

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 3 DAY OF JUNE, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA//310/00072/2017

P. Sadashivam
Ex. Sr. Trackman
Tirupattur, Salem Division
Southern Railway.

...Applicant

-versus-

1. Union of India rep., by
The General Manager
Southern Railway
Park Town, Chennai 600 003.
2. The Divisional Personnel Officer
Salem Division
Southern Railway, Salem.

...Respondents

By Advocates:

M/s Ratio Legis, for the applicant.

Ms. R. Sathyabama, for the respondents.

ORDER

(Pronounced by Hon'ble Mr. T Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"To call for the records related to the impugned order No. SA/P 353/OA 1164/2013 dated 28.09.2016 and to quash the same and further to direct the respondents to consider applicant's son for compassionate appointment in terms of the existing mandatory provisions under medical incapacitation or under LARSGES Scheme and to pass such other order/orders"

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant was regularly appointed as a Trackman in the year 1989 and further promoted as Keyman in the year 2012. The applicant has submitted a requisition for voluntary retirement under Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) with consequential appointment to his son S. Velumani. On subjecting the applicant's son to the medical examination, he was declared as unfit vide letter no. SA/P.136/Co-ord/LARSGESS/2011 dated 18.04.2012 with an advice that "in case the candidates feel that there is a possible error of judgment in the decision of the first Railway Medical Authority who examined them, they may seek re-medical examination to CMS/SA through DPO/SA (the 3rd respondent) on the support of a detailed medical certificate issued by a Registered Medical Practitioner". Accordingly applicant's son obtained a certificate from Dr. T. Panneerselam, Eye Specialist & Civil Surgeon in the Government M.K.M.C.

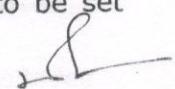
Hospital, Salem who on examination declared applicant's son was fit in BEE ONE to perform work in service/job and thereby a requisition was submitted to the 3rd respondent within the stipulated period.

3. The applicant's son was subjected to re-medical examination contrary to the mandatory rules and again declared medically unfit through the impugned order dated 28.06.2012 received on 02.09.2012 for being considered under appointment under LARSGESS and thereby the OA No. 310/01164/2013 was preferred and since by the time a final decision was passed in the OA the 1st applicant has retired. This Tribunal was pleased to restrict the relief to the applicant and as such directed the applicant by an order dated 10.06.2016 to represent for Re-Medical Examination in terms of the existing mandatory provisions. As against the representation dated 19.08.2016 the impugned order dated 28.09.2016 is made rejecting his representation and hence this OA.

4. The applicant has challenged the impugned order on the following among other grounds:

a. The denial of appointment on compassionate ground under LARSGESS to the son of the applicant on subjecting the applicant's son for Re-medical examination before a Medical Board is contrary to the statutory provisions and an act coupled with colourable exercise of authority which is non est in law.

b. The applicant had all the necessary qualification to be considered under the LARSGESS and hence the rejection through the impugned order stating that his son is not medically fit to BEE ONE is unjust and hence liable to be set aside.



c. The rejection through the impugned orders claiming that the son of the applicant is not fit in BEE ONE and fit only in CEE ONE without further subjecting the applicant's son for Re-medical examination before a Medical Board is unsustainable in law.

d. Para 181 of Indian Railway Establishment Manual declares that Chowkidar is a post coming under the same group consisting of Trolleymen, Gatekeeper, and Chowkidars, and the applicant's son was fit in CEE ONE and the medical classification specified for Chowkidar is CEE ONE, impugned denial of appointment to applicant's son on the plea that he was fit only in CEE ONE is contrary to the said mandatory provision and as such untenable in law and the impugned orders are liable to be quashed.

e. Annexure IV to para 520 of the Indian Railways Medical Manual Volume I spelt out that the lowest post in the Engineering Department requires only CEE TWO and they can be posted as Jamadar Peon, Lifters, Daftaries, Sweepers, Malis, Office Chowkidars and the applicant's son declared fit in CEE ONE to be posted in the above named posts in Engineering Department the impugned denial of appointment on the plea that he was not fit in BEE ONE but fit only in CEE ONE is nothing but miscarriage of justice and thus liable to be quashed.

f. The respondents have directed the applicant's son to approach any registered private medical practitioner and to get a detailed medical certificate with a specific certification. Therefore the respondents are estopped from rejecting the candidature of the applicant's son since the precondition was satisfied.

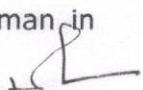
g. The impugned rejection on the pretext that appointment under



LARSGESS shall be restricted to the serving employees is against the principles of Good Conscience, Equity and fair-play and hence impermissible in law.

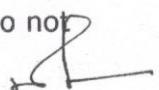
5. Per contra, the respondents in their reply have stated that the appointments on compassionate grounds are made to the dependants of Railway Servants who die in harness while in service or medically incapacitated before retirement. It is submitted that the applicant was not medically de-categorised/incapacitated. While working as Keyman he has applied for voluntary retirement and appointment to his son under Liberalised Active Retirement Scheme for the Guaranteed Employment for Safety Staff (LARSGESS). The applicant has mixed the compassionate ground appointment scheme and LARSGESS. The scheme of compassionate appointment applies to the case of medical unfitness of the employee in all medical categories and to the case of the death of railway employee while in service if he is the sole bread winner of the family. The applicant was not medically de-categorised or made unfit but retired on superannuation on 31.05.2015. Hence the scheme of compassionate appointment is not applicable to the case of the applicant.

