

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA. 350/01858/2015

Date of Order: 20.9.2016

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. Akhil Kumar Biswas, son of late Ananta Kumar Biswas, worked as Trackman/SSE/ PW/MLDT, residing at Village- Kendua, Post-Bulbulchandi, P.S.-Habibpur, Dist- Malda, Pin Code- 732142.
2. Aurobindo Biswas, son of Akhil Kumar Biswas, aged about 33 years, residing at Village-Kendua, Post- Bulbulchandi, P.S. Habibpur, Dist- Malda, Pin-732142.

.....Applicants.

-versus-

1. Union of India, through the General Manager, Eastern Railway, Fairlie Place, 17, N.S. Road, Kolkata- 700001.
3. The Divisional Railway Manager, Eastern Railway, Malda, P.O. and P.S. Malda, District- Malda, Pin Code- 732142.
4. The Sr. Divisional Personnel Officer, Eastern Railway, Malda, P.O. and P.S. Malda, District- Malda, Pin- 732142.

.....Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the Respondents : Mr. MK Bandyopadhyay, Counsel

ORDER

Per Ms. Jaya Das Gupta, AM:

The applicant had approached before C.A.T. under Section 19 of AT Act,
seeking the following reliefs:

"8(a) Office order being No. E/LARSGESS-2012/Notification/MLDT/Pt-1 dated 05.11.2015 issued by the Sr. Divisional Personnel Officer, Eastern Railway, Malda is not tenable in the eye of law and as such the same should be quashed.

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(b) An order do issue directing the respondents to grant an appointment in favour of the applicant no. 2 under the "Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff".

(c) An order do issue directing the respondents authorities to allow the applicant No. 1 to retire from his post with all benefits admissible under Rule pursuant to his application dated 26.07.2012 made under "Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff".

(d) Pass such further order/orders and/or direction/directions as your Lordships may deem and proper."

2. It is the case of the applicant that the applicant no. 1, the father was working as a Trackman. The applicant No. 1 applied for his voluntary retirement under the LARSGESS scheme on 26.07.2012 and prayed for appointment of his son i.e. the applicant No. 2 herein. The applicant No. 2 was declared provisionally empanelled, but he has not been called to appear in the medical test although it has been learnt that some candidates have already been extended with the appointment. On being aggrieved, the applicants moved an original application which was disposed of on 24.08.2015 with a direction upon the Railways to consider the individual merit of the applicants and scrutinize the same and proceed further with the matter within a period of 2 months. Respondent authorities passed a speaking order dated 05.11.2015 rejecting the claim of the applicants on the ground that Staff in specified safety category post with grade pay Rs. 1800/- within the age group of 50 to 57 years and minimum 20 years of qualifying service in specified safety category post are eligible for retirement/recruitment under LARSGESS scheme and this benefit cannot be acceded to in favour of the applicants as the applicant had crossed the prescribed upper age limit of 57 years. According to the applicants the speaking order dated 05.11.2015 is not tenable in the eye of law as the railway authorities failed to ascertain that the applicants applied for the benefit of LARSGESS scheme within time and that is why after preferring the application, the applicant No. 2 was allowed to appear in the written test and declared provisionally empanelled for recruitment. Hence the OA should be allowed.

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3. Per contra, the respondents have stated in para 3(a)(iv) that the application from those who proposes to retire under the LARGESS 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 years. All conditions of appointment for the ward of such retirees such as age limit, educational qualifications etc. will be determined with references to that date.

Para 3 (a)(vi) submits that those who have completed 33 years of qualifying service and are in the age group of 55 to 57 years to 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.

4. According to the respondent authorities, Shri Akhil Kr. Biswas, Trackman applied for recruitment under the LARSGESS scheme so that his son, Shri Aurobinda Biswas i.e. applicant no. 2 will get a job, and he has crossed the age of 57 years on the cut off date. Therefore, as per the scheme as the father Shri Akhil Kr. Biswas was not eligible to come under the LARSGESS scheme the son i.e. Shri Aurobindo Biswas though he passed the written examination held on 31.07.2013 was not called for medical examination. The respondent authorities have reiterated that the applicant cannot be beneficiary under the LARSGESS scheme and therefore this OA should be dismissed.

5. From Annexure A1 (Page-14) of OA it appears that the son applied for the written examination to be considered under LARSGESS scheme for cycle 2012 (1st half and 2nd half). From Annexure A1 (Page-18) the following information are available:

- (i) The name of the employee Shri Akhil Kumar Biswas, his date of birth 10.01.1958.
 - (ii) Date of appointment 18.11.1989.
 - (iii) Date of application under LARSGESS scheme 26.07.2012.
 - (iv) Date of normal retirement 31.01.2018.
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As he has applied under LARSGESS scheme on 26.07.2012 and as the cycle of examination is 2012 his age as on cut off date is 1st July of 2012 is between 50 to 57 years.

His qualifying service as on the cut off of date is more than 20 years (provided more than 20 years spent is as Safety category personnel).

6. Annexure R-6 annexed to the Railway is a copy of Railway Board letter of RBE No. 42/2011 which is set out below :

"Sub: Safety Related Retirement Scheme covering Drivers, Gangman and other safety categories with Grade Pay of Rs. 1800/-

Ref: Board's letter of even number dated 11.09.2010 and 24.09.2010.

