

♦ CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW

**Original Application No 21 of 2010
Order Reserved on 30.10.2014**

Order Pronounced on 17-12-2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

1. Jag Ram, aged about 40 years, S/o Sri Ram Het, R/o 51, Ram Tirath Marg, Narhi, Lucknow.
2. Gopal Chand Srivastava, aged about 39 years, S/o Sri Rajeshwari Prasad Srivastava, R/o House No. 2/29, Guru Ravidas Nagar, Wazir Hasan Road, Lucknow.

Applicant

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, 5th Floor, Hall No. 3 Sector-H, Aliganj, Lucknow.
5. Dy. Commissioner/Joint Commissioner Customs, Customs (Headquarters), P&V, Kendriya Bhawan, 5th Floor, Hall No. 3 Sector-H, Aliganj, Lucknow.
6. Superintendent (Headquarters), Custom Headquarters, Office of the Commissioner of Customs, 5th Floor, Kendriya Bhawan, Sector-F, Aliganj, Lucknow.

By Advocate : Jitendra Tiwari for Sri K. K. Shukla.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- ◆ (a) To issue an appropriate order or direction thereby setting aside the impugned oral order of termination by which the services of the applicants have been terminated w.e.f. 8.7.2009 from the posts of Farrash in the office of Commissioner of Customs, Hall No. 3, Kendriya Bhawan, Aliganj, Lucknow.
- (b) To issue an appropriate order or direction thereby directing the respondents to regularize the services of the applicants on the posts of Farrash/Safaiwala in the office of opposite parties in view of the letter dated 12.1.2009 issued by the Joint Commissioner (Cadre Control), Customs & Central Excise, Lucknow as contained in Annexure-18 to the original application which has been issued after the approval of the Chief Commissioner, Customs, Central Excise & Service Tax, Lucknow Zone, Lucknow.
- (c) To issue an appropriate order or direction thereby directing the respondents to allow the applicants to work and discharge their duties on the posts of Farrash in the office of Commissioner of Customs, Lucknow and to pay them their regular salary and other allowances, each and every month as and when the same falls due.
- (d) To issue a suitable order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.
- (e) To award the cost of this Original Application.

2. The brief facts of the case are that the applicant was engaged in Group D post in the office of the opposite parties on contract basis. Subsequently, he was appointed as Farrash w.e.f. 7.4.1997 on ad basis and has been paid the salary at the Rs. 49/- per day. It is submitted by the applicant that since then applicants is working. After completing 240 days, he submitted a representation to the authorities to give temporary status. The respondents did not pay any heed in respect of the representation of the applicant as such, applicant preferred O.A. No. 125 of 2002. The said O.A. was disposed of with certain directions. Subsequently, the respondents rejected the representations of the applicants dated 7.6.2002. As

such, the applicants again filed O.A. No. 147 of 2005. Subsequently, the respondents passed an order thereby rejecting the case of the applicants for regularization in the department in pursuance to the judgment and order dated 16.9.2005. Pursuant to that the applicants filed a Writ Petition No. 153 (SB) of 2006 before the Hon'ble High court. Thereafter, the applicant along with one Dharmanand challenged the order dated 19/20.12.2005 before the Tribunal by filing O.A. No. 125 of 2006 and during the pendency of the O.A., the respondents considered the case of Dharmanand and given him the regular appointment in the department. Subsequently, the Tribunal by means of an order dated 21.9. 2006 disposed of the O.A. No. 127 of 2006 through which, the Tribunal directed the respondents to consider the case of the applicant No. 1 and 2 on the same post and grounds as the applicant No. 3 was engaged on regular basis, but the respondents subsequently without considering the direction of the Tribunal rejected the claim of the applicant and passed the orders. Hence, the contempt petition was filed before the Tribunal. But the said contempt petition was also disposed of. After the said order was passed, instead of granting the temporary status to the applicants who are working since 1994, the respondents have issued an advertisement dated 30.12.2007 inviting applications for appointment on the five posts of Sepoy in the department. Being aggrieved by the impugned action of the opposite parties, the applicant filed another O.A. before this Tribunal vide O.A. No. 171 of 2008. The said O.A. also stands disposed of by this Tribunal vide order dated 29.8.2008 with a direction to Respondent No. 2 to 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 is available, the respondents could consider the applicants as per his previous assurance. The request to set aside the recruitment of Sepoys was dismissed as devoid of any merit. The applicants thereafter, filed a contempt petition before this Tribunal which was registered as Contempt Petition No. 58 of 2009 and the same also got disposed of. It is argued by the learned counsel for the applicant that on account of his filing of contempt petition, the respondents told the applicants not to attend the office as such, passed an oral termination order. On the basis of the impugned action of the respondents, the applicants preferred the present O.A.