6. It is further submitted that as per the policy the applicant's son Shri. S. Velumani was called for the written test. He did not qualify in the first examination conducted on 19.11.2011. Hence he was given second chance of written examination on 31.12.2011 in which he came out successful. He was sent for mandatory medical examination. As per Railway Board's instructions, as the employee seeking the benefit under LARSGESS was working as Keyman, his son can be considered only for the post of Trackman with Grade Pay of Rs. 1800, which is the lowest recruitment grade for the category of Keyman.



Engineering Department. The medical fitness required for the post of Trackman is BEE ONE. In the medical examination, he was found fit only in CEE ONE and below with glasses. As he was not fit in BEE ONE medical classification he could not be considered for appointment to the post of Trackman and his request for voluntary retirement under LARSGESS and also appointment to his son as Trackman was rejected and advised by letter No. SA/P136/Co.ord/LARSGESS/2011 dated 18.04.2012.

7. In pursuance of the directions of this Tribunal in OA No. 1164/2013 dated 10.06.2016, the applicant's representation dated 19.08.2016 was examined in detail and a detailed Annexure A3 disposal dated 28.09.2016 was issued by the 2nd respondent. It is submitted that the applicant's son was given chance for re-medical examination as per the provisions in Para 522(1)(i) of Indian Railway Medical Manual-Vol.I and was examined by Senior Divisional Medical Officer, Salem. Ophthalmologist/Railway Hospital/Perambur has opined that the candidate has compound Myopic Astigmatism in both eyes. Hence the Chief Medical Superintendent, Southern Railway, Salem has declared Shri. S. Velumani was unfit in "BEE ONE" Medical Classification. Since the applicant's son did not qualify in the medical examination for BEE ONE category the voluntary retirement of the applicant/appointment of his son could not be considered. The scheme was not made applicable to all categories of railway employees but was limited only to safety categories, that too, only to the specified post in safety categories where their duties involve hard manual labour and with ageing process. Further the scheme is not to offer employment to unemployed wards of Railway Employees and it is also not

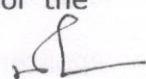


intended for granting compassionate appointment to the wards of the Railway employees to mitigate their hardship. Hence the respondents pray for the dismissal of the OA.

8. Heard the learned counsel for the parties and perused the pleadings and documents on record.

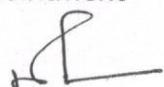
9. Admittedly based on the instructions contained in Railway Board's letters No. E(P&A)I-2010/RT-2 dt. 11.09.2010 and 29.03.2011, notification No. SA/P.136/Co.Ord/LARGESSION/2011 dated 15.06.2011 was issued calling applications for voluntary retirement under LARSGESS from the eligible employees of Salem Division and the applicant has applied for the same. As per the scheme the employment for the wards is admissible in the lowest recruitment grade of the respective category from which the employee seeks retirement depending upon the ward's eligibility and suitability but not in any other category. Further, the conditions of eligibility in the case of ward, being considered for appointment would be the same as prescribed for direct recruitment from the open market. The request of the employee for retirement under this scheme would be considered only if the ward is considered suitable for appointment in all respects, including medical fitness. The scheme also envisages that the retirement of the employee be considered only if the ward is found suitable in all respects.

10. The applicant submitted application for voluntary retirement under the LARSGESS asking for appointment to his son Shri. S. Velumani. As per Railway Board's instructions, as the employee seeking the benefit under LARSGESS was working as Keyman, his son can be considered only for the



post of Trackman in Grade Pay Rs. 1800, which is the lowest recruitment grade for the category of Keyman. The Medical fitness required for the post of Trackman is BEE ONE. In the medical examination Shri. S. Velumani was found fit only in CEE ONE and below with glasses. As he was not fit in BEE ONE medical examination he could not be considered for appointment to the post of Trackman and his request for voluntary retirement under LARSGESS and also appointment to applicant's son as Trackman was rejected. On submission of the certificate from a registered medical practitioner, Shri. S. Velumani was sent for re-medical examination and he was found unfit i.e. he did not qualify the medical standards required for "BEE ONE" classification during re-medical examination. According to the respondents there is no provision for further re-examination of Shri. S. Velumani once again. Hence the applicant's son was not considered for appointment.

11. Further the employment under the LARSGESS would be guaranteed only to those found eligible / suitable and finally selected as per the procedure. As the applicant had retired from service on superannuation w.e.f. 31.05.2015 the request of the applicant cannot be acceded to as the scheme of LARSGESS is only for serving employees. From the facts of the case it is clear that the respondents had not granted the request of the applicant to be considered for Voluntary Retirement and that as per Para 2 of Board's Letter dt. 26.09.2018 the Scheme has now been terminated w.e.f. 27.10.2017. It is pertinent to mention that appointment under LARSGESS is a concession but there cannot be a compromise to the eligibility and suitability. Here is the case where the applicant without ensuring that his son fulfils all the conditions of appointment



as Trackman which is a lowest post in the cadre where the individual is functioning. Medical fitness cannot under any circumstances be compromised due to the post being of Safety Cadre. Thus, when the requirement is BEE ONE, if the son is found fit only in CEE ONE and below with glasses there is no question of his being appointed under this Scheme. Infact attempt has been made by the respondents to ascertain whether the son of the applicant improves in his health by affording him another opportunity. Yet the applicant son did not fulfil the requisite condition. There is no question of appointment being granted by any relaxation of the Rules.

12. In view of the above facts and circumstances and instructions of the Railway Board the relief prayed for by the applicant cannot be acceded to. The OA is liable to be dismissed and is accordingly dismissed as devoid of merits.

No costs.