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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1310 of 1993

Allahabad this the 16th day of October 1995

Hon'ble Mr. T.L. Verma, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

1. Jai Ram S/o Banwari, R/o Chittupura, Lahartara, Varanasi.
2. Vakil Ahmad, S/o Mazhar Ali, R/o Village Palkaha, Post Lauraha, District Varanasi.
3. Mahboob S/o Irfan R/o Bahadurpur, Dohrighat, District Mau.
4. Abdul Salam, S/o Meer, R/o Village Bahadurpur, Dohrighat, District Mau.
5. Vijay S/o Baby Lal, R/o Village Kaithi, Post Kaithi, District Varanasi.
6. Rasheed Ahmad, S/o Sadiq, R/o Munshipura, Mau.
7. Jeut, S/o Ram Raksha, R/o Madhopur, Sigra, Varanasi.
8. Doodh Nath, S/o Rameshwar, R/o Badalpur, P. Rajepur, District Jaunpur.
9. Rajendra, S/o Raghunandan, R/o Semri Rampur, Post Vidya Bhawan Narainpur, District Balia.
10. Lallan S/o Mukh Lal, R/o Teer Ka Tazia, Azamgarh.
11. Lildar, S/o Salik, R/o Village & Post Jhaloopur, District Varanasi.

APPLICANTS.

By Advocate Shri Sanjay Kumar,

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager (P), North Eastern Railway, Varanasi.

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3. Chief Medical Superintendent, North Eastern Railway, Varanasi.
4. Chief Health Inspector, North Eastern Railway, Mau.

RESPONDENTS.

By Advocate Shri A.K. Shukla,

ORDER

BY Hon'ble Mr. D.S. Baweja, Member (A)

Eleven applicants through this O.A. have prayed for re-engagement as Safaiwala as similarly placed other casual labour Safaiwalas have since been re-engaged and thereby they have been discriminated violating Article 14 and 16 of the Constitution of India.

2. The applicants claim to have worked as casual labour Safaiwalas during the year 1977. The claim is based on the list of casual labourers prepared by Chief Health Inspector working under Chief Medical Superintendent of Varanasi Division of North Eastern Railway, The list dated 14.10.77 has been annexed with the application. The list contains the names of the applicants and shows that they have worked as casual labour Safaiwalas for a period of 24 days from 03.1.1977 to 27.1.1977. No other proof of working such as casual labour card has been furnished by the applicants.

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3. The applicants have alleged that out of the list of 20 casual labour Safaiwalas referred to above, nine have since been re-engaged as Safaiwalas. In re-engaging, the policy of 'pick and choose' has been followed as even the casual labourers out of this list who have worked for a lesser period than the applicants have been re-engaged. The applicants have not furnished the actual dates and reference number of re-engagement of those casual labour Safaiwalas out of the list under reference.

4. The respondents have filed the Counter-reply to which rejoinder has been filed by the applicants. Heard the learned counsel for the parties and carefully perused all the records placed before us.

5. The respondents in the Counter-reply have not denied the re-engagement of some of the casual labour Safaiwals out of the list. They have also not disputed the working details of the applicants, as detailed in the list dated 14.10.77. However, the averments made in the Counter-reply in various paras are at variance. In para 7.2 of the Counter-reply, it has been averred that the list furnished by the Chief Health Inspector is not an approved seniority list. Hence, any appointment made out of the list is baseless. It may be a chance that some of the names appearing in the list may be of those who have been

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previously re-engaged. However, in para-9 of the Counter-reply, an averment has been made that Chief Health Inspector could not engage the applicants because of the fact that they were not available at the time of engagement in the exigencies of work. In para-6 of the Counter-reply it is stated that a notification had been issued on 15.10.90 as per which all the Health Units were asked to send the applications along-with details of working for preparation of casual labourers' list for considering re-engagement. None of the applicants applied against the same. On the basis of the applications received against the notification dated 15.10.90, a list had been prepared, and nine persons, as alleged, were engaged from the list as per seniority. The contradictory averments made in the counter leads us to surmise that the issue has not been examined in detail before preparing the Counter-reply. A no clear policy seems to have been followed in re-engagement of the old face casual labourers as Safaiwalas.

6. From the averments made in the pleadings, filed by the parties, it emerges that the applicants were engaged as Casual Labour Safaiwala under Health Inspector, N.E. Railway, Mau on 03.1.1977, and that each one of them had put in 24 days service in their capacity as casual labourers. A list of casual labour who worked till 31.8.77 was sent by the Health

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Inspector to D.R.M. Varanasi through Chief Health Inspector. It has been admitted that some of the casual labours junior to the applicants have been re-engaged as Casual Labours Safaiwala. The arguments advanced by the counsel for the respondents, that the applicants did not apply and were not available for re-engagement is not tenable. The conclusion that the respondents have acted arbitrarily in giving re-engagement to some of the juniors to the applicant and denying the same to them in the circumstances of the case is, thus, inescapable.

7. Ordinarily a casual labour employed in open line does not acquire any right before being conferred temporary status after completion of 120 days continuous service. The applicant, who admittedly had put in 24 days of service as casual labour in 1977 had then not acquired any legal right. They are, however, entitled to be considered similarly as their juniors have been considered for re-engagement.

8. In view of the above, We dispose of this application with a direction to the respondents to consider the applicants for re-engagement as casual labour if, juniors out of the list (Annexure-2) have been re-engaged after verifying the authenticity of their working as casual labour (Safaiwala) as per the extant rules. This direction shall be complied with

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within three months from the date of
service of this order on the respondents.
There will be no order as to costs.

Shaw
Member (A)

Theresa
Member (J)

/M.M./