3. On behalf of the respondents, counter reply is filed and through counter reply, it is indicated that the entire story is concocted and the applicant concealed material facts of the case. Not only this, it is also indicated by the learned counsel for the respondents that the applicant claims that his services were orally terminated whereas, the applicants have not preferred any representations/appeal before the competent authority against his alleged oral termination order and the present O.A. is premature at this stage and the O.A. is liable to be dismissed. The learned counsel for the respondents however not disputed that the applicant has earlier filed number of OAs claiming one or the same relief. Not only this, it is also submitted by the respondents that the applicants are not working as Group D workers nor they were appointed as Daily Wage workers by the department at any point of time. Even prior to outsourcing, the applicants were only contractual workers and the

↗ daily wage workers are supplied to the department only through a placement agency and the payment of wages is made regularly to the concerned placement agency after strict enforcement of new Government of India Policy regarding engagement of workers. It is also indicted by the respondents that regarding engagement of casual workers, the number of circulars right from 2002 are in existences, and the respondents are under contract with M/s Priya Placement Services, 2 Manas Nagar, Jiamau, Lucknow who are providing casual workers to the department as and when it is required. The respondents counsel has also relied upon the letter issued by the M/s Priya Placement Services through which it is indicated that the applicants are not willing to work in the department as casual workers. The respondent annexed the circulars regarding engagement and regularization of casual workers on Group D posts issued from time to time. The learned counsel for the respondents has also placed the copy of the letter dated 6th February, 2007 by issued M/s Priya placement Services through which it is indicated that two persons namely Shri Dilip Krishan Kumar and Raju are not willing to work in the office of respondents organization as such, they discontinued their services.

4. On behalf of the applicant, rejoinder is filed and through rejoinder mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

5. While perusing the supplementary counter reply, the respondents reiterated the entire averments of the counter reply. Through rejoinder, the learned counsel for the applicant has once again submitted that there are two vacancies lying vacant in the

office of Commissioner Central Excise, Allahabad and the respondents No. 1 and 2 are considering the applicants on the said post despite their previous assurance.

6. Heard the learned counsel for the parties and perused the record.

7. As per the averments of the applicant, the applicant No. 1 was initially engaged in the office of respondents organization on 29.7.1994. The copy of the agreement along with the letter of contract dated 29.7.1994 is annexed as Annexure-1 to the O.A. which provides that services are contractual in nature at Rs. 4.40 per hour and he was supposed to work from 7:00 AM to 10:00AM in the morning and 5:30 PM to 6:30 PM in the evening. As per the averments of the applicant, the work on the post of Farrash was permanent in nature, as such from time to time, the agreement of the applicant got extended. Subsequently, in 1997, the applicant namely Sri Jagram and Sri Gopal Chand Srivastava were appointed on ad hoc basis for part time daily wages @ Rs. 49/- per day w.e.f. 1.4.1997. It is also to be pointed out that the applicant continuously worked on the said post of Farrash with the respondents organization as per the orders of the Department.

8. As regard the applicant No. 2 is concerned, he was engaged on 1.5.1995 on the post of Farrash on contract basis and is being paid salary on the daily wages @Rs. 49.00 per day. Subsequently, the respondents issued certain guidelines in regard to the casual workers and some of the persons who are working on the post of Farrash were appointed. That some employees also filed O.A before this Tribunal vide O.A. No. 525 of 2001 and the said O.A. was

disposed of by means of an order dated 5.10.2001 through which the Tribunal observed that in case any junior to the applicant's are engaged, the respondents shall offer to engage applicant's in preference to junior's and the O.A. was finally disposed of. The applicants were informed that their cases cannot be considered in view of the fact that they are not party in the O.A. As such, the applicants filed O.A. No. 125 of 2002 before this Tribunal which stands disposed of with a direction to the competent authority to decide the representation and pass a reasoned and speaking order. It is also observed by the Tribunal that in case the applicants have any grievance thereafter they will be at liberty to approach the Tribunal again. Subsequently, the claim of the applicant was rejected by means of an order dated 7.6.2002 which was further challenged by the applicants in O.A. No. 147 of 2005. It is also needless to say that the said O.A. also stands disposed of and while disposing of the O.A., the cognizance of DoPT Schemes were taken into cognizance and it is observed that if the applicants have completed the requisite period within two years and are sponsored through employment exchange shall be considered by the respondents. During the said period, the applicants also indicated that in pursuance of the O.A. 525/2001, the respondents have granted temporary status and regularized the services of some workers namely Sri Vimal Prakash yadav, Sri Shiv Narain, Sri Kedar Chand and Sri Rasheed Khan on the post of Farrash belonging to Group D post by means of order dated 22.8.2003. Subsequently, in pursuance of the direction of the Tribunal dated 16.9.2005 passed in O.A. No. 147 of 2005, the respondents have passed an order and observed that after

