

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No. O.A. 604 of 2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. Tapan Kumar Das,
Son of Late Nandalal Das,
Aged about 59 years,
Working as Helper – II,
Residing at Village and
P.O. – Southgaria, Chatterjee para,
District – South 24-Parganas,
Pin – 743613.
2. Biswajit Das,
Son of Tapan Kumar Das,
Aged about 34 years,
By Occupation – Unemployed,
Residing at Village and P.O. – Southgaria,
Chatterjee para,
District – South 24-Parganas,
Pin – 743613.

... Applicant

- VERSUS -

1. Union of India,
Through the General Manager,
Eastern Railway,
Fairlie Place, 17, N.S. Road,
Kolkata – 700 001.
2. The Divisional Railway Manager,
Eastern Railway,
Sealdah Division,
P.O. & P.S. – Sealdah,
Kolkata-14.
3. The Sr. Divisional Personnel Officer,
Eastern Railway,
Sealdah Division,
P.O. & P.S. – Sealdah,
Kolkata-14.

.. Respondents

For the Applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

Order dated:

2.9.2016

ORDER**Per Ms. Jaya Das Gupta, Administrative Member:**

The applicants in this case the father and son duo have applied under Section 19 of Administrative Tribunal Act, 1985 seeking the reliefs under the LARSGESS Scheme. Such reliefs are set out below:-

- "(a) An order do issue directing the respondents to grant an appointment in favour of the applicant No. 2 under the "Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff" after allowing him to appear in the medical test.
- (b) An order do issue directing the respondent authorities to allow the applicant No. 1 to retire from his post with all benefits admissible under Rule pursuant to his application made under "Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff".
- (c) Pass such further order/orders and/or direction/directions as your Lordships may deem fit and proper.
- (d) Leave may be granted to file this original application jointly under Rule 4(5)(a) of the CAT Procedure Rule, 1987."

2. From the facts of the case it appears that the applicant No. 1, the father of Shri Tapan Kumar Das was working as Helper – II and applicant No. 2 Shri Biswajit Das is the son of applicant No. 1. Shri Tapan Kumar Das had prayed for appointment of his son after applying for voluntary retirement on 14.5.2013. He had entered service under the Railways on 25.12.1980. As on the date of his application for being considered under the LARSGESS Scheme on 14.5.2003 he is above 56 years but below 57 years of age. The applicant No. 2 i.e. the son of the employee was declared qualified for being considered as beneficiary under the LARSGESS Scheme but he has not been called to appear in the medical test. Allegedly he has learnt from some quarters that list of qualified candidates have already been drawn up and some candidates have been appointed. As the ward has not been subjected to medical test for ultimately being appointed under LARSGESS Scheme and as the normal retirement date of the employee i.e. the father is fast approaching, the Ld. Counsel for the applicant has sought for urgent

2057

disposal of this case.

3. The case of the applicant is that he has more than 20 years of qualifying service having joined on 25.12.1980, as on the date of his application for being considered under the LARSGESS Scheme on 14.5.2003. He has fairly submitted that these 20 years of service is not completely covered, as service of a safety category personnel. Only little more than six years has been completed as Helper II which is considered as a safety category personnel. He has referred to Govt. orders of Railways under RBE No. 131/10 which is set out below for making out his case:-

"R.B.E. No. 131/2010

Subject: Safety Related Retirement Scheme covering safety categories with Grade pay of Rs. 1800/-

[No. E(P&A) 1-2010/RT-2, dated 11.9.2010]

Please refer to Board's letter No. E(P&A) 1-2001/RT-2 (KW) dated 2.1.2004 (Bahri's RBO 4/2004, p-5) regarding introduction of Safety related retirement scheme (SRRS) for Drivers and Gangmen.

2. It has now been decided to extend the benefit of scheme to other safety categories of staff with a grade pay of Rs. 1800/- pm. The qualifying service has been reduced from 33 years to 20 years and the eligibility age group from 55-57 years to 50-57 years for seeking retirement under the scheme in the case of safety categories with grade pay of Rs. 1800. The list of safety categories covered under the scheme is enclosed as Annexure.

