

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

Original Application No. 1262 of 2002.

Allahabad, this the 17th day of August, 2004.

Hon'ble Mr. D.R. Tiwari, A.M.

Govind,  
son of Sri Sangat  
resident of Railway Hartala  
Colony, Balmiki Basti,  
Chandan Nagar, Moradabad,  
at present working as regular  
Sweeper in Post and Telegraph  
Dispensary, Moradabad. .... Applicant.

(By Advocate : Shri Satish Dwivedi)

Versus

1. Union of India through the Secretary  
Ministry of Communication, Government  
of India, New Delhi.
2. The Post Master General  
Bareilly Region, Bareilly.
3. The Sr. Superintendent of Post Offices  
Moradabad Division, Moradabad.
4. The Chief Medical Officer Incharge,  
Post and Telegraph Dispensary,  
Moradabad. .... Respondents.

(By Advocate : Shri S. Singh)

O R D E R

By Hon'ble Mr. D.R. Tiwari, A.M. :

By this OA filed under Section 19 of A.T. Act,  
1985, the applicant has prayed for issuance of direction  
to the respondents for treating the appointment of the  
applicant on the post of Safaiwala under the Chief  
Medical Officer Incharge Post and Telegraph Dispensary,

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Moradabad as regular and permanent employee w.e.f. the date of his initial appointment alongwith consequential benefits attached to the post. He has further prayed for issuance of direction to the respondents to give all the benefits of temporary status to the applicant with effect from the date of grant of temporary status to him coupled with the payment of arrears with interest.

2. Filtering out the unnecessary details, the relevant factual matrix to adjudicate the controversy is that the applicant after being sponsored by Employment Exchange was selected for appointment on regular basis on the post of Safaiwala in post and Telegraph Dispensary, Moradabad. The availability of sanctioned post is clear from Annexure-A-1. The applicant has however contended that Medical Officer Incharge/ Post and Telegraph Dispensary, Moradabad vide his letter dated 22.8.1987 arbitrarily and illegally appointed to him on daily wage basis instead of appointing him on regular basis (Annexure-A-3). He has further contended that against the sanctioned post, in accordance with the procedure for selection of regular appointment he was given appointment and he has been continuously working on the post of Safaiwala in the aforesated Dispensary since his appointment. In the year 1991 the Sr. Superintendent of Post Offices, Moradabad demanded the particulars of service of the applicant and one Sadanand Chawkidar for grant of temporary status (Annexure-A-4 & A-5). The Superintendent of Post Offices vide order dated 26.11.1992 granted temporary status with effect from 29.11.1989 to Sadanand Sharma and others casual workers except the applicant (Annexure-A-6). However, he was allowed temporary status with effect from 29.11.1989 vide order dated 5.6.1996 (Annexure-A-8).

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His grievance is that inspite of grant of temporary status to the applicant w.e.f. 29.11.1989, he was denied consequential benefits which go with the temporary status. Hence, the applicant made a representation to the Superintendent of Post Offices, Moradabad stating therein that he has been granted temporary status but the benefits of said status is not been given to him (Annexure-A-9). Thereafter, the Superintendent of Post Offices vide letter dated 12.8.1997 issued direction for giving the benefits of temporary status to the applicant (Annexure-A-10). He has submitted that one Smt. Heera John who was also selected for regular appointment on the post of Nurse but she was given appointment on daily wage on permanent vacant post of Nurse. Aggrieved with the same Smt. Heera John filed OA No.1066/1996 for issuance of direction to the respondents to regularise her services on the post of Nurse. Accordingly, this Tribunal issued a direction to the respondents to consider the case of Smt. Heera John. The operative portion of the order of the Tribunal in OA No.1066 of 1996 decided on 1.7.1997 is being reproduced below :-

".....We find merit in this case of the applicant. We accordingly direct the respondents to regularise the services of the applicant on the post of Nurse with effect from the date of her first appointment or from such date as may be determined in accordance with the rules. We may clarify that by said other date, we mean that if there is any period of probation, the date may be fixed accordingly. The applicant shall also be entitled of all consequential benefits on her being regularised. The OA is disposed of accordingly, the stay order stand vacated. No order as to costs."

Accordingly, the respondents issued the order making her a permanent employee.

3. The applicant's contention is that the position of the applicant and Smt. Heera John are on the similar putting which may be seen from the statement at Annexure-A-12 & A-13). The applicant again represented his case to the Competent Authority and followed it by reminders but nothing has happened so far, the copy of the reminder dated 7.2.2002 is at Annexure-A-16. Aggrieved with in action of the respondents, the applicant has filed the instant OA. The applicant six of the relief stated above on the following grounds :-

- "i) The applicant was appointed on the post of Safaiwala after following all the procedure of regular appointment against a permanent sanctioned post.
- ii) Other employee of the department who has been allowed temporary status in similarly situation the applicant is also entitled for the same.
- iii) Inaction of the respondents amounts unfair labour practice in the facts and circumstances of the present case.
- iv) He is continuing in service since last more than 15 years and still he has been deprived of the benefits attached to the post and his services.
- v) Principles of justice, equity and good conscience in the facts and circumstances of the case requires that the services of the applicant should be regularised with effect from the date of his initial appointment alongwith consequential benefits to be attached to the post."

