

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 3095 of 2020

M. Kiran Kumar Rao

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Versus

1. Union of India through the General Manager, South Eastern Railway, Kolkata
2. Divisional Railway Manager, CKP Division, South Eastern Railway,
Chakradharpur, Singhbhum (West)
3. Sr. Divisional Personnel Officer, CKP Division, South Eastern Railway,
Chakradharpur, Singhbhum (West)
4. Sr. DOM/CKP, South Eastern Railway, CKP Division, Chakradharpur,
Singhbhum (West)

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CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mrs. Justice Anubha Rawat Choudhary
Through Video Conferencing

For the Petitioner: M/s M.M. Pal, Sr. Advocate, Ruby Pandey, Advocate

For the Respondents: Mr. Mahesh Tewari, Advocate

06 / 15.02.2021 Heard learned senior counsel for the petitioner and learned counsel for the Railways.

2. Applicant's claim for employment under LARSGESS Scheme (Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff) was rejected on 23.12.2016. Learned Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi vide order dated 18.12.2019 (Annexure-6), impugned herein, dismissed the O.A. No. 051/00212/2017 wherein the order of rejection dated 23.12.2016 was challenged, holding as under:

“8. Since the Hon'ble Punjab and Haryana High Court held that the LARSGESS Scheme does not stand to the test of Article 14 and 16 of the Constitution of India. In the appeal against the said judgment, the Hon'ble Apex Court declined to interfere with the directions of the Hon'ble High Court of Punjab and Haryana High Court. Considering the same, the respondents Railway Board has terminated the LARSGESS Scheme. However, vide Railway Board decision dated 28.09.2018 RBE No.151/2018, decided to impart natural justice to the staff who have already retired under LARSGESS scheme before 27.10.2017 [but not naturally superannuated] an 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. Therefore, the applicant's grievance cannot be tenable in view of aforesaid circular issued by the respondents.

9. We are of the considered opinion that since the LARSGESS Scheme has been declared as not stand to the test of Article 14 and 16 of the Constitution of India [by the Hon'ble High Court of Punjab and Haryana] and the respondents have terminated the said scheme except the employees of Railway who meet with criteria laid down in their circular dated 28.09.2018, i.e. RBE 151/2018. Under the facts and circumstances, we are not inclined to interfere with the decision taken by the respondents for not accepting the claim of the applicant for employment of his ward under the LARSGESS Scheme.

10. Accordingly, the claim of the applicant for appointment under the LARSGESS Scheme cannot be entertained in terms of RBE No. 151/2018 as the same is found unconstitutional by the Hon'ble Punjab and Haryana High Court which has been affirmed by the Hon'ble Apex

Court [supra].”

3. Both the parties have relied upon the order dated 26.03.2019 passed by the Hon’ble Supreme Court in Writ Petition (Civil) No. 219/2019 (Annexure-5) which reads as under:

“In SLP (Civil) No. 508 of 2018 arising from judgment and order dated 14.07.2017 rendered by the High Court of Punjab and Haryana at Chandigarh in RP No. 330/2017, the question for consideration was – whether the LARSGESS Scheme under which the dependents of those who were working in Railways could be accommodated in service was valid or not?

The matter thereafter engaged attention of this court and finally a decision was taken by Union of India on 05.03.2019 to terminate the LARSGESS Scheme. These developments were noted in the order dated 06.03.2019 and the pending petition i.e. MA No. 346/2019 in M.A. No. 1202/2018 in SLP (Civil) No. 508/2018 was disposed of. The order noted as under:

“The petitioner has since then taken a decision on 5th March, 2019 to terminate the LARSGESS Scheme and the decision so taken is as under:-

“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.”

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.”

The present writ petition prays inter alia for the following reliefs:

“Issue a writ in the nature of mandamus directing the respondent to appoint the petitioners in their respective cadres.”

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 representation.

With these observations, the writ petition stands disposed of. Pending application(s), if any, shall stand disposed of.”

