

(2019) 11 CAT CK 0024

In the Central Administrative Tribunal

Case No : Original Application No. 3308 Of 2015

Rakesh Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 11 CAT CK 0024

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

Bench : Division Bench

Advocate : M.S. Saini, Kripa Shankar Prasad

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. The applicant was working as Loco Pilot Mail under Respondent - Railway. He applied for voluntary retirement under Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS Scheme) in 2010 and requested that his son be appointed as Assistant Loco Pilot in his place.

2. Applicant pleads that the respondent - Railway vide order dated 02.01.2004 had 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 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. Applicant's son Sh. Vikrant was called for written exam which was held on 03.09.2011 and he passed in the same. The second stage of examination for the post of ALP, was Aptitude Test. It was held on 02.12.2011. Applicant's son appeared in the same but failed. Thereafter applicant requested for providing second opportunity for appearing in the Aptitude Test. This was not agreed to.

It may be mentioned here that Aptitude Test is a psychological test to test mental alertness and response time which are considered important for Train Drivers (known as Loco Pilot).

4. The recognised Workers Union of Railway approached Railway Board for granting second chance for clearing the Aptitude Test for all those candidates who had applied for ALP but had failed in the Aptitude Test. It was considered by the Railway Board and vide letter dated 30.08.2013, second chance was given to those who failed for the post of ALP starting from the LARSGESS cycle July 2013 and onwards. However, in respect of those who had failed the Aptitude Test in earlier cycles, i.e. January 2013 and earlier, this second chance was not given. This authorisation letter reads as under:

"Sub: Extension of second chance for Aptitude Test for recruitment as Assistant Loco Pilots to those wards who have passed the written test but could not clear the Aptitude Test under LARSGESS - PNM/AIRF Item No.8/2012 and a reference received from NFIR.

AIRF had raised a demand in the PNM Forum for extending second chance for appearing in Aptitude Test to those wards who have passed the written test for the post of Assistant Loco Pilots but could not clear the Aptitude Test under LARSGESS. This issue has also been raised by NFIR vide their reference dated 22.08.2012.

2. The matter has been considered by the Board. It has been decided to extend second chance for Aptitude Test for recruitment as recruitment as Assistant Loco Pilots to those wards, who have passed the written test but could not clear the Aptitude Test under LARSGESS, after a gap of three months, in exceptional cases based on merits of each case.

3. These instructions are applicable from July - December 2013 retirement/recruitment cycle onwards only. The past cycles will be governed by the earlier instructions.

4. The other terms and conditions of the Scheme will remain the same."

5. One of the Zonal Railway sought clarification from Railway Board as to who will be the competent authority to decide as to which are the cases to be considered as exceptional based on merit, to be afforded this second opportunity. Railway Board vide their letter dated 23.01.2015 clarified as under:

"Sub: Extension of second chance for Aptitude Test for recruitment as Assistant Loco Pilots to those wards who have passed the written test but could not clear the Aptitude Test under LARSGESS.

Ref.: Railway Board"s letter No. E(P&A)I-2010/RT-2 dated 30.08.2013.

With reference to Railway Board"s letter dated 30.08.2013 quoted above, one of the Zonal Railways had raised a query in respect of the Competent Authority for allowing second chance for Aptitude Test for recruitment as Assistant Loco Pilots to those wards, who passed the written test but could not clear the Aptitude Test under LARSGESS.

2. The matter has been examined by the Board and it is advised that second chance for Aptitude Test for recruitment as Assistant Loco Pilot under LARSGESS, may be allowed with the personal approval of the General Manager. However, this power should not be delegated further.

(This disposes off WCR"s letter No. WCR/P.Hq/Rectt/122/ LARSGESS dated 22.12.2014)"

6. Meanwhile, applicant made a representation for granting second opportunity on 20.08.2014. This was rejected vide letter dated 01.10.2014. The same reads as under:

"In reference to your representation received under above referred letter, it is informed that reply has already been given to you vide this office letter of even No. dated 08.02.2012 & 17.01.2013 (copy enclosed). However, the recent instructions of Rly. Bd. Vide their letter No. E(P&A)I-2010/RT-2 dt. 30.08.2013 on the subject matter is applicable from July - December 2013 retirement/recruitment cycle onwards only. The past cycles will be governed by the earliest instructions. Hence, your case is not covered under the extant rules for consideration."

