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CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A. No. 200/2019

Date Of Decision: 13 May, 2019.

CORAM: R. VIJAYKUMAR, MEMBER (A).
RAVINDER KAUR, MEMBER (J).

Mutthu Tulsimani, Age 62 Yrs.,
Ex. Helper Khalasi,
Under Sr. Section Engineer(S&T) (C),
Kalyan, Central Railway.
Residing at Block No. 12, Room No. 11,
F Row, Anand Nagar, Transit Camp,
Feed Road, Dharavi, Mumbai- 400 017.

...Applicant.

(By Advocate Shri S N Pillai)

Versus

1. Union of India,
Through the General Manager,
Central Railway, CST, Mumbai- 400 001.
2. Chief Administrative Officer(Const),
6th Floor, New Admn. Building,
C/Railway, CST, Mumbai- 400 001.
3. Dy. Chief Signal and Tele. Engineer(Const.),
Central Railway, Dadar, Mumbai- 400 014.
4. The Sr. Divisional Personnel Officer,
DRM's Office, Central Railway,
CST, Mumbai- 400 001.

...Respondents.

Reserved on : 03.04.2019

Pronounced on : 13.05.2019

ORDERPER:- R. VIJAYKUMAR, MEMBER (A).

This application has been filed on
08.01.2019 under Section 19 of the
Administrative Tribunals Act, 1985 seeking
the following reliefs:

"i) That this Hon'ble Tribunal be pleased to call for the records and proceedings pertaining to the issuance of Letter No. HPB/403/S&T/LARSGESS/Const dated 01.01.2015 of CPO. (Ann. A.1) from the Respondents and after examining the same, quash and set aside the said letter.

ii) hold and declare that as on 27.07.2013 i.e. the date of his application, the applicant fulfills all the conditions of LARSGESS and thus is eligible to be considered under LARSGESS with all consequential benefits.

iii) Direct the respondents to consider the Application for Voluntary Retirement & appointment of his Son under the LARSGESS Scheme in the second Cycle of the year 2013.

iv) Cost of this Application be awarded.

v) Any other and further relief as this Hon'ble Court may deem fit and proper under the circumstances of the case."

2. The applicant, whose Date of Birth is 10.12.1956, commenced service as Casual Labour with the respondents on 01.01.1983 and was regularly appointed as Khalasi on 25.02.1991. The applicant claims to be falling within the safety category which was included in the LARSGESS Scheme of the Railways and in RBE No. 131/2010 dt. 11.09.2010, the qualifying service was reduced to 20 years and the age group

expanded to 50-57 years . He filed an application for voluntary retirement under the LARSGESS Scheme for appointment of his son on 27.07.2013 in the second cycle of the year 2013 when he was 56 years old and this was forwarded by his supervising officer in a proper manner only on 26.06.2014. The papers were returned in September asking his Supervising Officer to carry out the necessary verification and then in October, his son was sent for medical examination and necessary vigilance clearances were obtained in this regard. The applications were again forwarded in December, 2014 and in January 2015, when these applications were considered, the applicant had crossed the age of 57 years and was accordingly considered over-aged and his application was rejected. The applicant superannuated in the normal course on 31.12.2016. Thereafter, the applicant had filed a representation and claims that he had not received any reply but he has now annexed as impugned order, letter No. HPB/403/S&T/LARSGESS/Const. dt.

01.01.2015 referring to applications like his case and stating that in case they fulfill the eligibility condition as on 01.01.2015, their applications could be forwarded for consideration.

3. The applicant claims in his MA No. 149/2019 that he received this information on 21.01.2015 and that there is a delay of two years, 11 months and 17 days in filing this OA.

4. Learned counsel for the applicant acknowledges the law as settled by the Hon'ble High Court of Punjab and Haryana and of the Hon'ble Apex Court in regard to this Scheme but refers to the RBE No. 150/2018 dt. 26.09.2018 and RBE No. 151/2018 dt. 28.09.2018. The first order quotes the decision of the Hon'ble High Court of Punjab and Haryana that the Scheme does not stand the test of Articles 14 & 16 of the Constitution of India and directs the respondents that before making any appointment under the offending policy, to examine its validity and sustainability by

re-visiting it, keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment. The Court had emphasized that such a direction was necessitated in view of the mandate of the Constitution Bench ***in State of Karnataka V. Uma Devi, (2006) 4 SCC 1.***

5. This judgment was upheld by the Hon'ble Apex Court on 08.01.2018, and the RBE No. 150/2018 was issued in consequence. The RBE No. 151/2018 clarified the previous order and records as below:

"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."

6. On the preliminary aspect of limitation, the applicant has admitted that his OA was filed with a delay of 2 years, 11 months and 17 days and claims that he was not aware of the legal remedies available to him.

These are not very acceptable arguments, especially when an applicant is seeking directions to the respondents to provide beneficial relief in direct contradiction and in direct violation of the Constitution regarding which the Hon'ble High Court of Punjab and Haryana emphasized the principles of equal opportunity and elimination of monopoly in holding public employment. A delay in the face of such a barrier is clearly insuperable. Moreover, even in terms of RBE No. 151/2018 which we have extracted above, it is evident that the applicant retired in the normal course on 31.12.2016 and then leisurely proceeded to file this application. The circular specifically acted to his disadvantage.

7. This Tribunal is bound by the rulings of the Hon'ble Apex court, the judgment of the Hon'ble High court of Punjab and Haryana and of this Bench in OA No. 208/2017 dt. 23.06.2017 that the Scheme itself was unconstitutional, ultra vires, illegal and defeating the rights of the righteous and

competitively meritorious.

8. Given the facts and circumstances of the present case, we are not entering into an examination of whether the two RBE Circulars consenting to extend the same Scheme to certain persons who retired earlier is within the provisions of the Constitution and would observe that there was always an option for the respondents to recall the voluntarily retired person to his old job. In the present case, the OA is barred by limitation and has no merits whatsoever in its favour. The OA is accordingly dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

Ram.

(R. Vijaykumar)
Member (A) 13/5/19

JD
10/6/19

