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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1468/2003

New Delhi this the 17th day of February, 2004

Hon'ble Shri Bharat Bhushan, Member (J)

Shri Mahesh Pal Singh
S/O Shri Munshi Singh,
R/O G-4, I.ASRI
Pusa Campus, New Delhi.

..Applicant

(By Advocate Shri Surinder Singh)

VERSUS

1. Union of India through
The Director,
National Centre for Agricultural
Economic and Policy Research,
Library Avenue, IASRI, Pusa
Campus, New Delhi.
2. Assistant Administrative Officer,
National Centre for Agricultural
Economic and Policy Research
Library Avenue, IASRI, Pusa Campus,
New Delhi.

..Respondents

(By Advocate Shri Satish proxy
counsel for Shri V.K.Rao)

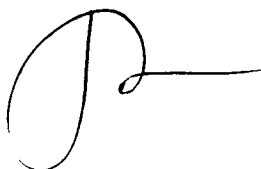
O R D E R

Hon'ble Shri Bharat Bhushan, Member (J)

The case of the applicant is that he was appointed as Safaiwala w.e.f 5.3.1994 on daily paid basis as per the rates prescribed for unskilled labourer by Delhi Administration and he continues in that position till date. The reliefs sought by him are as under:

"(a) Respondents to accord preference in regularisation of his services as Safaiwala cum-Messenger keeping his vast experience and most satisfactory service of more than 9 years in view;

(b) Any other or further relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case".





2. The case of the applicant is that his appointment was duly sponsored by the Employment Exchange and he belongs to Scheduled Caste category and is 8th pass. His grievance is that he came to know that the respondents have asked names for appointment as Safaiwala cum-Messenger from the Employment Exchange, Kirby Place, Delhi Cantt. at the end of May 2003. Consequently, he had approached the concerned authorities for his regularisation but he was told that in case his name comes from Employment Exchange then he would also be considered alongwith the other sponsored candidates. It is the case of the applicant that since his name was earlier sponsored for appointment as daily rated Safaiwala sometimes in 1994, thus, his name automatically stood deleted from the rolls of Employment Exchange hence it was not possible to get his name sponsored again. So his contention is that due to his working satisfactorily for a period of 9 years, he is entitled to get his service regularised as Safaiwala-cum-Messenger.

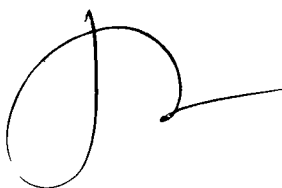
3. In the short reply filed on-behalf of respondents by way of counter to the original application filed by the applicant, the respondents have stated that the applicant has suppressed the important material facts and had made a false averment to the fact that he was continuously in employment with the respondents since 1994. Their contention is that the applicant was appointed on daily wage basis w.e.f. 7.3.1994 to 29.7.1994 and thereafter again from 1.8.1994 to 31.1.1995 and finally from 1.2.1995

till 19.3.1995. Their case is that from 19.3.95 onwards, the work with regard to providing the services of supporting staff (Safaiwala) was given on contract basis and applicant ceased to be even on the roll of daily wage basis with the respondents from 19.3.1995 onwards. Hence their contention is that the applicant is not entitled to any relief as prayed for.

4. I have heard the learned counsel for the parties and perused the records. Learned counsel for the applicant has contended very vehemently that there is a catena of rulings of the superior Courts regarding the regularisation of services of the casual labourers and ad hoc employees etc. on the basis of their long continuance in the post. The rulings relied upon in this respect are:

- (i) **State of Haryana Vs. Piara Singh**
(1992(4) SCC 118).
- (ii) **Ram Nath Paswan Vs. Union of India and Ors.**
(1995)30 ATC 1)
- (iii) **Jag Naresh and Anr. Vs. UOI and Ors.**
(OA 1462/2001) decided by the Principal Bench of the CAT on 16.1.2002.

