

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 283/2005

WEDNESDAY THIS THE 13th DAY OF DECEMBER, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

1 T.K. Padmini W/o M.R. Narayanan
Safaiwala (temporary) Divisional Office
Central Excise, Trichur
residing at Mullakal House, Thyoor PO
Trichur District.

2 P.U. Mallika W/o P.R.Mohan
Saffaiwala (Temporary) Range Office
Central Excise, Trichur
residing at Parthikkattil House
Pattekkara Chevinallur PO
Kochary, Trichur District. Applicants

By Advocate Mr. Shafik

Vs

1 Union of India represented by
The Secretary, Department of Personnel
Ministry of Personnel Public Grievances and
Pensions, New Delhi.

2 The Chief Commissioner of Central Excise
Kerala Zone, Central Revenue Building
I.S. Press Road, Cochin-682 018

3 The Commissioner of Customs & Central
Excise, Cochin Commissionerate,
I.S. Press Road, Cochin

4 The Assistant Commissioner of Central
Excise, Trichur Division, Trichur. Respondents

By advocate Mrs. Mariam Mathai, ACGSC.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants are temporary status attained Safaiwalas working under the 4th respondent and are aggrieved by the rejection of their claim for regularisation in Group-D posts in the office in which they are working.

2 They have prayed for the following reliefs:

- (i) To call for the records relating to Annexure A-1 to A-8 and to quash Annexure A-1 to the extent it denies appointment as Group-D in the vacancies arising in the same office on the basis of Annexure A-2 Scheme.
- (ii) To declare that the applicants are entitled for regular appointments Group-D in the same office as per Annexure A-2 scheme and Annexure A-7 order of this Hon'ble Tribunal
- (iii) To direct the IIInd respondent to review appointments made to Group-D cadres and to appoint the applicants regularly as group-D in the vacancies arising in Trichur office.
- (iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case and
- (v) To grant the costs of this Original Application

3 The first applicant was initially appointed as a Part-time Safaiwala at Sector Office, Chavakkad on 1.3.1991 and is presently working in the Divisional office, Central Excise, Trichur. The second applicant was appointed as Safaiwala on casual basis on 1.3.1991 in the Range Office, Central Excise, Trichur. In accordance with the scheme called "Casual Labourers (Grant of Temporary status and

Regulation) Scheme of Government of India 1993, both the applicants were granted temporary status w.e.f. 1.9.1993. When vacancies of Sepoys arose during 1995 the applicants were not considered on the ground that they did not fulfill the requirement of minimum height as per the Recruitment Rules. Aggrieved by the same the applicants filed O.A. 402/1997 before this Tribunal and the same was rejected as per order dated 3.9.1997. OP No. 21392/1997 filed against the order of the Tribunal before the Hon'ble High Court was disposed of by judgment dated 4.12.1997 with a direction to dispose of the representation submitted by the applicants. The said representations were rejected later. Further aggrieved by their non-regularisation even against vacancies of Safaiwala, the applicants filed O.A. 211/2001 before this Tribunal seeking regularisation against permanent posts of Safaiwala. The said OA was closed by order dated 20.3.2001 recording the statement of the respondents that the applicants who are appointed only in 1991 are juniors and they would also be duly considered for regular appointment as and when their turn comes after having offered appointment to the seniors. Thereafter the applicants have submitted joint representations which have not been responded. The applicants then filed O.A. 42/2002 claiming grant of full pay and allowances and other benefits which was dismissed as per order dated 1.11.2002.

4 The grounds now submitted by the applicants in this O.A. are that Annexure A-7 representation has been rejected on irrelevant considerations and none of the points raised by the applicants has

been considered and also that the interpretation given by the respondents for considering regularisation of Casual Labourers under the instructions in Annexure A-2 Scheme to the term "respective office" in para 8 of the said scheme as "State as a whole" and not the "office in which the Casual Labourers were working" is only to deny them the benefit of the scheme and is illegal and arbitrary and violative of the earlier decisions of this Tribunal.

