

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 9 of 2015

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

1. Dukhushyam Rout, aged about 28 years, S/o Mathuri Charan Rout, C/o Kanaklata Rout, At- Gorakhanath Railway Colony, PO – Nalibara, PS – Tirtol, Dist. – Jagatsinghpur, Odisha.
2. Ram Murtry Behera, aged about 30 years, S/o I.B.Laxman, At – Sana Harijan Street, Gate Bazar, PO/Town – Berhampur, Dist. – Ganjam, Odisha.
3. Nikunja Kumar Pattnaik, aged about 27 years, S/o Niranjan Pattnaik, At- Pahana, PO – Pankapala, Via – Rahama, Dist. – Jagatsinghpur, Odisha.
4. Laxmi kanta Singh, aged about 33 years, S/o Balaram Singh, At – Biswali, PO – Bhutmundai, Via – Kujang, Dist. – Jagatsinghpur, Odisha.
5. Pravat Kumar Subudhi, aged about 29 years, S/o Sachidananda Subudhi, At – Tarati, PO – Sorana, Via- Kuhudi, Dist. – Khurda, Odisha.
6. Sulochana Tarai, aged about 27 years, D/o Pathani Tarai, At – Tarati. PO – Sorana, Via – Kuhudi, Dist. – Khurda, Odisha.
7. Alok Kumar Pradhan, aged about 29 years, S/o Nrusingha Charan Pradhan, At – Patrajpur, PO – Arakhapur, Ps – Khaira, Dist. – Baleswar, Odisha.

.....Applicants.

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. Divisional Railway Manager, East Coast Railway, Khurda Road, AT/PO/PS – Jatni, Dist. – Khurda.
4. Chief Personnel Officer, E.Co.Rly., E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
5. Secretary, Railway Board, Rail Bhawan, New Delhi – 110001.

.....Respondents.

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

For the respondents: Mr.B.B.Pattnaik, counsel

Heard & reserved on : 3.4.2019

Order on : 13.5.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

In this case, seven applicants are aggrieved by the circular dated RBE No. 72/2013 of the Railway Board (Annexure-A/5 of the OA), by which it was stipulated that no written examination will be required to be qualified by the applicants prospectively from July-December 2013 under the Scheme Liberalized Active Retirement Scheme for Guaranteed Employment for Safety

Staff (in short LARSGESS) of the respondents and seeks the following reliefs in this OA:-

- (a) To quash para 2 of RBE No. 72/2013 under Ann. A/5 regarding dispensation of written test from July-December 2013;
- (b) And to quash the order of rejection dtd. 10.11.2014 under Ann. A/9 series;
- (c) And to direct the respondents to extend benefit of RBE No. 72/2013 regarding dispensation of written test and appoint the applicants in Railway under LARSGESS.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicants as in duty bound shall ever pray."

2. Under the LARSGESS scheme certain category of the safety category staff of the railways are allowed to opt for voluntary retirement with 20 or more years of experience and within the age of 50-57 years and one of his family member can be recruited against a vacant post subject to fulfilment of the eligibility. Prior to issue of the circular dated RBE No. 72/2013 of the Railway Board, the applicants to be recruited under LARSGESS were required to be qualified in a written examination, which was dispensed with prospectively from July, 2013. The applicants and their fathers had applied under the scheme as per the advertisement issued prior to issue of the circular dated RBE No. 72/2013. They appeared in the written test and could not qualify the test. After issue of the circular dated RBE No. 72/2013 of the Railway Board, they submitted a representation dated 4.6.2014 (Annexure-A/6) for reassessment of the written examination papers on the ground that the negative marking was adopted by the authorities in violation of the Railway Board instructions.

3. When no decision was taken by the respondents, the applicants filed the OA No. 639/2014 which was disposed of vide order dated 25.8.2014 (Annexure-A/7) allowing the applicants to withdraw the OA with liberty to make fresh and individual representation for reconsideration of their case in the light of the circular dated RBE No. 72/2013 of the Railway Board, which is to be enclosed with the representation. Accordingly, the applicant no. 1 has submitted the representation dated 15.9.2014 (Annexure-A/8) for applying the circular dated RBE No. 72/2013 of the Railway Board retrospectively from the date of issuance of the scheme from 2004.