2.1 It has also been decided to modify the nomenclature of the scheme as Liberalized Active Retirement Scheme for guaranteed Employment for Safety Staff (LARSGESS) with grade pay of Rs. 1800. However, the employment under the scheme would be guaranteed only to those found eligible/suitable and finally selected as per procedure.

3. The condition of qualifying service (i.e. 33 years) and age group (i.e. 55-57) for drivers will remain unchanged.

4. It is also reiterated that the retirement of the employee be considered only if the word is found suitable in all respects. Retirement of the employee and appointment of the ward should take place simultaneously.

5. The other terms and conditions of the Scheme will remain unchanged.

6. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

It is his contention that it is not apparent from this RBE that the total qualifying service of at least 20 years has ^{to be 104} been put as a safety category personnel.

4. The Ld. Counsel for the applicant has also submitted in the rejoinder that while the Railways applied Board's circular issued on 2014 which provides that an

SW

employee have to complete 20 years of qualifying service in a specified category it should not apply to the applicant as he applied for voluntary retirement on 14.5.2013 before such circular of 2014 was issued.

5. Per contra, it is the contention of the Railway authorities that the benefit of LARSGESS Scheme can only be extended to safety category personnel whose totally qualifying service has been spent on such safety category duties.

Issue to be decided:

The moot point to be decided is whether the total qualifying service period of the applicant has to be spent as a safety category personnel or partly as safety category personnel. We may consider the gamut of orders issued by Railways LARSGESS Scheme which are extracted and set out below:-

" The Ministry of Railways introduced a safety related Retirement Scheme for Drivers and Gangman after due deliberation on safety of Indian Railways.

The Railway Board then circulated the scheme by RB letter No. E(P&A) 1-2001/RT-2 (KW) dated 02.01.2004 (RBE No. 4/2004) for implementation of scheme to all concern.

The initial scheme as per RBE No. 4/2004 is extracted below:

"LARSGESS SCHEME

RBE 4/2004

[E(P&A)/I-2001/RT-2(KW), dated 2.1.2004]

Arising out of deliberations in the Workshop on Safety on Indian Railways conducted on 12th and 13th of July, 2003 the Ministry of Railways have decided to introduce a Safety Related Retirement Scheme for the categories of Gangmen and Drivers.

2. The main features of the Scheme are as follows:-

(i) The Scheme may be called Safety Related Retirement Scheme. The Scheme will cover two safety categories viz, Drivers (excluding shunters) and Gangmen whose working has a critical bearing on safety of train operations and track maintenance. The scheme has been framed on the consideration that with advancing age, the physical fitness and reflexes of staff of these categories deteriorate, thereby causing a safety hazard.

*Drivers: This category is directly responsible for the running of trains. Running duties demand continued attention and alertness. The element of stress combined with uncertain hours of work entailed in the performance of running duties over long periods of time tend to have a deleterious psychosomatic effect on their health. There is a slowing down of reflexes with the passage of time making them

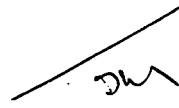
JWY

vulnerable to operational lapses.

*** Gangmen:** This category is responsible for the proper maintenance of tracks. Their duties involve heavy manual labour in the laying of tracks, repair of tracks, patrolling etc. Unlike workshops/locosheds, all this labour is performed in the open environment, they are subjected to the vagaries of extreme weather conditions, non-availability of fork lifts, EOT cranes, wheel barrow etc. as a result the infirmities associated with the aging processes and spinal and back problems catches up quite early in life.

These categories, work in conditions, in which fatigue sets in earlier, than in the case of staff who work indoors or within station limits or in depots and workshops. Although the other categories nomenclature as safety categories also have a vital role to play in ensuring operational safety, the nature of their duties, is less arduous. Therefore no other category other than Gangmen and Drivers is included in the Scheme. For the same reason, shunters who perform less strenuous, shift wise, duties within station yards, will also not be included in the scheme.

