
(2019) 03 CAT CK 0144

In the Central Administrative Tribunal

Case No : Original Application No. 2168 Of 2016

Maresh

APPELLANT

Vs

Union Of India Through The General Manager

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Railway Service Pension Rules, 1993 — Rule 32
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 03 CAT CK 0144

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Yogesh Sharma, S.M. Arif

Final Decision : Disposed Off

Judgement

Nita Chowdhury, J

1. This is a matter in which the applicant sought the following reliefs:-

"(i) That the Hon?ble Tribunal may graciously be pleased to pass an order quashing the impugned order dated 28.06.2016 and dated 26.04.2016 (Annex.A/1 & A/2) with all the consequential benefits, declaring to the effect that the same are totally illegal, arbitrary, against the scheme and discriminatory and consequently, pass an order directing the respondents to grant all the consequential benefits to the applicants deeming no such order has been passed with arrears and interest.

(ii) That the Hon?ble Tribunal may graciously be pleased to pass an order directing the respondents to release the retirement benefits of the applicant No.2 immediately with interest @ of 18% PA.

(iii) That the Hon?ble Tribunal may graciously be pleased to pass an order directing the respondents to place on record the copy of service book and leave account of the applicant No.2.

(iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation."

2. When this matter is taken up, learned counsel for the applicant states that he is relying upon the judgment of the Hon'ble Delhi High Court in Writ Petition (Civil) No.10279/2017 (Mewa Lal Pal and another vs. Union of India and another) decided on 25.1.2019 in which it has been held as under:-

"5. Considering the aforesaid circumstances, even though the LARSGESS Scheme has been declared to be unconstitutional, we are inclined to preserve the appointment of the petitioner No.2. It was not the fault of either of the petitioners when petitioner No.2 was granted appointment under the then prevailing LARSGESS Scheme upon petitioner No.1 seeking VRS under the said Scheme. Since the appointment had already been granted to petitioner No.2 and he has been serving since then, to discontinue his services at this stage would be highly inequitable."

3. Counsel further states that the respondents had wrongly calculated applicant no.2's period of service as less than 20 years of continuous service despite the fact that the applicant No.2 was appointed on 18.2.1986 as substitute Khallasi and as per the Rule 32 of the Railway Service Pension Rules, 1993, the services rendered as substitute shall be counted for pensionary benefits from the date of completion of three months in the case of teachers and four months in other cases of continuous service as substitute followed by absorption in a regular Group 'C' or Group 'D' posts without any break and therefore, from the date of appointment w.e.f. 18.2.1986 till 31.12.2014, the applicant no.2 had rendered more than 28 years of qualifying service.

4. The respondents in their counter affidavit have given reply to the said contention by only stating as under:-

"Para 4.7 That the contents of the Para 4.7 of the O.A. need no comments from the answering respondents, being matter of record."

5. The same is not a clear cut averment. Hence, it is not clear as to whether this applicant as per the Railway instructions under the LARSGESS Scheme 20 years of qualifying service in specified safety category. Further they have stated that as per the Railway Board RBE No.215/2009 dated 4.12.2009, it has been decided that "50% Temporary Status Labour Service on absorption in Regular Employment may be taken into account towards the minimum Service of 10, 20 and 30 years for the grant of benefit under the MACP Scheme on the analogy that the same is also reckoned as Qualifying Service for Pension. Further in reply to para 4.9 of the OA, it is submitted that earlier the LWP Statement of Shri Chaman Lal was wrongly calculated as 568 days by the dealing Clerk working under SSE/PC-STB/NDLS. However, when the LWP period was recalculated from the Original Leave Account at the time of Processing of Settlement case by dealing Clerk in Divisional Office/New Delhi, it came into notice that total LWP of the father of the applicant herein is 1840 days instead of 568 days. In this

regard, SSE/PC/STB/NDLS had clarified that "the LWP Statement was made incorrect, as per their detailed reply at Annexure R-11 & R-12.

6. Hence, according to their reply quoted above, the applicant is not satisfying qualifying service for consideration under the LARSGESS Scheme. The counsel for the applicants strongly contested the same and the annexures annexed by the respondents. Hence, we direct the respondents to first of all take a decision on the number of years of qualifying service, which the applicant qualifies for and whether it is under the Safety category, and then pass an order with regard to whether his case come within para 5 of the Order of the Hon'ble Delhi High Court in Writ Petition (Civil) No.10279/2017 and finally pass an order with regard to applicability of this Scheme and decide the case of the applicant according and also keep in mind the Railway Board, letter No.E(P&A)I-2015/RT-43 dated 26.09.2018, the contents of 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. 508/2018 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, 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 judgment dated 14.07.17 (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 judgment 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."

The respondents shall take a decision in view of the highlighted portion of the aforesaid scheme. The decision so taken by the respondents will be communicated to the applicant within a period of 90 days from the date of receipt of certified copy of this Order.

7. In the result, and for the foregoing reasons, the present OA is disposed of in above terms. There shall be no order as to costs.