

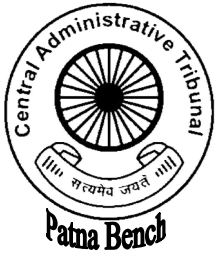
Central Administrative Tribunal
Patna Bench, Patna.
O.A./050/00114/2014

Date of Order:- 27.11. 2019

C O R A M

Hon'ble Mr. J. V. Bhairavia, Member [J]

Hon'ble Mr. Dinesh Sharma, Member [A]



Token Thakur, son of late Pati Thakur, Trolleyman under Senior Section Engineer [SIG/2], East Central Railway, Dhanbad.

....Applicant

By Advocate : Mr. M.P.Dixit

Vs.

1. 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 Divisional Railway Manager, East Central Railway, Dhanbad.
4. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad.
5. The Senior Divisional Financial Manager, East Central Railway, Dhanbad.
6. The Senior Section Engineer [SIB/2], East Central Railway, Dhanbad.

..... Respondents.

By Advocate : None

O R D E R (ORAL)

Per J.V. Bhairavia, M [J] :-

The applicant has filed the present OA for a direction upon the respondents to issue joining letter in favour of the son of the applicant, namely Suresh Thakur against Group-D post henceforth in compliance of appointment letter already issued, vide Annexure-A/4 along with all consequential benefits including arrears of salary from the date of joining allowed to other persons.

2. Brief history of the case of the applicant is that the applicant was initially appointed against Group-D post on in the year 1980 and now is working as Trolleyman.

3. The applicant submitted that the Railway Board framed a policy of retirement scheme called LARSGESS Scheme, vide RBE No.131 of 2010 which was circulated by Dhanbad Division on 13.10.2010. The applicant submitted that, having completed 20 years of qualifying service as Trolleyman and within the age group of 50-57 years as on 30.06.2010, he was allowed to opt for his retirement and appointment of ward in the same category. Accordingly, an admit card was issued to appear in the examination held in the month of February/March, 2012. The applicant further submitted that the respondents directed his son to appear on 29.05.2012 for paper verification. Accordingly, all papers were duly verified and was found in order on 29.05.2012 and thereafter medical test was held on 30.10.2012 in which he was found fit.

4. The applicant submitted that on some pretext or other, the son of the applicant was not given posting order whereas son/wards of other co-employees who have been screened along with his son, have been given posting order, which is not only discriminatory but also arbitrary and unconstitutional, hence the present OA. The applicant further submitted that he submitted a representation but till date no order has been passed and in the meantime, he superannuated on 31.08.2016 on attaining the age of 60 years.





5. The respondents filed their written statement and contended that in response to the notification dated 20.10.2010 issued by the Railway Board, the applicant applied for appointment of his son, Suresh Thakur who has been found eligible after completion of primary formalities, a letter was issued for verification of educational certificate in favour of the ward of the applicant and during the course of verification of certificates, it was found that the educational qualification of ward of the applicant was only madhyama pass, which is not valid for the purpose of employment in the Railways. Therefore, this OA deserves to be dismissed on this ground alone.

6. Without entering into the merit of the case, it is apt to note that the Railway Board vide its letter dated 26.09.2018 issued guideline to the General Managers, All Indian Railways for termination of the LARSGESS Scheme in view of directions given by the Hon'ble Punjab and Haryana High Court in its judgment dated 27.04.2016 in CWP No.7714 of 2016 and the orders of Hon'ble Supreme Court of India in SLP[C] No.508/2018 dated 08.01.2017, under RBE No. 150/2018 dated 26.09.2018, which reads as under : -

"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 of 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 27.04.2016 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) 2010] "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 14.07.2017 [Review Petition RA-CW-330-2017 in CWP No.7714 of 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 dated 08.01.2018, 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 27.10.2017 [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 27.10.2017 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."

7. It is further noticed that subsequent to aforesaid RBE No.150/2018, in supersession to it, the Respondents, Railway Board, the 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. Since the applicant has retired on superannuation on 31.03.2018 on attaining the age of 60 [normal retirement], therefore, his claim for appointment of his son under the LARSGESS Scheme in terms of letter dated 12.07.2019 issued by Railway Board, is not at all applicable.

11. Accordingly, the OA fails and the same is dismissed. No costs.

Sd/-

Sd/-

[Dinesh Sharma]M[A]

[Jayesh V. Bhairavia]M[J]

mps