

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 591 OF 2016

Date Of Decision:- 21st August, 2018.

**CORAM:HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).
HON'BLE SHRI. R. N. SINGH, MEMBER (J).**

Kasamali Rahamat Ali

Residing at Aga Khan Bada,
Behind Mutton Market,
Bhusawal, Dist Jalgaon 425201.
Working at Tracksman Under
Senior Section Engineer (P.Way)
Yard, Central Railway,
Bhusawal Division, Bhusawal.

....Applicant

(Applicant by Advocate Shri. R.K. Singh)

Versus

1. Union of India

Through the General Manager
Central Railway, Headquarter,
CST, Mumbai 400001.

2. Chief Section Engineer (P.Way)

Yard, Central Railway,
Bhusawal Division, Bhusawal 425201.

3. Division Railway Manager (P)

Central Railway,
Bhusawal Division, Bhusawal 425201.

4. Chief Personal Officer

Central Railway, Headquarter,
CSTM, Mumbai 400001.

...Respondents

(Respondents by Advocate Shri. V.D. Vadhavkar)

Reserved On : 13.08.2018.

Pronounced on: 21.08.2018.

ORDER**Per : R.Vijaykumar, Member (A)**

This application was filed on 04.02.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

*"a) This Hon'ble CAT Bench be pleased to set aside the letter dt. 21.02.2004 passed by the Divisional Railway Manager, Bhusawal and be direct to the respondents to allow the Application in LARSGESS Scheme and issue the appointment letter in favour of applicant's son in the interest of justice.
b) Cost of this original application be provided for.
c) Any other and further relief, order as this Hon'ble Tribunal may deem fit and proper in the interest of justice."*

2. The applicant made a claim for appointment of his first son from his second marriage under the LARSGESS Scheme on 03.03.2015 based on his service as Trackman under the SSE, Central Railway, claiming that he had completed 28 years of service as Gangman in Group-D Category with Grade Pay of Rs. 1800/- presently. The

applicant had married for the first time and had three children from that marriage and then for some reasons that he has set out in his application, married again and had two children from his second marriage. The claim for LARSGESS was made with reference to the second son who, it is noted, is stated to be 28 years old and is the same age as that of the first son of the first marriage. The respondents have denied his application on the grounds that he had not taken permission from the administration for the second marriage which he now claims is in accordance with the marriage provisions available under the Mohameddan Law to which he adheres.

3. When the case was called today for admission, the learned counsels for the parties were heard and the case records have been carefully perused.

4. On the claims for grant of LARSGESS, we have recently decided some cases including **OA No.2084/2014 of Suresh**

Daulat Tayade Vs. Union of India decided on

14.04.2018 by following the previous decision of the co-ordinate Bench of this Tribunal at Chandigarh which had held that the scheme itself was unconstitutional. The decision dated 14.07.2018 in OA No.7714/2016 of the Chandigarh Bench had been challenged in the Hon'ble High Court of Punjab and Haryana, which upheld the orders of the Tribunal. The respondents then filed an SLP before the Apex Court which upheld the decision of the High Court and dismissed the SLP giving liberty to the petitioners-Railways to ask for review from the concerned High Court. The Review Application No.330/2017 in WP(C) No.7714/2016 was considered by the Hon'ble High Court and dismissed by Orders dated 14.07.2017 with the following observations.

"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."

5. In view of the above directions and the liberty granted to the Railway to re-visit the Scheme, the legal position is settled and the present OA cannot proceed further to decide the matter on merits unless the Scheme itself is re-visited and again promulgated in a form that is not *ultra vires* of the Constitution.

6. In these circumstances, the OA is disposed of, granting liberty to the applicant to approach the appropriate forum in the Railways for re-visiting the LARSGESS Scheme and to consider his grievances. There shall be no order as to costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)