7. The applicant is aggrieved that the second chance to clear the Aptitude Test is being given to only those who failed in the cycle July 2013 and onwards but not to those who failed earlier. Applicant had since superannuated on 31.12.2014 and pleads that the inaction on the part of the Railways, has led to denial of second chance to his son for appearing in the Aptitude Test. Instant OA has been filed seeking direction to the respondents to allow his son Sh. Vikrant, the second chance which is within the competence of General Manager as per the clarification issued on 23.01.2015 (para 5 supra).

8. Applicant pleads that extension of second chance only to those who failed in July 2013 and onwards while not extending this chance to failed candidates of earlier cycles is discriminatory and this has since been challenged in Hon"ble High Court also where decision is awaited.

Further, even though as a result of judicial pronouncements, LARSGESS Scheme was terminated w.e.f. 27.10.2017, however, in regard to the LARSGESS Scheme

certain directions were issued by the Hon"ble Apex Court in WP(C) No.219/2019. In follow up, certain policy directives were issued by Railway Board vide letter dated 29.05.2019 which read as under:

"Sub:- Disposal of representations submitted for employment under LARSGESS Scheme in light of Supreme Court's orders in WP (C) No.219/2019.

Attention is invited to Board"s letter of even no. dated 05.03.2019 (RBE no. 39/2019) whereby decision for termination of LARSGESS Scheme in compliance of orders dated 08.01.2018 of Hon"ble Supreme Court in SLP (C) No. 508/2008) has been communicated. Thereafter, representation from wards/employees pertaining to the cycles pending prior to 27.10.2017 have been received in Board"s office quoting the Hon"ble Supreme Court"s Order dated 06.03.2019 in M.A. No.346/2019. Order dated 26.03.2019 in WP(C) No.219/2019 (Narinder Siraswal & Ors. Vs. UOI & Ors.) and Order dated 22.04.2019 in WP (C) No.448/2019 (Tarun Chowdhury & Ors.). Similar representations have also been received in SCR as mentioned in the reference received from South Central Railway dated 01.05.2019 seeking Board"s guidelines on the issue.

Extract of the Orders of Hon"ble Supreme Court in WP(C) No.219/2019 and 448/2019 are reproduced below:

WP(C) 219/2019

"Since the petitioners are claiming benefit under the Scheme which was prevalent when applications were preferred by the petitioners, we give liberty to the petitioners to approach the concerned authorities with appropriate representation. If such representation is made, the authorities will do well to consider the matter within two weeks on preferring of the representations. With these observations, the Writ Petition stands disposed of. Pending application(s), if any, shall stand disposed of."

WP(C) 448/2019

"These Writ Petitions are disposed of in terms of the aforesaid Order dated 26.03.2019. We have not expressed and shall not be taken to have expressed anything on the merits of the submissions. Pending application(s), if any, shall stand disposed of."

In view of the above, the matter has since been considered in Board"s office and it is decided that if any individual representations are received in light of the Apex Court"s Orders dated 06.03.2019, 26.03.2019 and 22.04.2019, the Railways concerned should examine and dispose of each individual representation based on the factual matrix of the case."

9. In this context, the applicant pleads that he has made a representation dated 10.07.2019 and that his case is of period when LARSGESS Scheme was in force and as such his ward be given second chance to appear in the Aptitude Test and in this regard, he has relied upon a judgment by Hon"ble High Court of Punjab

and Haryana at Chandigarh titled Union of India vs. Om Prakash and another, WP(C) No.5462/2014 delivered on 03.09.2015.

