

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

811

CWP No. 26712-2014 (O&M)  
Decided on : 03.08.2023

Amar Nath and another

. . . Petitioner(s)

Versus

Union of India and others

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**  
**HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

**PRESENT:** Mr. Shivam Sharma, Advocate for the petitioners.

Mr. S. K. Sharma, Senior Panel Counsel  
for respondents No. 1 & 2 (Union of India).

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**DEEPAK SIBAL, J. (Oral)**

1. The present petition is directed against the judgment dated 05.11.2014 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal' ) through which the petitioners' original application was dismissed.

2. On 24.05.1973, petitioner No.1 joined the Indian Railways as a Loco Cleaner. On 14.07.1977 he was promoted as Fireman-C; on 14.07.1979 as Fireman-B; in the year 1981 as Fireman-A; in 1983 as DSL Assistant, Loco Pilot (Goods) and on 01.06.2005 as Loco Mail Pilot.

3. In January, 2004, the Railway Board introduced a scheme known as 'The Safety Related Retirement Scheme' (for short the Scheme) as per which Drivers and Gangmen in the age group of 55-57 years, who had to their credit 33 years of qualifying service, could seek voluntary retirement

on the acceptance of which, in their place, their ward could be given employment. However, employment to the ward was to be subject to the ward being otherwise found eligible and suitable.

4. In the year 2009 petitioner No. 1 sought voluntary retirement and upon the acceptance of his request, the consequent employment under the Scheme for his ward-petitioner No. 2. Through order dated 17.08.2009, petitioner No. 1's application for consideration of his case under the Scheme was rejected on the ground that he did not have 33 years of service to his credit and was thus not eligible under the Scheme.

5. Petitioner No. 1 represented against the rejection of his application. In response thereto, though the respondents accepted the fact that on the date of his application petitioner No. 1 had to his credit 33 years of qualifying service but again rejected his request for being favorably considered under the Scheme on the ground that he was over age being beyond 57 years of age. Petitioner No. 1 again represented against the rejection of his request but the respondents reiterated their earlier stand.

6. The afore rejection was challenged by the petitioners before the Tribunal through OA No. 86-HR-2013-**Amar Nath and another v. Union of India and others**, which application of theirs was disposed of by the Tribunal on 19.09.2013 with a direction to the respondents to re-consider the case of the petitioners within two months.

7. In terms of the afore referred order of the Tribunal petitioner No. 1's case was not considered by the respondents within two months and therefore, the petitioners approached the Tribunal through a Contempt Petition. On being put to the notice, the respondents informed the Tribunal that they had re-considered the petitioners' case and through order dated

27.02.2014 had again rejected the same but now on the ground that petitioner No. 2 had failed to pass the prescribed written test and though the Scheme did provide for a second chance to clear the written test but no such chance could have been granted to petitioner No 2 as by time petitioner No.2 could have been granted such chance, petitioner No. 1 had already superannuated and was thus not eligible to be considered under the Scheme.

8. Order dated 27.02.2014, was then made the subject matter of challenge by the petitioners before the Tribunal through OA No. 060/0037/2014-*Amarnath and Anr v. Union of India and others*, which was dismissed by the Tribunal on 05.11.2014 for the reason that petitioner No.2 had failed to clear the prescribed written test; he had rightly been denied to avail the second chance to clear the written test because by that time petitioner No. 1 had superannuated and that such denial by the respondents was in conformity with the conditions prescribed in the Scheme. Aggrieved by the said order of the Tribunal the petitioners have knocked the doors of this Court through the instant petition.

9. Learned counsel for the parties have been heard and with the their able assistance the record of the case has also been perused.

10. In the year 2009, petitioner No. 1 had applied for consideration of his case under the Scheme which application of his was rejected on 17.08.2009 on the ground that petitioner No. 1 did not have to his credit the requisite years of service. He filed a representation against the afore rejection in response to which the respondents though accepted the fact that petitioner No. 1 had the requisite years of service to his credit but again rejected to favorably consider his case under the Scheme on the ground that he was over age. Such rejection by the respondents was challenged by the

petitioners before the Tribunal in which proceedings directions were issued to the respondents to re-consider the petitioners' claim. On re-consideration of the matter, the respondents again denied the petitioners' claim but this time on the ground that petitioner No. 2 had failed to pass the requisite test and that though, a second chance was permissible, the same could not have been granted to petitioner No. 2 in terms of the decision taken by the respondents through R.B.E. No. 98/2006 dated 25.07.2006, the relevant portion of which reads as under:

