

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.2163 of 2014

Orders reserved on : 03.01.2020

Orders pronounced on : 20.01.2020



**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Suresh Baraik,
S/o Sh. Mahadeo Baraik,
Ex. Sweeper on daily wages basis, Central Administrative Tribunal,
Circuit Bench, Ranchi, R/o Perengchawali, Post-Jamudag, PS –
Sonahatu, Distt. Ranchi (Jharkhand).

.... Applicant

(By Advocate : Shri M.P. Dixit)

VERSUS

1. The Union of India through,
The Secretary,
Department of Personnel & Training (D.O.P.T.)
Government of India, New Delhi.
2. The Hon'ble Chairman,
Central Administrative Tribunal, Principal Bench,
61/35, Copernicus Marg, New Delhi-110001.
3. The Hon'ble Vice Chairman,
Now Redesignated as Head of the Department,
Central Administrative Tribunal,
88A, Sri Krishna Nagar, Patna 800001.
4. The Principal Registrar,
Central Administrative Tribunal, Principal Bench,
61/35, Copernicus Marg, New Delhi-110001.
5. The Registrar,
Central Administrative Tribunal,
88A, Sri Krishna Nagar, Patna 800001.
6. The Deputy Registrar,
Central Administrative Tribunal,
88A, Sri Krishna Nagar, Patna 800001.
7. Shri Raju Kumar Chaudhary,
S/o Sh. Vishwanath Choudhary,
Working as Sweeper,
Central Administrative Tribunal,
88A, Sri Krishna Nagar, Patna 800001.
8. Shri Nadeem Ahamad
S/o Late Md. Saleh
Working as Peon, Central Administrative Tribunal,
88A, Shri Krishna Nagar, Patna-800001.

9. Shri Sanjay Kumar,
 S/o Sh. Chandreshwar Singh,
 Working as Chowkidawr,
 Central Administrative Tribunal,
 88A, Shri Krishna Nagar, Patna-800001.

10. Shri Anoj Kumar,
 S/o Sh. Sakhi Chandra Prasad Yadav,
 Working as Chowkidar,
 Central Administrative Tribunal,
 88A, Shri Krishna Nagar, Patna-800001.

..... Respondents

(By Advocate : Shri Amit Anand)



O R D E R

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J) :

By means of instant OA, the applicant has prayed for the following reliefs:-

“8.1 That your Lordships may graciously be pleased to direct/ command the Respondents to consider the candidature of the Applicant for his regular appointment against the Group –“D” henceforth at par with the persons who have been appointed as evident from Annexure-A/6.

OR

That your Lordships may graciously be pleased to declare/hold the appointment made in favour of four persons as evident from Annexure-A/6 as null, void and ab-initio illegal and contrary to the Judgment of the Secretary, State of Karnataka and others – V/s- Uma Devi reported in 2006 (2) P.L.J.R. (S.C.) Pg. 363 holding that no person can claim appointment unless and until appointment is made through open advertisement by directing them to initiate fresh process of appointment under the settled norms within the time frame.

8.2 That your Lordships may further be pleased to direct/command the Respondents to grant all consequential benefits in favour of the Applicant for which he is legally entitled too.

8.3 Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the Applicant.”



2. Brief facts of the case are that the applicant was initially engaged on daily wages to the post of Safaiwala-cum-Chowkidar for Circuit Bench at Ranchi (CAT, Patna Bench) on 31.3.2008 for a period of 45 days. Thereafter, a proposal for extension of the said period was sent by the concerned respondents to respondent No.2. However, no order was received from the respondent No.2 for extension of his period. The respondents of CAT, Patna Bench and Circuit Bench at Ranchi, in the meanwhile, allowed the applicant to continue till the proposal comes from respondent No.2. According to the applicant, he continued to work from 8.30 A.M. to 6.00 P.M. even without any proper remuneration, as he was paid only Rs.45/- per day.

