

\$~9 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 01.12.2021

+ **W.P.(C) 3577/2021 & CM APPL. 10819/2021**

KAPIL DEV

.....Petitioner

Through: Mr A.K. Trivedi and Mr Naveen Kumar,
Advocates.

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Mr J. K. Singh, Standing Counsel for
Railway with Mr Amit Kr., Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. At the time when notice was issued in the present writ petition i.e., on 19.03.2021, the predecessor bench had etched out the contours of the controversy obtaining between the parties in the present matter. For the sake of brevity, the said order is extracted hereafter:

“1. The father of the petitioner Kapil Dev, namely, Mr. Rajinder Singh was employed with the respondents Indian Railways. The respondents Indian Railways brought out a scheme where they permitted certain categories of employees to take voluntary retirement in lieu of their wards being employed in the respondents Indian Railways. The said Scheme was declared ultra vires by Central Administrative Tribunal (CAT), Principal Bench, New Delhi the Constitution of India and the said order has attained finality.

2. Consequent to the Scheme under which the petitioner was employed in lieu of his father, having been declared ultra vires, the services of the petitioner are informed to have been terminated in or about the year 2013. The petitioner and his father filed OA No.4264/2013 and we are informed that under an interim order in the said OA, the petitioner continued in employment. In the interregnum, the father of the

petitioner i.e., Mr. Rajinder Singh, died on 2nd January, 2014. OA No.4264/2013 was dismissed on 16th January, 2015 and the said order also attained finality. It appears that under the interim order in the OA and which though had come to an end on 16th January, 2015 when the OA was finally decided, the petitioner was allowed to continue in service till 18th January, 2020, when he was finally dismissed.

3. This writ petition has been filed impugning the order dated 16th January, 2015 of dismissal of OA No.4264/2013 as well as the order dated 18th January, 2020, of dismissal of the petitioner from service.

4. Though the dismissal from service of the petitioner on 18th January, 2020 is consequential to the order dated 16th January, 2015 of CAT, which has attained finality, and which order in turn is in accordance with an earlier order of CAT holding the Scheme to be ultra vires, and there would have been no occasion for entertaining this petition, but the petitioner, as Annexure P-5 to the petition, has annexed Mewa Lal Pal Vs. Union of India, 2019 SCC Online Delhi 6766 (DB) followed in order dated 25th January, 2019 in W.P. (C) 10296/2017 titled Bharat Ram Vs. Union of India and order dated 4th February, 2019 in W.P. (C) 1146/2019 titled Shiv Prasad Vs. Union of India (Annexure P-6 and P-7 to the petition respectively) where it appears, in similar circumstances, the termination was set aside and the employee who had been permitted to continue for long, was allowed to continue.

5. We have enquired from the counsel for the respondents Indian Railways appearing on advance notice, whether any remedy was preferred against the order in Mewa Lal Pal supra.

6. The counsel for the respondents Indian Railways states that he will have to take instructions.

7. On enquiry, it is informed that the salary of the petitioner has not been paid after 18th January, 2020.

8. Merely because of Annexure P-5 to P-7, it is deemed appropriate to issue notice.

9. Notice is accepted by counsel for the respondents Indian Railways.

10. The facts, if any required to be placed on record, be placed on record either by way of additional documents or under affidavit.

11. List on 23rd August, 2021.”

2. Mr J.K. Singh, who appears on behalf of the respondents, does not dispute the fact that, the Special Leave Petition (S.L.P.) preferred by the respondents against the judgment of the Division Bench of this Court in **Mewa Lal Pal and Anr. vs. Union of India and Anr.** 2019 SCC OnLine Delhi 6766

(DB), has been dismissed, albeit, on the ground of delay.

3. Mr A.K. Trivedi, who appears on behalf of the petitioner, informs us that the S.L.P (C) Diary No.10460/2021, preferred against the order dated 25.01.2019 passed in W.P. (C) 10296/2017, titled ***Bharat Ram and Anr. vs. Union of India and Anr.***, which is adverted to in the aforesaid order dated 19.03.2021, was dismissed on 05.07.2021.

