

**Central Administrative Tribunal Lucknow Bench Lucknow**

**O.A. NO. 171/2008.**

**This the 29<sup>th</sup> day of August, 2008**

**HON'BLE DR. A. K. MISHRA MEMBER (ADMINISTRATIVE)**

1. Jag Ram, aged about 36 years, S/o Sri Ram Het, R/o 51, Ram Tirath Marg, Narhi, Lucknow.
2. Gopal Chand Srivastava, aged about 35 years, S/o Sri Rajeshwari Prasad Srivatava, R/o House No. 2/29, Guru Ravidas Nagar, Wazir Hasan Raod, Lucknow.

Applicants.

By Advocate Sri Anurag Srivastava.

**Versus**

1. Union of India through its Secretary Department of Finance revenue, Central Board of Excise & Customs, New Delhi.
2. Chief commissioner of Central Excise/Customs, 7-A, Ashok Marg, Lucknow.
3. Commissioner Central Excise, Civil Lines, Allahabad.
4. Commissioner Customs, Kendriya Bhawan, 5<sup>th</sup> Floor , Hall No. 3 Sector H, Aliganj, Lucknow.
5. Dy. Commissioner/Joint Commissioner Customs, Customs (Headquarters), P&V Kendriya Bhawan, 5<sup>th</sup> Floor, Hall No. 3

Respondents.

By Advocate Sri Atul Dixit.

**Order**

**By Hon'ble Dr. A. K. Mishra, Memdber(A):**

This is an application for issue of a direction to set aside the Advertisement dated 30.12.2007 (Annexure-1) issued by the office of Respondent No. 2 for recruitment of Sepoy in Group 'D' and also for an

appropriate direction to the respondents to appoint the applicants on any post in Group 'D' category in the department through regularization of their services.

2. The brief recital of the case is as under: -

Originally applicants were engaged on contract basis as part time Farrash. Subsequently, they were appointed as Farrash on ad hoc basis and on daily wages. As the applicants were continuously working as daily rated wage earners and were discharging the duties of Farrash, they made representations to accord them the temporary status, which was not acceded to. They filed O.A. No. 525/2001 before this Tribunal which was dismissed in its order dated 5<sup>th</sup> October 2001 with an observation that in case juniors to the applicants have been engaged, the respondents shall offer to engage the applicants in preference to the juniors. Subsequently, another O.A. No. 125/2002, was filed by the applicants which was decided on 22<sup>nd</sup> February 2002 with a direction to the competent authority to dispose of the representation of the applicant having regard to the judgment made in O.A. 640/1995, N.G. Rajeevan Vs. U.O.I. & another reported in 377 Swamy's CL Digest 1997/2. It seems, the Ernakulam Bench of this Tribunal gave a finding that temporary status was to be granted to the causal labourers who had been working more than 206 days in the offices having 5 day- a- week working hours. In pursuance of this direction, the applicants made a representation before the Commissioner of Customs Lucknow. The representation was rejected on the ground of ineligibility of the applicants for grant of temporary status in terms of O.M. dated 10.9.1993 of Ministry of Personnel Public Grievances, (DOP&T) . Another O.A. No. 147/2005 was filed against this rejection order dated 7.6.2002, which was again disposed of with an observation that the claims of the applicants could be considered only in terms of DOP&T Circular of 7.6.88 and the scheme of a regularization issued along with office memorandum dated 10<sup>th</sup> September 1993. Apparently, the applicants



did not satisfy the criteria provided in this scheme. Accordingly, the representation was again rejected on 19/20.12.2005 on the ground that they did not fulfill the criteria of DOP&T scheme. Against the judgment of this Tribunal dated 6.9.2005 and the consequential order passed by the respondents on 19/20.12.2005, the applicants filed Writ Petition No. 153(S.B.) 2000 before the Hon'ble High Court, which was dismissed with an observation that the applicants should seek alternative remedy available to them. Thereafter, the two applicants along with another person called Dharmanand, Applicant No. 3, filed one more O.A. No. 127/2006 before this Tribunal. During the pendency of this application, the Applicant No. 3 Dharmanand, got a regular appointment in the department. In the O.A. No. 127/2006 the contention of the applicants to be regularized or to be given the temporary status was dismissed as without basis. However, in passing, it was observed that if the other applicant No. 3 could be regularized in service and if the applicants No. 1 and 2 were on the same footing, their cases could also be considered on the same ground.

3. Thereafter, the respondent No. 2 passed a detailed order on 20.11.2006 stating that there was one vacant post of Safaiwala against which all the contract laborers were considered, out of them applicant No. 3 who was a member of SC and who had worked as Safaiwala, was considered suitable and given preference over applicants No. 1 and 2 who had no experience of the work of Safaiwala. However, it was mentioned in this order that as and when vacancies arose, the cases of applicants No. 1 and 2 would be given due consideration and since there were no vacancy at that point of time, their representations for appointment on regular basis could not be taken up.