3. The applicant submitted his representations on 14.11.2009 and 29.1.2010 to the respondents for enhancement of his wages and also for extension of his service period but no reply was received. The applicant submitted an application on 9.7.2009 for his regular appointment but no intimation was given to him. In the meanwhile, the applicant came to know that some persons, who were outsiders, were going to be appointed against four vacant posts of Group 'D'. Therefore, he submitted a representation on 13.4.2010 through registered post for his appointment but no information was given to him. He again moved a detailed representation on 18.3.2011 (Annexure A/4) and simultaneously moved an application under RTI Act for



seeking certain information. The applicant received a reply dated 4.5.2011 in which the respondents admitted that no advertisement was published for appointment for the said four Group 'D' posts. The reply given under RTI Act has been annexed as Annexure No.A/6 with the OA. Hence, the applicant has prayed that the entire appointment, being against the verdict of Hon'ble Apex Court in the case of **Secretary, State of Karnataka and others vs. Uma Devi**, 2006 (4) SCC 1, be declared null and void.

4. In the counter reply filed by the respondents, it has been stated that the applicant, being a daily wager, has no legal status for claiming his appointment as a matter of right. He was appointed only for a period of 45 days and his subsequent engagement for some more days was without approval of the competent authority, i.e., (the Chairman, CAT). He was paid Rs.45/- per day for part time work and he was not engaged on full time basis. Therefore, any unauthorised engagement of the applicant in a post, cannot give him any right to be appointed on a regular post.

5. It has been next contended that post of Group 'D' of CAT, Patna Bench, were filled up in accordance with the recruitment rules and as per the past practice. The appointments of all four persons were made through employment exchange. It is further contended that as the applicant has no right to claim appointment, therefore, there

is no violation of Articles 14, 21 and 311 of the Constitution of India.



6. Learned counsel has placed before the Court the office order dated 24.9.2019 passed by CAT, Patna Bench, which shows that in pursuance of CAT, Principal Bench, order dated 19.9.2019 and DOP&T's letter dated 29.5.2019, all the four employees (Multi Tasking Staff) were appointed on regular basis as MTS w.e.f. 13.9.2019.

7. The further contention of learned counsel for the respondents is that the selection process for the recruitment of aforesaid four Group 'D' employees has been closed long back and even the services of all of them have now been regularised. Therefore, at this stage, it cannot be disturbed by declaring their appointments as null and void. They have been appointed through employment exchange in accordance with recruitment rules. Employment exchange always put notice before any recruitment. Hence, there was no illegality and it does not make any difference if the applicant cannot get notice of recruitment and failed to fill up the form.

8. In this regard, our attention has been drawn to Annexure A/3, which is a representation/application dated 13.4.2010 moved by the applicant before the Principal Registrar, CAT, Principal Bench, New Delhi to show that the applicant has admitted this fact that due to being busy while doing the work of Safaiwala of Circuit Bench at Ranchi, he

could not fill up the form, the last date of which was 25.11.2010.



9. A perusal of the aforesaid letter shows that it has been specifically worded in it that मेरा आपसे निवेदन यह है कि दिनांक 21/11/10 से दिनांक 25/11/10 तक, केन्द्रीय प्रशासनिक अधिकरण सरकिट ब्रांच ट्रेनिंग एच० ई० सी० धुर्वा रांची झारखण्ड मे सफाई का काम करने के कारण मै वयस्थ था। मुझे विश्वस्त सूत्र से पता चला कि दुबारा आवेदन पत्र मांगा गया जिसकी अंतिम तारीख 25/11/10 था इसी व्यस्तता के कारण मै फॉर्म नहीं भर पाया'.

10. Learned counsel for the respondents has contended that when the applicant even failed to fill up examination form before the last due date, how he can claim that he was not given a chance to be appointed against the regular post.

11. The applicant has filed his rejoinder affidavit reiterating the same facts as has been stated in the OA.

12. We have considered the rival submissions advanced by learned counsel for the parties and have carefully gone through the records.

13. Admittedly, the applicant has failed to participate in the examination as he could not fill up the examination form, due to being extremely busy in Circuit Bench at Ranchi, which is clearly evident from the perusal of Annexure A/3. Moreso, it is also an admitted fact that the applicant was engaged as a

Safaiwala-cum-Chowkidar on daily wages initially for a period of 45 days but this period could not be extended further as no approval was received to extend his services by the CAT, Principal Bench, New Delhi. It is trite law that a daily wager has no right to claim a regular appointment even when he has filled up the form and has appeared in the examination. To the contrary, the present applicant has even failed to appear in the examination.



14. Considering all these facts and circumstances, the OA is devoid of merit and is liable to be dismissed. Accordingly it is dismissed. No costs.

(Pradeep Kumar)
Member (A)

/ravi/

(Justice Vijay Lakshmi)
Member (J)