

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 2.8.2004

ORIGINAL APPLICATION NO. 491/1994

Baiju son of Shri Nathu aged about 34 years, by caste Harizan, resident of Village Mangorra, District Mathura, Uttar Pradesh. At present posted as Local Safaiwala at Railway Station Jajan Patti, Western Railway, Kota Division.

....Applicant

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. The DRM, Western Railway, Division Office, Kota.
3. The Station Master, Jajan Patti, Western Railway.

....Respondents

Mr. Anil Khanna, Counsel for the applicant.

Mr. S.P. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) Quashing and setting aside the order/direction vide Annexure A/1.
- (ii) Declaring the order/directions vide Annexure A-1 illegal as such null and void.
- (iii) Directing the respondents to reinstate the applicant with all consequential benefits including the back wages.
- (iv) Respondents be directed to compensate the applicant for the difference of back wages from the date when the applicant became entitle for the grant of temporary status till the date of disengagement.
- (v) Cost of the application be awarded in favour of the applicant."

2. The facts of the case are that the applicant was initially engaged as Safaiwala by the respondents in the year 1979 for the

purpose of doing cleaning work of platform and railway quarter at Jajan Patti. The grievance of the applicant in this OA is that despite rendering so much years of service, he has not been given the benefit of grant of temporary status as per the Scheme prevalent with the respondents and his service has been illegally discontinued vide impugned order (Annexure A/1). Further contention raised by the applicant is that he made representation to the respondents and since no relief was granted to the applicant, he has filed earlier OA No. 46/1994 in this Tribunal with a direction to the respondents to grant temporary status upon him and to compensate him for the difference of back wages due to non grant of temporary status. The said OA was decided by this Tribunal on 3.2.1994 whereby respondent No. 2 (DRM Kota) was directed to decide the representation of the applicant dated 28.7.1993 (Annexure A/1) through a speaking order on merits in accordance with rules within a period of one months from the date of receipt of a copy of this order. However, liberty was reserved to the applicant to file a fresh OA. Subsequently, the applicant filed the present OA. This Tribunal allowed this OA and vide order dated 23.7.1999, the respondents were directed to re-engage the applicant on the post of Safaiwala within a period of one month from the date of receipt of a copy of the order. The respondents were further directed to consider the case of the applicant for grant of temporary status as per the rules. The respondents filed a Review Application against this order of the Tribunal, which was also dismissed. Subsequently, the matter was carried before the Hon'ble High Court through DB Civil Writ Petition No. 2271 which was decided vide order dated 6.11.2003. The Hon'ble High Court set aside the impugned order passed by this Tribunal and remitted back the case to this Tribunal for decision of this OA after giving full opportunity to file reply to the petitioner. This Tribunal was directed to restore the OA to its original number after giving the opportunity to file reply and full opportunity of defending the same. Accordingly, this OA was restored to its original number.

3. The respondents have also filed reply. In the reply, it has been stated that the applicant was never engaged as Casual labour. However, he was working as Local Safaiwala on contract basis and he was being paid monthly emoluments of Rs.300/- per

month for that purpose. The respondents have also annexed an application of the applicant (Annexure R/1) whereby the applicant has requested for allotting the work of cleaning of platform and quarters @ Rs.600/- per month on contract basis. From the perusal of this application, it is also clear that this application was submitted by the applicant pursuant to the quotations invited by the respondents. Thus from this document, it is clear that the applicant was not engaged as Safaiwala on casual basis but he was appointed on contract basis for which quotations were invited by the respondents and in pursuant thereto, the applicant was given contract of cleanliness of the platform and quarters on monthly rate of Rs.300/- per month. The respondents alongwith the reply have also annexed a letter dated 16.8.1994, which document shows that the respondents have done away the system of engaging the person as local Sawaiwala on contract basis and as many as fifty persons engaged in that capacity at different stations were disengaged <sup>earlier</sup> ~~earlier~~ this order. The last para of this letter also reveals that respondent No. 2 want to take action against those Station Superintendent at local level who has not carried out this order.

4. Thus from the material placed on record, we are of the view that the applicant was not engaged on casual basis but he was engaged in the capacity of local Safaiwala and for that purpose, he was being given Rs.300/- per month. Thus, according to us, the applicant is not entitled for the grant of temporary status as the Scheme is applicable to Casual labour and not to person who were engaged on contract basis as Local Safaiwala on fixed payment. The contention of the learned counsel for the applicant that applicant was appointed as Casual labour as can be seen from letter dated 15.4.1987 (Annexure A/3) written by the Station Master as also Annexure A/2 which shows the number of days the applicant performed his duty, cannot be accepted. From the perusal of Annexure A/2, it is evident that the applicant has worked at Jajan Patti from April 1979 to October 1980 continuously as Local Safaiwala and according to Railway record, he has worked for a total period of 535 days. This document does not indicate that he has worked on casual basis. Rather the perusal of this document shows that the applicant has worked in the capacity of Local Safaiwala. Thus from this document, it cannot be concluded that the applicant was working as Safaiwala in the capacity of Casual Labourer. Similarly,

letter written by the Station Master, Western Railway, Jajan Patti (Annexure A/3) does not indicate that the applicant has worked as casual labour. This document only shows that the name of the applicant was entered in the Muster Roll continued from April 1979 to March 1987 and he was paid salary through salary bills regularly. Thus this document only indicates that the applicant has worked in the Department and he was paid fixed emolument and from the subject, it is clear that the capacity in which the applicant worked has been indicated as "Local Safaiwala." Since we have specifically held that the applicant has not worked as Casual labour, rather he has worked in the capacity of Local Safaiwala on monthly fixed amount of Rs.300/- per month, as such, he is not entitled to the grant of 'Temporary Status' and in case his service as 'Local Safaiwala' has been discontinued vide Annexure A-1, no fault can be found on that account as respondents has done away with the system of taking work of cleanliness from Local Safaiwala as can be seen from Annexure R-2 whereby as many as 50 persons working on different stations were discontinued prior to issuance of order on 16.8.1994.

5. The learned counsel for the applicant submits that despite the order dated 16.8.1994 (Annexure R/2), the applicant is still working as Local Safaiwala and he is also being paid fixed emolument of Rs.300/- per month. The applicant who is also present also admits this fact. The learned counsel for the applicant submits that his client should be continued in the said capacity in case the relief as prayed for by the applicant is not granted.

6. We see considerable force in the submissions made by the learned counsel for the applicant. The applicant has been working in the Department since 1979 as Local Safaiwala at a fixed amount of Rs.300/- per month. As such he has got a preferential right to continued in that capacity in case the work is available with the Department and unless the respondents decide to discontinue with this arrangement. Accordingly, we are of the view that in case the applicant is still working as Local Safaiwala in the fixed amount of Rs.300/- per month, he shall be allowed to work in that capacity in case work is available with the respondents. However, such arrangement will continue till the respondents decides to discontinue with this

arrangement by extracting the work either by engaging regular employee(s) or otherwise or through some other arrangement.

7. With these observations, the OA is disposed of. No costs.

  
X & B

(A.K. BHANDARI)

MEMBER (A)

  
C & C

(M.L. CHAUHAN)

MEMBER (J)

AHQ