examining the case of the applicants, it is found that since neither the name of the applicant was sponsored through employment exchange nor fulfills the criteria of DPOT schemes as such, the claim of the applicant cannot be considered by the department and rejected the claim of the applicants. These orders were passed by the respondents on 19/20.12.2005. the Writ Petition No. 153 of 2006 (SB) was filed before the Hon'ble High Court challenging the aforesaid orders, but the Hon'ble High Court dismissed the said Writ Petition on the ground of alternative remedy. As such, the applicants preferred an O.A. No. 127 of 2006 before the Tribunal and during the pendency of the O.A., the respondents considered the case of one applicant namely Sri Dharmanand and given him the regular appointment in the department. Subsequently, the O.A. also stands disposed of with a certain directions. Learned counsel for the applicant has also indicated that the respondents in utter disregard of the judgment passed by the Tribunal dated 21.9.2006 in O.A. No. 127 of 2006 rejected the representation of the applicants and indicated that since there are no vacancies at present, their consideration for appointment cannot be taken up at this time. The applicant being aggrieved of the order dated 20.11.2006 preferred the Civil Contempt Petition No. 44 of 2007 which was subsequently disposed of by the Tribunal. Not being satisfied with the action of the respondents, the applicant again preferred O.A. No. 171 of 2008 and it is indicated that the respondents 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 are available, they could consider the applicants as per his previous

assurance. When nothing was heard the applicant preferred civil contempt petition No. 58 of 2009 and the said contempt petition also stands disposed of by means of an order dated 16th November, 2010. The learned counsel for the applicant has vehemently argued that after the contempt petition, the respondents took a different view and the services of the applicants were terminated orally w.e.f. 8.9.2009 which is wholly arbitrary and unlawful. Apart from this, it is indicted by the learned counsel for the applicant that there are number of vacancies which are lying vacant in the respondents organization and the oral termination order of the applicant is liable to be quashed and the respondents be directed to consider the case of the applicant and regularize their services on the post of Farrash.

9. The bare perusal of the entire record shows that the applicant was initially engaged on a contract basis for a limited period of time vide order dated 29.7.1994. It is also to be seen that 5 employees have challenged the oral termination and also prayed for issuing a direction to regularize their services on Group D w.e.f. the date of initial engagement through O.A. No. 525 of 2001. The applicants also preferred O.A. No. 125 of 2002 through which, it is prayed that the direction be issued to the respondents to confer temporary status on the applicants as the applicants had completed 206 days of service. The applicants have prayed that fixation of pay at the minimum in the scale of pay admissible to Group D employees and benefits of Provident fund etc are consequential to that. In pursuance of the same, the respondents have also issued the office memorandum in 1988 in regard to the recruitment of casual

workers and persons on daily wages. The said OM was subsequently reviewed in 1991 and thereafter in 1992, 1993 as well as in 1995. Needless to point out here that the applicants also preferred an O.A. No. 147 of 2005 through which they again sought benefit of decision passed in O.A. No. 525 of 2001 and also prayed that they may be granted temporary status and further their services be considered for regularization. It is also needless to say that the applicants also preferred O.A. No. 127 of 2006 through which they have prayed for granting temporary status and regularization and also prayed for issuing a direction to the respondents to confer temporary status on the applicants as they had completed 206 days of service. It is also to be pointed out that once again in all these OAs certain directions were issued for considering the case of the applicant which was duly considered by the respondents and the respondents have passed the order dated 20.11.2006 in response to the direction issued by the Tribunal in O.A. No. 127 of 2006 through which it is indicated that only one post of Safaiwala fell vacant and all the contract labour were considered for the said post. Since all of them were contract labour, there was no question of inter-se-seniority between them. Consequently, since one Dharmanand was working as Safaiwala has been given preference over the others who were working in different capacity/grade as such he was given appointment. Apart from this, it is also indicated that as and when appropriate vacancies arise in either the Customs(Prev.) Commissionerate, Lucknow or the Central Excise Commissionerate, Lucknow, the case of the applicant No. 1 and 2 shall be duly considered for appointment. Since there was no

vacancies at that time as such they were not given the benefit. After observing the above, respondents have passed the orders dated 20th November, 2006. Subsequently, the respondents issued an advertisement for filling up 5 posts of Safaiwala in Group D in the pay scale of Rs. 2610-4000. The applicant again feeling aggrieved by the said order, preferred O.A. No. 171 of 2008. The said O.A. was also disposed of by the Tribunal through which a direction was issued to the respondents to examine the availability of post of Farrash as reflected in the statement given by the Chief Information Officer and if such a suitable vacancy are available, they could consider the applicants as per his previous assurance. In pursuance of the same, the respondents again considered the case of the applicant and passed an order on 12.1.2009 through which it is indicated that at Lucknow and Kanpur there are no vacancies in the cadre of Farrash/Safiwala whereas, two vacancies are lying vacant in Allahabad Commissionarate and there is one vacancy in Custom (Pre) Lucknow, but the same cannot be filled up as it has no cadre of its own. In view of the above the request of the applicant was not feasible and accordingly, it was rejected.

10. It is to be pointed out that the applicants appointment was purely on contract basis which was done in the year 1994 and thereafter, in 1997, they were given the ad hoc appointment and since then, the applicants have preferred number of O.As and in all the O.As, the case of the applicant was directed to be considered. After considering the case of the applicant when nothing was found feasible, the respondents rejected the claims of the applicant.

11. Since the case of the applicant was considered by the respondents for number of times as per the direction issued by the Tribunal, and the respondents have passed the orders on 12.1.2009 through which it is indicated that the applicants cannot be considered for regularization,. As such, at this stage, we are not convinced by the pleadings available on record. As such, the O.A. is fit to be dismissed.

12. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

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