

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1032/1990. DATE OF DECISION: April 24, 1991

Rajendar Kumar Applicant.

V/s.

Union of India Respondents.

COURT: Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri R.L. Sethi, counsel for the applicant.

Shrimati Raj Kumari Chopra, counsel for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their lordships wish to see the fair copy of the judgment? No.
4. To be circulated to all Benches of the Tribunal? No.

(Signature)
(P.C. JAIN)
Member (A)

(Signature)
(RAM PAL SINGH)
Vice-Chairman (J)

12

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Mrs. Raj Kumari Chopra, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C.Jain, Member (A).)

JUDGMENT

Aggrieved by his non-selection to the post of Daily Wages Safaiwala in pursuance of the interview held on 2.5.1990, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 with the prayer that the respondents should be directed to engage him on daily wages in preference to fresh recruits or juniors similarly recruited in accordance with the guidelines prescribed by the Tribunal.

2. The facts of this case fall in a very small compass. Though the applicant has stated that he was recruited through the local employment exchange as a daily wages Safaiwala, the respondents' contention is that he was selected and engaged as a Waterman during summer season with effect from 24.4.87 to 14.8.87. In his rejoinder, the applicant has not been able to rebut this contention. It is a common ground of the parties that the applicant had worked only for the period from 24.4.87 to 14.8.87. It is stated by the respondents that respondent No.2 intended to engage some Safaiwalas on daily wages in 1990 to improve the sanitation conditions of the hospital in the interest of patient care and accordingly a requisition was sent to local employment

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exchange, which sponsored about 285 candidates. Interview call letters were sent, among others, to the applicant as well, but he was not found suitable for engagement as Safaiwala on daily wages by the Selection Board. Hence this application.

3. We have perused the material on record and have also heard the learned counsel for the parties.

4. There is no allegation of malafide or bias or prejudice against the Selection Board. Having participated in the selection, even otherwise the applicant cannot challenge the same (Brij Kishore Dubey & Others vs. Union of India & Another - ATR 1989 (2) CAT 592).

5. Learned counsel for the applicant solely relied for his case on the judgment of a Division Bench of the CAT in the case of Shri RAJ KAMAL AND OTHERS v. UNION OF INDIA (SLJ 1990 (2)(CAT) p. 169). Learned counsel for the respondents contended that the cited case is not at all relevant. The same plea has been taken in the reply filed by the respondents as well. It is also urged that the applicant having never worked earlier with the respondents as Safaiwala, could not have any preferential claim, and that in accordance with the instructions issued by the Department of Personnel, he was not eligible for consideration for regularisation in a Group 'D' post. In Raj Kamal's case (supra), applicant No.1 was engaged as a daily-wager w.e.f. 16.11.1983 and continued as such for a number of years and in each year service for a minimum of 38 days in 1983 to a maximum of 299 days in 1984 had been put in. During certain periods, he also worked as a Peon on purely ad-hoc and temporary basis. Similarly applicant No.2 was engaged from 3.8.1983 and had put in a minimum service of 127 days in 1986 to a maximum of 315 days both in 1984 and 1985. He was appointed as ad-hoc Peon w.e.f. 6.6.1986, which appointment was terminated on (c)

14.2.1988. He was again appointed on ad-hoc basis as a Peon on 14.2.1988. Applicant No.3 was engaged as a Daily Wager on 30.4.1984 and had put in a minimum of 140 days of service in 1989 to a maximum of 278 days in 1985. He also worked as ad-hoc Chowkidar from 29.12.87 to 15.3.1989. Similarly, applicant No.4 was engaged on daily wage basis on 16.11.1983 and worked for a minimum of 38 days in 1983 to a maximum of 298 days in 1984. He also worked as ad-hoc Peon from 23.6.1986 to 27.2.1987, 1.2.1988 to 13.2.1988 and 14.2.1988 to 15.3.1989. It is clear from the above that the applicants in that case had worked for a number of years and had also put in more than 240 days as prescribed for offices working on 6 days a week or 206 days as prescribed for offices working on 5 days a week for at least two consecutive years and were thus eligible for consideration for regularisation, if the vacancies in Group 'D' posts existed, in accordance with the instructions issued by the Department of Personnel. In the case before us, the applicant had worked only for a limited period of less than four months and that too on a post of daily wage Waterman for the summer season, which by nature is a seasonal post and he could not be deemed to have been appointed on a work of regular and continuous nature. In Raj Kamal's case also, the instructions issued by the Department of Personnel were taken note of except that existence of a regular vacancy in Group 'D' post in the particular Department / organisation in which the applicant was working, was not to be insisted upon. It was also stated (in para 28 of the judgment) that even according to the counter-affidavit filed by the respondents, the applicants have worked continuously for more than 240 days in various years. In the scheme approved by the Supreme Court in connection with the absorption of the casual labourers of the Railways,

the criteria for absorption was that persons concerned had completed 360 days of continuous employment (Inder Pal Yadav v. Union of India - 1985 (2) SLR 248). Similarly, the scheme for daily wage casual labourers employed in the P.&T, the requirement prescribed was continuous working for more than one year in the Posts & Telegraphs Department. In the U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India and Others (AIR 1988 SC 517), the Supreme Court laid down the condition of continuous working for more than one year as Class IV employee in the Income-tax Department.

6. In view of the above discussion, we see absolutely no merit in this O.A. and the same is accordingly dismissed with costs on parties.

(C.C. 24/4/1991
(P.C. JAIN)
Member(A)

(R. P. SINGH)
Vice-Chairman (J)