- (ii) Under the Scheme, Drivers and Gangmen in the age group of 50 to 57 years may seek retirement.
- (iii) Employment to a suitable ward of the employee, whose application for retirement under the scheme is accepted, will be considered.
- (iv) The employee should have completed 33 years of qualifying service in order to be eligible for seeking retirement under this scheme.
- (v) The request for retirement will be on a voluntary basis and there will be no element of compulsion on the part of the Administration.
- (vi) The ward will be considered for appointment only in the lowest recruitment grade of the respective category from which the employee seeks retirement, depending upon his/her eligibility and suitability, but not in any other category.
- (vii) Applications from those who propose to retire under this scheme will be taken once in a year. The cut off date for reckoning the eligibility of employees for seeking retirement under this scheme will be 30th June of the respective year. All conditions of appointment for the ward of such retirees such as age limits, educational qualifications etc. will also be determined with reference to that date.
- (viii) The last date for submission of requests for retirement and consideration of a ward for appointment under the scheme, will be the 31st of July of the respective year.
- (ix) Employees who desire to withdraw their requests for retirement may be allowed to do so, not later than 30th September of the respective year. No request for withdrawal of request will be entertained thereafter.
- (x) The discretion to accept the request for retirement will vest with the administration depending upon the shortage of staff, physical fitness and the suitability of the ward for appointment in the category of Driver/Gangmen as the case may be.
- (xi) Those who have completed 33 years of qualifying service and are in the age group of 55 to 57 years would be considered in the first phase of the scheme to be followed by those in the age group of 53 years onwards but less than 55 years.
- (xii) The conditions of eligibility, in the case of wards, being considered for appointment would be the same as prescribed for direct recruitment from the open market.
- (xiii) Suitability of the wards will be assessed in the same manner as is being done in the case of direct recruitment. The assessment will be done



through respective Railway Recruitment Boards. 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.

(xiv) Since the Safety Related Retirement Scheme is a package having no nexuses with any of the existing schemes, no weightage towards qualifying service will be admissible to the employee who seeks retirement under this scheme. The wards appointed under this scheme will not be allowed to change their category except as is being allowed under the already existing rules.

(xv) For the purpose of reckoning eligibility for residential accommodation, wards appointed under this scheme will be treated at par, with those appointed through direct recruitment, from the open market; the terms of regularization of accommodation as applicable to the wards of employees appointed on compassionate basis, will not be applicable in their case."

3. After the successful implementation of the first phase of the scheme, the implementation of the second phase covering employees with less than 33 years of qualifying service was implemented by RBE 131/2010 and is extracted below:

"R.B.E. No. 131/2010

Subject: Safety Related Retirement Scheme covering safety categories with Grade pay of Rs. 1800/-

[No. E(P&A) 1-2010/RT-2, dated 11.9.2010]

Please refer to Board's letter No. E(P&A) 1-2001/RT-2 (KW) dated 2.1.2004 (Bahri's RBO 4/2004; p-5) regarding introduction of Safety related retirement scheme (SRRS) for Drivers and Gangmen.

2. It has now been decided to extend the benefit of scheme to other safety categories of staff with a grade pay of Rs. 1800/- pm. The qualifying service has been reduced from 33 years to 20 years and the eligibility age group from 55-57 years to 50-57 years for seeking retirement under the scheme in the case of safety categories with grade pay of Rs. 1800. The list of safety categories covered under the scheme is enclosed as Annexure.

2.1 It has also been decided to modify the nomenclature of the scheme as Liberalized Active Retirement Scheme for guaranteed Employment for Safety Staff (LARSGESS) with grade pay of Rs. 1800. However, the employment under the scheme would be guaranteed only to those found eligible/suitable and finally selected as per procedure.

3. The condition of qualifying service (i.e. 33 years) and age group (i.e. 55-57) for drivers will remain unchanged.

4. It is also reiterated that the retirement of the employee be considered only if the word is found suitable in all respects. Retirement of the employee and appointment of the ward should take place simultaneously.

