

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
CP/050/00095/14
[Arising out of OA/050/00206/2013]

Date of Order: 30.05.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Hardeo Prasad, Son of Late Barhan Sahu, Resident of Village- Barkuty, Post-Sardhadu, District- Chatra.
2. Kanji Lal, son of Late Lalit Mohan Kanji Lal, Resident of Bishanpur, Near B.N. Singh Began, Post-B, Polytechnic, District- Dhanbad.

.... Applicants.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. Shri B.B. Singh, the Divisional Railway Manager, East Central Railway, Dhanbad.
2. Shri Ujjawal Anand, the Senior Divisional Personnel Officer, East Central Railway, Dhanbad.

.... Respondents.

By Advocate: - Mr. B.K. Choudhary
Mr. Kumar Sachin

O R D E R
[ORAL]

Per Mr. Dinesh Sharma, A.M.- This CP has been filed for alleged non-compliance of the order dated 28.08.2013 passed by this Tribunal in OA No. 206/2013.

2. In this contempt petition, on 16.01.2018 this Tribunal had passed the following order: -

“ In this contempt application, the applicants have alleged non compliance of the direction of this Tribunal dated 28th August, 2013 disposing of OA-206/2013. The order is extracted verbatim hereinbelow :-

“7. The OA is allowed. Since the wards of the present applicants have succeeded in the written test, appointments for their wards may be considered after medical test and other prescribed test of the department. A copy of this order be furnished to the learned counsel for the applicant so that before retirement of applicant no.3 action can be taken by the respondents.

8. Before we part with the case, we would like to observe that in our opinion the LARSGESS Scheme’s legality should be re-examined by the respondents in the light of provisions of Article 14 and 16 of the constitution. This Scheme gives advantage to children of a category of Railway servants in public employment for which there seems to be no rational justification and it apparently militates against the principle of equality as enshrined in Article 14 and 16 of the Constitution of India. Their selection is not on open competition basis. The scheme of compassionate appointment to dependents of an employee in case of his death or permanent medical incapacitation has some rational basis which has also been tested in a catena of judgments of Hon’ble Supreme Court. In case of LARSGESS Scheme, we are not aware whether the constitutional validity of the scheme itself has been so tested in any of the matters before Hon’ble Supreme Court or any Hon’ble High Court. Since the scheme is not under challenge in this case, we refrain from giving any finding in the matter and leave it to the Railway administration to get the legality of the scheme re-examined in the light of our observation before they further continue with it. We also make it clear that instant case shall be prejudiced in any manner by this observation of ours.”

2. In their written statement/show cause, the respondents have declared that out of the three applicants of the OA, the son of Brahmdeo Mishra [applicant no.1] was found eligible to be considered and granted appointment. Son of Hardeo Prasad [applicant no.2] is under process and after completion of necessary formalities, appointment orders shall be issued. However, in regard to applicant no. 3, Shri S.K.Kanjilal, the respondents have submitted that since Shri S.K.Kanjilal held his lien against the post of Motor Vehicle Driver since 2007, he did not come under the purview of LARSGESS Scheme, and accordingly, his son could not be considered for the benefit under the said Scheme.

3. Learned counsel for the applicant placed before us some documents of the Railways wherefrom it appeared that applicant no.2 although a Gangman was appointed as Mate, which does not come under the purview of LARSGESS Scheme. Nevertheless, his son has been considered for appointment under the LARSGESS Scheme. Therefore, the reason why the son of Shri S.K.Kanjilal, a Gangman posted on adhoc basis as Driver could not be considered under LARSGESS Scheme, could not be reconciled or comprehended.

4. Accordingly, we issue notice to the Deputy Chief Engineer [Construction] to show cause as to why contempt proceeding shall not be initiated against him for deliberately flouting the order of this Tribunal. Issue notice accordingly. List it for hearing on 22.02.2018.”

3. The respondent contemnors have filed their reply rendering unqualified and unconditional apology for any act of omission or commission. However, they have stated that they have got no role either in appointment or consideration for appointment under the LARSGESS scheme. Their role was only to forward the applications submitted by the candidates to the competent authority of the Personnel Department who are the competent body in this respect. At the time of hearing this case, the learned counsel for the respondents also filed a decision dated 06.03.2019 by the Hon'ble Apex Court in **Union of India Vs. Kala Singh & Ors.** in an allegedly similar case. The said decision is reproduced below:-

“ While disposing of SLP(Civil) Dy. No. 37460/2017 on 08.01.2018, this Court has made the following order:

“ Heard learned counsel for the parties.

Delay condoned.

Since the direction in the impugned order is only to re-visit the Scheme in question, no interference is called for at this stage. The petitioner(s) may take a conscious decision in the matter within a period of six weeks from today.

If any party is affected by the decision taken, such party may take remedy against the same in accordance with law.

The special leave petition is, accordingly, dismissed.

Pending application(s), including application for intervention, shall also stand disposed of.”

The petitioner has since then taken a decision on 5th March, 2019 to terminate the LARSGESS Scheme and the decision so taken is as under:-

“ In compliance of the directions of the Hon'ble Punjab & Haryana High Court dated 27.04.2016 in CWP No. 7714 of 2016, dated 14.07.2017 in RA-CW-330_2017 and Orders of Hon'ble Supreme Court dated 08.01.2018 in SLP (C) No. 508/2018, Ministry of Railways have revisited the LARSGESS Scheme duly obtaining legal opinion and consulted Ministry of Law and 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. Therefore, no further appointments should be made under the Scheme subject to position mentioned in para 2 below:

2. As regards the cases where the wards had completed all formalities including Medical Examination under LARSGESS Scheme prior to 27.10.2017 and were found fit, but the employees are yet to retire, the matter is pending consideration before the Hon'ble Supreme Court and further instructions would be issued as per directions of the Hon'ble Court."

Since the Scheme stands terminated and is no longer in existence, nothing further need be done in the matter.

Application (s) is/are accordingly disposed of."

4. The learned counsel for the applicant produced another decision of the Hon'ble Apex Court in **Prithawi Nath Ram Vs. State of Jharkhand & Ors.** (AIR 2004 SC 4277). In this decision, the Hon'ble Apex Court found it wrong on the part of the court dealing with application for contempt of court to test the correctness of the order or to give additional direction or delete any direction.

5. After hearing the arguments and going through the records of this case, we find that the respondents have cited genuine reasons for their inability to comply with the orders of this Tribunal. Since in the light of the recent orders of the Hon'ble Supreme Court it does not appear that the failure to comply is an intentional act of contempt, we hereby drop further action under these contempt proceedings. CP is dropped accordingly.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member