The demands raised by the employees' Federations, such as constitution of a lower level Assessment Committee at Divisions, processing of the retirement/recruitment cases more than once in a year, etc. under Liberalised Active Recruitment Scheme for Guaranteed Employment for Safety Staff (LARSGESS) have been under consideration of Board for some time. It has been decided that the retirement/recruitment process under the LARSGESS in respect of all safety categories of staff including Gangmen in Grade Pay of Rs. 1800/- p.m. and Drivers/Loco Pilots may be done twice in a year as per the annexed time schedule. The suitability of the wards for recruitment under the scheme may be adjudged by the Assessment Committee as follows:

- (i) Assessment Committee of 3 JAG Officers at Divisional Level to adjudge the suitability of wards for recruitment against safety category in Grade Pay of Rs. 1800/- p.m and
- (ii) Assessment Committee of 3 SAG Officers at Headquarter Level may continue to adjudge the suitability of wards of Drivers/Loco Pilot.

2. The process of retirement/recruitment may be started from July, 2011 for the current calendar year 2011.

3. The other terms and conditions of the Scheme will remain the same.

4. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

ANNEXURE

Time Schedule

(a) 1st half-January – June

- (i) Cut off date for reckoning eligibility of the 1st January employee and his ward

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- (ii) Last date for receiving the applications : 31st January
- (iii) Scrutinizing the applications : 1st February to 28th/29th Feb
- (iv) Last date of withdrawal of application : 28th/29th February
- (v) Conducting of Physical Test/Written Test etc. : 1st March to 30th March
- (vi) 2nd chance to failure in written test in First chance giving a gap of 20-30 Days. : Upto 31st May
- (vii) Medical exam acceptance of retirement /: 1st to 30th June
Joining the job by the wards

(b) 2nd half- July- December

- (i) Cut off date for reckoning eligibility of the employee and his ward : 1st July
- (ii) Last date for receiving the applications : 31st July
- (iii) Scrutinizing the applications : 1st to 31st August
- (iv) Last date for withdrawal of application : 31st August
- (v) Conducting of Physical Test/Written Test etc. : 1st Sept to 31st October
- (vi) 2nd chance to failure in written test in first chance giving a gap of 20-30 days : Upto 30th November
- (vii) Medical exam acceptance of retirement/ : 1st to 31st December
Joining the job by the wards

Index No. 1031: Safety Related Retirement Scheme covering Drivers, Gangman and other safety categories with Grade Pay of Rs. 1800/-."

As the applicant had applied on 26.07.2012 therefore, his cut of date for reckoning eligibility will be 1st July as per the time schedule given in the above annexure.

7. We also find details in respect of eligible category, eligibility criteria, age group, qualifying service, cut of date of submission of application etc from Eastern Railway Board No. E/Ruling/HWH/LARSGESS/2011, Howrah, dated, the 13th Jan 2011, RBE No. 131/2010. The relevant portions are set out below:

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"However details in respect of Eligible category, Eligibility Criteria, Age group, Qualifying service, cut off date for submission of application (in duplicate) and withdrawal of application are appended below.

Eligible Categories:

1. Drivers (Except Shunters), Gangman/Trackman.

2. A) Operation Deptt.

3. (i) Pointsman(ii) Shuntman (iii) Leverman (iv) Geteman

(v) Traffic Porter.

B) Civil Engineering Deptt:-

i) Gateman (ii) Trolleyman (iii) Keyman.

C) Signal & Telecommunication Deptt.:- Khalasi/Kh. Helper

Redesignated as Helper Gr. II & Gr. I attached to ESM/MSM/TCM/WTM.

D) Mechanical & Electrical Deptt:-

i) Khalasi/Khalasi Helper redesignated as Helper Gr. II and Gr. I assisting Loco Fitter/C&W Fitter/Fitter in Diesel Sheds (Open Line & Workshops) and Train Lighting & AC Fitters (Open Line & Workshops)
(ii) Crane Jamadar & Crane Khalasi

Qualifying service

20 years for all above (except Drivers)
33 years for Driver

Age group

50-57 years for all above
55-57 years for Drivers

Eligibility

As per DR recruitment Norms from Open Market

Recruitment

Lowest Recruitment Grade GP-1800/-"

8. Therefore, as we find that the applicant was a Trackman who has a qualifying service of 22 years and 8 months and belongs to the age group of 50 to 57 years, he is an eligible candidate for applying under the LARSGESS scheme and it cannot be said at all that he had applied after he attained 57 years



of age. Therefore, the impugned order dated 05.11.2015 which is set out below is quashed and set aside.

"Sub: Retirement/recruitment under LARSGESS.
Ref: Hon'ble CAT/Calcutta's order in OA No. 350/01172/2015.

In pursuance to the judgment passed by Hon'ble CAT/Calcutta in the OA No. referred above, your service record has been scrutinized.

Staff in specified safety category post with grade pay Rs. 1800/- within the age group 50 to 57 years and minimum 20 years of qualifying service in specified safety category post eligible for retirement/recruitment under LARSGESS scheme.

Your date of birth is recorded in service record as 10.01.1958. As you have already passed the prescribed upper age limit of 57 years, your voluntary retirement as well as appointment of your ward under the scheme cannot be acceded to."

9. The respondent authorities are directed to consider the eligibility of the applicant's father once again in terms of our findings as given above and take necessary action within a period of 3 months from the date of receipt of a copy of this order, of accepting the voluntarily retirement of the applicant simultaneously with the appointment of his son Shri Aurobindo Biswas, as per extant rules of the Railways regarding the LARSGESS scheme.

10. OA is accordingly disposed of. No costs.

(Jaya Das Gupta)
Member (A)

(Vishnu Chandra Gupta)
Member (J)

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