5 The respondents in their reply submitted that the rejection of the representations of the applicants by Annexure A-1 order is proper and in accordance with the order of this Tribunal in O.A. 42/2002 wherein this Tribunal had observed that the applicants do not have any subsisting cause of action in that regard. With regard to the claim of relaxation they have enclosed list of temporary status attained casual labourers as on 1.1.2004 (Annexure R-1) in which the applicants figures at Sl. Nos. 26 and 27 and the seniormost individuals, viz. those who are figuring earlier in the list have been initially appointed as early as in 1980 and 1981 much before the applicants. The sanctioned strength of Safaiwalas in the Kerala Central Excise Zone is 10 and the Commissionerate-wise allocation of this sanctioned strength is Cochin Commissionerate -four, Calicut Commissionerate -three and Trivandrum Commissionerate -three. They further submitted that no vacancies of Safaiwala have arisen in Trichur office as claimed by the applicants. There are only three sanctioned posts of Safaiwala in Calicut Commissionerate -one at the Headquarters, Calicut and the other two at the Divisional offices

at Calicut and Kannur respectively and there are no sanctioned post in Trichur Division. The further contention of the applicants on the retirement vacancies in Trichur which were purported to have been filled up by the employees of Kannur Division is also not correct. It is finally submitted that in Kerala Zone, regularisation of temporary status Casual Labourers is being made strictly on the basis of the date of initial appointment and the applicants who are very junior have to wait for their turn.

6 The applicants filed a rejoinder contesting the averments of the respondents specifically the interpretation given to the term "respective office". They have pointed out that a contrary stand has been taken by the Government of India in O.A. 1166/96 in which the respondents stated before the Tribunal that the seniority in the respective Regional Passport Offices is being taken in to account for rejecting the case of the applicants therein. Therefore it is contended by the applicants that different Departments of Government of India cannot take different stands at their convenience.

7 The respondents have filed an additional reply statement reiterating that as far as Central Excise Departments are concerned, the "respective office" means the office of the Cadre Controlling authority of Kerala Zone situated at Cochin and that there is no sanctioned strength of Safaiwala at the Divisional Office and Range Office at Trichur where the applicants are working and if the

argument of the applicants is to be accepted they can never be appointed for want of sanctioned post. The case referred to in O.A. 1166/96 is in respect of the Regional Passport Offices which are situated at Calicut, Cochin and Trivandrum only and they do not have other subordinate offices whereas the Central Excise Department has 140 Divisions and Range offices in the whole of Kerala State.

8 Since the applicants' side contended that sanctioned post of Safaiwalas are being utilised by Department not with reference to the strength in each office but according to their whims and fancies, certain clarifications were called for by the Court with reference to which the third respondent has filed two clarificatory statements showing the distribution of sanctioned strength of posts and details of personnel working in different formations of the Department. In these statements the respondents have admitted that even though permanent posts were allotted to certain formations, rearrangements have been made according to administrative convenience and that presently the vacancies existing are in the Trivandrum only.

9 I have heard Shri Shafik appearing for the applicants and Mrs. Mariam Mathai, ACGSC appearing for the respondents. The learned counsel for the applicant contended that the present action of the respondents in denying the vacancies of Group-D to the applicants even after the vacancies have arisen in the same office and inducting

others who are working in other offices is violative of the provisions of the scheme, and that the seniority list produced by the respondents has come out only now and the respondents are also transferring employees from one office to another without consideration of the sanctioned strength. The learned counsel for the respondents submitted that the respondents have discretion in the matter of deploying the employees according to the need and justification for the post and the applicants have no right to claim that posts are to be created in the office in which they are working to suit their needs.

10 I have considered the rival pleadings on record. The two applicants in this O.A. have been agitating their claim for regularisation from 1997 onwards before this Tribunal. Their earlier Applications before the Tribunal for consideration for promotion to the post of 'Sepoy' was rightly rejected holding that the provision of minimum height in the Recruitment Rules is not arbitrary and the applicants could not claim that Recruitment Rules should be relaxed to suit them. Their claim now has come down to only consideration against vacancies of Safaiwala or Sweeper which do not prescribe such conditions regarding height etc. The applicants have not put forth any claim for any specific vacancies except to say that the vacancies had arisen in various offices but they have not been considered though they have more than 10 years of temporary service. The contention of the respondents is that they have to wait for their turn according to the seniority.

11 The real grievance of the applicants arises out of the policy in force in the Central Excise Department that the regularisation of temporary Casual Labourers will be considered based on the initial date of appointment taking the State as a whole based on a common seniority list instead of taking each office as a unit. Therefore, the real question to be decided is the interpretation of the term "respective office" in Annexure A-2 instruction on the grant of temporary status scheme of Government of India 1989. Para 8 dealing with the procedure of filing up the posts reads as under:

8 Procedure for filling up of Group-D posts.

"Two out of every three vacancies in Group-D cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel & Training from amongst casual workers with temporary status. However, regular Group-D staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfill the minimum qualification prescribed for post, regularisation will be considered only against those posts in respect of which literary or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer."