5. The other terms and conditions of the Scheme will remain unchanged.

6. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

The eligibility criteria of scheme was further extended and changing

the name of scheme as Liberalized Active retirement scheme for

Guaranteed Employment for safety Staff (LARSGESS) the same has also

been circulated the circulation reads as under:

2059

"EASTERN RAILWAY"

No. E/Ruling/HWH/LARSGESS/2011. Howrah, dated, the 13th Jan 2011

All Concerned in Howrah, Division.

Sub: Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS)

Reference: Authority: I) Railway Board's letter E(P&A)I 2001/RT 2(KW)dated 2.1.2004 (RBE No.4/2004) circulated Under CPO/ ER/ KKK's SI.No. I(I)2004 docketed No.E393/0/3/SRRS, dated 20.1.2004.

II) Railway Board's letter E(P&A)2001 /RT-2(KW) Dated 15.4.2005 (RBE 64/2005)circulated under CPO / ER/ KKK's SI.No.96(8)/ 2005, dkt.No. E. 393 /0/3SRRS dated 2.8.2005.

III) Railway Board's letter E(P&A)I-2010/RT-2 dated 11.9.2010, (RBE No.131/2010)circulated under CPO/ ER/ KKK's SI.No.122/2010 Dktd. No. E393 /0/SRRS/(Dup) dated 22.9.2010

IV) Railway Board's letter No.E(P&A)I-2010/RT-2 Dated 24.9.2010 (RBE No.141/2010) circulated Under CPO/ ER/ KKK's SI.No. 130/2010 dktd. No. E.393/0/3/SRRS (Dup)dated 11.10.2010.

V) Railway Board's letter E(P&A)i-2010/RT-2 dated 7.10.2010 circulated under CPO/ER/KKK's SI. No. 135/2010 docketed No. E.33/0/3/SRRS(Dup)dated 19.10.2010.

The details of the scheme, eligibility criteria, category of staff Governed by the scheme etc. are circulated in the above mentioned reference. However details in respect of Eligible category, Eligibility Criteria, Age group, Qualifying service, cut off date for submission of application (in duplicate) and withdrawal of application are appended below.

Eligible Categories.

1) Drivers (Except Shunters), Gangman/ Trackman.

2) A) Operation Deptt.

3) (i) Pointsman (ii) Shuntman (iii) Leverman (iv) Gateman (v) Traffic Porter.

B) Civil Engineering Deptt.:-

I) Gateman (II) Trolleyman (III) Keyman.

C) Signal & Telecommunication Deptt. :- Khalasi/Kh. Heldper Redesignated as Helper Gr.II & Gr.I attached to ESM/MSM/TCM/WTM.

D) Mechanical & Electrical Deptt.:-

i) Khalasi/Khalasi Helper redesignated as Helper Gr.II & Gr.I Assisting Loco Fitter/ C&W Fitter/ Fitter in Diesel Sheds (Open Line & Workshops) and Train Lighting & AC Fitters (Open Line & Workshops), (ii) Crane Jamadar & Crane Khalasi,

Qualifying service

20 years for all above (except Drivers)

33 years for Driver

02/3

Age group

50-57 years for all above
55-57 years for Drivers.

Eligibility

As per DR recruitments Norms from Open Market.

Recruitment

Lowest Recruitment Grade GP-1800/-.

The cut off date for reckoning the eligible of employees for seeking retirement under this scheme will be 30th June of the respective year, All Conditions for appointment of the wards such as age limit educational qualification etc. will be determined with reference to that date. The last date for submission of request for retirement and consideration of wards for appointment under the scheme will be 31st July of the respective years.

The service Railway Employees filling in the categories governed by the scheme and who fulfill all the terms and conditions mentioned in the scheme and modified time to time may apply in the proforma attached.

All the application received by the respective unit Officers should be sent to the Branch Officers who will in turn forward all the application. In a consolidated for to the Ruling section of Personnel Branch of 30th April of the respective year for further necessary action.

This should be given wide publicity.

DA: One Proforma.

