



2025:DHC:2852-DB



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

Date of decision: 23.04.2025

+ **W.P.(C) 5125/2025**

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Raj Kumar, CGSC

versus

ASHISH DHIMAN

.....Respondent

Through: Mr. A.K. Trivedi, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (Oral)

CM APPL. 23400/2025 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 5125/2025 & CM APPL. 23399/2025

2. This petition has been filed challenging the Order dated 24.09.2024 passed by the learned Central Administrative Tribunal Principal Bench, New Delhi (hereinafter referred to as “learned Tribunal”) in O.A. No.2597/2023, titled “*Ashish Dhiman v. Union of India & Ors.*” (in short, ‘OA’), allowing the said OA filed by the respondent herein with the following direction:

“ 5.2 In view of the above, the following orders are passed:

(i) Order dated 11.07.2023 (Annexure A-1), Show Cause Notice dated 9.09.2016 (Annexure A-2) and order dated 19.12.2019 which are the basis of the order dated 11.07.2023 are quashed;



2025:DHC:2852-DB



(ii) Late Shri Suresh Kumar, father of the applicant shall be treated as retired on voluntary retirement under the LARSGESS Scheme with effect from 2.06.2016. The order dated 19.12.2019 vide which the appointment of the applicant has been withdrawn with immediate effect, is quashed. The applicant shall be taken back in service immediately with all consequential benefits."

To give a brief background of facts in which the present petition arises, the father of the respondent- late Sh. Suresh Kumar was initially appointed on casual basis in 1987. He was later appointed as a Khallasi against a regular sanctioned post 'on substitute basis' with effect from 26.04.1988. He was regularised in the said post of Khallasi with effect from 31.12.1996. He submitted an application seeking voluntary retirement under the LARSGESS scheme in the year 2014-15, which was accepted by the petitioner with effect from 02.06.2016. In accordance with the said scheme, the respondent was then appointed as a helper Khallasi, with effect from the same date i.e. 02.06.2016.

3. The petitioners claim that at the time of finalisation of settlement of the case of the father of the respondent, his leave account was rechecked and an error was found in calculation of 'leave without pay', which was earlier counted as 670 days instead of 1056 days. The petitioners claimed that if the excess period of 'leave without pay' is excluded, the father of the respondent would have rendered service of only 19 years 5 months and 6 days from the date of his regular appointment till 31.12.2014, thereby not entitling him to the benefit of the LARSGESS scheme, which required a minimum of 20 years of



2025:DHC:2852-DB



service.

The petitioner, therefore, issued a Show Cause Notice dated 09.09.2016 to the father of the respondent, and *vide* Order 22.11.2016, withdrew the grant of VRS to the father of the respondent and cancelled the appointment of the respondent. The said orders were challenged by the respondent herein and his father by way of O.A. No. 4459/2018 and O.A. No. 99/2020 respectively.

4. The same were disposed of by the learned Tribunal *vide* an order dated 09.09.2020, with the following direction:

“ 12. We therefore, dispose of the OAs

i) directing the respondents –

(a) To forthwith release the retirement benefits payable to the applicant in O.A.No.4459/2018 on the basis of his VRS, within four weeks, pending passing fresh orders in pursuance of the show cause notice dated 09.09.2016.

(b) In case his explanation to the Show Cause Notice is not accepted and the order of voluntary retirement is withdrawn, the differential amount between the one already paid and the one payable on retirement on superannuation shall be released.

ii) Setting aside the order dated 22.11.2016 and directing the respondents to pass fresh orders, taking into account his explanation dated 21.12.2016, submitted to the Show Cause Notice dated 09.09.2016, within six weeks from the date of receipt of a certified copy of this order; and

(iii) Directing that the status of the applicant in OA.99/2020, under the LARSGESS scheme shall depend upon the nature of orders which the respondents may pass, as indicated above. There shall be no order as to costs.”

5. In compliance with the said order, the petitioner, by an order



2025:DHC:2852-DB



dated 13.02.2021, treated the father of the respondent as having superannuated on his normal retirement date and settled his retirement dues. The petitioners also terminated the services of the respondent stating that as the father of the respondent had not completed 20 years of qualifying service at the relevant time, and the acceptance of his voluntary retirement was an administrative error, the respondent was not entitled to be appointed in service.

6. The same was challenged by the respondent by way of O.A. No. 1023/2021, which was disposed of by the learned Tribunal by way of the order dated 04.05.2023, holding as under:

“ 13. In the present case, the authorities have themselves admitted their lapse. Moreover, I have no hesitation in holding that the impugned order is very terse and cryptic, it does not meet any of the requirements of a reasoned and speaking order. Therefore, I cannot sustain the same.

14. Accordingly, in the light of the discussion detailed above, the present OA is allowed to the extent that the impugned order dated 15.02.2021 is quashed and set aside. While doing so the matter is remanded back to the Competent Authority amongst the respondents to decide the matter afresh giving due consideration to the representation of the applicant/ applicant's father pursuant to show cause notice dated 09.09.2016 and pass an order which is reasoned and appropriate. While passing such order, the Competent Authority amongst the respondents shall specifically deal with observation of the Hon'ble High Court in its judgment dated 25.01.2019 in WP (C) 10279/2017 and determine whether the observation of the Hon'ble High Court in the said judgment would be applicable in the facts and circumstances of the instant matter in terms of



2025:DHC:2852-DB



*the contents of representation of the applicant.
The direction contained herein shall be
complied within a period of 12 weeks from the
date of receipt of a certified copy of this
order.”*

7. The petitioner again passed an order dated 11.07.2023, rejecting the claim of the respondent for appointment. The same was challenged by the respondent in form of the said OA.
8. The learned Tribunal, by its Impugned Order, has held that the father of the respondent had completed his qualifying service on the day his application for VRS had been accepted by the petitioners. The learned Tribunal in reaching the said conclusion placed reliance on Rule 31 and 32 of the Railway Services (Pension) Rules, 1993 to hold that the period for which the father of the respondent had worked as a casual employee and on substituted basis, has to be counted towards his qualifying service.
9. As far as the claim of the respondent that even the ‘leave without pay’ of the father of the respondent should have been counted for the calculation of the qualifying service, the learned Tribunal, however, found no merit and rejected his claim.
10. In spite of the issue of ‘leave without pay’ being not entitled to be counted towards the service period of the father of the respondent for determining his entitlement to VRS, the learned Tribunal found that the father of the respondent had completed the qualifying service and therefore, his request for VRS was rightly accepted under the LARSGESS scheme and the respondent was rightly granted appointment under the said scheme.



2025:DHC:2852-DB



11. Strangely, the learned counsel for the petitioner challenges Impugned order contending that the period when the father of the respondent was on 'leave without pay' should not be counted towards his qualifying service. We state that the submission is strange because the said submission of the petitioners has been accepted by the learned Tribunal and we, therefore, fail to understand as to why it is being challenged herein.

12. As far as there is no challenge made by the learned counsel for the petitioners on counting of the period when the father of the respondent was working as a casual employee or on substitute basis, and on the finding of the learned Tribunal that if these periods are counted, father of the respondent would in fact have completed the period of service of 20 years as required under the LARSGESS scheme, we therefore, find no merit in the present petition.

13. The same is accordingly dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 23, 2025 /Pr/Kz/VS

Click here to check corrigendum, if any