

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

...

Original Application No. 949 of 1999.  
this the 15th day of october, 2004.

HON'BLE MR. A.K. BHATNAGAR, MEMBER (J)  
HON'BLE MR D.R. TIWARI, MEMBER (A)

1. Kamta Prasad, S/o Sri Ram Harakh.
2. Basant Lal, S/o Sri Cheedi Lal.
3. Umesh Kumar, S/o Sri Munna Lal.
4. Santosh, S/o Sri Mohan.
5. Rajesh Kumar, S/o Sri Lal Mohan.
6. Raju, S/o Sri Kashi Prasad.
7. Smt. Asha Devi, D/o Sri Bhagirathi
8. Smt. Chinta Devi, D/o Budhoo, W/o Kali Charan.

Applicants.

By Advocate : Sri R.C. Johri.

Versus.

1. Union of India through its General Manager,  
Northern Railway, New Delhi.
2. The Divisional Railway Manager, Northern Railway,  
Lucknow.

Respondents.

By Advocate : Sri G.P. Agarwal.

ORDER

BY D.R. TIWARI, MEMBER (A)

By this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following relief(s):

" (i) Notification no. 807/E.Ke.Le/96-97 dated 22.10.1997 and notification No. 807 E/CL/97-97/pt. dated 2.1.1997 issued by the Assistant personnel officer (Special) of the office of the Divisional Railway Manager, Northern Railway, Lucknow (Refer Annexure I & III) in respect of empanelment of 212 persons as Safaiwalas out of which posting order of 196 persons as Safaiwala vide notification no. 807E /CL/96-97/pt. dated 2.12.1997 (refer Annexure I & II)

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be quashed being descriminative in nature and against the extant rules of the India Railway Establishment Manual Vol. I and infringement of the orders notified by the Railway Board quoted in para 4 & 5 be quashed.

(b) That the posting order no. 807E/CL/96-97/pt. dated 2.12.97 issued by the Assistant Personnel officer (Special) Refer Annexure II on page 9 vide note I whereas it has been stated that the candidate -s posted above under Station Supdt. Lucknow and Varanasi under Commercial Department shall be given advancement for promotion in accordance with the AVC meant for Safaiwalas of T&C (Department in same seniority be quashed as it is discriminative in nature, if not then all the Safaiwalas working under the supervision of the Chief Health Inspector, Lucknow and Varanasi under the over all control of the Station Manager, Lucknow and Varanasi be also given as if posted under Commercial department and all be given also advancement for promotion in accordance with the Advancement meant for all the Safaiwalas or Traffic and Commercial department being in the same seniority group.

(c) Direction may be issued to the Divisional Railway Manager, Northern Railway, Lucknow i.e. Respondent no.2 to conduct the process of screening from amongst the application and remaining casual labour Safaiwalas under the control of the Chief Health Inspector (Station) Varanasi vide notification no. E(NG)11/CL/188 dated 1.10.88 (Refer Annexure XXX)

(d) Direction may be issued to the Divisional Railway Manager, Northern Railway, Lucknow i.e. respondent no.2 of the application to incorporate the name of the applicants in the Live Register as Casual Labour Safaiwalas vide General Manager (P), Northern Railway New Delhi's notification no. 220 E/190-XII-A(EIV) dated 14.8.1987 (Refer Annexure XIV) of the Application.

(e) .... "

2. Filtering out un-necessary facts, the relevant facts for deciding the controversy involved are that all the applicants belonged to the S.C. community of Mela Bhangi (Sweeper) by birth and profession and all the applicants had worked as Casual labour Safaiwalas under the control of the then Senior Health Inspector, Northern Railway, Varanasi . The total number of working days of all the applicants which they had worked for are as under :

| <u>Sl. No.</u> | <u>Name</u>   | <u>Working Days</u> |
|----------------|---------------|---------------------|
| 1.             | Kamta Prasad  | 140                 |
| 2.             | Basant Lal    | 177                 |
| 3.             | Umesh Kumar   | 140                 |
| 4.             | Santosh Kumar | 140                 |
| 5.             | Rajesh Kumar  | 139                 |

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|    |                  |     |
|----|------------------|-----|
| 6. | Raju             | 116 |
| 7. | Smt. Asha Devi   | 31  |
| 8. | Smt. Chinta Devi | 103 |

The photocopy of the working certificates issued by the Senior Health Inspector, Northern Railway, Varanasi have been attached as Annexure No.s 10,11 and 12 of the O.A.

3. It has been pleaded that by virtue of being the bonafide casual labour, who worked as casual labour Safaiwala are legal casual labourers as per rule 2001 of Indian Railway Establishment Manual ( in short I.R.E.M.) Vol. II. It has been complained that their names should have been incorporated in the casual labour register by the competent authority, which was not done for the reasons known to them. It is a clear infringement of the policy of the Railway Board as well as the instructions of the General Manager, Northern Railway, New Delhi. The circular of the Railway Board dated 14.8.1987, vide para 8, it has been stressed that the casual labour live register should be maintained in the respective units. The applicants have submitted that the Railway Board's notification dated 25.4.1986 has decided that the name of the casual labourers who were discharged from the employment at any time after 1.1.1981 on completion of work or for want of further productive work can continue to be born on the live casual labour register. The Railway Board's notification dated 17.8.92 has clearly stated regarding filling up of Group 'D' i.e. class IV category vacancies subject to certain exception by processing of screening and empanelment of the casual labour and substitutes will continue to be enforced for vacancies arising upto 30.6.1993. Yet, the Railway Board's notification dated 3.9.1996, it has been laid down that in spite of regularisation of casual labour in pursuance of the announcement made by the Railway

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Minister in Parliament during the Budget discussion for the year 1996-97 to the effect that all 56,000 casual labourers who were on roll as on 30.4.1996, will be regularised by 1997-98. The applicants have further detailed the procedure regarding screening, and empanellment and further process of regularisation. It has been contended that the procedure for recruitment of Safaiwalas has been infringed and in contravention of Rule 179 of I.R.E.M. Vol. I. In view of these facts and reasons mentioned above, the relief(s) have been claimed by the applicants and have submitted that the O.A. deserves to be allowed.

