
(2018) 07 JH CK 0083
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1077 of 2018

Vishwanath

APPELLANT

Vs

union of India

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Citation : (2018) 07 JH CK 0083

Hon'ble Judges : APARESH KUMAR SINGH, J; RATNAKER BHENGRA, J

Bench : Division Bench

Advocate : P.K.Mukhopadhyay, Gautam Rakesh

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and railways.
2. Applicants in O.A. No. 051/00169/2015 are aggrieved by an order dated 10.11.2017, passed by the learned Central Administrative Tribunal, Circuit Bench, Ranchi, whereunder, their prayer for direction upon the respondents to consider their case and to provide employment to their respective wards under the Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (for short LARSGESS), dated 11th September, 2010 was rejected.
3. Applicants claimed to have applied for retirement and employment of their dependents. The scheme dated 11.9.2010 Annexure-2 framed by the Railways Board, Ministry of Railways was a modification of the scheme dated 2.1.2004 RBE No. 4/2004 i.e. "Safety related to retirement scheme". Drivers and Gangmen (Annexure-1). The 2004 Scheme was framed to cover two safety categories viz. drivers (excluding shunters) and Gangmen whose working has a critical bearing on safety of train operations and

track maintenance. The Scheme had been framed on the consideration that with advancing age, the physical fitness and reflexes of staff of these categories deteriorate, thereby causing safety hazards.

Under the scheme of 2004, drivers and gangmen in the age group 50 to 57 years may seek retirement and employment to a suitable ward of the employee whose application for retirement under the Scheme is accepted. Employees who have completed 33 years of qualifying service would be eligible for seeking retirement under the Scheme, it would be on voluntary basis. Applications from those who proposed to retire would be taken once in a year and the cut-off date for reckoning of the eligibility of employees for seeking retirement would be 30th June of the respective year. All conditions of employment for the ward of such retired employee such as age limits, educational qualification etc. would also be determined with reference to that date. The last date for submission of request for retirement and for consideration of a ward for appointment would be 31st of July of the respective year. Employees who desire to withdraw their request may do so not later than 30th September of the respective year. No requests for withdrawal would be entertained thereafter. The discretion to accept the request for retirement was vested in the administration depending upon the shortage of staff, physical fitness and the suitability of the ward for appointment in the category of Driver/Gangmen, as the case may be. Clause-12 of the Scheme of 2004 clearly provided that the conditions of eligibility in the case of wards being considered for appointment would be the same as prescribed for direct recruitment from the open market. Clause-13 further provided that suitability of the wards will be assessed in the same manner as is being done in the case of direct recruitment. The assessment would be done through respective Railway Recruitment Boards. The Scheme of 11th September, 2010 (Annexure-2) however extended the benefit of SRRS dated 2.1.2004 to other safety categories of staff with a grade pay of Rs. 1800/- p.m. The qualifying service was reduced from 33 years to 20 years and the eligibility age group from 55-57 years to 50-57 years for seeking retirement. The nomenclature of the Scheme was modified from SRRS to Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) with grade pay of Rs. 1800/-. It further reiterated that employment under the

Scheme would be guaranteed only to those found eligible/suitable and finally selected as per procedure. Other terms and conditions of the Scheme would remain unchanged.

4. The applicants contended that the educational qualification for proposed appointment was fixed as Class-8 pass for the post of Gangman vide notification dated 13.10.2010 issued pursuant to the Scheme dated 11.9.2010 in respect of the category of the Gangman (Annexure-3).

Applicants/petitioners herein contended that in terms of the Scheme they along with other employees applied for the benefit of the said Scheme in prescribed format. They expressed their desire to get their respective sons/wards employed with the respondent.

5. However, conspicuously averments made in para 10 of the instant petition also lacks in specific details and the date of such application. Annexure-

4, application of one such applicant Bishwanath does not show any date. In any case, the application was not made in terms of Clause-8 of the SRRS

dated 2.1.2004/ RBE No. 4 of 2004 (Annexure-1) which required it to be made by 31st July of the respective year i.e. 2010 in the case of these

applicants. The applicants being aggrieved by non-consideration, approached the learned Tribunal only in the year 2015 with a prayer to direct the

respondents to consider their applications in terms of LARSGESS and provide employment to their respective wards.

6. The learned Tribunal heard the parties and took note of the stand of the respondent-Railways brought on record through written statement.

Railways contended that the minimum educational qualification for fresh recruitment to railway service in PB-1 grade pay Rs.1800/- (erstwhile group-

D post) was class-10 pass or ITI or equivalent and it applied to all future recruitments against direct recruitment quota through all modes. Since, the

applicants did not fulfill the minimum criteria of educational qualification, their applications could not be processed any further. They had already

retired from service and were not entitled to any benefit of LARSGESS.

7. Learned Tribunal on consideration of the material facts and the Scheme came to the conclusion that wards of such employees seeking

retirement under LARSGESS should possess minimum educational qualification of Class-10 pass or ITI or equivalent. The wards of the applicants

herein did not possess minimum educational qualification after issuance of the

modified upgraded educational qualification vide notification dated

9.12.2010.Â These applicants had retired long back and had approached the tribunal after considerable delay in 2015. Therefore, the benefit of

LARSGESS could not be extended to the applicants. The O.A. was dismissed being devoid of merit.

8. Learned counsel for the petitioner submits that the case of the applicants ought to have been considered as per the minimum educational eligibility

criteria of 8th pass in terms of the notification dated 13th October, 2010 and not the new notification dated 9.12.2010. Learned tribunal therefore

committed error in rejecting the case of the applicants though their wards were eligible in terms of notification dated 13th October, 2010 laying down

eligibility criteria of 8th pass. The case of the applicantsâ?? ward could not be considered on the basis of enhanced educational qualification of 10th

pass under notification dated 9th December, 2010.

9. This has been contested by the learned counsel for the railways on the grounds taken before the learned tribunal based on the Scheme itself.

10. We have considered the submissions of learned counsel for the parties in the backdrop of the relevant facts and the Scheme applicable to the case

of such employees. We find that the petitioners have conspicuously failed to make any reference of the date of their applications in the averments in

the writ petition and perhaps in the Original Application also no such date was mentioned as would be borne out from the narration of the case of the

applicants at para 3 of the impugned order. As noted above, in terms of Clause-8 of the SRRS dated 2.1.2004 (Annexure-1) other terms whereof

have remained unchanged in the revised notification dated 13th September, 2010 (Annexure-3), the application should have been made latest by 31st

July, 2010 i.e of the year in reckoning Annexure-4 enclosed as example of one such application, does not contain any date. Moreover, the enclosed

transfer certificate thereto at the top contained date of 1st November, 2010. The railways however had enhanced the minimum eligibility qualification

for applying under the scheme to 10th pass or ITI or equivalent from 8th pass which was applicable earlier. The applicants remained silent for four

years till they sought information under RTI as per statements made at para 14 on 16.5.2014.Â They were informed under RTI that the qualification

had been enhanced from 8th to 10th pass. In the light of these material facts,

the claim of the applicants was not considered fit under the LARSGESS

Scheme as their wards did not possess the minimum qualification of class 10th pass or ITI or equivalent.Â

11. Considered thus, we do not find that the learned tribunal had committed any error of law or facts in passing the impugned order. Therefore, no interference is called for. The writ petition is accordingly dismissed.