12 The applicants have pointed out that the decision of this Tribunal in O.A. 1166/96 in which the same question arose for consideration in a claim made by a Casual Labourer in the Passport Office, Kozhikode who had more length of service than the 5th respondent therein who was working in Kochi office and the vacancy

had arisen in Kochi office. This Tribunal had observed as follows:

"On a careful scrutiny of the pleadings in this case as also the various provisions of the Scheme, we are convinced that the stand taken by the respondents is a correct one. Though the applicant has put in more length of service than the fifth respondent, as the fifth respondent is working in Kochi and the applicant is working in Kozhikode, the applicant has no right to claim any preference over the fifth respondent who is entitled for regularisation in that office. The right of the applicant is for regularisation which would arise in Kozhikode only."

13 This decision amounts to ratification of the claim of the applicants herein, the ratio being, for appointment, Casual Labourers working in any particular office would be considered for the vacancy arising in that office, irrespective of their overall seniority in the department. The respondents seek to distinguish between the position that subsists in the Passport Office and the Central Excise Department which has a number of offices scattered all over the State, with many of the divisional and other field formations not having sanctioned posts at all. Therefore, they contend that if the above judgment is to be followed, the casual labourers working in such offices would not get any opportunity for appointment in Group-D post. While this could be correct to some extent, it is true that if the seniority at state levels has to be adopted for regularisation it would result in considerable hardship to the Casual Labourers who are initially engaged on local basis from the local Employment Exchange or otherwise. They would not be in a position to move from their native place to distant places in the State thereby defeating the very purpose of the scheme. This is borne out by the statement of the

respondents themselves in the reply statement that even though the posts in the Commissionerates are distributed as 4:3:3 in Cochin, Calicut and Trivandrum respectively, the actual working strength is 5 in Cochin and 5 in Calicut and that they have been constrained to make such adjustments "purely on humanitarian consideration" to permit the low paid employees to continue in the station they were rather than transfer them to offices where there are sanctioned strength." This indicates that the respondents themselves are very much aware of the problem that such low paid employees cannot move from one place to another. We do not find any reason why the Central Excise Department cannot take Commissionerate-wise seniority units for appointment of casual labourers in Group-D post. It is understandable that each field office cannot be a unit. But as far as three Commissionerates are concerned as seen from their Annexure R-2 document filed, the allotment of sanctioned strength and fixation of the number of posts of all categories are made Commissionerate-wise. This position is also further borne out by Annexure R-3 documents which shows allotment of the posts after the restructuring exercise undertaken in the Department. The only reason we could see from the additional reply statement filed by the respondents for taking Zonal seniority is that the cadre controlling authority of the Kerala Zone is situated in the Commissionerate office at Cochin. This is purely an administrative arrangement and even if the cadre controlling authority is at the Central Excise Commissionerate Cochin, there should not be any difficulty to

maintain seniority at each Commissionerate level and the vacancy position can be controlled at the level of Commissionerate by the cadre controlling authority even if he is situated at Cochin. This would ensure that the Casual Labourer would have to move only within the territory of the commissionerate and not across the State. Since the sanctioned posts are also 3 and above in each commissionerate there should not be any difficulty to operate the quota of two out of three vacancies in the group-D cadre. In fact I should think that even the seniority of Group-D employees in the Central Excise Department is being maintained Commissionerate-wise and not State-wise though I have not ascertained the actual position from the respondents. After considering the position as borne out by the records I am of the view that the interpretation that the term "respective offices" of the Central Excise Department would mean the entire Kerala State Zone is not a correct one and the same is not in tune with the intention and purport of the scheme for regularisation of Casual Labourers in Group-D post and as such requires to be revised in accordance with the observations above.

14 Coming to the individual claims of the applicants, their contention that there are vacancies in the office where they are working is not proved to be correct. In fact there are not even sanctioned posts of Safaiwala in the Trichur office. Even if the entire Calicut Commissionerate is taken as one unit as proposed now, there exists no vacancy as five persons are working against three

sanctioned posts. It also remains to be seen what position the applicants occupy in the seniority list if it is broken up commissionerate-wise. It could result in prospective improvement of their promotion prospects in the future depending on the vacancies that may arise. The applicants have prayed for review of the promotions made to the group-D cadre. I do not think it would be proper to unsettle the promotions already made in respect of the low paid employees but their lien may be shown against sanctioned strength of each commissionerate irrespective of their deployment elsewhere for administrative convenience, which would also enable proper determination of vacancies in each unit in the future. Any revision of the procedure by redrawing the seniority list commissionerate-wise would have only prospective effect. Hence, I direct the respondents to undertake this exercise so that Casual Labourers who are awaiting regularisation and are soon crossing the age limit set for consideration for regularisation as Group-D get the benefit of the scheme at Annexure A-2 as envisaged therein. With these directions, the OA is disposed of. No costs.

Dated 13.12.2006.

Sathi Nair
SATHI NAIR
VICE CHAIRMAN

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