This case is in the context of LARSGESS Scheme where said Sh. Om Prakash was working as a driver but he did not have the minimum 33 years of service which was needed for voluntary retirement under LARSGESS Scheme. He pleaded that he has worked as Casual/Substitute during the period 1969 to 1970 which was not accounted for while working out his qualifying service and if included, he will satisfy the minimum requirement. This was not agreed by the Respondent Railway on the plea that he was on the verge of retirement on superannuation on 31.03.2008. He felt aggrieved and filed OA in the Tribunal which was dismissed vide orders dated 31.05.2010. Thereafter he preferred a writ No.19689/2011 which was allowed and orders dated 31.05.2010 was set aside and matter was remanded back to the Tribunal. Thereafter, the Tribunal allowed the OA vide order dated 23.09.2013 subject to refund of amount equal to the salary minus pension with effect from the deemed date of voluntary retirement and respondent Railway was directed to consider the case. This decision was challenged by the respondent Railway in this writ. In this case Hon"ble High Court ruled as under:

"16. Here respondent No.1 had applied in accordance with the provisions of the Scheme well in time but it were the petitioners who had kept his application pending for about three years. So, they cannot take the benefit of their own wrong.

17. Mere this fact that respondent No.1 has retired subsequently on 31.03.2008, is also no ground to reject his claim. The said plea was also considered by the Co-ordinate Division Bench while allowing CWP No.19689 of 2011 with the following observations:-

"The Tribunal's observation that the petitioner has meanwhile retired on attaining the age of superannuation, in our considered view, is not an incurable disqualification. In such like situation, the respondents-department ought to have fixed a deemed date of voluntary retirement of the petitioner with an option to him to deposit the arrears of salary minus the pension, which would have entitled him the benefits under the Scheme. Such a recourse would have balanced the equities between the parties."

18. The aforesaid observations of the Co-ordinate Division Bench have not been challenged by the petitioners. So, the subsequent retirement of respondent No.1 will be of no legal consequences to decline him the relief to which he was otherwise entitled. Hence, we do not find any legal infirmity in the impugned order dated 23.09.2013 passed by the learned Tribunal.

19. Thus, keeping in view the aforesaid discussion, the present writ petition has no merits and the same is hereby dismissed."

10. Relying on this decision, applicant pleaded that he is also ready to make

refund of his salary minus pension, if his son Sh. Vikrant is given second opportunity to clear the Aptitude Test and is granted appointment as ALP.

11. It is also pleaded that a similar case was adjudicated by Principal Bench of this Tribunal in OA No.1620/2015 decided on 09.09.2016 wherein the Tribunal directed to grant second chance to clear the Aptitude Test. The operative para reads as under:

"11. In view of the above discussion, we allow the OA with the direction to the respondents to extend the benefit of second chance to the applicants for the Aptitude Test. We set a time frame of 90 days from the date of receipt of a copy of this order to implementation of the order. No costs."

12. Per contra, the respondents opposed the OA. It was pleaded that even though Railway Workers Union had represented for granting second opportunity to the failed candidates of earlier cycles, however, it was not agreed and decision was communicated vide letter dated 27.06.2014. The same reads as under:

"Sub: Extension of second chance in the matter of Aptitude Test under LARSGESS Scheme, PNM/AIRF Item No.8/2012.

The undersigned is directed to refer to the Minutes of the PNM Meeting held on 06.05.2014 to discuss the left over items and to state that though the Orders were issued on 30th of August 2013, but were made applicable from the retirement/recruitment cycle already in process viz. July - December 2013.

2. As per the existing provisions of the Scheme, if the ward fails in the Aptitude Test in a particular cycle, than concerned railway employee can again apply for voluntary retirement in the subsequent cycles provided both employee and ward are eligible. The benefit of the Scheme cannot be allowed to those employees who have already crossed the upper age limit and have thus become ineligible. In the circumstances Board's Order dated 30.08.2013 cannot be made effective retrospectively."