3.1. For this purpose, he has drawn our attention to Annexure R-4, appended to the reply filed by the respondents. A perusal of the same shows that S.L.P. (C) Diary No. 10460/2021 was dismissed by the Supreme Court on the ground of delay, leaving all questions of law open.

3.2. On being queried, Mr Singh confirms that the aforesaid order dated 05.07.2021, passed by the Supreme Court, was common to the other two cases i.e., in the S.L.P.(s) preferred against the order dated 04.02.2019, passed in W.P. (C) 1146/2019 titled ***Shiv Prasad and Anr. vs. Union of India and Anr.*** and order dated 25.01.2019, passed in W.P.(C) 10279/2017 titled ***Mewa Lal Pal and Anr. vs. Union of India and Anr.***.

4. Given this position, what is evident is that the Division Bench's judgment in all three cases i.e., ***Mewa Lal Pal***, ***Bharat Ram*** and ***Shiv Prasad***, remains undisturbed. The relevant observations made in ***Mewa Lal Pal*** case, which have been subsequently followed in the case of ***Bharat Ram*** and ***Shiv Prasad***, read as follows:

".....4. The submission of learned counsel for the petitioners is that the respondents had implemented the said LARSGESS Scheme qua petitioner No.1, and consequently, granted appointment to petitioner No.2 on 20.08.2013. Since then, petitioner No.2 has been serving with the respondents. When the impugned communication dated 27.11.2013 was issued, the petitioners approached the Tribunal and the Tribunal stayed the operation of the said order. Consequently, the petitioner No.2 has been serving with the Railways since 2013.

5. Considering the aforesaid circumstances, even though the LARSGESS Scheme has been declared to be unconstitutional, we are

inclined to preserve the appointment of the petitioner No.2. It was not the fault of either of the petitioners when petitioner No.2 was granted appointment under the then prevailing LARSGESS Scheme upon petitioner No.1 seeking VRS under the said Scheme. Since the appointment had already been granted to petitioner No.2 and he has been serving since then, to discontinue his services at this stage would be highly inequitable.

6. The stand taken by the respondents that the said LARSGESS Scheme is not applicable qua Electric Department also cannot be appreciated. The petitioners cannot be made to suffer for the said lapse on the part of the respondents. Had petitioner No.2 not been granted appointment on 20.08.2013, he would have pursued other avenues and may have got other similar or even better employment. At this stage, it would be unjust to discontinue his services.

7. Consequently, while dismissing the present petition, we direct that the services of petitioner No.2 should not be discontinued only on account of the LARSGESS Scheme being declared ultra vires, or on account of the fact that the said scheme was not applicable to the Electric Department when appointment was granted to petitioner No.2."

4.1. In other words, relief has been granted by the respondents to the petitioners in **Mewa Lal Pal, Bharat Ram and Shiv Prasad** case [referred to hereinabove].

4.2 Mr Singh cannot but accept the position that the petitioner in the present case i.e., Kapil Dev is identically positioned.

4.3. As is evident from the record [something which Mr Singh does not dispute], the petitioner's father applied for voluntary retirement under the Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff Scheme [in short "LARSGESS Scheme"], which entitles such an applicant to seek employment for his/her ward.

4.4. The petitioner's father, via order dated 19.06.2013, issued by respondent no.2 i.e., Divisional Railway Manager Office ("DRM office"), took voluntary retirement from the post of Electric Khalasi. Pursuant thereto, as per the LARSGESS scheme formulated by the respondents, the petitioner was

appointed to the same post as his father i.e., the post of Electric Khalasi.

4.5. It appears that a show cause notice dated 27.11.2013, issued by the DRM office, was served on the petitioner. A perusal of the contents of the said notice shows that, on 27.11.2013, the appointment of the petitioner was cancelled by the respondents.