3. According to the petitioner, though LARSGESS Scheme was terminated vide RBE Circular No. 151/2018 dated 26.09.2018, but the claim of the persons who had preferred applications under the Scheme when it was prevalent, have been considered by the Respondent authorities in view of the observation of the Hon’ble Supreme Court in the concluding paragraph of the judgment dated 26.03.2019, quoted above. In support thereof, petitioner has referred to Railway Board’s letter dated 12.07.2019 (Annexure-7) (Page-56); letter dated 20.05.2019 (page-57) clarification regarding

LARSGESS of Adra Division whose services were terminated after 27.10.2017 belonging to 1st phase of LARSGESS-2017 issued by the South Eastern Railway; letter dated 11.06.2019 issued by the Northern Railway regarding disposal of representation submitted for employment under LARSGESS Scheme in light of Supreme Court's orders in W.P.(C) No. 219/2019; instances of recruitment of wards under LARSGESS under South Eastern Railway vide letter dated 11.06.2019 (Page-59); instruction of the Railway Board dated 29.05.2019 to the General Manager, Northern, North Frontier and South Central Railways to the effect that if any individual representations have been received in the light of the Apex Court Orders dated 26.03.2019, Railway should examine and dispose of such representation based on the factual matrix of the case. Petitioner has also enclosed one letter dated 07.06.2019 issued by the South Central Railway in the case of one L. Nageshwara Rao for appointment of his son Rohit Kumar under LARSGESS Scheme who had qualified in the written test and Aptitude test and was called upon for verification of his identity and medical examination. Reliance is also placed upon the Office Order No. 6/2020 dated 28.01.2020 containing the list of 24 candidates in connection with their claim for employment under LARSGESS Scheme in the light of Apex Court order and also instance of one Ram Yash Pandey, s/o Late Shiv Nath Pandey (Annexure-9) in whose regard the competent authority had accorded approval to consider his case in Group-D Post under LARSGESS Scheme vide letter dated 26.11.2019 issued by the Divisional Railway Manager, Northern Railway, Lucknow. Regarding the second ground of objection raised by the Railways of non-completion of 20 years of requisite qualifying service in Safety Category by the applicant's father in the prescribed Grade Pay of Rs. 1800 and Rs. 1900, as per the Notification dated 13.06.2013, learned counsel for the petitioner has referred to the transfer letter dated 08.01.1986 (Annexure-3 series) at page-34 and certain extracts of service book at Annexure-11 to the rejoinder to refute the contention that the employee was taken into the post of Khalashi in 1998 only. According to the petitioner, his father was a Call Boy from 1981 till 1986 and thereafter transferred as Khalashi in 1986. Since 1986 till the cut-off date for application i.e. 01.01.2013, he remained in the Safety Category post of Khalashi. It is submitted that the entire service book of the petitioner's father has not been enclosed to refute this contention.

4. Learned Senior counsel for the petitioner submits that there is no categorical reply to the averments made at paragraph-17 and 18 relying upon Annexure-8 series and Annexure-9 in the counter affidavit at paragraph-13. Based on these submissions, order of rejection dated 23.12.2016 and the impugned order of the learned CAT dated 18.12.2019 are being questioned. It is submitted that the claim of the petitioner has been erroneously rejected on both counts.

