

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 5/1 day of October, 2007.

**HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN.
HON'BLE MR. K.S. MENON, MEMBER- A.**

ORIGINAL APPLICATION NO. 1365 OF 1999

1. Virendra Kumar, S/o Sri Brij La, Ticket No. 1615.
2. Suresh Kumar, S/o Sri Phundi, T. No. 1620.
3. Uma Shankar, S/o Sri Sukhlal, T. No. 1616.
4. Anil Kumar Shukla, T.No. 1618.
5. Raj Ballabh, S/o Sri Raghunath Prasad, T. No. 1624.
6. S.K. Shukla, T. No. 1625.
7. Ranjeet Singh Chauhan, S/o Hublal Singh, T. No. 1622.
8. Mahendra Pal, S/o Sri Kali Charan, T. No. 1619.
9. Nand Lal, T. No. 1623.
10. Kanyaiya lal Yadav, T. No. 1617.
11. Dayanand Tewari, T. No. 1627.

All group 'D' employees working in the office of Area Officer Commanding , 402, Air Force Station, Chakeri, Kanpur.

.....Applicants.

VERSUS

1. Union of India through the Secretary,
M/o Defence, New Delhi.
2. Area Officer Commanding, 402, Air force Station,
Chakeri, Kanpur.

.....Respondents

Present for the Applicants:

Present for the Respondents :

Sri A.K. Dave

Sri D.S. Shukla

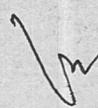
ORDERBY HON'BLE MR. JUSTICE KHEM KARAN, V.C.

By this O.A applicants have prayed for quashing the impugned orders dated 25.05.1999 (Annexure A- 8 to the O.A) and 27.09.1999 (Annexure A- 9 to the O.A) coupled with prayer for a direction to the respondent No. 2 to change their trade from Safaiwala to Lascars.

2. We may state at the outset that excepting the applicant No. 7 and 11 namely Ranjeet Singh Chauhan and Daya Nand Tiwari, the rest of the applicants have withdrawn their claim vide order dated 27.04.2001, so we need not consider them for any relief.

3. Admittedly, the applicant No. 7 and 11 were appointed as Anti Malaria Lascar (in short A.M.L) under the respondents in 1989 after inviting names from the Employment Exchange and holding a selection for a period up to 31.10.1989. They ceased to work w.e.f. 01.11.1989. On creation of some vacancies in the cadre of A.M.L, they made attempt to get themselves absorbed or reappointed and on their failure to do so, they and others filed O.A No. 953/89 before this Tribunal. There is further no controversy that this Tribunal disposed of that O.A with following directions: -

" The petition is, therefore, disposed of with the direction that the case of the petitioners shall be considered by respondent No. 2 for appointment and absorption as Anti Malaria Lascar and other allied posts against the newly created vacancies within a period of two months from the date of receipt of



certified copy of this judgment, bearing in mind this Tribunal's interim orders dated 07.11.1989."

4. Instead of being reappointed or absorbed as A.M.Ls, applicants were appointed as Safaiwala and according to the respondents, this appointment on the post of Safaiwala was given on the basis of willingness given by the applicants. On the other hand, the applicants have stated that though in the appointment letters issued to them, their designation were noted as Safaiwala but they always discharged the functions of A.M.Ls and the respondents always gave assurance that their trade would be changed from Safaiwala to A.M.Ls. Applicants continued to give representations for change of the trade from Safaiwala to A.M.L. They say that though the respondents have changed the trade of several employees (see para 10 of the O.A) but the trade of the applicants has not been changed. The matter became more prominent when respondent No. 2 issued order dated 25.05.1999 (Annexure A- 8) asking some of the applicants to work as Safaiwala at some other place. It appears, during the pendency of this O.A, respondents have issued another order dated 27.09.1999 directing the applicant Nos. 7, 9, 10 and 11 to work as Safaiwala at some other place. This led the applicants to file this O.A.

5. In their initial reply, the respondents have tried to say that the claim of the applicants for posting them as A.M.L is not maintainable as they themselves gave their willingness for appointment as Safaiwala. They had narrated the circumstances under which these applicants were appointed as Safaiwala pursuant to the direction dated 11.07.1990 of this Tribunal in O.A No. 953/89 and to the direction issued from Headquarter. They say that the question relating to the change of trade

of the applicants cropped up from time to time in various meetings but owing to the non-availability of the vacancies in the cadre of A.M.L, same could not be acceded to. It has also been stated in para 28 and 33 of this reply that there is no vacancy of permanent nature in the cadre of A.M.L. They did not admit that the applicants have had been working as A.M.L. In Suppl. Counter Affidavit filed in November 2003, the respondents have tried to say that on the basis of willingness given by the applicants excepting the applicant Nos. 7 and 11, their trade has been changed from Safaiwala to A.K.L but on the terms and conditions provided in Government orders.

6. Applicants 7 and 11 have conceded that they did not accept the terms and conditions as laid down by the respondents for change of their trade from Safaiwala to A.M.L as that would have forfeited their previous services. They say in para 8 of Suppl. Rejoinder Affidavit filed in January 2004 that according to the terms and conditions of the willingness, the applicant Nos. 7 and 11 would have been treated as fresh appointee as Lascar so they did not sign. But in para 3 (f) of another Suppl. R.A dated 09.09.2004, applicant Nos. 7 and 11 state that in any case, they are entitled for protection of pay in case of change of their trade from A.M.L to Safaiwala as Circular dated 18.04.2001 does not provide for giving pay protection in the changed trade.

