



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs. JUSTICE R.THARANI

W.P. (MD)No.6452 of 2018

and

W.M.P. (MD)Nos.6260 and 6261 of 2018

P.Balamurugan

... Petitioner

Vs.

1.The General Manager,
G.M.Office,
NGO Main Building,
Southern Railway,
Park Town,
Chennai 600 003.

2.The Divisional Railway Manager,
DRM Complex,
Southern Railway,
Park Town,
Chennai 600 003.

3.The Divisional Railway Manager,
DRM Complex,
Southern Railway,
Madurai 625 096.

4.The Assistant Personnel Officer / M & E,
The Senior Divisional Personal Officer,
Southern Railway,
Madurai.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Ref.OA/310/00426/2017, dated 11.12.2017 passed by the Central Administrative Tribunal, Madras Bench and quash the same as illegal and consequently to direct the respondents to appoint the petitioner under compassionate grounds under Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARGESS) within the time stipulated by this Court.



For Petitioner
For Respondents

: Mr.T.Lajapathi Roy
: Mr.S.Manohar

ORDER

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(Order of the Court was made by T.S.SIVAGNANAM,J.)

Heard Mr.T.Lajapathi Roy, learned counsel for the petitioner and Mr.S.Manohar, learned counsel for the respondents.

2.The petitioner is aggrieved by the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.310/00426/2017, dated 11.12.2017. The petitioner filed the said Original Application to direct the respondents to provide suitable employment to the applicant under LARSGESS scheme or any other suitable scheme in the Southern Railways, within the time frame that may be fixed by the Tribunal by considering his representation.

3.The said scheme was issued by the Railway Board to assist the wards of the railway employees in securing employment in Group - D service in the Engineering Department, in cases, where application for voluntary retirement under the LARSGESS scheme is made by the employee between the age group 50 and 57 years. The application was made by the petitioner on the ground that his father viz., A.Pandian, who was serving as a Senior Trackman in the Southern Railway had suffered physical ailment as a result of strenuous work and exercised this option to go on voluntary retirement under the LARSGESS scheme.

4.The dispute, which had arisen, was whether the petitioner's father was within the prescribed age group ie., 50 to 57 years. The application submitted by the petitioner's father, seeking employment for his son, the petitioner, dated 02.12.2010 was received by the department on 07.12.2010 and forwarded to the 2nd respondent. There is an endorsement in the said letter that there is no pending DAR, SPE, Vigilance case against the petitioner's father. However, the date of birth of the petitioner's father was mentioned as 16.02.1954. Whereas, the correct date of birth of the petitioner's father was 16.12.1954. On account of the error committed by mentioning the wrong date of birth, the age of the petitioner's father was calculated and the application was rejected on the ground that he has crossed 57 years 4 months and 14 days as on 30.06.2011. It appears that this mistake was not realized by the petitioner's father and they submitted another application on 02.01.2014 mentioning the correct date of birth of the petitioner's father as 16.12.1954. The respondent / Railway Administration has not placed any record before the Central Administrative Tribunal disputing the stand taken by the petitioner with regard to the date of birth of the petitioner's father. In fact, the Tribunal rejected the



petitioner's original application on the ground that even assuming the date of birth of the petitioner's father is 16.12.1954, as on 01.01.2014, he had crossed the age limit of 57 years. This observation of the Tribunal is based upon the second application given by the petitioner.

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5. What we are concerned about is as to whether merely because the petitioner's father, who was Group - D employee working as a Senior Trackman, could have been rejected even assuming, had furnished a wrong date of birth, when the authority had verified the application and certified that there are no DAR, SPE, Vigilance case pending, ought to have noticed the error. This is more so when the employees are at such low level and invariably they do not have any formal education.

6. If the date of birth of the petitioner's father is taken as 16.12.1954, we have examined as to whether the application dated 02.12.2010 received by the Railway Administration on 07.12.2010 is in order. We are of the considered view that taking the nature of employment done by the petitioner's father, the decision should be taken in favour of the petitioner's father and for an inadvertent mistake committed by him, the petitioner and his father should not be made to suffer. Therefore, we are of the considered view that the date of birth of the petitioner's father should be reckoned as 16.12.1954 and if the same is taken then, the application dated 02.12.2010 received in the office of the respondent on 07.12.2010 is well within the age limit prescribed under the LARSGESS scheme.

7. The next hurdle is that the petitioner was over aged and therefore, hit by the policy decision of the Railway Board. This is on account of an order passed by the High Court of Punjab and Haryana, wherein it was held that the LARSGESS scheme would result in back door entry of persons and it would be against the decision of the Constitution Bench in ***State of Karnataka Vs. Uma Devi (2006 (4) SCC 1)***. As against the said decision, the Railway administration filed SLP (Civil) No.508 of 2018 before the Honble Supreme Court, which was dismissed by order dated 08.01.2018. We are informed by Mr.S.Manohar, learned counsel for the respondents that the Review petition filed by the Railway Administration was also dismissed.

8. This order is put against the petitioner to deny the relief even though we have held that the petitioner's application is within the time limit prescribed under the LARSGESS scheme. However, subsequently, the Railway Board has taken a decision that the benefit of the scheme could be extended to those employees, who have already retired under LARSGESS scheme before 27.10.2017. Another proceedings has been passed by the Railway Board on 28.09.2018 which is to the following effect.



"In supersession of Railway Board's letter No.E(P&A) I-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 impart 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."

On a reading of the above said decision, it is seen that the same has been issued bearing in mind that there are Court cases initiated by various erstwhile staff of the Railways.

9.Thus, there is no impediment for this Court to issue directions to the respondents to extent the benefit of the LARSGESS scheme to the petitioner and his father as we have found that the application dated 07.12.2010 is a valid application and the error in the date of birth of the petitioner's father should be rectified as 16.12.1954. Since the petitioner's father was permitted to superannuate on 01.01.2015, such superannuation being prior to 27.10.2017 the benefit of the LARSGESS scheme should be extended to the petitioner.

10.Accordingly, the respondents are directed to appoint the petitioner under the LARSGESS scheme and issue appropriate orders, within a period of 3 months from the date of receipt of a copy of this order. The Writ petition is ordered accordingly. No costs. Consequently, connected W.M.Ps.are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

To

1.The General Manager,
G.M.Office,
NGO Main Building,
Southern Railway,
Park Town, Chennai 600 003.

2.The Divisional Railway Manager,
DRM Complex,
Southern Railway,
Park Town, Chennai 600 003.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Divisional Railway Manager,
DRM Complex,
Southern Railway,
Madurai 625 096.

4.The Assistant Personnel Officer / M & E,
The Senior Divisional Personal Officer,
Southern Railway,
Madurai.

+1 CC to M/s.S. MANOHAR, Advocate (SR-85051[F] dated 04/09/2019)

+1 CC to M/s.T.LAJAPATHIROY, Advocate (SR-85279[F] dated 05/09/2019

W.P. (MD)No.6452 of 2018
03.09.2019

NBJ

MS/19.09.2019/5P.7C