

(2019) 10 CAT CK 0045
In the Central Administrative Tribunal
Case No : Original Application No. 410 Of 2017

Radhey Shyam

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Motor Vehicles Act, 1988 — Section 3, 81

Citation : (2019) 10 CAT CK 0045

Hon'ble Judges : Pradeep Kumar, Member (A), Ashish Kalia, J

Bench : Division Bench

Advocate : Yogesh Sharma, Neetu Mishra, Satpal Singh

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. The applicant was engaged as a casual Gangman under Civil Engineering Department of Railways w.e.f. 30.12.1977. Thereafter, he was given temporary status w.e.f. 15.10.1980 as a Gangman in the Engineering Department. Subsequently, he changed his department and was posted on 20.05.1981 as a Fitter Khalasi in Mechanical Department of Railways. Thereafter he was screened on 04.03.1987 and made permanent. In due course, he got to be promoted as Loco Pilot Goods and is presently working as such.

2. Applicant pleads that the respondent - Railway vide order dated 02.01.2004 introduced a safety related retirement scheme for Drivers and Gangman by which the Drivers and Gangman in the age group of 55 to 57 years could seek voluntary retirement and in lieu thereof could request employment of their ward who had the requisite qualification for the same post. Subsequently, vide orders dated 11.09.2010 the benefits of this scheme were extended to some other safety categories of staff also with a grade pay of Rs.1800 p.m. and it was also decided to modify the nomenclature of the scheme as Liberalized Active

Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS Scheme) in which two things were modified, In that, the benefit was extended to some additional safety category staff and they could seek benefit in age group 50-57 years. However, in respect of Loco Pilots, the age group remains unchanged as 55-57 years. Other terms and conditions of the scheme remain unchanged. LARSGESS Scheme was to be implemented in two cycles every year, i.e. January and July.

3. The applicant applied for voluntary retirement under LARSGESS Scheme for the cycle July 2014. Since the request was not replied, he made a representation on 06.04.2015 to the Divisional Railway Manager. He received a reply on 30.04.2015 that he has not completed minimum requisite 33 years of qualifying service, as was required under the scheme, hence his request under LARSGESS Scheme could not be considered.

4. The applicant made a representation on 17.07.2015 that his qualifying service needs to be counted with effect from 15.10.1980 and on this basis he claimed to have completed 33 years of qualifying service and accordingly, requested for reconsideration of his request. He made another representation on 30.12.2015. This was considered by the respondents and a letter was issued on 22.12.2016 which reads as under:

"Sub: Voluntary Retirement of Sh. Radhey Shyam S/o Sh. Panna Lal LPG/SSB under LARSGESS for Period 1.7.2014.

In reference to above on the request of above name for the appointment of his ward under LARSGESS scheme for the period 1.07.2014 on the examine his case on the basis of record available and entries in his service record and enquiry report which has been submitted by as SWLI/JHIND.

It is not established that his DOA is 14.10.1980 and his claim to count service w.e.f. 15.10.1980 to 19.05.1981 as qualifying is not tenable being no authentic and verifiable record available.

He may informed accordingly under advice to this office."

5. Said letter was sent to Sr. CC/SSB under whom applicant worked with directions to advise the applicant. It is this rejection which is impugned in the instant OA.

6. The applicant has pleaded that his request for consideration under LARSGESS Scheme for July 2014 was rejected initially on 30.04.2015 and accordingly, he missed to apply for the scheme for the cycle January, 2015.

Accordingly, his application for July 2014 needs to be considered for January 2015 cycle.

7. Per contra, the respondents opposed the OA. It was pleaded that for Loco Pilot Goods to make an application under LARSGESS Scheme, they were required to be in the age group of 55-57 years of age with qualifying service of at least 33

years and only then could the appointment of the ward as Assistant Loco Pilot be considered, if the said ward fulfils all eligibility conditions.

In the case of applicant, the qualifying service worked out to 32 years 9 months and 5 days w.e.f. 20.05.1981 to 30.06.2014. Even if the earlier temporary service for the period 15.10.1980 to 20.05.1981 is also considered, the qualifying service still works out to 32 years 11 months and 22 days and hence the applicant does not satisfy the minimum qualifying service required of 33 years and accordingly he is not eligible for benefit under LARSGESS Scheme.

8. The respondents further drew attention that the said LARSGESS Scheme is no more in force w.e.f. 27.10.2017 in terms of various judicial pronouncements and decision taken by the respondents - Railway. Accordingly, OA is without merit and the same is required to be dismissed.

9. Matter has been heard at length. Sh. Yogesh Sharma, learned counsel represented the applicant and Ms. Neetu Mishra for Sh. Satpal Singh, learned counsel represented the respondents.

10. The applicant's request for LARSGESS Scheme for July 2014 cycle could not be considered as he did not fulfil the minimum qualifying service requirement. Accordingly, the decision of the respondents cannot be faulted.

11. Further, the Allahabad Bench of this Tribunal in OA No.330/00859/2015 titled Brahm Dutt Mishra vs. Union of India and ors. noted as under:

"6. The issue of LARSGESS Scheme was examined by Hon"ble Punjab and Haryana High Court in CWP No.7714/2016 arising out of the order passed by Chandigarh Bench of this Tribunal in the case of Kala Singh and others vs. Union of India and others in OA No.060/656/2014. While disposing of the CWP No.7714/2016, Hon"ble High Court vide the judgment dated 27.04.2016 held that the LARSGESS Scheme does not stand the test of the Article 14 and 16 of the Constitution of India and the Railway Board was directed to re-consider the said Scheme. The Review petition filed by the respondents was also dismissed by Hon"ble High Court vide order dated 14.07.2017. Subsequently the Railway Board challenged the order of Hon"ble High Court before Hon"ble Supreme Court in the SLP (C) No.508/2018 and vide order dated 08.01.2018, the Hon"ble Supreme Court declined to interfere with the order of Hon"ble High Court.

7. Thereafter, the Railway Board has reviewed the LARSGESS Scheme as per the direction of Hon"ble Punjab and Haryana High Court and vide its order dated 26.09.2018 (R.B.E. No.150/2018) has decided as under:-

"2. In compliance with the above directions, Ministry of Railways have revisited the scheme duly obtaining legal 4 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 appointment 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."

8. Subsequently, another Circular dated 28.09.2018 (RBE No.15/2018) was issued. The contents of circular is reproduced as below:- "In supersession to Railway Board's letter No.E(P&A)1- 2015/RT-43 dated 26.09.2018, it is stated that while the LARSGESS Scheme continues to be on hold with effect from 27.10.2017 on account of various court cases, to impact 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."

12. The LARSGESS Scheme has thus been already terminated w.e.f. 27.10.2017. As of now it is only those cases where the employee had already retired under LARSGESS Scheme before 27.10.2017, i.e., a case where it was a voluntary retirement under LARSGESS Scheme and not normal superannuation, and where a case could not be considered because of the order of the Railway Board to put the Scheme on hold, can only be considered now.

13. In the present circumstances, the applicant continues to work and he was not voluntary retired under LARSGESS Scheme as on 27.10.2017. Accordingly, the relaxation vide letter dated 28.09.2018 also cannot be considered in respect of the instant applicant.

14. Since LARSGESS Scheme itself does not survive any more, nothing subsists in the instant OA. The same is dismissed being without merit. No costs.