7. We may observe that the respondents were asked to bring the record so as to ascertain whether the applicant Nos. 7 and 11 were discharging the functions of A.M.L or Safaiwala, in compliance of our direction, the respondents brought the service book of applicant Nos. 7 and 11, Pay Roll from January 2002, Attendance Register for our

perusal. However, Sri A.K. Dave, counsel appearing for the applicants was of the view that these records are not sufficient and Detailing Register was also to be looked into, which the respondents had not brought.

8. Since the case was old one and the pleadings were already complete so we heard Sri A. K. Dave, learned counsel appearing for the applicant and Sri D.S. Shukla for the respondents.

9. Sri Dave stated that the order dated 27.09.1999 so challenged in the O.A was not was be quashed, except this that the designation of the applicant Nos. 7 and 11 was wrongly shown as Safaiwala in place of A.M.L. According to him, after the decision of this Tribunal in O.A No. 935/89, there was no option with the respondents but to give appointment to the applicants on the post of A.M.L, but instead of doing so, they gave them appointment on the post of Safaiwala. He says that these applicants had no option but to give their willingness for appointment as Safaiwala. Learned counsel argued that willingness of applicant Nos. 7 and 11 for being appointed as Safaiwala was the willingness under compulsion as they were out of employment and had no capacity to bargain with the respondents. Sri Dave has also argued that material on record will prove that the applicant Nos. 7 and 11 have had been discharging the function of A.M.L from the date they were reappointed after the decision of this Tribunal in O.A No. 953/89. The learned counsel has drawn our attention towards Nominal Roll. He says that Annexure A- 4, A-5 and A-6 will prove that the respondents have had been changing the trade of their several persons by adopting pick and choose policy ignoring the claim of the applicants . He has also argued

that the case of the respondents that there are no vacancy in the cadre of A.M.L or enmass change of trade is not possible, is belied by the fact that during the pendency of this O.A, they have themselves changed the trade of nine applicants but on the basis of their own terms and conditions. Sri Dave says that if the vacancies were not their in the cadre of A.M.L, as stated in the reply, from where those vacancies ^{came} so as to accommodate these nine applicants in the cadre of A.M.L. He has also stated that the respondents are not correct in saying that only in exceptional case, such ^{change} in trade is allowed as they have allowed the change in the trade to these nine applicants. Sri Dave goes on to argue that the respondents are taking undue advantage of their being employer and forcing the employees to accept unfair terms and conditions.

10. Sri D.S. Shukla was asked to satisfy us as to how nine out of 11 applicants could be accommodated as A.M.L, if there were no vacancies in that cadre, as stated in the initial reply. He tried to say that it was ^{on} the basis of their willingness to loose the benefit of previous service, that change of trade of those nine applicants was accepted. We have not been able to convince ourselves how willingness or unwillingness will be relevant in the context of availability or non-availability of vacancies in the cadre of AML. In other words, if some one in the cadre of Safaiwala is ^q prepared to forego his 20 or 22 years service, there can be vacancy in the cadre of A.M.L to accommodate him. Sri Shukla has drawn our attention towards instructions dated 16.09.1972 (Annexure SCA- 1) as amended or clarified by subsequent instruction dated 02.01.1978 (Annexure SCA-2) and 18.07.2001 (Annexure SCA- 3), which provides that change in trade is possible in exceptional circumstances on the

condition that the individual concerned is willing to forego the past service for the purpose of seniority and promotion.

11. What we notice is latest guide lines (SCA- 3) does not speak of loosing the benefit of pay protection though earlier guide lines (SCA- 1 and SCA- 2) did provide that pay would be fixed at the minimum of the pay scale.

12. There is no dispute that the pay scale of Safaiwala and pay of A.M.L is the same. It is difficult for us to accept the contention of Sri Dave that reappointment of the applicant on the post of Safaiwala was not proper. There is no dispute that the appointment was made on the basis of willingness given by the applicant Nos. 7 and 11. But the fact that they were initially inducted as A.M.L and the fact that this Tribunal had also asked the respondents to absorb or appoint them on the post of A.M.L or allied post, cannot be lost sight off. It is also a fact that these applicants have had been representing from the very beginning for change of their trade and issue has had been engaging the attention of the respondents in various meetings. There appears substance in the submissions of the applicants that respondents have had been changing the trade (see Annexure A- 4, 5 and 6). In other words, change of trade is not impermissible under rules or existing guide lines. It is for this reason that request of nine applicants (out of 11 of this O.A) has been accepted but on the conditions laid down by the respondents.

13. We are of the view that in all fairness , the respondents should have allowed the claim of the applicant Nos. 7 and 11 for change of trade from Safaiwala to A.M.L atleast with pay protection as provided in latest

clarification dated 18.07.2001. It does not say that the individuals will not be entitled to pay protections. Even if the rules provide that the individuals will not be entitled to pay protection, the same can be relaxed considering the special nature of the case of applicant Nos. 7 and 11.

14. So, this O.A is finally disposed of with a direction to respondent No. 2 to change the trade of applicant Nos. 7 and 11 from Safaiwala to Lascars with the benefit of pay protection within a period of three months from the date a certified copy of this order is produced before him and to modify the order dated 27.09.1999 accordingly. The record produced by the respondents on 26.09.2007, shall be returned to Sri D.S. Shukla. No order as to costs.

J. Menon
5.10.07
MEMBER - A.

C. J. Dunn
5.10.07

VICE-CHAIRMAN.

/Anand/