

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA**

O.A. 1323 of 1997

Date of order: 31.08.2007

**Present : Hon'ble Dr. A.R. Basu, Administrative Member
Hon'ble Dr. D.K. Sahu, Judicial Member.**

Shri Lakhan Mistry and 2 Ors.

- Versus -

- 1. Union of India, Service through the
General Manager, S.E. Railway,
Garden Reach, Calcutta-700 043.**
- 2. The Divisional Railway Manager,
S.E. Railway, Adra Division, P.O. Adra,
District: Purulia.**
- 3. The Divisional Personnel Officer (H),
S.E. Railway, Adra Division, P.O. Adra,
District: Purulia.**
- 4. The Divisional Electrical Engineer (G),
S.E. Railway, Adra Division, P.O. Adra,
District: Purulia.**
- 5. The Junior Engineer (Electrical) (South),
S.E. Railway, Adra Division, P.O. Adra,
District-Purulia.**

...Respondents

For the applicants : Mr. P.K. Arora, counsel.

**For the respondents : Mr. C.R. Bag, counsel.
Mr. M.K. Sardar, counsel.**

O R D E R

Per Dr. A.R. Basu, AM

Three applicants have been jointly filed this O.A. challenging the panel published by the respondent No.3 (Annexure-A/9) and have prayed for a direction to the respondents to give them appointment in Gr.'D' category. The applicant Nos. 1 and 2 belongs to SC community while applicant No. 3 belongs to Muslim community. It is their case they were engaged as Part Time Sweeper by order dated 8.1.90 at Adra on daily rate basis vide Annexure-A/2. Their such appointment continued uninterruptedly. It is stated that the DPO,



Adra sent a communication dt. To the Electrical Foreman regarding conduct of supplementary screening for absorption and the names of the applicants were included in this list. The applicants claim that accordingly they appeared in the screening on 27.1.93 in the chamber of APO/III/Adra.. Their case is that those Part Time Sweepers who were engaged earlier than the applicants in 1988 had already been appointed against regular Gr.'D' post. They were therefore expecting that they would also be given regular appointment since they were already screened. The grievance of the applicants is that subsequently in 1992 and 1993 regular appointments were made from open market whereas the applicants have not been regularized. They made several representations and their case was also taken up by the President, S.E. Railway Main Congress, but to no effect. Thereafter the respondent authorities issued a notification dt. 1.3.96 notified 114 vacancies for substitute safaiwalls in Gr. D category in Adra division and accordingly a panel was also published on 29.9.97 but the names of the applicant did not appear in this panel though names of many outsiders had been included. Hence they were obliged to file this O.A impugning the panel prepared by the respondents vide Annexure-A/9.

2. At the time of admission hearing, an interim order was passed restraining the respondents from recruiting freshers as per panel prepared on the basis of recruitment notice dated 1.3.96 (Annexure-A/8). But subsequently interim order was modified and four posts were directed to be kept vacant.

3. The respondents have filed a reply in which they have stated that the applicants were never engaged as substitutes. It is asserted that in the railway there is no post like part-time safaiwall and therefore question of appointing the applicants as such is untenable. However, it is admitted that they had been engaged for jobbing of Safai work occasionally. It is also stated that such jobing work is contractual in nature and, therefore, the applicants cannot claim any regularization. It is asserted that the applicants were under misconception that they have been engaged as substitute safaiwalla which is not true. It is denied that they have acquired the status of substitute Safaiwala as claimed. It is contended that the expression "substitute" as per railway rules has a definite meaning and such substitutes are paid in regular scale. The applicants themselves stated that they were Part Time Safaiwala. The



respondents have denied the certificates enclosed by the applicants with the application having been issued by the competent authority. They have enclosed at Annexure-R/1 a fax message wherein it has been stated that there is no person named Dinesh Choudhury working as Substitute Safaiwala. It may be possible that by the same name another person may have worked as Part Time Safailwala but he was never a substitute. However, Dinesh Choudhury is not an applicant in this case.

3. The applicants have filed a rejoinder denying the averments made by the respondents.

4. We have heard ld. counsel for the parties and perused the documents. Ld. counsel for the applicants has drawn our attention to Annexure-A/2 series. From the same it appears that under order of the Divisional Electrical Engineer the applicants were engaged as Part Time Sweeper vide order dated 8.1.90 Such appointment continued subsequently also as per the orders of the same authority. There is some certificates issued by the Junior Engineer that the applicants had worked as such. From Annexure-A/4, it appears that the applicants were screened in a supplementary screening. By relying all these documents ld. counsel has submitted that the claim of the respondents that the applicants had never worked is incorrect. He has submitted that since the applicants worked for a considerable time, may be on Part Time basis, the respondents may be directed to engage them as Gr.'D' employees as there are vacancies and many outsiders have also been engaged.

5. The ld. counsel for the respondents, on the other hand, has submitted that for regular engagement of Gr.'D' employees there are certain procedures in the railways. He has drawn our attention to the reply at page 2 and stated that they applicants had worked for only jobbing of safai work locally when situation so demanded or in the absence of regular safaiwallas and when there was some special jobs requiring such part time engagement for safai work. He has also pointed out to page 5 of the reply and stated that in fact no panel was prepared by the DPO/Adra on 29.8.97 as stated by the applicants and that recruitment procedure is envisaged as a two-tier exercise and requires time. The list stated as panel is nothing but a short list for calling candidates who had applied in response to advertisement for further selection. He has reiterated that the applicants were never engaged as Part Time Safaiwala. May be, they were locally engaged for jobing of Safaiwala which is nothing but



contractual nature of work. The applicants are neither casual labourers nor substitutes as claimed. Hence they cannot be regularized through screening which is done only for casual labourers or substitutes on the basis of prescribed procedure.

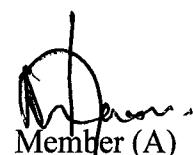
6. We have considered the matter carefully. Although the respondents have denied that the applicants were ever engaged as Part Time Safailwala, but we find from Annexure A/2 series that as per order of Divisional Electrical Engineer (G), Adra the applicants were engaged as Part time Sweepers. In the said order the office file number is also appearing. The respondents have not seriously disputed that the applicants had never worked under the railways. It is their case that they may have worked for jobing duty on local basis. In our opinion, when there was order from Senior officer of the railways like DEE and office file numbers are also available on the said order, the respondents should examine the matter carefully and ascertain whether such order was actually issued by the said authority or not. If the applicants had worked even as Part time worker, their case should have been considered sympathetically by the railways along with outsiders when such recruitment was made and the impugned panel or even a short list for further selection was prepared. We need not go into the controversy at this stage for want of sufficient materials and since the documents produced by the applicants are being disputed.

7. Accordingly, we dispose of this O.A. with a direction to the respondent authorities to examine the grievance of the applicants and if they had worked as Part time Safaiwala as claimed by them on the basis of direction of Divisional Electrical Engineer, their case for regularization may be considered against available or future vacancies along with others. We also take note of the fact that three vacancies have been kept reserved in terms of the interim order of this Tribunal. This consideration be made within four months from the date of communication of this order and the applicants be informed the result of such consideration within the aforesaid period.

8. With the above direction, the O.A. is disposed of. The interim order is vacated.



Member (J)



Member (A)