4. Per contra, the respondents have contested this OA by filing a detailed counter affidavit and they have submitted that the applicant is not entitled to any relief claimed because he was engaged as part time Safaiwala on daily wage and the grant of temporary status was wrongly issued to the applicant. They have further argued that P & T Dispensary in Moradabad which was previously under the Administrative Control of Telecom

Divisional Engineer Moradabad was subsequently transferred to the Postal Department with 12 sanctioned post vide there letter dated 1-6-1987 including the post of Safaiwala (Para 6 of the counter affidavit). It has been further submitted at the time of transfer of the Dispensary was vacant and to carry out day today work of Safaiwala the Medical Officer Incharge P & T Dispensary, Moradabad had placed requisition to the Employment Exchange Moradabad for engagement of Safaiwala on daily wage basis @ Rs.12.55 per day vide letter dated 16.5.1987. The Employment Officer Moradabad sponsored the names of 18 persons including the name of the applicant finally. The applicant was selected on daily wage basis vide Medical Officer Incharge Moradabad letter dated 22.8.1987 till regular appointment is made on the post (Annexure-CA-1) after that the applicant was granted temporary status wrongly vide letter dated 5.6.1996 treating him at par in Group 'D' cadre and is being paid on the minimum pay scale of Group 'D' official w.e.f. 29.11.1987. In view of this fact, it has been pleaded that OA is bereft of merit and may be dismissed.

5. I have heard counsel for both the sides and perused the pleadings. I have carefully considered the rival contention of both the counsel.

6. During the course of the arguments the counsel for the applicant has drawn my attention to Annexure-A-1 which indicates that the post of Safaiwala has been shown in Col. 7 against the permanent post. He has further argued that the grant of temporary status to the applicant is a further <sup>proof</sup> ~~proof~~ that he was not on daily wage but was considered as a casual employee.

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Counsel for the respondents has reiterated the plea during the course of the arguments mentioned in the counter affidavit reply.

7. The only crucial question which arises for consideration is whether the applicant is entitled for regularisation with effect from the date of his initial appointment. The contention of the respondents that the grant of temporary status to the applicant has been wrongfully done can not be countenanced simply because the applicant is not responsible for this wrong. I may also mentioned that he has been working on that post without any break and his continuous working further perfected his legal right. Hon'ble Supreme Court has repeatedly held that any appointment against the permanent post, in accordance with the rules, would entitle the persons so appointed, the right of regularisation. They have further held that long years of continuance without any break in service leads to the presumption that the post is permanent. In the case of Rudra Kumar Sain Vs. Union of India & ors. 2000 (8) S.C. 25, the Supreme Court has held that stopgap appointment/ad-hoc appointment is made in order to meet some urgent situation only. In the present fact situation this is not the case. In the case of P.L. Dhingra Vs. Union of India & ors. (AIR 1958 S.C. 36) in para 11 & 12 of the judgment, the Apex Court held that if the appointment is made as per rules and is continued for long years on adhoc basis, the appointment should be considered as regular appointment and the appointee is entitled for regularisation from the date of his initial appointment.

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8. In the facts and circumstances of this case, I am of the considered view that the post was sanctioned one and the applicant's appointment on the said post <sup>not</sup> on daily wage basis is arbitrary and illegal. The contention of the respondents that grant of temporary status to the applicant was done wrongly is certainly not attributable to the applicant. There is enough force in what has been pleaded by the counsel for the applicant that the case of the applicant is based on the similar facts with the case of Smt. Heera John, a Nurse working in respondent's establishment. In pursuance of the judgment of this Tribunal, the respondents have granted regularisation to Smt. Heera John. It is pleaded by the counsel for the applicant that in similar situation if that benefits could be extended to Smt. Heera John, there is no reason as to why the applicant should be deprived of that facility. I am not inclined to agree with the counsel for the respondents. In view of this fact the OA is bound to succeed on merit.

9. In view of the facts and circumstances mentioned above and the discussions made, the OA succeeds and is allowed. The respondents are directed to treat the appointment of the applicant on regular basis with the date of his initial appointment alongwith consequential benefits. They are also directed that the benefits of the temporary status be extended to the applicant from the date of grant of temporary status and arrears are allowed with no interest. Cost easy.

*D. Rao*  
Member (A)