*“The issue has accordingly, been examined by the Board and it has been decided that the candidates who fail to qualify the written examination may be given one more chance to qualify the suitability test, wherever such requests are received, subject to the condition that both Railway servant and his/her ward availing the benefit available under the Scheme continue to fulfill the eligibility conditions as on the date of the examination or 30<sup>th</sup> of June of the respective year, whichever is earlier.”*

11. The petitioners again knocked the doors of the Tribunal which found that the petitioners' claim for the grant of a second chance to enable petitioner No. 2 to clear the written test had been rightly denied by the respondents as before such chance could have been granted, petitioner No. 1 had already superannuated and thus, in terms of the decision taken by the respondents through R.B.E. No. 98/2006 dated 25.07.2006, was clearly not entitled to the second chance. No error is found in such finding of the Tribunal especially when the afore decision was/has not even been challenged by the petitioners.

12. Even otherwise, in **Manjit and others v. Union of India and another**, AIR 2021 SC 944, the Supreme Court dismissed a writ petition filed before it under Article 32 of the Constitution of India. Through such petition, the petitioners therein had sought appointment under the Scheme. Paragraph No. 6 of the judgment, which is relevant, reads as under:-

“6 The reliefs which have been sought in the present case, as already noted earlier, are for a writ of mandamus to the Union of India to appoint the petitioners in their respective cadres. A conscious decision has been taken by the Union of India to terminate the Scheme. This has been noticed in the order of this Court dated 6 March 2019, which has been extracted above. While taking this decision on 5 March 2019, the Union of India had stated that where wards had completed all formalities prior to 27 October 2017 (the date of termination of the Scheme) and were found fit, since the matter was pending consideration before this Court, further instructions would be issued in accordance with the directions of this Court. Noticing the above decision, this Court, in its order dated 6 March 2019, specifically observed that since the Scheme stands terminated and is no longer in existence, nothing further need be done in the matter. The Scheme provided for an avenue of a back door entry into the service of the railways. This would be fundamentally at odds with Article 16 of the Constitution. The Union government has with justification discontinued the scheme. The petitioners can claim neither a vested right nor a legitimate expectation under such a Scheme. All claims based on the Scheme must now be closed.”

(emphasis supplied)

13. In **The Chief Personnel Officer & Others v. A Nishanth George**, (2022) 11 SCC 678, the Supreme Court has held as follows:

“20 From the above judgment, it is evident that a coordinate Bench of the High Court had taken the view that the benefit of the LARSGESS scheme

*could not be extended where an employee had attained the age of superannuation in the normal course before 27 October 2017. The respondents' fathers superannuated on 31 May 2016 (SLP (C) No. 1417 of 2019) and on 31 December 2014 (SLP (C) No. 906 of 2021). The contention of the respondents that since the claims were pending 7 Writ Petition 1040 of 2016 17 adjudication before various fora, the delay cannot be attributed to them is erroneous. **This Court in Manjit (supra) held that pending claims under the scheme must be closed. The respondents cannot claim any vested right under the scheme. Clause (x) of notification which was issued on 2 January 2004 states that discretion to accept the request for retirement will vest with the administration depending on the suitability of the wards for appointment in the same category as the employee. Therefore, the respondents cannot be brought within the purview of the exception merely because the claim was made before 27 October 2017.***

(emphasis supplied)

14. Thus, in both *A Nishanth George's case (supra)* and *Manjit's Case (supra)* the Supreme Court has held that the Scheme was violative of Article 16 of the Constitution of India as it provided for a back door entry into the service of the railways and that the same had rightly been terminated by the Union of India. All pending claims under the Scheme were further directed to be closed as the claimants, like the petitioners, whose claims were pending were held to have no vested right of consideration under the Scheme.

15. In the light of the above, no relief as claimed by the petitioners can be granted.

16. In view of the above discussion and in particular, the afore quoted observations by the Supreme Court in *A Nishanth George's case*

*(supra) and Manjit’s Case (supra)*, the instant writ petition deserves rejection.

- 17. Dismissed.
- 18. Pending application(s), if any, shall also stand disposed of.

( DEEPAK SIBAL )  
JUDGE

( SUKHVINDER KAUR )  
JUDGE

03.08.2023

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|------|----------------------------|--------|
| Riya | Whether speaking/reasoned: | Yes/No |
|      | Whether Reportable:        | Yes/No |