

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 44 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

K. Gopalu, aged about 57 years, S/o Late Appauyya, at present working as a Gate Keeper under Senior Section Engineer (P.Way)/E.Co.Rly./ Berhampur, permanent resident of Vill.- Kansi, Via – Brahmapur, Dist. – Ganjam, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, At/PO/PS – Jatni, Dist. – Khurda.
3. Asst. Divisional Engineer, East Coast Railway, Berhampur, At./PO – Berhampur, Dist. – Ganjam.
4. Senior Section Engineer (P.Way), East Coast Railway, Berhampur, At/PO-Berhampur, Dist. – Ganjam.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 29.1.2019

Order on : 31.1.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OA has been filed with the prayer for following reliefs:-

"To direct the respondents to dispose of the option/application dtd. 25.7.2014 of the applicant as per RBE No.72/2013 and provide engagement to his ward in Railway under LARSGESS."

2. The applicant was initially appointed under the respondent-railway on 1.9.1979 as a Box carrier in the operating department and then transferred as Gangman, which is a safety category of post. In pursuance to the Liberalized Active Retirement Scheme for Guaranteed Employment for Safety (in short LARSGESS) related persons, the respondent no. 2 issued a notification dated 10.7.2014 (Annexure-A/3), inviting applications and the applicant, in response, applied through proper channel on 25.7.2014 (Annexure-A/4). The applicant is aggrieved as his application dated 25.7.2014 is pending without any order for allowing the benefit of the LARSGESS to him.

3. In reply, the respondents filed the Counter stating that Hon'ble High Court of Punjab and Haryana, vide order dated 27.4.2016, has held the LARSGESS scheme does not stand the test of Article 14 and 16 of the Constitution of India and directed the Railway Board to revisit the scheme. It is stated that the present OA is not maintainable in view of the order of the Principal Bench and Hon'ble High Court of Punjab and Haryana, vide judgments at Annexure-R/1 and R/2 respectively. It is further stated that in response to the advertisement, the applicant submitted the application without enclosing attested copies of the certificate in support of the age, qualification and caste etc. of his ward suggested by the applicant for appointment under LARSGESS. It is also stated that since enclosing the attested copy of the certificates is mandatory as per the notification, his application was rejected and the same was returned to the office of the respondent no. 4 on 14.8.2014, which has been received by the applicant.

4. The applicant has filed Rejoinder on 17.7.2017 stating that no order of the Railway Board in pursuance to the judgment at Annexure-R/1 and R/2 has been enclosed by the respondents. Regarding non-enclosure of the attested copy of the certificates, it was stated that the authorities did not bother to point out the deficiencies on 25.7.2014 so that the applicant would have corrected the deficiencies before the last date of 5.8.2014. Till such time the order is issued by the Railway Board regarding the Scheme, the applicants would have right to claim the benefit of the said scheme.

5. The matter was heard on 29.1.2019. Mr. NR Routray, learned counsel for the applicant, argued that the applicant's application was rejected since attested copy of the certificates was not attached, for which, no opportunity was given to the applicant for rectification of the defects. Mr. T. Rath, learned counsel for the respondents submitted that vide order dated 22.9.2018 of the Railway Board, the LARSGESS scheme was terminated w.e.f. 27.10.2017 and no appointment under the scheme should be made except in cases where the employee concerned had retired under the Scheme before 27.10.2017 and their wards could not be appointed because of the letter of the Railway Board putting the scheme under hold. Learned counsel for the respondents also submitted the copy of the order dated 26.9.2018 of the Railway Board in this regard. Learned counsel for the respondents also submitted that after declaration of the Scheme unconstitutional, no case can be considered under LARSGESS.

6. We have considered the submissions of both the parties and also perused the circular dated 26.9.2018 of the Railway Board, which states as under:-

"No. E(P&A)I-2015/RT -
43

Dated: 26.09.2018

The General Managers,
All Indian Railways.

