relief can be granted to the applicants in the instant O.A.

6. Accordingly, the instant Original Application is disposed of with the observation that after re-visitation of Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) by the Railways in terms of the directions issued by the Hon'ble Supreme Court, if the applicants still feel aggrieved, the matter can be re-agitated in accordance with law before the competent forum having jurisdiction over the matter.

7. Ordered accordingly. No order as to costs.

(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER

Kumawat