

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

OA/050/00290/2016

Date of orders : 15th July, 2019

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER [J]
HON'BLE MR. DINESH SHARMA, MEMBER [A]

Birendra Prasad Yadav, son of Sri Bhagdeo Rai, Senior Track Man, under Senior Section Engineer [P.Way], East Central Railwy, Goroul, District – Vaishali [Bihar], resident of Village – Lal Pokhar Chak Jagdishpur, PO – Digghi Kalan, P.S. – Hajipur [Sadar], District – Vaishali [Bihar].

.....applicant

By Advocate : Shri M.P.Dixit

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, District – Vaishali [Bihar].
2. The General Manager [Personnel], East Central Railway, Hajipur, District – Vaishali [Bihar].
3. The Chief Medical Director, East Central Railway, Hajipur, District – Vaishali [Bihar].
4. The Divisional Railway Manager, East Central Railway, Sonpur, PO – Sonepur, District – Saran [Bihar].
5. The Senior Divisional Personnel Officer, East Central Railway, Sonpur, PO – Sonepur, District – Saran [Bihar].
6. The Senior Divisional Personnel Officer, East Central Railway, Sonpur, PO – Sonepur, District – Saran [Bihar].
7. The Chief Medical Superintendent, East Central Railway Hospital, Sonpur, PO – Sonepur, District – Saran [Bihar].

..... Respondents.

By Advocates: Mr. D.K.Verma

ORDER

Per Jayesh V. Bharavia [J]:- In the present OA, the applicant has prayed for quashing and setting the impugned order dated 22.03.2016 [Annexure-A/6] issued by the Respondent No.6 whereby Shri Krishna Kant Ranjan, son of the applicant, Shri Birendra Prasad Yadav has been denied appointment under the LARSGESS Scheme.

2. The ld. counsel for the applicant has submitted that the

respondents had called for options to be appointed under LARSGESS Scheme in terms of "LARSGESS SCHEME" dated 11.10.2018 from the eligible persons under notification dated 05.08.2012. Since the applicant was fulfilling the eligibility criteria, he submitted his application for appointment of his son, namely Shri Krishna Kant Ranjan. Said Krishna Kant Ranjan appeared for medical examination on 07.01.2014. The applicant submitted that the medical authority who had examined the son of the applicant had wrongly written the medical category for the post of Track Man is B-1 whereas the medical category is B-2 and below, vide letter dated 10.03.2014, which is also incorrect. Further, the competent medical authority of District Hospital, Hajipur had immediately re-examined the applicant and found the applicant fit under B-1 category. Therefore, the applicant submitted his detailed representation dated 05.04.2014 to re-medical examination of his son but the same was not arranged.

In the meantime, the respondents issued another notification dated 02.05.2013 inviting options to be appointed under the LARSGESS Scheme, and pursuant thereto, the applicant again submitted his application. The son of the applicant was again called for the suitability test on 07.08.2014. Thereafter, he was called for the medical examination at Divisional Railway Hospital, Sonepur who found the son of the applicant medically fit for the post of Track Man under LARSGESS Scheme. However, vide impugned order dated 22.03.2016, the son of the applicant has been denied appointment under LARSGESS Scheme mainly on the ground of medical unfitness of his son conducted in the year 2014, which was the first medical examination of said Krishna Kant Ranjan. Therefore, it is submitted that the respondents

ought not to have rejected the claim of the applicant on the ground of his first result of medical examination because the son of the applicant was declared medically fit in his second application.

3. On the other hand, the respondents filed their counter affidavit and denied the contentions of the applicant for appointment under LARSGESS Scheme. It is submitted that the second option submitted by the applicant has mistakenly been entertained. The respondents further submitted that according to 515[2] of Indian Railway Medical Manual that if a candidate fails in his first medical fitness examination, there is no provision of re-medical of the same candidate. The son of the applicant was sent for re-medical examination by mistake. The case of the applicant was considered by the higher authority and in the light of instructions, the candidature of the son of the applicant has been cancelled, vide letter dated 22.03.2016 [Annexure-R/4], hence not entitled for any relief.

4. The applicant has filed his rejoinder and reiterated his submissions.

5. During the course of arguments, it is submitted that the applicant is presently working as Senior Track Man with East Central Railway.

6. Heard the learned counsel for the parties and gone through the materials available on record.

7. It is an admitted fact that the LARSGESS Scheme introduced by the Railway Board has been declared unconstitutional by the Hon'ble Punjab and Haryana High Court and the respondents, Railway Authorities have withdrawn the Scheme vide RBE No. RBE No.150/2018 and in supersession thereto, the Respondents, Railway Board has issued another RBE No.151/2018 dated

28.09.2018 bearing no. E[P&A]-2015/RT-43, which reads 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 w.e.f. 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."

8. Since the Hon'ble Punjab and Haryana High Court held that the LARSGESS Scheme does not stand to the test of Article 14 and 16 of the Constitution of India. In the appeal against the said judgment, the Hon'ble Apex Court declined to interfere with the directions of the Hon'ble High Court of Punjab and Haryana High Court. Considering the same, the respondents Railway Board has terminated the LARSGESS Scheme. However, vide Railway Board decision dated 28.09.2018 RBE No.151/2018, decided to impart natural justice to the staff who have already retired under LARSGESS scheme before 27.10.2017 [but not naturally superannuated] an 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. Therefore, the applicant's grievance cannot be tenable in view of aforesaid circular issued by the respondents.

9. We are of the considered opinion that since the LARSGESS Scheme has been declared as not stand to the test of Article 14 and 16 of the Constitution of India [by the Hon'ble High Court of Punjab and Haryana] and the respondents have terminated the

said scheme except the employees of Railway who meet with criteria laid down in their circular dated 28.09.2018, i.e. RBE 151/2018. Under the facts and circumstances, we are not inclined to interfere with the decision taken by the respondents for not accepting the claim of the applicant for employment of his ward under the LARSGESS Scheme.

10. Accordingly, the claim of the applicant for appointment under the LARSGESS Scheme cannot be entertained in terms of RBE No.151/2018.

Sd/-

Sd/-

[Dinesh Sharma]
Member [Admn.]
mps/-

[Jayesh V. Bhairavia]
Member [Judicial]