

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition Nos.745, 1689 and 1776 of 2015

Common Order: (per V.Ramasubramanian, J.)

The Union of India and the South Central Railways have come up with the present writ petitions challenging a common order passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad in a batch of three original applications, directing the South Central Railways to consider the cases of the respondents 1 to 103 herein for appointment under a scheme known as LARSGESS-2010.

2. We have heard Mr. L.Ravichander, learned Senior Counsel appearing on behalf of Mr. P.Bhaskar, learned Standing Counsel for the South Central Railways and Mr. Bondu Sekhara Reddy, learned counsel appearing for the respondents 1 to 10.

3. By a letter dated 02-01-2004, the Railway Board introduced a scheme known as "Safety Related Retirement Scheme", covering two categories of employees, namely, Drivers (excluding Shunters) and Gangmen, whose working has a critical bearing on the safety of train operations and track maintenance. Under the scheme, drivers and gangmen in the age group of 50 to 57 were permitted to seek retirement, in consideration of an employment to a suitable ward of the retiring employee. Apart from other conditions, the scheme envisages that the suitability of the wards will be

assessed in the same manner as was being done in the case of direct recruitment. The assessment of the candidates was to be made through Railway Recruitment Boards. The scheme was designed in such a manner that the exit of the retiring employee will coincide with the entry of the ward into service.

4. By a further Circular dated 11-9-2010, the Railway Board expanded the safety categories coming under the scheme. This Circular dated 11-9-2010 modified the nomenclature of the scheme as “Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff”. Under the modified scheme, the qualifying service was reduced from 33 years to 20 years and the eligibility age group was reduced from 55 - 57 years to 50 - 57 years. Para 2.1 of the scheme made it clear that “the employment under the scheme would be guaranteed only to those found eligible/suitable and finally selected as per procedure”. Similarly, paragraph-4 of the modified scheme stipulated that “the retirement of the employee will be considered only if the ward was found suitable in all respects”.

5. The respondents 1 to 3 herein are the wards of employees who came within the purview of the said scheme, namely, LARSGESS. The parents of the respondents 1 to 3 were employed in the safety categories of the South Central Railways. Therefore, the respondents 1 to 103 applied. A written examination was held on 26-02-2012 and results

were declared on 09/10-4-2012. The respondents 1 to 103 were declared passed.

6. Thereafter, the respondents 1 to 103 were directed to attend a Physical Efficiency Test at Guntakal from 22-5-2012 to 25-5-2012 and 30-5-2012. Eventually, a Select List of 45 candidates was published on 15-6-2012. Upon enquiries it was revealed that the respondents 1 to 103 did not qualify in the Physical Efficiency Test. Therefore they were not selected.

7. Aggrieved by their non-selection, the respondents 1 to 103 herein filed three applications in O.A.Nos.279, 881 and 966 of 2013 on the file of the Central Administrative Tribunal, Hyderabad, contending that the Physical Efficiency Test should have been dispensed with. The said applications were allowed by the Central Administrative Tribunal by an order dated 28-8-2014, forcing the Railway Administration to come up with the present writ petitions.

8. The main ground on which the respondents 1 to 103 challenged their non-selection was that by the Board's letter dated 09-12-2011, the requirement of passing the Physical Efficiency Test had already been dispensed with by the Railway Board, in line with the recommendations of the 6th Central Pay Commission. Thereafter, the General Managers of various Zones sought a clarification about the abolition of the Physical Efficiency Test and the Railway Board, by RBE No.04/2012, dated 03-01-2012, directed all the General Managers of Zones to dispense with the Physical

Efficiency Test in the relevant categories under LARSGESS. The respondents 1 to 103 further contended that by a letter dated 17-5-2012 sent by the Deputy Director (Establishment) of the Railway Board, all General Managers were directed to cancel the Physical Efficiency Test, if no Physical Efficiency Test had been held as on that date. Since Physical Efficiency Test had not been conducted as on the said date, namely, 17-5-2012, the respondents 1 to 103 contended that the conduct of the Physical Efficiency Test in May, 2012 was illegal.

9. The respondents 1 to 103 also contended that the South Central Railways itself recommended the cases of 1780 candidates who had failed in the written examination and that therefore they cannot be discriminated against.

10. All the aforesaid arguments of the respondents 1 to 103 were accepted by the Tribunal and the Tribunal found that the clarification dated 17-5-2012 dispensing with the Physical Efficiency Test, cannot depend upon the fortuitous circumstance of the particular stage of the selection process. The Tribunal held that the scheme LARSGESS is a beneficial scheme like compassionate appointment and that therefore the benefit of the same cannot be denied to persons who have passed the written examination. Taking such a view, the Tribunal allowed all the applications.

11. But unfortunately, the Tribunal has omitted to take note of the fundamental fact, namely, that by a letter dated

29-3-2011, the Railway Board decided to have selection process twice in a year. As per the original scheme, the suitability of the ward for selection has to be tested on the same parameters as a candidate seeking direct recruitment would be subjected to. For direct recruitment, the Statutory Rules prescribe a written examination followed by Physical Efficiency Test. Clause 2(xii) of the original scheme dated 02-01-2004 reads as follows:

“(xii) 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.”

12. Therefore, it is clear that the procedure for direct recruitment was directed to be adopted even with respect to appointment under the scheme. Even when the original scheme of the year 2004 was modified under the Board's letter dated 11-9-2010, the above stipulation was not modified. Paragraph-5 of the letter dated 11-9-2010 under which the present scheme was introduced reads as follows:

“5. The other terms and conditions of the Scheme will remain unchanged.”

13. The respondents 1 to 103 herein applied for the first cycle of the relevant year. By the proceedings dated 29-3-2011, the Board directed the process of retirement-cum-recruitment to start from July, 2011 for the calendar year 2011. The relaxation from the conduct of Physical Efficiency Test, was granted only in respect of the recruitment cycle of July – December, 2011 under the Deputy Director's letter

dated 17-5-2012. Unfortunately, the respondents 1 to 103 herein did not participate in the said cycle. Therefore, the relaxation granted under the said letter dated 17-5-2012 was not applicable to their cases.

14. The above important aspect has been lost sight of by the Central Administrative Tribunal. Moreover, the respondents 1 to 103 cannot be granted any relief as on date. It appears that about 117 employees applied under the scheme LARSGESS. Out of them, 6 persons continue to be in service. The remaining 111 continued in service up to the date of retirement and have already reached the age of superannuation. In other words, the parents of more than 90% of the respondents 1 to 103 herein continued to work from the date of announcement of the scheme in the year 2010, upto the date of their normal date of superannuation and have retired. Hence, if the order of the Tribunal is sustained, the respondents 1 to 103 will be conferred with two benefits, namely, (1) that of allowing their parents to continue in service up to the normal age of retirement and (2) that of granting appointment to their wards, converting the posts as hereditary posts.

15. In view of the above, the writ petitions deserve to be allowed. Accordingly, they are allowed and the common order of the Tribunal is set aside. The original applications filed by the respondents 1 to 103 herein shall stand dismissed.

The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

05th December, 2016.
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