

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR
BENCH:JAIPUR .

O.A.NO.84/95

Date of order: 20.9.96.

Bhag Chand

: Applicant

vs.

Union of India & Ors. : Respondents

Mr. K.L.Thawani, counsel for the applicant
Mr. V.S.Gurjar, counsel for respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

The applicant Shri Bhag Chand has filed this application under Section 19 of the Administrative Tribunals Act, 1985, to seek a direction for the respondents that he is entitled to regular appointment as Safaiwala in Group 'D' and that his non-absorption on regular basis is violative of Articles 14 & 16 of the Constitution of India and principles of natural justice.

2. Facts in brief relevant for disposal of this application are that he was engaged as a casual labour contingent Safaiwala w.e.f. 13.7.1988 with the respondents department and his actual appointment order was issued on 2.9.98. He has been continuously working in the office of

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Head Record Officer, Jaipur Railway Mail Service, Jaipur Railway Station as casual labour (Safaiwala) for the last seven years. He approached this Tribunal in OA 138/91 to direct the respondents for his regular absorption as Group 'D' Safaiwala. Vide order dated 15.3.1994 the respondents were directed in the aforesaid OA to examine the question of regularisation of the applicant. The Senior Superintendent, Railway Mail Service, Jaipur Division, Jaipur (respondent No.3) passed orders that the applicant being a part-time employee is not entitled to regular absorption in terms of Department of Personnel letter dated 12.4.1991. He made a representation on 4.4.1994 (Annex.A-8) to the Senior Superintendent, Railway Mail Service, Jaipur Division, Jaipur. His representation to the Post Master General, Rajasthan Circle, Jaipur was also rejected. Apprehending that respondent No.4 Head Record Officer may fill up the post of Safaiwala after seeking nomination from Employment Exchange, he has been constrained to file this O.A.

3. The respondents have opposed this application by filing a written reply to which no rejoinder has been filed. The stand of the respondents has been that the averments made by the applicant are misleading since the Department of Personnel letter dated 12.4.1991 was applicable only in the case of full time casual labourers and not in the case of part-time casual labourers as the applicant. It has, therefore, been urged that the application being without any foundation deserves dismissal.

4. We have heard the learned counsel for the applicant as also the counsel for the respondents and have examined the record in great detail.

5. The only point for consideration in this CA is whether the applicant being a part-time Safaiwala with the respondents department is entitled to be regularised in terms of Department of Personnel letter No.45-95/87 SPB-I dated 12.4.1991?

6. In support of his argument, the learned counsel for the applicant has strongly relied upon the judgment of Ernakulam Bench of the Tribunal in M. John Rose and another Vs. Head Record Officer, RMS TV Division, Thiruvananthapuram and seven others, (1992)20 ATC 896 and a Full Bench judgment of Central Administrative Tribunal, Hyderabad bench in CA No.912/92 and 961/92 Sakkubai and N.J.Ramulu vs. The Secretary, Ministry of Communications Etc. and four others, and reported in Full Bench Judgments of the Central Administrative Tribunals 1991-94, Vol.III page 209. As against this, the learned counsel for the respondents has relied upon the observations made by Hon'ble the Supreme Court in the case of State of Punjab vs. Surinder Kumar, AIR 1992 SC 1593. It has been argued by the learned counsel for the respondents that since the appointment of the applicant has been made on specified terms laid down in his order of appointment dated 3.9.1988 (Annex.A-6), the applicant cannot insist for his regularisation.

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7. We have given anxious thought to the arguments of the learned counsel for both the parties. From the perusal of the Full Bench judgment of Hyderabad Bench of the Tribunal in O.A. No. 912/92 and 961/92 Sakkubai and N.J.Ramulu vs. The Secretary, Ministry of Communications Etc. & four others, it is abundantly clear that this question was exhaustively considered by the Full Bench with reference to the scheme notified vide Department of Personnel letter dated 12.4.1991 which has been reproduced in ~~whole~~ whole in the judgment of M.John Rose and another Vs. Head Record Officer, R.M.S., TV Division, Thiruvananthapuram and seven others. It has been held by the Full Bench in Sakkubai's case that the qualification prescribed for part-time labourers is double the qualifications prescribed for full time casual labourers thereby rendering them eligible for regular promotion. Considering the fate of the part-time employees who have been seeking absorption on regular basis, it has been observed by the Full Bench that:

"These unfortunate employees have rendered continuous service as part-time casual labourers for a long period of about eighteen years without any improvement in their service conditions. The object of the Scheme is to confer temporary status upon casual labourers who have been rendering service for long periods without any security of tenure. It is difficult to say that part-time casual labourers who have also served for long periods without security of tenure did not merit similar just and fair treatment. Besides, this is only a fading category. It should not be difficult to accommodate by giving temporary status to the part-time casual labourers. At least at the fag end of their service the Department should treat them kindly. The view taken by the Ernakulam Bench may it best be characterised as liberal. But it is eminently just and equitable."

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The Full Bench therefore confirmed the view taken by the Ernakulam Bench of the Tribunal in the case of M. John Rose and another vs. Head Record Officer, RMS and gave the relief on the same line as was granted by the Ernakulam Bench.

8. In the instant case also the situation is similar and the decision of the Ernakulam Bench of the Tribunal having been not challenged by the respondents therein and has become final and further affirmed by the Full Bench in the case of Sakoolai and N.J.Ramulu (*supra*), we are also bound by the principle laid down in it. As far as the judgement of Hon'ble the Supreme Court relied upon by the learned counsel for the respondents is concerned, it is suffice to mention that in the matter of regularisation of part-time Lecturers in the Department of Education of the State of Punjab, the Hon'ble Supreme Court has on facts held that they do not find any reason as to why the specific terms on which the appointments of part-time Lecturers were made could not be enforced. Appointment of Lecturers on regular basis in the Department of Education stands entirely on different footing which may not be equated with the category of part-time low paid employees like the applicants who are Safaiwalas in the respondents department and have been serving for the last over seven years. Further in the case before Hon'ble the Supreme Court, no scheme of regularisation of part-time Lecturers was under consideration, whereas, in the instant case there has been a specific scheme

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of regularisation dated 10.4.1991. Hence, the decision relied upon by the learned counsel for the respondents is distinguishable and no benefit of it can be taken by the respondents. Moreover, similar category of part-time employees have been given relief not only by the Ernakulam Bench of the Tribunal but also by the Full Bench of the Tribunal affirming the Ernakulam Bench decision in Sakoorai and N.T.Ramulu's case (supra). The learned counsel for the respondents has failed to place any judgment of Hon'ble the Supreme Court whereby the aforesaid judgments of the Central Administrative Tribunal have been set-aside or quashed.

9. For all the aforesaid reasons, the issue raised in this OA is answered in the affirmative. The OA is allowed and the respondents are directed to treat the applicant as full time casual worker for the purpose of grant of temporary status in Group D posts w.e.f. 14.2.1995, the date of filing of this OA, in accordance with the scheme promulgated by their Circular dated 10.4.1991 referred to above with consequential benefits. The applicant, however will not be entitled to any arrears/back wages arising out of such direction. The respondents should comply with this direction within a period of three months from the date of receipt of a copy of this order. In the facts and circumstances of the case, there shall be no order as to costs.


(RATAN PRAKASH)
MEMBER (J)


(O.P.SHARMA)
MEMBER (A)