

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

Original Application No. 226 of 2014 with MA 157/14

This the 14th day of August, 2020

Date of Reserve: 04.08.2020

Date of Pronouncement: 20.08.2020

CORAM :

HON'BLE SHRI JAYESH V BHAIRAVIA, MEMBER (J)

HONBLE DR A K DUBEY, MEMBER(A)

- 1 Shri Rajesh S Solanki,
S/o Shri Sanabhai Solanki, Aged: 38 years,
Working as Ex- Part time Safaiwala, Under BRC(P),
R/O.:B/25, Valmikinagar Society,
N/h. Gorakhnath Temple, Vadodara-390016.
- 2 Shri Jitendra S Patel,
S/o Shri Snakarbhai Patel, Aged 45 years,
Working as Ex- Part time Safaiwala, Under BRC (P),
R/O/:A/25, Ketan Tenemants, Panchawati J'naka,
Gorwa, Vadodara – 390 016.
- 3 Shri Bharat H Solanki,
S/o. Shri Hirabhai Solanki, Aged 46 years,
Working as Ex- Part time Safaiwala, Under BRC (P),
R/O: Solnki Faliya, Panchawati J'naka,
Gorwa, Vadodara – 390 016. ... Applicants

By Advocate Ms S S Chaturvedi

V/s

- 1 Union of India,
Notice to be served through
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.
- 2 Divisional Railway Manager(E),
Western Railway, Pratapnagar,
Baroda – 390 004. ... Respondents

By Advocate Shri M J Patel

ORDER

Per Dr A K Dubey, Member(A)

- 1 The applicants have filed the present OA seeking engagement on regular basis with all consequential benefits on the ground that they had worked as Part Time Safaiwala from 1994 to 2000.

2 The reliefs sought for are as follows:-

“8.1 Lord ships be pleased to admit this petition and be pleased to direct the respondent to issue the order for the engagement on regular basis to the applicant with all consequential benefit.

8.2 The applicant prays to the Hon’ble Tribunal that Age relaxation may be granted from the date of appointment in the railway.

8.3 The Order for be call for the record.

8.4 Any other relief which the Hon’ble Tribunal deems fit.”

3 The applicants contend that they were appointed as Part Time Safaiwala in 1994 and had worked up to 2000 without any break, but the respondents terminated their services without following the procedure. The applicants have annexed the copy of their Identity Cards, Miscellaneous claims payment Order as Annexures A/2 and A/3 respectively. It is submitted by the counsel for the applicant that the applicants had filed representations (Annexure A/1), seeking absorption on regular basis but till date the respondents have not replied to the same. It is further submitted that respondents had issued order dated 29.09.2006 to all department heads in which they asked the details of substitute/Part Time Safaiwala in the prescribed proforma.

3.1 It is also submitted by the applicants that the Railway Board letter No.E(G)97 EC-2-1 dated 08.01.1997 (Annexure A/4), states that “w.e.f. 01.01.1997, Safai work involved in office premises, stations, residential colonies and coaching maintenance depot’s should be done departmentally, Group C and D posts as considered essential and necessary may be created with the personal approval of General Manager and with finance concurrence. While creating posts, surplus posts available elsewhere may be taken into consideration. Such posts may be

created without an immediate matching surrender, in view of urgency involved. Matching surrender of equal monetary value shall, however, be ensured by 31.12.97 and confirmation to the effect given to Railway Board.” It is also mentioned in the said letter that “Where part time safaiwalas/substitutes have been directly engaged by Railway, such safaiwalas/substitutes may be recruited as Safaiwalas, subject to their qualifying the prescribed medical examination. Board approve of age relaxation in this regard.” Applicants’ Counsel submitted that though required to act on these Memoranda and instructions, Respondents did nothing. Applicants filed representations dated 1997, 15.07.2004 and 28.10.2012 but respondents did not reply.

4 Learned counsel for applicant also emphasised that the 1997 circular was in force at the time when the applicants worked. It was applicable to the case of the applicants but the respondents issued notification dated 31.05.2012 as per Court’s order and regularised the part time Safaiwala whose total service of 50 days was there and other persons engaged after 1997. Hence this OA. Besides applicants also filed MA 158 of 2014 in this OA for permission for Joint Application which has been allowed vide order dated 23.04.2014.

4.1 Applicant has also filed MA No.157/2014 seeking condonation of delay. Applicant has stated in the MA that he had submitted representation in the 1997 and reminders on 15.07.2004 and 28.10.2012. Applicants have contended that they had liabilities of large family, grandmother of applicant no.1 expired on 26.04.2007, both mother and father was under regular treatment and that they were not in a position to pay advocates fees.

Hence, they pray that the delay in filing OA be condoned in the interest of justice.

