

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 18.08.2000

OA No.573/94

Pooran S/o Shri Nauchanda, presently posted as Local Safaiwala under Station Superintendent at Malarana Railway Station, Western Railway.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager (E), Western Railway, Kota Division, Kota.
3. Station Superintendent, Malarana, Western Railway, Kota Division.

.. Respondents

None present for the applicant

Mr. Hemant Gupta, Proxy counsel to Mr. M.Rafiq, counsel for the respondents

CORAM:

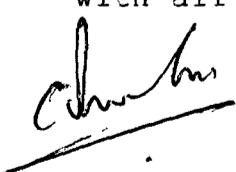
Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

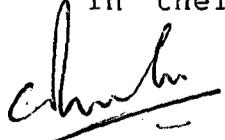
Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant seeks directions that he may be declared as Temporary Status (for short TS) holder since 31.12.1981 and he be treated as temporary railway servant with available rights and benefits. He also prays that the order dated 16.8.1994 be declared null and void and he be reinstated with all consequential benefits.



2. Facts, as stated by the applicant, are that he was recruited by the Station Superintendent (for short SS) Malarana (respondent No.3) on or about 9.6.1978 to perform the work of Local Casual Safaiwala and since then he has been rendering services continuously till he was suddenly disengaged vide order dated 16.8.1994 (Ann.A1) alongwith some 50 others without any notice. He had completed 120 days of continuous service on 31.12.1991, breaks occurring due to not taking work from him but was not granted TS. He was medically examined on or about 24.6.1987 and found fit for appointment (Ann.A2). He applied for a Group-D post (Ann.A3). Vide Ann.A4 dated 18.5.1993, Casual Labour Substitutes were called for selection to the post of Safaiwala and he applied in the prescribed proforma. The record of service of the applicant with due endorsement of the SS, Malarana was sent to AOS (E) vide Ann.A5. The SS, Malarana also sent his latest recommendation for TS certifying that the applicant had completed 253 days of continuous services prior to 31.8.1994 (Ann.A6). The contention of the applicant is that in view of rendering continuous services as detailed above, the disengagement of the services of the applicant is wholly illegal, arbitrary and capricious and is violative of principles of natural justice. Further, that ignoring artificial breaks, in view of para 2003 (d) of the IREM, the applicant had rendered 120 days of continuous service on 31.12.1991, the applicant had become entitled to become temporary railway servant and to screening and selection for Group-D post. Further that the applicant had vide, Ann.A6, completed 240 days of continuous service within one year prior to his retrenchment and, therefore, he was entitled to TS.

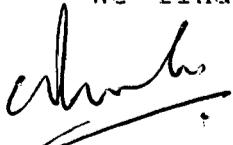
3. In their reply, the respondents have controverted



the averments made by the applicant. It has been stated that the applicant was engaged as and when required to work as Safaiwala purely on contract basis. It has been denied that there is any designation like Local Safaiwala against which appointment of the applicant could be made. However, in the past some work was being given on contract basis to clean some areas on fixed rate and these contractors were being called as Local Safaiwalas and, therefore, the question of regularisation and confirmation of the applicant did not arise. It is further stated that such contingency labour was engaged by the Station Master himself and that too, as per need to work of safai. It is also contended that Chapter XXIII of IREM and Paras 2504/2511 as also Chapter XX and Para 2003 (d) regarding grant of TS were not applicable as the applicant was not a Casual Labour and payment was made to him out of contingent fund. It has also been stated that the applicant was not entitled to either grant of TS or regularisation and the mere fact of an application having been made by the applicant with endorsement made thereupon did not in any way help the case of the applicant. Finally, it is contended that the services of the applicant were rightly dis-engaged and no notice or chargesheet were required as the applicant was working on contract basis.

4. We have carefully gone through the material on record and heard the learned counsel for the respondents. Learned counsel for the applicant was given one week's time to submit his written submissions as he was not present not only on the date of hearing on 1.8.2000 but on a number of dates, the case was listed for hearing after 10.3.1997. No written submissions were, however, submitted within the said period.