(Attn: CPOs)

Sub: Termination of the LARSGESS Scheme in view of directions of Hon'ble High Court of Punjab and Haryana and the orders of Hon'ble Supreme Court of India in SLP (C) No. 508/2018 dated 08.01.2018.

Ref: Board's letter of even number dated 27.10.2017.

The Hon'ble Punjab and Haryana High Court in its judgement dated 27.04.16 in CWP No. 7714 of 2016 had held that the Safety Related Retirement Scheme 2004 (later renamed as the Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff {LARSGESS}, 201 0) "prima facie does not stand to the test of Articles 14 and 16 of the Constitution of India." It had directed "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." Thereafter, in its judgement dated 14.07.17 (Review Petition RA-CW-330-2017 in CWP No. 7714 of 2016), the Hon'ble High Court reiterated its earlier direction and stated "such a direction was necessitated keeping in view the mandate of the Constitution Bench in **State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1.**"

1.1 . In the Appeal against the judgement of the Hon'ble High Court of Punjab & Haryana, the Hon'ble Supreme Court of India, while disposing of the SLP (C) No. 508/2018 vide its order dt. 8.01.18, declined to interfere with the directions of the High Court.

2. In compliance with the above directions, Ministry of Railways have revisited the scheme duly obtaining legal opinion and consulted Ministry of Law & Justice. Accordingly, it has been decided to **terminate the LARSGESS Scheme w.e.f. 27.10.2017 i.e. the date from which it was put on hold. No further appointments should be made under the Scheme except** in cases where employees have already retired under the LARSGESS Scheme before 27.10.17 (but not normally superannuated) and their wards could not be appointed due to the Scheme having been put on hold in terms of Board's letter dated 27.10.17 though they had successfully completed the entire process and were found medically fit. All such appointments should be made with the approval of the competent authority."

7. It is also noted that vide the circular dated 28.9.2018 (RBE 151/2018), it is clarified as under:-

".....**Sub: LARSGESS Scheme.**

Ref: (1) Board's letter of even number dated 27.10.2017

(2) Board's letter of even number dated 26.09.2018

In supersession to Railway Board's letter No. E(P&A)I-2015/RT-43 dated 26.09.2018, it is stated that while the LARSGESS Scheme continues to be on hold with effect from 27.10.2017 on account of various court cases, to impart natural justice to the staff who have already retired under LARSGESS scheme before 27.10.2017 (but not naturally superannuated) and appointment of whose wards was not made due to various formalities, appointment of such of the wards/candidates can be made with the approval of the competent authority."

8. From the circulars of the Railway Board as stated above, it is clear that the Railway Board has decided not to consider any appointment under the scheme

except those cases where the employee has already retired under LARSGESS before 27.10.2017 (but not naturally superannuated). Regarding submission of Mr. Rath about constitutional validity of the scheme, as per the judgment dated 27.4.2016 of Hon'ble High Court of Punjab and Haryana in the case of Kala Singh and others vs. Union of India and others, it is held as under:-

"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 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."

9. It is noted that vide order dated 23.12.2016 of the Principal Bench of the Tribunal (copy enclosed at Annexure to the Counter filed by the respondents), the OAs were disposed of in terms of the order dated 27.4.2016 of Hon'ble High Court of Punjab and Haryana in the case of Kala Singh and others vs. Union of India and others. Since the scheme is to be revisited by the Railway Board, which has issued the circulars RBE No. 150/2018 and RBE No. 151/2018, some cases under the Scheme can be considered as laid down by the Railway Board.

10. In this OA, the application submitted by the applicant under LARSGESS was rejected by the respondents due to non-submission of attested copy of the certificates and the rejection order was sent to the applicant through the Respondent no. 4 as stated in para 4 of the Counter filed by the respondents. This contention has not been denied by the applicant in the Rejoinder. Moreover, there is nothing on record to show that the applicant had retired under LARSGESS and not under normal superannuation before 27.10.2017, the cut off date specified by the Railway Board in the circulars referred at para 6 and 7 of this order. Hence, we are of the view that the applicant has failed to furnish adequate justifications to call for any interference in the matter. The OA is accordingly dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath