

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH AT NAINITAL

(This the 24th day of April 2015)

Hon'ble Ms. Jasmine Ahmed-JM

Original Application No. 1229 of 2007
(U/S 19, Administrative Tribunal Act, 1985)

Jugnu S/o Khuddu, R/o 10/91, Balmiki Bagh, Kaishar Khan
Nala, Nai Ki Mandi, Agra.

..... **Applicant**

By Advocate: Mr.A.K. Jaiswal/Mr. L.M Singh

Versus

1. Union of India through the Secretary Ministry of Defence, New Delhi.
2. The Controller General Defence Accounts, West Block - 5, R.K. Puram, New Delhi.
3. The Controller of Defence Accounts (Army), Central Command, Meerut Cantt., Meerut.
4. The Accounts Officer (Admin), Area Accounts Office (Army), 49, M.G. Road, Agra.

..... **Respondents**

By Advocate: Shri Rakesh Srivastava

ORDER

Shri L.M Singh counsel for the applicant and Shri Rakesh Srivastava counsel for the respondents are present.

Jasmine Ahmed

2 By filing this Original application under section 19 of Central Administrative Tribunal Act, 1985, the applicant herein is seeking the following reliefs:-

- "(i) Issue a writ, order or direction in the nature of certiorari calling for records, pursuant to which the order impugned dated 8.8.2007 (Annexure A-1 to the O.A.) has been passed by respondent NO. 4 and quashed the same.*
- (ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent NO. 4 to reinstate the applicant in service with all consequential benefits and ensure his monthly payment accordingly.*
- (iii) Issue a writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- (iv) Award cost to the original application to the applicant".*

3. The factual matrix of the case is that the applicant was engaged as part time Safaiwala on contract basis on 1st June 1993. The applicant continued to work as part- time Safaiwala time to time as extended by the respondents. The counsel for the applicant states that as the applicant was working continuously, the applicant preferred representation to the respondents for granting him temporary status and also to regularize him in any group D posts. He contends that the applicant has worked with full satisfaction of the respondents and in this regard the respondents have given certificate to him

also. He stated that the work contract of the applicant was extended by the respondents themselves time to time finding his service satisfactory. He drew my attention to page NO. 19 of the O.A. which is a letter dated 23.12.2005 by the Accounts Officer that as the mutual agreement made between the applicant and the Accounts Officer, AAO (A) Agra on 27.12.2004 the contract of the applicant as part time Safaiwala was extended for further six months starting from 27.12.2005 to 26.6.2006 for rendering satisfactory service. The counsel for the applicant states that the applicant always worked with full satisfaction, hence after rendering a long service with the respondents restraining him from work w.e.f. 30th June 2007 is arbitrary and illegal. He also stated that in the order dated 8.8.2007 the respondents have written that as the applicant was absent without giving any information from 27.6.2007 to 30.6.2007 and also his work during the service period was not satisfactory hence his part time contract is not being extended. He states that the work of the applicant was not satisfactory is stigmatic in nature, hence it needs a show cause notice before terminating his job. He also states that the respondents have discontinued his job only because he demanded temporary status from them for his long service. He alleges that the respondents have kept another employee on contract, after orally restraining him from performing his job which is illegal and violative of natural justice.

Jasmin Akh

4. The counsel for the respondents vehemently opposes the contention of the counsel for the applicant and states that the applicant was engaged as part time Safaiwala w.e.f. 1.6.1993 to 30.12.1998 but not as a casual labourer which is clearly transpires from the available records i.e. contingent bill, forwarding memo of area Accounts Office (Army), Agra and sanction of the competent authority for the month of January 1996 to February 1996 and April 1996 to February 1997. In this regard he also drew my attention to Annexure CA -1 (from page 25 to 77 of the counter affidavit) showing that in every documents sanction has been taken for pay of the applicant as part time Safaiwala, hence the contention of the applicant's counsel that the applicant was engaged as casual labour is completely wrong. He stated that the applicant was re-engaged again on contract basis as part time Safaiwala w.e.f. 27.6.2004 to 26.6.2005 only for duty to be performed for four hours on daily basis and again on 27.6.2005 to 30.6.2007 duty to be performed for six hours daily. He drew my attention to Annexure CA-3 which is a representation dated 3.7.2007 of the applicant where the applicant himself has stated that he was working as part time Safaiwala. Lastly counsel for the respondents contends that as the work of the employee was not found satisfactory and he absented himself w.e.f. 27.6.2007 to 30.6.2007 without giving any intimation, his part time contract was not renewed.

Jasmine Ahmed

5. Heard the contentions of the parties, perused the pleadings and documents on records.

6. After perusing all the documents and records, it is established beyond doubt that the applicant was engaged as part time safaiwala from the very initial day of engagement. His contract was renewed from time to time. The applicant has performed his duty with the respondents some times four hours a day and some times six hours a day. Though the applicant has worked with the respondents, but it was only on part time contract basis, being extended from time to time. A contractual employee cannot claim temporary status and having no right to be regularized on any regular post. But obviously if a contractual employee is removed by another contractual employee he is having some right over the fresh contractual employee. As per the Hon'ble Apex Court's Judgment in the case of Piyara Singh, a contractual employee cannot be removed by a contractual employee. There is no need of giving any show cause to the part time contractual employee as his contract does not say so, and as per the contract the effectiveness of the contract is only for six months. In these eventualities after the expiry of six months the employee does not have any right to continue in his job until unless his contract is again being extended at the discretion of the employer.

Jasmine Ahluwalia

7. Accordingly, in the interest of justice as the applicant has rendered a long service with the respondents, the respondents may consider his candidature as part time Safaiwala over any fresh appointment of part time Safaiwala.

8. Accordingly, the O.A. is disposed of with the above direction. No costs.

Jasmine Sharma

Member (J)

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