5. On the other hand, learned counsel for the respondents has also placed reliance upon several judgements of the Apex Court to rebut this argument that the appointment was not made on regular basis. His submission is that the applicant was appointed only on daily wage basis in three spells between 7.3.1994 to 19.3.1995 and his services were dispensed with after March, 1995. His submission is that he was never on regular basis with the

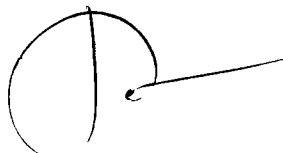


Respondents. Hence, according to him the applicant was not entitled to any relief as claimed by him, since for the past 9 years he had not worked with the respondents and prior to that period too he had worked only for brief spells. His contention is that at no time the initial recruitment of the applicant was effected through a regular prescribed procedure, hence, his submission that the applicant is not entitled to regularisation. In this regard, he has placed reliance upon para 9 of the Apex Court judgement in **Chanchal Goyal (Dr.Mrs.) Vs. State of Rajasthan** reported in 2003 II AD (S.C) 295). The said para reads as under:-

"Unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularization. It is true that an ad hoc appointee cannot be replaced by another ad-hoc appointee; only a legally selected candidate can replace the ad-hoc or temporary appointee. In this case it was clearly stipulated in the initial order of appointment that the appellant was required to make room once a candidate selected by the Service Commission is available".

In order to support his further contention that the applicant cannot be regularised since his appointment is never on regular basis, he has relied upon the following observations of the Hon'ble Supreme Court in the same judgement:

"There is no scope of regularization unless the appointment was on regular basis. Considerable emphasis has been laid down by the appellant to the position that even for temporary appointment there was a selection. That is really of no consequence. Another plea of the appellant needs to be noted. With reference to the extension granted it was contended that a presumption of the Service Commission's concurrence can be drawn, when extensions were granted from time to time. This plea is without any substance. As noted above, there is no scope for drawing a presumption



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about such concurrence in terms of sub-rule (2) of Rule 27. After one year, currency of appointment is lost. The extension orders operated only during the period of effectiveness".

In another ruling of the Supreme Court in **J & K Public Service Commission and Ors Vs Dr. Narinder Mohan and Ors.** (1994(2)SCC 630), it was, inter alia, observed that "it cannot be laid down as general rules that in every category of ad-hoc appointment if the ad-hoc appointee continued for longer period, rules of recruitment should be relaxed and the appointment by regularization be made". In **Union of India and Ors. Vs. Harish Balkishna Mahajan** (1997(3)SCC 194), the challenge to the order of dismissal on the ground of long continuance as ad hoc/temporary employees was also to be held without any substance.

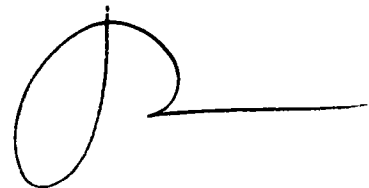
6. The learned counsel for the respondents during the course of arguments has further submitted that after the year 1995 since in task of providing the services of supporting staff i.e. Safaiwala was given on contract basis so they had never engaged the applicant thereafter, and the applicant of his own violation had sought employment with different contractors at different times. But this argument has been rebutted by the learned counsel for the applicant. The contention of the learned counsel for the applicant is, that, as a matter of fact the work entrusted to the contractors by the respondents only and in that sense, it were they i.e. the respondents who were instrumental in transferring the services of the applicant to those contractor. Hence, his submission is that the applicant though was working with the contractor yet he was the



employee of the respondents only and was thus entitled to regularisation. In this regard, the learned counsel has placed reliance upon the decision of the Central Administrative Tribunal (Chandigarh Bench) in **Kiran Pal and Ors Vs. UOI & Ors.** (OA No.800/CH/2001) decided on 14.8.2002 wherein it was held that the applicant could not be engaged through contractors and shall be treated as direct employee of the respondents and consequently it was held that they were entitled for regularisation.

7. I have given my careful consideration to the rival contentions and the law produced by both the learned counsel for the parties. So far as the issue of transfer of services of the applicant to the contractor is concerned, there is no material or any documents on record to prove that the services of the applicant was transferred to any of the contractor. The material available on record simply shows that the respondents had engaged the applicant on daily wage basis on 3 different spells i.e. w.e.f. from 7.3.1994 till 19.3.1995, 1.8.1994 to 31.1.1995 and 1.2.1995 to 19.3.1995. The Apex Court decision relied upon by the Respondents as referred to in Para 5 hereinbefore do not permit the applicant to be treated to be appointed on regular basis or to be entitled to regularisation. The facts and circumstances of the case are such that the applicant is not entitled to the relief claimed. Hence, I am of the view that the OA is devoid of merit. The same is hereby dismissed.

No costs.



(Bharat Bhushan)
Member (J)