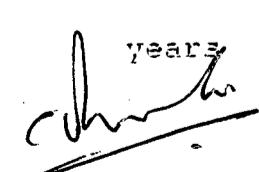
5. We find that a more or less similar case of Local



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Safaiwala was earlier considered by this Bench of the Tribunal in OA No. 491/94, Baiju v. Union of India and ors. decided on 23.7.1999. In the said case also, the applicant had averred that having completed more than 100 days of service and having become eligible for grant of TS and his case having been recommended for conferment of TS by the concerned SM, no response was forthcoming from the authorities inspite of the applicant therein having put in more than 15 years of service. This Bench of the Tribunal had in the circumstances, directed the respondents to re-engage the applicant as Safaiwala. Of course, in that case, the respondents had not filed a reply inspite of a number of opportunities. However, the respondents had filed a Review Petition for review/recall of the decision dated 23.7.1999 which was dismissed by this Tribunal vide its order dated 30.3.2000 in RA No.15/1999 (in OA No.491/1994) after rejecting the submissions made in the Review Petition, essentially contending that the applicant in the said OA was a contractor used for cleaning of certain areas on fixed rates. It may be useful to extract the relevant part of the order in the said review petition:-

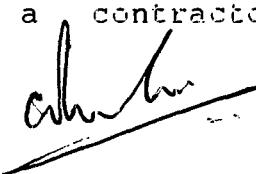
"In any case, the records of the official respondents themselves do not bare out the fact that the applicant was paid as contractor. Even in Review Petition, it has been mentioned that the applicant was being paid a fixed rate of Rs. 300 per month as per contract. A contract is not generally paid a fixed amount every month, and therefore, it is quite clear that the applicant was working as Casual Labour behind the veil of the so called contract. It has also been denied in the Review Petition that the applicant was paid salary through S/Bills regularly for years together for working days as has been



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mentioned in the letter of Station Master, Western Railway, Jajanpatti in his letter dated 15.4.1987 but how can the facts and details of that letter annexed at Ann.A3 in the OA be ignored. It also appears from the details at Ann.A4 to the OA that the applicants case for temporary status was forwarded by the Station Master, Western Railway, Jajanpatti to the Sr. DE (E), Kota. The claim of the official respondents in this Review Application that the applicant in the OA was a contractor does not, therefore, appear to be a discovery of new and important evidence which was not within the knowledge of the official respondents when the Tribunal had disposed of the OA vide its order dated 23.7.1999."

6. We have considered in depth the theory of the respondents that a large number of Casual Labours working as Safaiwalas at various stations were contractors, each and every one of them a separate contractor and, therefore, all of them were eligible neither for TS nor for regularisation. We have already rejected such a far fetched theory to defend engagement of certain poor persons to work as Safaiwalas on casual basis by 'stating' that they were all contractors in their own individual entities in OA No. 491/94 read with RA No.15/1999 (supra). After our most careful consideration, we do not find any other option but to reiterate our decision. While we appreciate the compulsion of the Station Masters in engaging some Safaiwalas to work on casual basis but it will be most devious form of labour exploitation to unilaterally declare each of them a separate 'contractor', pay them a fixed amount without measurement of the work performed by such a contractor, have no agreement/work order for such



contractors and such other perquisites to establish a relationship between railways and the so called contractors. It has also to be appreciated that when the railways employ thousands of Casual Labour and frame a scheme of conferment of Temporary Status for them to enable them have some benefits without any claim at all on any post, heavens would not have fallen if fifty odd 'Local Safaiwalas' were also considered for TS. After all, they have been working albeit off and on, for years and years and if work for them is still available; there will be all the justification in the world to continue giving them work as and when available and confer on them the TS so that they become entitled to some benefits. May be, there was a ban on further engagement of Casual Labourers without the approval of the General Manager but as noticed by this Bench of the Tribunal in the case of Nanak Singh in OA No.77/1995 decided on 12.3.1998, many casual hot weather watermen were re-engaged and some freshly engaged after obtaining 'the approval of the General Manager.

7. In the circumstances, we allow this Original Application and direct the respondent No.2 to treat the applicant as Casual Labour, re-engage him on priority basis as and when work is available and also consider him for grant of Temporary Status/regularisation as per rules.

Parties to bear their own costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member