5. Learned counsel for the Railways inter-alia has made the following submissions:

As per RBE Circular No. 151/2018 issued on 26.09.2018, quoted in the judgment of Hon'ble Supreme Court, the LARSGESS Scheme was terminated. However, cases of wards of such employees who had completed all formalities including medical examination prior to 27.10.2017 i.e. the date from which the LARSGESS Scheme was put on hold, were to be considered, but not of the wards of such employees who had superannuated on attaining the natural age of superannuation before that date. Petitioner's father had superannuated on 31.12.2016, as per Annexure-R/2 series at page-24 of the counter affidavit, which has remained unchallenged. The fixation of the salary of the petitioner's father at the time of transfer as Call Boy on 16.06.1986 also remained unchallenged. No representation was preferred against it. The pay fixation of his father as a Call Boy under 5th Pay Commission with effect from 01.01.1996 also remained unquestioned without any grievance. Petitioner's father was inducted as Khalashi on 20.04.1998 which is a Safety Category Post and as such, he completed 14 years 08 months and 12 days only by 01.01.2013 i.e. the cut-off date for eligibility under LARSGESS Scheme, as per the Notification dated 13.06.2013 inviting application for recruitment under the Scheme. Therefore, on both counts, claim of the petitioner is untenable in law and also on facts.

6. We have taken into account the pleadings on record and the relevant documents relied upon by the learned counsel for the parties. Learned CAT has dismissed the Original Application for the reason that the LARSGESS Scheme had been terminated vide Railway Board's decision dated 26.09.2018 under RBE Circular No. 151/2018.

Respondent Railway has contested the plea of the petitioner on two counts.

- (i) that his father had superannuated on 31.12.2016 on attaining 60 years of age and as such, his case was excepted under para-2 of the Circular RBE No. 151/2018 for consideration on a claim for employment under LARSGESS Scheme.
- (ii) that petitioner's father did not have the qualifying service of 20 years in the Grade Pay of Rs. 1800 since he was inducted into the post of Khalashi on 20.04.1998 and completed 14 years 08 months and 12 days only as on 01.01.2013 i.e. cut-off date under the Notification dated 13.06.2013 inviting application under LARSGESS Scheme.

However, Respondents have not made any categorical reply to the averments made at para-17 and 18 of the writ petition relying upon Annexure-8 series and Annexure-9 thereto which have been referred to in the foregoing paragraphs. These two set of documents have been relied upon by the petitioner to show that pursuant to

the observation of the Hon'ble Supreme Court in its order dated 26.03.2016, claim of the persons whose applications under LARSGESS Scheme were pending when the scheme was prevalent, have been considered and many of them have been granted appointment. Annexure-9 letter dated 26.11.2019 has been cited in support of the statement made at paragraph-18 that the employee Shiv Nath Pandey though had reached the age of superannuation in 2015, but the claim of his son Ram Yash Pandey was considered under LARSGESS Scheme after passing of the judgment of the Hon'ble Supreme Court. Petitioner has placed reliance on certain documents such as Annexure-3 series and Annexure-10 and 11 series enclosed to the rejoinder in support of the claim of qualifying service of 20 years in Safety Category of his father as having been transferred as Khalashi in January 1986 and had remained as such till the cut-off date i.e. 01.01.2013 under Notification dated 13.06.2013. Respondents on this point have enclosed the superannuation notice dated 07.09.2016 showing the employee as Helper whose date of superannuation is 31.12.2016. In the counter affidavit, Respondents have taken a plea that the petitioner's father was inducted in the Safety Category on the post of Khalashi on 20.04.1998. The entire service book of the employee has however not been brought on record.

7. In these circumstances, we are of the opinion that the matter deserves to be remitted to the competent authority to consider the claim of the petitioner in accordance with law and the applicable Scheme and Circulars after due verification of the service record of the employee. The competent authority shall also take into account the documents borne from the pleadings on record on the rival claims of the parties on both counts, as noted above. The Competent Authority / Respondent No. 3 shall consider the case of the petitioner in accordance with law within a reasonable time, preferably twelve weeks from the date of receipt of a copy of the representation enclosing the entire writ petition, counter affidavit and the rejoinder along with its Annexures and a copy of this order. The order dated 18.12.2019 passed by the learned CAT in O.A. No. 051/00212/2017 shall not come in the way of the Respondent No. 3 in taking a fresh decision in the matter in accordance with law. Writ petition is disposed of in the aforesaid terms. Let it be made clear that no observation made hereinabove shall be treated as comments on the merits of the case of the parties while making such reconsideration.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)