

(RESERVED ON 06.03.2019)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This is the 14th day of **March, 2019**.

ORIGINAL APPLICATION NO. 330/00577/2014

**HON'BLE MS AJANTA DAYALAN, MEMBER (A)
HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)**

1. Smt. Afsar Jhan , W/o Late Mazahar Khan
2. Zunaid Khan, aged about 26 years, Son of Mazahar Khan
Both resident of 162, Malookpur, Taliya, Near Masjid Poorbiyan,
Bareilly.Applicants

VERSUS

1. Union of India through General Manager, Eastern Railway,
Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Bareilly.
3. Senior Divisional Railway Manager, North Eastern Railway, Bareilly.
.....Respondents

Advocate for the Applicants : Shri B.K. Vishwakarma

Advocate for the Respondents : Shri L.M. Singh

O R D E R

(Delivered by Hon'ble Ms. Ajanta Dayalan, Member-A)

The present original application is directed against the order dated 16.11.2012 (Annexure A-1 to OA) rejecting the claim for appointment of applicant no. 2 in lieu of voluntary retirement taken by his father Late Mazahar Khan, who was the applicant no. 1 and now has been substituted by Smt. Afsar Jhan.

2. The facts of the case are that the husband of the applicant no. 1 joined the railway service on 21.02.1973. He was ultimately promoted to the post of Loco Pilot and he was to retire in February 2013. But due to ill health, the husband of the applicant no. 1 sought voluntary retirement with condition to provide employment to his son that is the applicant no. 2

vide his application dated 29.07.2010 (Annexure A-3 to OA). On finding no response to his request, he made another representation dated 30.09.2010 (Annexure A-4 to OA). It is stated that in terms of Railway Board Circular dated 01.09.2010 (Annexure A-5 to OA), Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) Scheme was made applicable to Drivers as well. One of the conditions was that retirement of the employee would be considered only when the dependent is found eligible for appointment from all angles and the retirement of the employee and appointment of his dependent should be done simultaneously. Learned counsel for the applicants stated that despite this statutory condition the claim of the applicants was rejected vide impugned order dated 16.11.2012. This is despite the fact that the father of the applicant no. 2 was retired prematurely vide order dated 28.02.2011, but no employment to the applicant no. 2 has been granted as yet. Learned counsel for the applicants pleaded that this amounts to discrimination as in many other cases similarly placed, dependent of the employee have been appointed to various posts. He also stated that the impugned order is in violation of Railway Boards Circular dated 01.09.2010 as well as 23.11.2012 (Annexure 5A to the OA).

3. The respondents have contested the claim of the applicants. They have stated that the father of the applicant no. 2 Late Mazahar Khan while working as Loco Pilot submitted an application in 2010 for premature retirement under LARSGESS Scheme with appointment of his son. The applicant no. 2 was however, not found suitable as per the norms and scheme and hence, his application was rejected. Later, the father of the applicant no. 2 submitted another representation dated 30.09.2010 for voluntary retirement on the basis of his ill health which was considered and he was granted voluntary retirement with effect from 28.02.2011 as

per rules. Learned counsel for the respondents further pleaded that the voluntary retirement application dated 30.09.2010 was unconditional and because of personal reasons of Late Mazahar Khan and was not linked to LARSGESS Scheme. It was this application for voluntary retirement that was accepted by the administration and father of the applicant was retired on 28.02.2011. His earlier application under LARSGESS Scheme was already rejected by the administration. Learned counsel for the respondents further pleaded that the father of the applicant no. 2 was not covered under LARSGESS Scheme as this scheme was applicable subject to fulfillment of certain conditions, as is clear from the Railway Board's order dated 01.09.2010 being relied upon by the learned counsel for the applicants itself. He argued that this order itself states clearly that the eligible service was to be of 33 years and the employee was to be in the age group of 55 to 57 years, which condition remains unchanged. Accordingly, the learned counsel for the respondents concluded that the impugned order has been passed correctly and gives clear reasons for rejection of the claim of the applicants.

4. We have heard the learned counsels for both the parties and have gone through the pleadings. We have also given our thoughtful consideration to the entire matter.

5. We note that it is a fact that the father of the applicant no. 2 gave representation dated 29.07.2010 (Annexure A-3). In this representation, reference of Railway Board's Scheme of 2004 and 21.04.2010 are referred to and he has also sought employment for his son simultaneously. However, two months later on 30.09.2010 (Annexure A-4), the father of the applicant submitted another application. This does not refer to any Railway Board Circular or LARSGESS Scheme at all. This does not talk of

seeking employment for his dependent / son. It clearly states that due to his family circumstances, he is unable to continue in service. In this representation, it is further stated that he be voluntarily retired and this letter be treated as three months notice for retirement. This letter, therefore, basically annuls the claim of Late Mazahar Khan for grant of appointment of his son, who is the applicant no. 2 as this letter refers his notice for voluntary retirement with a period of three months and he was retired from service in February 2011. Hence, no claim can be pressed for appointment of his son at all. Rather, he of his own freewill, gave up that claim and sought to be voluntarily retired with three months notice. We also find that para 3 of Railway Board's order dated 01.09.2010 being relied upon by the applicants itself clearly states that the eligible service is to be of 33 years and age group of employee is to be 55-57 years and vide impugned order dated 16.11.2012, it was made clear that these conditions are not fulfilled by the deceased applicant Late Mazahar Khan. This is because his date of birth was 21.02.1953 and as such, he had already reached the age of 57 years in February 2010. Even the first representation made by the deceased applicant Late Mazahar Khan seeking employment under LARSGESS Scheme is of July 2010 that is after the deceased applicant reached the age of 57 years and hence, he was not eligible on this count.

6. In view of the above facts, we find that there is no justification in the claim of the applicants. The OA is, therefore, dismissed being devoid of merits. No order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A