4. The respondents, on the other hand, have opposed the contentions of the applicants on multiple grounds. They have filed M.P. no. 2039 of 2000 with the prayer that the O.A. be dismissed being highly time barred. In the said M.P., the respondents have given the details in respect of all the applicants to show that none of them had worked even for a single day after 1991 and it has been argued that the O.A. has been filed in respect of all the applicants after one year, which debars filing of the O.A. under Section 21 of the A.T. Act, 1985. The respondents by filing M.P. no. 2040/2000 they also argued that the applicants have been silent for more than 10 years and Annexures which they have filed are in complete inasmuch as they do not establish the fact the authority who have issued it, hence in absence of the any documentary proof, it is difficult to consider their case only on the basis of their averments made in the O.A. In the Counter affidavit, it has been stated that Sri Kamta Prasad was engaged for specific work and for specific period and with the expiry of the period and work, he was put off from duty. The Annexure A-3 which has been issued by the Senior Health Inspector did not vest any legal right. Even if it is assumed that

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the said certificate is genuine one, it may be stated that the applicant Kamta Prasad got the certificate on 22.6.90, whereas the present O.A. has been filed in the year 1999 without giving any proper explanation for delayed submission of the application. The contents of para 4.A-ii to 4.A-viii of the O.A. have been vehemently denied, and it has been submitted that old records are not maintained and they have been weeded out under the provisions of rules. The working days do not give any legal right to the applicant namely Kamta Prasad. The persons who have issued the certificate have no right to issue the same .

5. As per provisions contained in I.R.E.M. Vol. II no fresh faces shall be recruited after December, 1980 without the approval of the G.M. and no subordinate officers have a right to engage any casual labour. Para 9 of the Counter clearly states that as per para 2001 of I.R.E.M. and definition clause, the applicants have not acquired any status and because they were engaged as per the need of the work and the need was over, they were dis-engaged. This further strengthens that [as per para 2001 ibid sub clause (v) of I.R.E.M. casual labour must possess casual labour card. The applicants do not possess the casual labour card. These facts clearly show that they were not engaged as per rules, but they were engaged as per the need. The question of recording the name of casual labour live register does not arise as it was obligatory for the applicants to make representation to the competent authority, which they failed to do. In so far as challenge to the notification is concerned, it has been submitted that they have neither worked for 120 days or 180 days continuously without break, nor they have attend MRCL status and as such they have no right to challenge the notification.

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They have also failed to implead the posting orders of the casual labourers, hence the O.A. is bad for non-joinder of the necessary parties. It has been submitted in para 36 of the Counter affidavit that the decision of the Hon'ble Supreme Court in the case of Inder pal Yadav would not be applicable to them because they are not covered by that judgment. The O.A. as, it has been filed is full of ambiguity and ambiguous. There are number of reliefs joined together in one application, which is not permissible under the law.

6. During the course of arguments, the counsel for the applicants pleaded very strongly that the notification did not have wide <sup>scale of</sup> circulation and the employees who have not worked even a day have been given the duty. The counsel for the applicants has strongly pleaded that the notice was inadequate, hence appointments made as per the notification, in question, is invalid and arbitrary. The counsel for the applicants has relied upon the following decisions in support of their case.

- (i) A.T.J. 2000(2) 688 in re. Mohd. Yusuf Vs. State of J & K.
- (ii) Bhikam Chand Vs. Jodhpur Central Co-operative Bank Ltd. & Others. 1998 (6) SLR 668.
- (iii) T.U. Gharat & Ors. Vs. Union of India & Ors. A.T.J. 2003 (1) 192.
- (iv) K. Eswara Dutt Vs. Chairman, Food Corporation of India & Ors. 1998(4) S.L.R. 675.
- (v) Balwinder Singh & Ors. Vs. State of Punjab & Others 1998 (4) SLR 35.
- (vi) Dakshin Railway Employees Union & Ors. Vs. Union of India & Ors. (1992) 21 A.T.C. 608.

7. We have perused the decisions cited by the learned counsel for the applicants and we find that the facts of the case are quite different from the facts of the case in hand. Hence, they do not provide any assistance to the applicants and these decisions are distinguishable from the facts of the present case as each decision depends upon the facts and circumstances


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of each case.

8. The respondents during the course of arguments have submitted that the notification had a limited circulation because it pertains to the local appointment. He has also argued that the decisions cited by the counsel for the applicants for wider circulation is not applicable in this case. He has further argued that the application is very vague and relates to the records which have already been weeded out. He has finally pleaded his argument relying upon sub clause (v) of Chapter 20 of I.R.E.M. Vol. II, which clearly provides that in view of the facts and circumstances of the case, the applicants have acquired no legal right what-so-ever. He submits that the O.A. is devoid of any merit and is liable to be dismissed on these grounds.

9. The crucial question which arises for decision in this case is whether the respondents are justified in denying the reliefs sought for by the applicants in the O.A. The close scrutiny of the contention of the applicants and the strong refutation/rebuttal by the respondents leave us <sup>in</sup> no-doubt that the O.A. is liable to be dismissed. They have not been able to demonstrate that they were entitled to be regularised or even entitled to be in roll to the casual labourers live register.

10. In view of the facts and circumstances mentioned and the discussions made, the O.A. is devoid of any merit and is accordingly dismissed. NO costs.

  
MEMBER (A)

  
MEMBER (J)

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