4. This representation has been rejected by the order dated 10.11.2014 (Annexure-A/9 series) issued to each of the applicants, stating the following:-

"Further that the RBE No. 72/2013 was issued by the Railway Board dispensing with the written examination for recruitment of words of Gangmen and specified safety category in Grade pay Rs.1800/- under LARSGESS in which it was specifically mentioned that the said instructions would be applicable from July-December 2013 retirement/recruitment cycle onwards

only and does not have a retrospective effect. As such, your claim of consideration under the RBE No. 72/2013 is not accepted."

5. In the counter the respondents have mentioned that applicant No. 3 and 5 along with others had applied for LARSGESS 2012 and they had applied in the written examination but could not qualify. It was also stated that the applicant No.1 had applied under the scheme in pursuance to the notification dated 27.12.2012 and had appeared in the written tests on 21.4.2013 but he could not qualify. He was given a second chance for appearing in the written test on 18.6.2013 but he could not qualify again. It is stated that the procedure of reduction of 1/3rd marks for every wrong answer has been prescribed in the para 7.4 of RBE 121/2005 of the Railway Board and hence it was incorrect to say that the applicants have been given negative marks wrongly. The respondents have also reiterated the ground mentioned in the impugned order dated 10.11.2014 (Annexure A/9) by which the representation dated 15.9.2014 (Annexure A/8) of the applicants were rejected.

6. The applicants have also filed rejoinder stating that a similar matter came up before CAT, Calcutta Bench in OA 694/2001. In that case the Tribunal found that the Railway Board's letter dated 13.3.2000 which was a clarification to the letter dated 11.1.1973 was not sustainable vide order dated 25.7.2006 (Annexure A/10).

7. We have heard learned counsel for the applicant and the respondents and also perused the materials available on record including the order of the Tribunal in OA 694/2001. The matter in OA No. 694/2001 did not pertain to the LARSGESS scheme. Hence it is factually distinguishable from the present OA and therefore, the order in OA No. 694/2001 has no application in this OA. Some of the applicants had earlier applied under the LARSGESS scheme in pursuance to the advertisement issued by the Railway authorities, but they did not qualify in the written test. In this OA, the prayer is to apply the Railway Board circular RBE 72/2013 (Annexure A/5) retrospectively from the year 2004 when LARSGESS scheme was introduced. Generally the executive instructions have prospective effect, unless it is specifically mentioned in the instructions. The circular RBE 72/2013 reads as under :

"The employees' Federations have been demanding dispensation of Written Examination for recruitment of wards under LARSGESS for quite some time. The matter has been considered by the Board and it has been decided to dispense with Written Examination for recruitment of wards of Gangmen and the specified Safety categories in GP Rs.1800/- as notified in Board's letters of even number dated 11.9.2010 and 3.1.2012 under LARSGESS. However, they will have to qualify the medical tests for the relevant category/posts, after verification of educational certificates etc. by a Committee of three JAG level officers at Division level.

2. These instructions are applicable from July-December 2013 retirement/recruitment cycle onwards only. The past cycles will be governed by the earlier instructions."

8. From the language of the circular as extracted above, it is clear that it will be applicable prospectively and it has no retrospective application. There is also no justification furnished in the pleadings by the applicants in support of the contention that the circular RBE 72/2013 have retrospective application. That will unsettle the position which has been decided and settled previously in respect of LARSGESS scheme. Therefore we do not find any justification for acceding to the request of the applicants. Further whether a policy decision will be applicable prospectively or retrospectively is a decision of the competent authority. In this case the Railway Board being the competent authority has decided the policy as stated in RBE 72/2013 with prospective effect.

9. We also take note of the fact that the Railway Board has issued a circular dated 26.9.2018 on the LARSGESS scheme, 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}, 2010) "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."

Vide another circular dated 28.9.2018 (RBE 151/2018), the Railway Board further 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."

10. As per the circulars as stated above, the Railway Board has decided not to consider any appointment under the scheme except for those cases where the employee concerned has already retired under LARSGESS before 27.10.2017 (but not naturally superannuated). Therefore, there is no scope for the respondents to consider any modification to the RBE No. 72/2013 as prayed for in the OA.

11. In view of the above facts and circumstances, we do not find any merit of this OA, which is accordingly, dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath