

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A.No.566/97

Dt.of Order: 6.2.02

Present: Hon'ble Mr. B.P. Singh, Administrative Member
Hon'ble Mr. Kuldip Singh, Judicial Member.

GANESH LAL MALLICK

VS

M/O SURFACE TRANSPORT

For the Applicant: Mr. S.K. Dutta, Counsel
Mr. T.K. Biswas, Counsel.

For the Respondents: Mr. B. Mukherjee, Counsel

O R D E R

In this OA, the applicant has impugned an order No.15 of 1997 Annexure A-3 and also Office Order No.16 of 1997 Annexure A-4. Vice Annexure A-4, the applicant who was working as Peon in the office of the respondents was transferred to the post of Safaiwala, Mercantile Marine Department, Calcutta.

2. The case of the applicant is that the applicant was initially recruited as Safaiwala. But as per the OM dated 16.1.1976 of the Department of Personnel and Training Safaiwalas/farashes are entitled to be appointed as Peon to improve their work environment after completion of five years service. The said memo is annexed as A-1. The applicant also, after completing five years of service as Safaiwala got his turn to be considered for the post of Peon in the year 1994 and have been found eligible and fit in all respects and he was appointed as Peon on transfer basis from 1.3.1994 and he was also shown in the seniority list of Peon-cum-Tepeholder at Sl.No.14 vide Annexure A-2.

3. The applicant further states that there are 19 posts of peon in the Office of the Principal Officer, Calcutta, which

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also include two posts of Messenger-cum-peon at Port Blair.

4. It appears that due to a study conducted by SIU, one post of peon at Port Blair was abolished. Consequent thereupon, the impugned order (Annexure A-3) was issued whereby one Shri A.Lakra, Peon of MMD Port Blair was transferred to MMD Calcutta in the same capacity and on his transfer to Calcutta, the applicant has been transferred to the post of Safaiwala vide Annexure A-4. Thus, it is pleaded, that the applicant is again being reverted back to the post of Safaiwala.

4. In order to challenge the same, the applicant submitted that as per the seniority list, the applicant is the only peon, belonging to SC category and as such the decision of the respondents to revert him back to the post of Safaiwala, treating him as surplus is in violation of the Government of India's orders ^{Issued} passed by the DOPT vide OM dated 28.8.1978 which provides that if surplus staff is there, while surrendering or abolishing the post, representation of reserved community has to be maintained amongst the employees who are retained in service and since the applicant is the only SC candidate so he could not have been reverted back. Thus, the decision to revert him back as Safaiwala is clear violation of the Government of India's decision and the applicant prays for allowing of the OA.

5. The respondents are contesting the OA. The respondents pleaded that since SIU recommended the abolition of one post of Messenger/Ponn at Port Blair, the department had to abolish one post of Peon. The incumbent of the post Shri A. Lakra who was at Sl.No.11 in the seniority list as Peon had to be accommodated at Calcutta and the applicant

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being the junior most amongst the peons had to be transferred to another post, lying vacant in the same pay scale, although the post is ~~also~~ ^{for} Safaiwala. It is also submitted that the post of Peon and Safaiwala are having the identical ^{pay} scale and the applicant had been merely transferred to the post of Safaiwala and he had not been reverted back. ~~As regards~~

6. As regards the status of the applicant being belonging to SC community, the department submitted that since the applicant submitted two certificates with regard to his cast, so the department has to conduct a fresh scrutiny for his authenticity to verify whether the applicant is SC candidate or not.

7. As regards the allegation of the applicant that as per OM dated 16.1.1976, the Safaiwals who have rendered five years service are considered for the post of Peon, in reply to that the department had only submitted that they do not want to make any comment over this. However, the department pleaded that this is an administrative order and because of the SIU recommendation and in order to take declaration of any surplus Shri A. Lakra has been transferred from Port Blair to Calcutta and since Lakra is senior to the applicant in the common seniority list, so the applicant was transferred to the post of Safaiwala and this is also a temporary measure on account of regularisation of pay bill ^{not} but the applicant is ^{not} prepared to work.

7. It is also pleaded that there are fair chances of vacancies being created shortly in the post of Peons and the applicant will be transferred back.

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9. We have heard the learned counsel for the parties and gone through the records.
10. The fact that the applicant had pleaded that as per CM dated 16.1.1976, all persons who are working as Safaiwala for a period of five years becomes eligible to be appointed as Peon and that he had been appointed as Peon after undergoing the eligibility test and being found fit in all respect is not in dispute.
11. The applicant had been appointed as Peon after undergoing the test. This fact has not been denied by the respondents. The respondents even do not contradict the allegations that there are provisions in the CM dated 16.1.1976 for appointment of safaiwala as peons. The fact that the applicant was initially recruited as Safaiwala and after rendering five years service he has been considered and appointed as Peon, thus stands established.
12. Now the question arises whether the applicant could have been re-posted as Safaiwala or whether it affects his status or not.
13. In our view, though the post of Peon and Safaiwala may be carrying identical pay scale but ~~as per~~ ^{so far as} the status of ~~as the~~ individual is concerned, the applicant status had suffered as ~~when~~ an order was passed posting him as safaiwala. It exactly cannot be the only criteria to say that both the posts are identical when specially the CM dated 16.1.76 provides that only those safaiwalas who have rendered five years of service may be appointed as Peons and once the applicant had been elevated to this post of Peon from that of Safaiwala after undergoing the process of eligibility test and being found fit, he could not have been posted ^{back} as Safaiwala.

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14. Even otherwise, as alleged by the applicant, the department was required to maintain a balanced ^{representation k} scope of reserved category candidates in the cadre of peons also. Since there is no other SC candidate working as Peon so on that score also the applicant should not have been posted as Safaiwala. Another candidate might have been posted as Safaiwala.

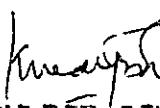
15. Thus, in view of our considered opinion, the impugned order dated 9.5.97 vide which the applicant has been transferred to the post of Safaiwala cannot stand and is liable to be quashed.

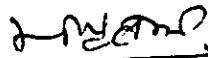
16. During the course of argument, learned counsel for the ^{* Corrected} ~~* applicant~~ respondents also pointed out that now since one of the peons

dt. 21.2.02 have retired, the applicant can be adjusted to that post also.

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So, we feel that the OA can be allowed. Accordingly, we allow the OA, quashing the impugned order at Annexure A-4 and direct the respondents to adjust the applicant in the cadre of Peon post. This direction shall be complied with within a period of two months from the date of receipt of copy of this order.

17. OA allowed. No order as to costs.


(KULDIP SINGH)
Member (J)


(B.P. SINGH)
Member (A)

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