5 Counsel for the Respondents submitted that in accordance with the Railway Board letter No.E(G)97/EC 2/1 dated 08.01.1997 (Annexure A/4) Railways issued a circular soliciting proposals for creation of the post of Safaiwala. The counsel for respondents submitted that in its decision in OA 420/2012 with OA 19/2013, OA 360/2012, OA 118/2012, OA 237/2012 and OA 190/2007 dated 12.02.2013, this Tribunal had directed the respondents to consider the claim of applicants therein in the light of the Railway Board Circular dated 18.01.1997, after due medical test and relaxation of age, since that matter was covered by the judgment of Hon'ble High Court of Gujarat in SCA 23431, 23436, 29941 & 29181 of 2007, and to complete the exercise in a period of three months.

6 On receipt of notice, the respondents have filed a detailed reply denying the claim of applicants and have stated that the applicants have challenged the impugned action of respondents but neither any year has been stated nor any date has been given. It is further submitted that applicants in their representations, had stated their grounds similarly and obviously all the grounds would not be applicable to each of the applicants in a similar manner. Respondents' counsel further submitted that the representations stated in the OA had never been acknowledged and it was unclear whether such representations had ever been actually received by the respondents because records were not there to validate this claim. It has also been submitted in the reply that the applicants themselves were not aware, as to when and under whom they served and during which

period. He submitted that the applicants had not stated the specific date, month or year and had not referred to any specific dated order of such engagement, but were merely stating inaction on part of respondents. And that too after such time lag

7 Shri M J Patel, learned counsel for respondents placed reliance on the order of this Tribunal in OA Nos. 374/2012 and 9 Ors decided on 09.12.2019, dismissing similar request for regularisation after a gap of almost a decade.

8 Heard Ms S S Chaturvedi, learned counsel for applicant and Shri M J Patel, learned counsel for respondents. Perused the pleadings on record and the documents placed before us. The applicants contend that they have worked as part time safaiwala for the period from 1994 till 2000 in support of which they have produced copies of their identity cards (Annexure A/2 collectively) and miscellaneous claims' payment authorisation (Annexure A/3 collectively). The respondents have stated in their reply that they have verified from respective sections and these papers were unclear and did not reveal under whom they worked or what was the period. He informed that the matter is older than a decade and records are available only for the last ten years. Applicant No.1 claims that he had given representation dated 1997 for regularisation and dated 15.07.2004 and 28.10.2012 for re-engagement, claiming that they had worked as part time safaiwala from 1994 to 1997 (Annexure A/1 collectively). However, no specific dates are mentioned. These are too vague even to verify as neither the period of duration nor the authority under whom they worked was specified. Even the copies of the memo

authorising miscellaneous claims do not specify to whom and what for were these payments made. Nor are the amounts in these memos consistent to suggest any regular or fixed payment.

9 After carefully going through the documents placed before us and the letter of the Railway Board dated 08.01.1997 (Annexure A/4), under which the applicants seeks relief, and keeping in view the facts of this case, it is clear that even if the applicants were there on contractual part time engagement, they had to undergo the procedure prescribed in the Railway Board letter No. E(G) 97 EC/2/1m, dated 08.01.1997 and letter No.E.Policy/261)/Vol.VII dated 16 January which meant that firstly, contracts of Safaiwalas should not be renewed and no fresh contracts could be entered into w.e.f. 1997 and secondly, the specified safai work should be done departmentally by creating group D & C posts. This letter dated 08.01.1997 also allowed age relaxation after medical clearance of such part time safaiwalas/substitutes that were considered fit for recruitment as safaiwala. Therefore it is obvious that there was a due procedure to be undergone for creation of group D posts on which safaiwala could be recruited and there was no bar on erstwhile part time safaiwalas/substitutes if they fulfilled the criteria and the medical tests requirement. Needless to say that this was to be done in 1997 and consequently termination of part time safaiwala and creation of safaiwalas' posts in group D would have taken place. By his own admission, the first applicant gave a representation on 1997 and thereafter only on 15.07.2004. His third representation is dated 28.10.2012. Now after over twenty years seeking a relief from the process that was undertaken in 1997, does not

appeal to reason. The Respondents' procedure and instructions are clear and non compliance or failure undergoing the due process and in taking its benefit cannot be agitated after lapse of such a long period.

10 Keeping in view the facts emerging from aforesaid discussions, documents before us and the case cited by the counsel for respondents, we feel that the applicants have neither been able to establish their claim nor have they been able to offer any reasonable explanation of the delay and therefore the OA as well as MA 157/2014 is liable to be dismissed. Accordingly both OA and MA 157/2014 are dismissed. No order as to costs.

(Dr. A.K.Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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