(J.P. Kusumakar)
Sr. Divl. Personnel Officer,
Howrah"

The benefit of LARSGESS was further extended to employees of safety staff working in GP of Rs. 1900/- by RBE No. 99/2011, is quoted herein below:

"R.B.E. No. 99/2011

Subject: Safety Related Retirement Scheme covering safety categories with Grade pay of Rs. 1900/-.
[No.E/(P&A)-2010/RT-2 dated 28.6.2011]

Please refer to Board's letters of even number dated 11.9.2010 (Bahri's RBO 131/20, p-267) and 24.9.2010 (Bahri's RBO 141/2010, p-285) vide which the benefit of safety Related Retirement Scheme (SRRS) was extended to other safety categories of staff with grade pay of Rs. 1800/- p.m. The nomenclature of the Scheme was also modified as Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) with Grade Pay of Rs. 1800/-.

2. Considering the demand of the Employment Federations it has now been decided to expand the scope of LARSGESS by enhancing the existing criteria of grade pay of Rs. 1800/- to Rs. 1900/-. However, the employment



under the Scheme would be guaranteed only to those found eligible/suitable and finally selected as per the laid down procedure. The list of Safety categories covered under the Scheme in Grade Pay Rs. 1800/- has already been circulated vide Board's letter dated 11.9.2010. Same categories in Grade Pay Rs. 1900/- will now be eligible for the scheme.

3. For determining the eligibility for seeking retirement under the Scheme, Grade Pay, corresponding to the post against which the employee is working on regular basis, will be taken into account. In other words, the staff working on the post with Grade of Rs. 1900/- will continue to be eligible for seeking retirement under the Scheme even after getting financial upgradation in Grade Pay higher than Rs. 1900/- under MACPS.

4. The eligibility conditions for the safety staff with grade pay of Rs. 1900/- seeking retirement under the scheme would be the same as those for Drivers viz. 33 years of qualifying service and age between 55-57 years. Recruitment of the wards of such employees being in respective category (i.e. in grade pay of Rs. 1900/-) their suitability would be adjudged by an Assessment Committee of 3 SAG officers at Headquarter level as in the case of the wards of Drivers.

5. The eligibility conditions in respect of qualifying service and age group in case of Gangmen and other safety categories in grade pay of Rs. 1800/- would remain 20 years and 50-57 years respectively, and the suitability of their wards would be adjudged by an Assessment Committee of 3 JA Grade officers at Divisional level.

6. It is once again reiterated that the retirement of the employee be considered only if the ward is found suitable in all respects. Retirement of the employee and appointment of the ward should take place simultaneously.

7. The other terms and conditions of the Scheme will remain unchanged.

8. This issues with the concurrence of the Finance Directorate of the Ministry of Railways."

6. On going through the above orders of the Railways it is evident that the Special Scheme of LARGESSE has been prepared to give relief to such people who because of advancing age and the strenuous condition of work, suffer from want of physical fitness and reflexes thereby causing safety hazard to the public. The normal healthy working of these workers has critical bearing on the safety of train operations and track maintenance. Therefore, this special benefit of voluntary retirement together with appointment of their ward has been given vis-à-vis normal superannuation which entails spending total qualifying service in any job which need not be of safety category nature.

Sh

7. Therefore, keeping the spirit of the policy matter adopted by the Railways in the LARSGESS Scheme this is not a fit case for interference in the decisions taken by the Railways. Therefore, as he did not complete the required period of qualifying service of 20 years as a safety category personnel his voluntary retirement notice was not accepted as per rule.

8. As referred earlier, the Ld. Counsel for the applicant has also submitted in the rejoinder that the respondent authorities have rejected the case of the applicant as per Railway Board's Circular issued on 2014 which provides that an employee has to complete 20 years of qualifying service out of which at least the last ten years should be spent as a safety category employee. It should not apply to the present applicant as he applied for voluntary retirement on 14.5.2013 before such circular of 2014 was issued. However, we make it clear that we have arrived at our decision in the present case without considering RBE Order which was issued in the year 2014.

9. Accordingly, the O.A. is dismissed. No costs.

(Jaya Das Gupta)
MEMBER(A)

(Bidisha Banerjee)
MEMBER(J)

SP