

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1559/97

New Delhi this the 5th Day of March 1998. ✓

Hon'ble Shri R.K. Ahooja, Member (A) (9)

Shri Palley,
Son of Shri Bengali,
Ex. Temporary Status &
Screened Casual Safaiwala,
Under Chief Health Inspector,
Northern Railway,
New Delhi.

Petitioner

Resident of A1/341 Sultanpur,
New Delhi-110 041.

(By Advocate: Shri M.L. Sharma)

-Versus-

1. General Manager,
Northern Railway,
Headquarters Officer,
Baroda House,
New Delhi.

2. Divisional Rail Manager,
Northern Railway,
New Delhi.

Respondents

(By Advocate: Shri O.P. Kshatriya)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant claims that he was appointed as a Casual Safaiwala under the Chief Health Inspector, Northern Railways on 1.8.1979. He was also granted temporary status w.e.f. 2.9.1984. and he claims to have been screened for regularisation on 10.12.1986. He further states that having worked continuously from 1.8.1979 to 31.5.1990 he was deputed to the Container Corporation of India (CONCOR) w.e.f. 1.6.1990 initially for a period of two years which period was extended from

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time to time and was due to expire on 31.5.1995. As the CONCOR were willing to absorb him permanently he sought resignation from his parent department but respondent No. 2 vide impugned letter Annexure A-1 dated 8/11.8.1995 instead treated him as discharged. As a result applicant's period of service w.e.f. 1.8.1979 to 31.5.1990 and his deputation period from 1.6.1990 to 31.5.1995 has been forfeited and his retiral benefits e.f. Pension, Computation, Leave Encashment and gratuity have been denied. This has been done despite the fact that CONCOR have been making to the Railways regular payments towards foreign service contribution on account of the applicant throughout the period of deputation.

2. The respondents denied the claim of the applicant that he has been treated from 1986 as a regular employee. They raised a preliminary objection that since the order dated 8/11.8.1995 is being assailed in July 1997, the applicant is barred by limitation. On merit they state that the applicant had throughout been working as a Casual Safaiwala and was posted as such in Inland Container Department. The same was later converted into CONCOR and the applicant joined the CONCOR according to his own will and not on direction from the competent authority. Since he had never appeared in the screening test, he was treated as discharged from the rolls of the Indian Railways.

3. I have heard the counsel. The impugned order of discharge is dated 8/11.8.1995. It is an admitted position that the applicant had gone over to CONCOR in 1990. If the respondents had been treating him as Casual

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Safaiwala with temporary status, they should have discharged him from the time the applicant was transferred to CONCOR. They, however, waited for five years which lends strength to the claim of the applicant that he was treated on deputation for the period from 1990 to 1995. This is further corroborated by the order of the respondents Annexure A-6 issued by the Divisional Officer of the Northern Railway dated 16.11.1990 addressed to the General Manager, CONCOR stating that the applicant was being nominated to work on deputation for a period of two years. There could be no deputation of a casual employee and, therefore, the claim of the applicant that he was being treated as a regular Safaiwala appears to be strong. The applicant also claims that even as late as 1995, the respondents had called the casual safaiwala for screening and as a result many of his juniors were also screened and regularised.

4. In the facts and circumstances of the case, I consider that the applicant ought to be treated as regular employee from the date his juniors were screened and regularised in the screening test in 1995. The consequential benefits as pension and other retiral benefits will have to be worked out on that basis. Since this is a petition for retiral benefits, the objection of the respondents as regards limitation is not relevant.

5. The OA is accordingly disposed of with the direction that the respondents should treat the applicant as a regular employee from the same date as his next junior was regularised in the screening test

held in the year 1995 and to work out his retiral
benefits after deciding his application for
resignation.

(2)

There shall be no order as to costs.

R.K. Mittal
(R.K. Mittal)
Member (A)

Mittal