

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.275/2019 with MA No.286/2019

This the 28th day of August, 2019

**Coram : Hon'ble Shri Devendra Chaudehry, Member (A)
Hon'ble Shri M.C.Veerma, Member(J)**

1. Shri Jagdish
Son of Shri Vasubhai Zala
Age about 62 years.
Occupation : Retired.
2. Shri Dharmendra Alias Dharmesh
Son of Shri Jagdishbhai Vasubhai Zala
Age about 33 years, Occupation : Unemployed

Address of both Applicants :
Quarter No.B/96,
Kothi Compound
Rajkot 360 001. Applicants

(By Advocate : Ms. K.L.Kalwani)

VERSUS

1. Union of India,
Owing and Representing Western Railway
Through General Manager
W. Rly. Churchgate,
Mumbai 400 020.
2. Divisional Railway Manager

CAT, Ahmedabad Bench

W. Rly. Rajkot Division,
Kothi Compound
Rajkot 360 001.

3. Railway Board Secretary
Rail Bhavan,
New Delhi Respondents.

ORDER (ORAL)

Per : Hon'ble Shri M.C.Verma, Judicial Member

Matter is at the motion hearing stage. Heard. Learned counsel Ms. K.L.Kalwani submits that the applicant No.1 is ex-employee of the respondents and applicant No.2 is the son of the applicant No.1 and that present OA has been preferred for non grant of employment to applicant No.2, under LARSGESS Scheme by respondents. Learned counsel submitted that applicant No.1 preferred the application for appointment of his son under LARSGESS Scheme but his request was wrongly rejected by the Railway authority in year 2013 so he, impugning said order of rejection, preferred OA No.285/2013 and said OA was not disposed of on merits as LARSGESS Scheme since then

CAT, Ahmedabad Bench

has declared not in conformity with Articles 14 & 15 of the Constitution. However, the respondents now have issued circular dated 26.9.2018 (Annexure A-14) regarding LARSGESS Scheme and have extended its benefit to some other candidate. That applicant No.2 is also entitled to its benefits, likewise the others.

2. The backdrop facts as has been stated in pleadings of the OA or are reflected from Annexures attached with the OA, precisely are that applicant No.1 has joined the Railway service as casual labour on 24.12.1979 on VOP, was regularised in service w.e.f. 01.01.1984 and he retired as Khalasi on 30.06.2016 on attaining age of superannuation. While was in service, the Applicant No.1 was charge sheeted for unauthorised absence for a period of three months and the Disciplinary Authority vide Order dated 21.2.1995 removed him from service, said order of removal from service was challenged by applicant No.1 in OA No.576/1998 and the Tribunal remitted the matter back to the Disciplinary Authority to reconsider the same.

CAT, Ahmedabad Bench

Respondents reconsidered the same and passed the order dated 04.8.2003 modifying the penalty by reducing the pay of the applicant to one stage lower in the same time scale of pay for a period of three years with future effects. Thereafter, on 26.8.2004, the Disciplinary Authority directed to treat the period of removal to the date of reinstatement as *dies non* for all purposes. Again by way of OA No. 374/2004, applicant No.1 approached the Tribunal with prayer to quash the order to treat the period as *dies non* and this Tribunal directed the respondents to pass appropriate order in terms of Rule 1344 of IREM. Respondents also challenged the aforesaid Order of the Tribunal, in SCA No.2976/2006 and Hon'ble High Court partly allowed the SCA and directed the respondents to treat the intervening period as 'leave without pay'.

2.1 In obedience of the Order of the Hon'ble High Court of Gujarat, respondents passed Order dated 29.01.2009 treating above said intervening period as 'leave without pay' and treating

him in continuous services for all other purposes including the purpose of leave, increment and retiral benefits.

3. As far issued of present OA, benefit under LARGESS Scheme relates, applicant No.1 preferred petition for appointment for his son under said Scheme and his request was rejected by the authority in the year 2013 vide order dated 06.9.2013 (Annexure A-9). Being aggrieved by said order, the applicant No.1 preferred OA No. 285/2013 on the file of this Tribunal and said OA remains pending till 31.01.2017. During pendency of said OA No.285/2013, Hon'ble High Court of Punjab and Haryana, vide its judgment dated 27.04.2016 passed in CWP No.7714/2016 held that the LARSGESS Scheme prima facie does not stand to the test of Articles 14 & 16 of the Constitution of India and the same is a device evolved by the Railways to make back doors entries in public employment. The Order of the Punjab and Haryana High Court was impugned on the file of Hon'ble Supreme Court but the SLP preferred, was

CAT, Ahmedabad Bench

dismissed. The nutshell result which yielded is that LARSGESS Scheme was held illegal. .

4. After declaration of the Scheme as illegal, the Railway Board issued circular dated 26.9.2018 which is at Annexure A-14 of the instant OA. Said circular for the sake of brevity is reproduced herein below :

*“Government of India
Ministry of Railways
Railway Board*

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 judgment 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}, 201 0) “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

CAT, Ahmedabad Bench

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.

3. Please acknowledge receipt.

Hindi version will follow.

—sd—

(N Singh)
Joint Director/E(P&A)
Railway Board"

5. It is manifest from said Circular that no further appointments has to be made under the Scheme except of cases where employees already have retired under the LARSGESS Scheme before 27.10.2017 and their wards could not be appointed due to the Scheme having been put on hold in terms of Board's letter dated 27.10.2017 though they have successfully

CAT, Ahmedabad Bench

completed the entire process and were found medically fit.

All such appointments shall be made with the approval of competent authority. In other words, circular dated 26.10.2017 permits the appointment under the Scheme only of son/daughter of employee who has retired under the LARSGESS Scheme before 27.10.2017 and whose ward could not be appointed due to the Scheme having put on hold in terms of Board's letter dated 27.10.2017. Additionally, it should also be there that said ward successfully completed the entire process and was also found medically fit.

6. In instant case, neither applicant No.1 did retire under LARSGESS Scheme but he retired on attaining the age of superannuation and further the case of appointment of applicant No.2 had already been rejected in year 2013. It is not a case that applicant No.2 had successfully completed the process and his appointment could not be there because of Board's letter dated 27.10.2017. It is not squarely covered under the circular dated

CAT, Ahmedabad Bench

26.09.2018. The OA deserves dismissal and accordingly is dismissed. MA also stands disposed of accordingly.

(M.C.Verma)
Member (J)

(Devendra Chaudhry)
Member (A)

nk