

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.11861 of 2016
Date of Decision: December 18, 2017

Sushil Kumar

...Petitioner

Versus

**The Presiding Officer, Central Administrative Tribunal, Chandigarh Bench,
Chandigarh & others**

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.Ravinder Malik (Ravi), Advocate,
for the petitioner.

Mr.Banni Thomas, Advocate,
for respondent Nos.2 to 6.

AMIT RAWAL, J.

1. Petitioner has approached this Court under Articles 226/227 of the Constitution of India seeking quashing of the order dated 19.1.2016 (Annexure P-3) passed by the Central Administrative Tribunal, Chandigarh Bench (for short "CAT"), whereby the Original Application seeking quashing of the notice dated 22.8.2013 (Annexure A-9) issued by respondent No.4-The Divisional Manager, Northern Railway and order dated 16.7.2013 (Annexure A-8) passed by respondent No.6-Senior Section Engineer (P.Way), SSE/P.Way, Karnal relieving the petitioner from service, had been dismissed.

2. Mr.Ravinder Malik (Ravi), learned counsel appearing on behalf

of the petitioner submitted that father of the petitioner, namely, Rajpal son of Lila, was appointed as Trackman in the Indian Railway in the year 1980 and promoted as Keyman in the year 2004. Respondent-department issued Literalized Active Retirement Scheme in the year 2011, which was called “LARSGESS” for the purpose of guaranteed employment for Safety Staff, who had taken the voluntary retirement from the service. In pursuance to the aforementioned Scheme, father of the petitioner had opted under the Scheme to seek voluntary retirement and sought the employment of the petitioner vide letter Annexure A-1. His application for voluntary retirement under the LARSGESS Scheme 2011 was accepted and he was relieved from service with immediate effect and petitioner was appointed on temporary basis as Trackman in the pay scale of ₹5200+20200/- and pay grade ₹1800/- with pay of ₹7000/- per month. In pursuance to the aforementioned letter, the petitioner was posted as Trackman in the office of the Senior Section Engineer (P.Way), Karnal with a rider that in case any prior report of the police officer with regard to the character of the petitioner was found against him, he would be removed from the service without any further information.

3. It has been next argued that the petitioner had appeared in the written examination held on 8.9.2011 under the LARSGESS Scheme and was declared pass. Before issuing the appointment letter, he was required to pass medical category as Bee-One. The medical examination of the petitioner was held on 2.3.2013 at Central Hospital, New Delhi, whereby he was declared medically fit for appointment as Trackman Class Aye Two APO/NRLY as per the certificate dated 2.3.2013 (Annexure A-3). In pursuance thereof, the petitioner and his father filed affidavits dated

5.4.2013 (Annexure A-4) agreeing to the pension scheme, notification and the instructions. While working as a Trackman, petitioner was surprised to receive a letter written by respondent No.7 to respondent No.4 for his medical re-examination on the ground that during the self-audit of medical examination, file of candidate Sushil Kumar got mixed up. The said error, from the contents of the letter, occurred due to the fact that large number of candidates appeared for medical examination.

4. Vide letter dated 22.7.2013 (Annexure A-6), respondent No.5-Sr.Divisional Personnel Officer-11, Northern Railways, New Delhi directed the petitioner to appear for medical re-examination, which was conducted at Divisional Hospital, Delhi and detailed report of the medical re-examination of the petitioner was sent on 25.7.2013 (Annexure A-7) from the Divisional Hospital to respondent No.4. As per the aforementioned report, it was found that the petitioner was declared fit for category “Bee Two” and not “Aye Two” and, thus, was not found eligible for discharging the duty as Trackman. As per the medical terminology, “Bee Two” relates to colour blindness. It was owing to the aforementioned medical report, the petitioner was astonished to receive the impugned notice and constrained to challenge by preferring the Original Application.

5. It was further argued that the CAT had erroneously dismissed the Original Application by not taking into consideration the Safety Related Retirement Scheme, whereby, the case of the petitioner ought to have been considered for having been appointed for the post, other than, Trackman. The medical re-examination report conducted by the office of the Chief Medical Superintendent, Northern Railway did not anywhere mention that the petitioner was completely unfit for any category of post. After the

promulgation of the Scheme, *ibid*, the respondents formulated the scheme known as “Literalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS Scheme) which was earlier known as Safety Related Retirement Scheme and the father of the petitioner had also worked as a Keyman and, therefore, the petitioner could have also been appointed for the said post or the other posts, like Khalasi/Khalasi Helper etc.

6. We have heard the learned counsel for the parties, appraised the paper book and in our opinion, the order of the CAT is based upon the appreciation of the facts and interpretation of the Scheme calling for no interference. The petitioner cannot derive any support from Annexure R-1 on which reliance has been placed by him. Clause IV of the aforementioned Scheme basically pertained to the appointment of Gangmen. For the sake of brevity, relevant portion of the Scheme Annexure R-1, *ibid*, reads thus:-

“Gangmen: This category is responsible for the proper maintenance of tracks. Their duties involve heavy manual labour in the laying of tracks, repair of tracks, patrolling etc. Unlike workshops/locosheds, all this labour is performed in the open environment, they are subjected to the vagaries of extreme weather conditions, non availability of fork lifts, EOT cranes, wheel barrow etc. As a result, the infirmities associated with the aging processes and spinal and back problems catches up quite early in life.

These categories, work in conditions, in which fatigue sets in earlier, than in the case of staff who work indoors or within station limits or in depots and workshops. Although the

other categories hormenciatured as safety categories also have vital role to play in ensuring operational safety, the nature of their duties, is less arduous. Therefore no other category other than Gangmen and Drivers is included in the Scheme. For the same reason, shunters who perform less strenuous shift wise, duties within station yards, will also not be included in the scheme.

ii) Under the Scheme, Drivers and Gangmen in the age group of 50 to 57 years may seek retirement.

Iii) Employment to a suitable ward of the employee, whose application for retirement under the scheme is accepted will be considered.

iv) The employee should have completed 33 years of qualifying service in order to be eligible for seeking retirement under this scheme.”

7. Learned counsel for the petitioner could not dispute that the earlier medical examination of the petitioner declaring him fit for the post meant for having eye sight “Aye One” had got mixed up. Admittedly, for the post of Trackman, minimum requirement was “Bee One fitness”. In such a situation, the petitioner could not be allowed to continue on the post of Trackman, being a sensitive post, which prescribes some category of fitness, as noticed above, so as to avoid any untoward accident or incident.

8. There is no provision in the Scheme for providing an alternative post and having left with no other option, the respondents, had rightly terminated the services of the petitioner. Consequently, VRS of Raj Pal under the LARSGESS Scheme was also recalled and he was ordered to

be taken back on duty as the purpose of the Scheme was to provide employment to the wards of the employees, who were falling under the LARSGESS Scheme subject to fulfillment of all the conditions.

9. In view of what has been noticed above, we do not find any illegality or perversity in the impugned order. Resultantly, the writ petition stands dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**December 18, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No