4.6. Via the aforementioned notice, not only was the appointment of the petitioner as Electric Khalasi cancelled by the respondents, the voluntary retirement granted to the father of the petitioner *qua* the LARSGESS scheme, was also cancelled. The reason given for cancellation was that the petitioner's father was not covered by the LARSGESS scheme.

5. Being aggrieved, the petitioner, along with his father, filed an action with the Central Administrative Tribunal [in short the 'Tribunal'], against the order dated 27.11.2013. The said action was numbered as OA No. 4265/2013.

5.1. The Tribunal, *vide* order dated 09.12.2013, issued notice in the aforesaid O.A., and stayed the operation of the impugned order dated 27.11.2013.

5.2. However, as is evident from the extract set forth hereinabove, on 16.01.2015, the Tribunal dismissed a batch of O.A.s, which included O.A. No.4265/2013. The operative part of the order dated 16.01.2015 of the Tribunal reads as follows:

"...17. We, in the above facts and circumstances, are of the considered view that LARSGESS Scheme is ultra vires of Article 14 and 16 of the Constitution and any claim of the Applicants under the said Scheme is not sustainable in law. Accordingly, these CAs are dismissed. No costs.....".

5.3. The principal ground on which the OAs were dismissed was that, according to the Tribunal, the subject scheme i.e., the LARSGESS Scheme was *ultra vires* of Articles 14 and 16 of the Constitution of India, and therefore, the claim made by the applicants, according to the Tribunal, was not sustainable in law.

5.4. Pertinently, despite the dismissal of O.A. No.4265/2013 on 16.01.2015,

the petitioner continued in service till 18.01.2020. *Via* order dated 18.01.2020, the petitioner was dismissed from service.

5.5. In the interregnum, the petitioner's father expired on 02.01.2014.

5.6. According to Mr Singh, the order of dismissal dated 18.01.2020, is pivoted on the aforementioned decision of the Tribunal dated 16.01.2015.

5.7. However, Mr Singh does concede, as noticed above, that in other cases i.e., in the case of Mewa Lal Pal, Bharat Ram, and Shiv Prasad, the appointments of their wards have not been disturbed.

5.8. Given this position, we are of the view that the petitioner, who has continued to agitate his right, cannot be treated any differently from the wards of Mewa Lal Pal, Bharat Ram and Shiv Prasad.

6. We may also note that Mr Singh has submitted that the petitioner should be relegated to the Tribunal, to assail the dismissal order dated 18.01.2020.

6.1. According to us, as long as the judgments in the aforementioned cases [i.e., *Mewa Lal Pal*, *Bharat Ram* and *Shiv Parsad* cases] remain undisturbed, the Tribunal cannot take a different view from what has been taken by the Division Bench of this Court. As a matter of fact, as a co-ordinate bench, we are also bound by the view taken in those cases¹.

6.2. Besides this, we are also of the opinion that, in a matter like this, relegating the petitioner to a statutory remedy would not be the best way forward.

7. Therefore, for the foregoing reasons, the prayer made in the writ petition is allowed.

7.1. The order of dismissal dated 18.01.2020, is set aside.

7.2. Accordingly, the petitioner will be reinstated in service and will be given all consequential benefits, except the salary for the period spanning between

¹ See *Rajasthan Public Service Commission and Another vs. Harish Kumar Purohit and Others*, (2003) 5 SCC 480; *Central Board of Dawoodi Bohra Community and Another vs. State of Maharashtra and Another*, (2005) 2 SCC 573

18.01.2020 and the date on which the petitioner re-joins the respondents.

7.3. The petitioner will report to the office of respondents for re-joining his duty on 06.12.2021, at 10:00 A.M.

8. The writ petition is disposed of in the aforesaid terms. Consequently, pending application shall also stand closed.

(RAJIV SHAKDHER)
JUDGE

(TALWANT SINGH)
JUDGE

December 01, 2021

Click here to check corrigendum, if any