13. Thereafter, one of the Zonal Railway, namely, Northern Railway had sought a specific clarification vide letter dated 12.02.2015 whether second chance can be given to the failed candidates of those cycles where such rejection panels were issued after Board's policy directive dated 30.08.2013. This was not agreed vide Railway Board's letter dated 12.05.2015, the same reads as under:

"Sub: Inordinate delay caused in the formation of the panel of Assistant Loco Pilots under LARSGESS on Northern Railway - reg. Please refer to your letter No.831-E/O/169/2V/EIV/Pt.1 dated 12.02.2015 on the above cited subject.

2. The matter has been considered by Board. The benefit of second chance for Aptitude Test for recruitment as ALP has been allowed to those wards who passed the written test, but could not clear the Aptitude Test under LARSGESS from July-December 2013 onwards only. This provision is uniformly applicable to all the Railways. Any dispensation to one Railway is not feasible, as it will be

discriminatory and will lead to litigation and demand from other Railways where such failed candidates may be available.

3. In addition to above, all the employees have crossed the prescribed upper age limit and relaxation in any of the eligibility conditions is against the objective of the Scheme. In the circumstances, the benefit of second chance in Aptitude Test cannot be extended to 38 candidates (belonging to retirement/recruitment cycles prior to July 2013) being considered as ALP under LARSGESS.

4. The Time Schedule prescribed for processing of retirement/recruitment requests for respective cycles of each year should be strictly followed to avoid such situations."

14. It was further pleaded that as a result of judicial pronouncements, the LARSGESS Scheme has since been terminated w.e.f. 27.10.2017. Attention was drawn to Railway Board's letter dated 05.03.2019 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, 26.09.2018 and 28.09.2018.

In compliance of the directions of the Hon"ble Punjab and Haryana High Court dated 27.04.2016 in CWP No.7714 of 2016, dated 14.07.2017 in RA-CW-330-2017 and Orders of Hon"ble Supreme Court dated 08.01.2018 in SLP (C) No. 508/2018, Ministry of Railways have revisited the LARSGESS 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. Therefore, no further appointments should be made under the Scheme subject to position mentioned in para 2 below.

2. As regards the cases where the wards had completed all formalities including Medical Examination under LARSGESS Scheme prior to 27.10.2017 and were found fit, but the employees are yet to retire, the matter is pending consideration before the Hon"ble Supreme Court and further instructions would be issued as per directions of the Hon"ble Court."

15. In this connection, since the applicant has already superannuated on 31.12.2014 and his son could not clear the Aptitude Test prior to the cut off date of 27.10.2017, it is not permissible now to consider the case under LARSGESS Scheme.

16. Matter has been heard at length. Sh. M.S.Saini, learned counsel represented the applicant and Sh. Kripa Shankar Prasad, learned counsel represented the respondents.

17. The applicant's request for second chance to appear in the Aptitude Test could not be considered as this is contrary to the stated policy directives. The

stand of the respondents cannot be faulted.

18. 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."

19. 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.

20. Applicant's case cannot be covered under the directions dated 05.03.2019 (para 14 supra) as he had already superannuated on 31.12.2014 prior to the cut off date of 27.10.2017. The orders dated 03.09.2015 of Hon"ble High Court of Punjab and Haryana regarding refund of salary minus pension (para 9 supra), can also not be considered in view of a later judgment of Hon"ble Apex Court in Union of India and ors. vs. Kala Singh and ors. in IA 18573/2019, in Misc. Application No. 346/2019 in Misc. Application No.1202/2018 in Petition for Special Leave to Appeal No.508/2018, dated 06.03.2019 wherein the Hon"ble Apex Court has held as under:

"Since the Scheme stands terminated and is no longer in existence, nothing further need be done in the matter.

Application(s) is/are accordingly disposed of."

21. In view of the foregoing, since LARSGESS Scheme itself does not survive any more w.e.f. 27.10.2017 and applicant has superannuated earlier on 31.12.2014 and his son did not qualify in the specified examination, nothing subsists in the instant OA. The same is dismissed being without merit. No costs.