

Central Administrative Tribunal
Principal Bench: New Delhi

OA 2432/96.

New Delhi this the 7th day of March 1997.

Hon'ble Mr N. Sahu, Member (A)

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Shri Nagendra Singh
S/o Shri Shishpal Singh
R/o House No. 2660
Shibhan Pura Mohalla
Meerut Road
Ghaziabad (U.P.)

...Applicant.

(By advocate: Shri Jog Singh)

Versus

Union of India through

1. Secretary
Ministry of Agriculture
Dept. of Rural Development
Krishi Bhawan
New Delhi.
 2. Joint Marketing Adviser
Dte. of M&I
Branch Head Office
Nagpur
 3. Chief Chemist (Agmark Lab.)
Dte. of Marketing & Inspection
- ...Respondents.

(By advocate: Shri K.C.D.Gangwani)

O R D E R

Hon'ble Mr N. Sahu, Member (A)

This application is directed against the order of the respondents dated 25.10.96 transferring the applicant, a temporary status sweeper of Regional Agmark Laboratory (RAL), Ghaziabad to Sub office, Dte. of Marketing & Inspection, Krishna Kutir, Varanasi (U.P.). There is a background history in this case which needs to be recounted briefly. Shri Nagender Singh and his wife Smt. Raj Bala were engaged as part-time sweepers w.e.f. 4.1.93 by Chief Chemist, Regional Agmark Laboratory (RAL), Ghaziabad. The respondents perceived that part-time sweepers are ineligible for conferment of temporary status and, therefore, their request for conferment of temporary status was turned down. Smt. Raj Bala did not attend to

(16)

her duties during a particular period and as such no wages were paid to her. Their engagement was terminated in August 1994 and September 1994 respectively for unsatisfactory work and objectionable behaviour. The couple filed an OA 1639/94 against the said termination order and prayed for conferment of temporary status and wages from March 1994 to May 1994. The Tribunal directed by order dated 16.1.95 grant of temporary status even though they were part-time workers on the basis of the Full Bench judgement of the Tribunal in OAs 912/92 and 961/92. About payment of wages, the Tribunal ordered an enquiry. Temporary status was conferred and wages were not paid because the enquiry report indicated that she did not do any work.

2. After the couple were engaged as temporary status full time sweepers, the respondents found that they did not require services of two full time-sweepers since the work was earlier attended to by two part-time sweepers. As per page 5 para L of the counter, respondents state that they had either the option to terminate the services of one of them or utilise them at another establishment of the Directorate. As such, the applicant was transferred to Varanasi.

3. Learned counsel for the respondents reiterated the submissions made in the counter that the transfer was not made in contravention of any statutory rules and it was not an order with a bias. It was simply an appreciation of the need for only one full time sweeper which would be within the financial constrains of the office and the transfer was made to help the applicant. There is a mention in this connection in the OA that Smt. Raj Bala, wife of the applicant, had been allegedly detained in a room for unexplained reaons but the police found the allegation to be untrue on investigations.

16

(7)

4. In the above background, the order of transfer is contested. Learned counsel for the applicant states that from 1979 to 1993, two part-time sweepers have been working. It was only in the year January 1993 that the applicant and his wife were engaged and on the basis of the directions of the Tribunal, the couple was conferred temporary status, given full time employment and this benefit was extended retrospectively. To the contention of the respondents that the Audit objected to the engagement of two full time casual labourers in place of 2 part-time casual labourers, learned counsel for the applicant stated that the area meant for sweeping and cleaning comprised of two halls, five big rooms, seven toilets and thirty two wash-basis with an area of 6699 sq.ft. It is stated that this area required the services of two full time sweepers. These facts are not verified and, therefore, cannot be considered at this stage.

5. The objection taken in the counter affidavit is that the departmental remedies have not been exhausted. It cannot be accepted as the applicant is not a regular government employee and there are no definite guidelines on a transfer policy in cases such as that of the applicant who is a casual worker. During arguments, the question whether the applicant could be transferred at all has been discussed. It was pointed out by the learned counsel for the respondents that in the order of engagement of Nagendra Singh as a temporary status casual worker dated March 27, 1996, certain conditions were made part of the order. Those conditions are "conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rate of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work." Learned counsel for the respondents argued that since no work is available for two full time sweepers and as Varanasi falls within the recruitment unit/territorial circle, on the basis of

(18)

✓ availability of work, the applicant's shift from Ghaziabad to Varanasi is justified.

6. Applicant's counsel assailed this order of transfer on the ground that the said order was with a motive and to harrass him. There are two policy guidelines of the government which were infringed. (i) The Government has stated that employees belonging to SC/ST should not be transferred unless it is absolutely necessary to do so and as far as possible should be retained in or near home-town; (ii) serving husband and wife under the government should be retained at the same place of work, as far as possible. It is urged that this order of transferring the applicant to a far off place, a distance of 800 kms. violated both these guidelines and is an act of grave injustice. A safaiwala deserved a compassionate treatment. It is further stated that the applicant has four school-going children studying in schools nearby his residence and the transfer of the applicant will adversely affect their education on the ground that the expenditure of the children cannot be met from one pay packet. Learned counsel on both sides have cited a number of decisions to support their respective claims.

7. It is not possible to support the order of transfer to such a distant place as Varanasi. It will cause considerable damage to the applicant both phychologically and financially. He and his wife belong to SC community and both have to work together to look after their four school-going children and, therefore, the order of transfer cannot be sustained. There was a suggestion during the course of the arguments to consider deploying the applicant to another unit at a nearby place, namely, Faridabad which is well connected with Ghaziabad by proper communication. This would enable both husband and wife to live together and they

19

can work in two different units. The decision whether one sweeper or two sweepers are necessary is best left to the authorities themselves. The averment that two part-time sweepers did the job earlier and there was no need to employ two full time sweepers is a factual submission made by the respondents and I think their appraisal of the needs has to be respected. This court cannot sit in appeal on a question of fact to decide whether two full time sweepers are necessary. I, therefore, direct that if there is no sufficient work for two full time sweepers, the applicant can be transferred but only to a place like Faridabad. This would protect the interests of his children; husband and wife would not be separated and also the norm that SC/ST employees are not sent away from their hom[े]town or their place of choice to a far distant place would stand complied with.

The OA is disposed of as above.

N. Sahu 7/3/97
[N. Sahu]
Member (A)

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