4. The present application is by way of challenging this order. During the course of hearing, it was conceded by the counsel for the applicants



that they no longer pursued their case for temporary status and regularization on the basis of the scheme of 1993 of DOP&T, because they did not fulfill the criteria. They are basing their present claims only on the direction given by this Tribunal in its last order and the assurance given by the respondent No. 2 that their cases could be considered as an when vacancies arose.

5. Their second contention is that persons who were junior to them as contract labourers have already been regularized and therefore, they have a right to be considered. This issue, was already considered by this Tribunal in its order dated 5<sup>th</sup> October 2001 in O.A. No. 525/2001.

Paragraph 13 of this order deals with this issue:

*“13. Learned counsel for applicant has given averment as per Para 4.27 that juniors of the applicant's are working in the department. However, as per Para-3 of the Short Counter Reply the persons whose names mentioned in Para 4.27 are not working in the department. According to the respondents the averments made in Para 4.27 are misconceived and incorrect. The Chart of the pay roll of daily wagers of last two months have been annexed as Annexure SCR-1 and Annexure SCR-2 to show that none of the junior's whose names are indicated in Para 4.27 were engaged during the said period mentioned in Annexure SCR-1 and Annexure SCR-2. Thus, the applicant's claim that the juniors have been retained has no merits.”*

It is unfortunate that the same issue is being raised again and again when it was found as without merit by this Tribunal itself in its earlier judgment. I see no justification to consider this plea any more.

6. As regards, availability of vacancy, the applicant has obtained some information from the office of Respondent No. 2 by invoking RTI Act. It shows that against the sanctioned strength of 5 relating to the category of Farrash/Safaiwala in their office at Allahabad, 4 are now working. As such, one vacancy is available (Annexure 15 to O.A.). From the statement made by the Chief Information Officer of the office



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of Respondent No. 2 at Annexure No. 16, it is seen that one post of Farrash is vacant in the whole jurisdiction of Respondent No. 2. It is the case of the applicant that their cases should have been considered against this vacancy.

7. Further, it was submitted that an advertisement had been issued (Annexure -2) for recruitment of Sepoy, in category 'D' and a number of casual workers had been recruited against these vacancies. Moreover, outsiders also had been recruited but, the cases of the applicants were not given due consideration as promised earlier.

8. In the Counter Affidavit, it has been clarified that 14 posts of Sepoy for Lucknow Zone are available. According to the regularization scheme 2/3rds of this number i.e. 09 posts are to be filled up by those workers who were granted temporary status in the past and one third of this number, namely, 05 posts are to be filled up by direct recruitment. The respondents have accordingly taken up the recruitment process. Since the applicants do not have the temporary status, it was not possible to consider them against the quota meant for temporary workers. They did not apply to be considered against the direct recruitment quota of 5 posts. As regards, the vacancy of one post of Farrash, it was clarified that the statement made by the Chief Information Officer also mentioned that Group 'D' posts in their Department were mostly filled up by way of transfer on loan of suitable candidates from other Departments. Therefore, the statement under RTI Act did not reveal the actual vacancy obtaining in the Department.

9. The counsel for the respondents brought to my notice the decision of Hon'ble Andhra Pradesh High Court dated 3.8.2006 in W.P. No. 14715/2005 (Annexure CR-1 to the C.A.) enunciating the settled position of law that the Tribunal will not issue any specific direction or



mandamus to appoint any specific person or ask the government department to proceed in a specific manner regarding regularization of casual/ contract labourers or their engagement through labour employment agencies. We accept this position as a valid proposition of law. There was no case if the Department had followed rules and administrative instructions relating to regularization of contract/ad hoc daily rated labourers. But, they have already made an exception in respect of applicant No. 3. The fact that he was a member of S.C. or that he had experience as Safaiwala are not germane to the point at issue. He could not have been regularized if he did not fulfill the criteria of the Regularisation Scheme of 1993. Therefore, the respondent No. 2 had to make a fair assurance in the impugned order that the cases of the applicants would be considered as and when suitable vacancies arose.

10. From the records placed before us, it appears that one vacancy is available in the post of Farrash. The respondent No. 2 in its order dated 20.11.2006 has already given an assurance to consider the applicants as and when vacancies were available.

11. Therefore, this application, is disposed of with a direction to Respondent No. 2 that he might examine the availability of a post of Farrash as reflected in the statement made by the Chief Information Officer and if such a suitable vacancy was available, he could consider the applicants as per his previous assurance. The request to set aside the recruitment of Sepoys is dismissed as devoid of any merit.

  
(Dr. A. K. Mishra)  
Member (A)