

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.506/2015

Date of Decision: 01.11.2018.

CORAM:HON'BLE DR. BHAGWAN SAHAI, MEMBER (A)
HON'BLE SHRI R.N. SINGH, MEMBER (J)

Mr. Keru Ganapat Mahasane
Village Fhangulgaon, Post. Talegaon,
Taluka Nasik.

... ***Applicant***

(Advocate Shri A.D. Nimbalkar)

VERSUS

1. Union of India,
Through the Divisional Railway General Manager,
Central Railway, Division Office,
Personal Branch, CSTM, Mumbai 400 001.
2. The General Manager,
Central Railway, Division Office,
Personal Branch, CSTM, Mumbai 400 001.
3. The Divisional Railway Manager,
Central Railway, Division Office,
Personal Branch, CSTM, Mumbai 400 001.
4. The Office Superintendent,
Department of Electrical Engineering (TD Office),
Central Railway, Kalyan, Dist. Thane. ... ***Respondents***

(Advocate Shri V.D. Vadhavkar)

ORDER (Oral)

Per : Shri R.N. Singh, Member (J)

Heard the learned counsels for the parties.

2. By way of present OA, the applicant has sought the following reliefs:

“8.a) Direct the respondents to include the applicant's name under LARSGESS Scheme and as per LARSGESS Scheme retired the applicant under voluntary retirement from the employment of the Respondent No.1.

8.b) Direct to the respondent to provide to applicant's ward/Son Mr. Rajaram Keru Mhasne employment in the Respondent No.1 in place of the applicant.

8.c) Any other and further relief may be granted in the interest of justice and equity.”

3. Learned counsel for the respondents submits that the issue involved in the present OA has already been decided in a series of cases including by this Bench of the Tribunal vide order/judgment **dated 17.04.2018 in OA No.211/00084/2014 in Shri Suresh Daulat Tayade Vs. Union of India & Anr.** and also places on record a copy of that order. The operative portion of the order/judgment dated 17.04.2018 (supra) reads as under:-

“...3. In this OA, the applicant has grievance regarding the impugned order dated 13.02.2014 by which his claim for appointment of his ward in Group 'D' under “Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Scheme” (for short “LARSGESS”) has been rejected by the respondents on the ground that the applicant has rendered only 17 years 6 moths and one day service only on cut off date is 01.07.2011. In this OA, the following reliefs are, therefore, sought:-

“8.1. Call for the records of the case from the respondents.

8.2. *Quash and set aside the order of the respondent No.2 dated 13.02.14 (Annx. A.1).*

8.3. *Direct the respondents to accept voluntary retirement of applicant and simultaneously appoint ward of the applicant namely Satish under LARSGESS Scheme w.e.f. 01.07.2011, with all consequential benefits.*

8.4. *Any other relief deemed fit and proper in the circumstances of the case may kindly be granted.*

8.5. *Allow the application with cost.”*

4. *So far as claim for appointment under LARSGESS Scheme is concerned, recently this Tribunal vide order dated 23.06.2017 in OA No.210/00208/2017, Satish Yuvraj Patil Vs. Union of India and others involving Western Railway has declared LARSGESS Scheme as unconstitutional and consequently, there cannot be any claim for consideration under the said Scheme. This decision is based on the previous decision rendered by Chandigarh Bench of CAT by which the claim for appointment under LARSGESS Scheme was dismissed on the ground that scheme itself is unconstitutional. This was challenged in Writ Petition No.7714/2016 before the Hon'ble High Court of Punjab and Haryana, which was dismissed vide order dated 27.04.2016 in the following words:-*

“We have heard learned 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 back-door 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 this writ petition with a direction to the Railway Authorities that hither to 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.”

5. Thus, a direction was issued to the Railways to revisit the Scheme since it is constitutionally invalid. It is also directed that before making further appointments under LARSGESS Scheme, the Railways needs to justify the constitutional validity of the scheme.

6. The Railway Board has challenged the aforesaid decision of Hon'ble High Court of Punjab and Haryana in SLP before the Hon'ble Supreme Court and vide order dated 06.03.2017, it is held that there was no ground to interfere with the impugned order of the Hon'ble High Court and dismissed the SLP by passing the following order:-

“Heard learned Solicitor General appearing for the petitioners.

Delay condoned.

We do not find any ground to interfere with the impugned order of the High Court.

The special leave petition is, accordingly, dismissed. However, the petitioners are not debarred from moving the High Court for ventilating their grievances as the petitioners were not heard earlier.”

7. In pursuance of the aforesaid order and grant of liberty, the Railways filed Review Application No.330/2017 in Civil Writ Petition No.7714/2016 before the Hon'ble High Court of Punjab and Haryana. This Review Petition was also dismissed vide order dated 14.07.2017 in the following words:-

“This application has been moved by Railways seeking recall / review of the court order dated 27.04.2016 wherein this Court made some prima facie adverse comments on the validity, legality and propriety of “Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff” (LARSGESS), 2010” and directed the Railway authorities to re-visit the said policy keeping in view the principles of equal opportunity and elimination of monopoly in public employment before making further appointments thereunder.

It is pertinent to mention that under the said policy, Railway employees employed as

Safety Staff are entitled to seek voluntary retirement and seek appointment of their wards as per their eligibility. This Court found that such a policy was prima facie violative of Article 14 and 16 of the Constitution of India. Hence, the necessary directions were issued.

We have heard learned senior counsel for the respondents at a considerable length. It is true that no notice was issued and the Railway Authorities were not heard while making prima facie observations but fact of the matter is that the only direction issued by this Court was to re-visit the offending policy keeping in view the principles of equal opportunity on public employment before further appointments are made. Such a direction was necessitated keeping in view the mandate of the Constitution Bench in Secretary, State of Karnataka & Ors. Vs. Uma Devi (2006) 4 SCC 1.

No case to review / recall the order dated 27.04.2016 is made out.

Dismissed.”

8. It is, thus, obvious that the decision holding the LARSGESS Scheme is ultra-virus was confirmed with liberty to the Railways to revisit the said scheme and to take appropriate decision thereon. In view of above settled legal position, the present OA cannot proceed further to decide it on merit at this stage until the LARSGESS Scheme is revisited by Railways.

9. The OA, therefore, stands disposed of, however, with liberty to the applicant to approach the appropriate forum on revisiting the LARSGESS Scheme by the Railways for ventilation of his grievances.

10. The parties are, however, directed to bear their respective costs of this OA.

11. Registry is directed to forward certified copy of this order to both the parties at the earliest for taking appropriate steps in the matter”

4. Accordingly, this OA is also disposed of with liberty to the present applicant as given in the order/judgment dated 17.04.2018. No order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

dm.