

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

**Original Application Nos. 374/2012, 40/2013,
130/2013, 432/2013, 245/2014, 316/2014, 335/2014,
336/2014, 339/2014 & OA 212/2015**

Reserved on : 30.08.2019

Pronounced on: 09.12.2019

CORAM :

Hon'ble Shri Devendra Chaudhary, Member(Administrative)

Hon'ble Shri M.C.Verma, Member (Judicial)

OA No.374/2012

Shri Mukesh Manubhai Harijan,
S/o Shri Manubhai Harijan, Aged 34 years,
Working as Ex-part time Safaiwala,
R/O: 14/T, Railway Colony Quarters, Anand.

... Applicant

Versus

- i) Union of India, Notice to be served through
General Manager, Western Railway, Churchgate,
Mumbai – 400 020.
- ii) Divisional Railway Manager (E),
Western Railway, Pratapnagar, Baroda – 390 001.
- iii) Senior Security Commissioner (RPF office),
Western Railway, Pratapnagar, Vadodara.

...Respondents

With OA No.40/2013

Shri Jayantilal S Solanki,
S/o Shri Sanabhai Solanki, Aged 49 years,
Working as Ex-Khalasi/Casual Labour.
R/o- Nr Power House, Harijanwas, Godhara-389001.

... Applicant

Versus

- i) Union of India,
Notice to be served through
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.
- ii) Divisional Railway Manager,
Western Railway, Pratapnagar, Baroda – 390 001.

...Respondents

With OA 130/2013

1. Vinodbhai Chotabhai Waghela Age 41 years
2. Urmeshbhai Chotabhai Waghela Age 44 years
3. Shantilal Ambalal Gorla Age 43 years
4. Dineshbhai Chandubhai Age 46 years
5. Babubhai Jivabhai Solanki Age 46 years
6. Arvinbhai Babubhai Solanki Age 43 years
7. Vinodbhai Narayanbhai Solanki Age 42 years
8. Sureshbhai Nathabhai Solanki Age 42 years
9. Kanubhai Pasabhai Age 45 years

All the applicants are Ex-Part- time Safaiwala under Railway Department. C/o:- 37, Shahbhairam Park, Nr Tulsi Garnada, Anand – 385001.

... Applicants**Versus**

- i) Union of India, Notice to be served through, General Manager, Western Railway, Churchgate, Mumbai – 400 020.
- ii) Divisional Railway Manager(E), Western Railway, Pratapnagar, Baroda – 390 004.

... Respondents**With OA No.432/2013**

Shri Jaydevbhai H Solanki,
S/o Shri Hirabhai Solanki, Aged 38 years,
Working as Ex-Part time Safaiwala,
R/o. Jetalpur Road, Vadodara – 380 006.

... Applicant**Versus**

- i) Union of India, Notice to be served through, General Manager, Western Railway, Churchgate, Mumbai – 400 020.
- ii) Divisional Railway Manager(E), Western Railway, Pratapnagar, Baroda – 390 004.

... Respondents**With OA No.245/2014**

Shri Bharat M Purabia,
S/o Shri Mangalbhai Purabia, Age 41 years,
Working as Ex-Part time Safaiwala
Under SS Nadiad.
R/o.: Gokul Sheri, House No.A/18,
Someswar Nagar, Vasna, Ahmedabad-380007

... Applicant

Versus

- i) Union of India, Notice to be served through,
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.
- ii) Divisional Railway Manager(E),
Western Railway, Pratapnagar, Baroda – 390 004.

... Respondents**With OA No.316/2014**

Smt Kusum P Waghela,
S/o Shri Punambhai Waghela, Aged 43 years,
Working as Ex-part time Safaiwala,
R/O.: Nr. Tijori Office, Harijanwas, Kheda.

... Applicant**Versus**

- i) Union of India, Notice to be served through,
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.
- ii) Divisional Railway Manager(E),
Western Railway, Pratapnagar, Baroda – 390 004.

... Respondents**With OA No.335/2014**

Natwarbhai N Solanki,
S/o Shri Naginbhai Solanki, Aged 31 years,
Working as Part time Safaiwala
Under Dy. CSTE/C/BRC.
Resi: Harijanwas, Opp. Ramji Mandir,
Danteshwar, Vadodara – 390004.

... Applicant**Versus**

- i) Union of India, Notice to be served through,
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.
- ii) Divisional Railway Manager(E),
Western Railway, Pratapnagar, Baroda – 390 004.

... Respondents**With OA No.336/2014**

Sandip R Solanki,
S/o. Shri Rameshbhai Solanki, Aged 32 years,
Resi: GLR 17-L, Railway Quarter, Godhara- 389 001.

... Applicant**Versus**

- i) Union of India, Notice to be served through,
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.

- ii) Divisional Railway Manager(E),
Western Railway, Pratapnagar, Baroda – 390 004. ... Respondents

With OA No.339/2014

Shri Rakesh P Solanki,
S/o Shri Pratapbhai Solanki, Age 34 years,
Resi of 13/4, G.L.Yard, Godhara,
Working as Ex-Part time Safaiwala under CSI, GDA. ... Applicant

Versus

- i) Union of India, Notice to be served through,
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.
ii) Divisional Railway Manager(E),
Western Railway, Pratapnagar, Baroda – 390 004. ... Respondents

With OA No.212/2015

Smt Narmadaben Chandubhai Harijan,
Aged 45 years, Worked as Ex-part time Safauwaka
Under: SSE/OHE/KSB, BRC Division,
R/o. A/1/10, Mangalam Housing Soc.
Nandlav Road, Bharuch – 382 001. ... Applicant

Versus

- i) Union of India, Notice to be served through,
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.
ii) Divisional Railway Manager(E),
Western Railway, Pratapnagar, Baroda – 390 004. ... Respondents

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Present :

By Advocate : Ms S. S. Chaturvedi....For Applicants.

By Advocate : Shri M. J. Patel..... For Respondents.

O R D E R
[Per M. C. Verma, Member(J)]

1. These matters pertain to reinstating/absorbing of applicants on regular basis as ‘Safaiwala’. Claim of applicants of aforementioned bunch of ten OAs stem from Circular of the Railway Board No.E(G) 97EC 211 dated 08.01.1997 and applicants stating that their services

had to be regularised under the said Circular, have preferred these OAs, the relief sought is near to similar and facts of applicant's case, as emerged reveals that applicants either were working as Part-time Safaiwala or under contract for Safai work under the respondent. All applicants are represented by same counsel, namely Ms. S.S. Chaturvedi, Advocate and respondents are also represented by one Counsel, namely Sh. M.J.Patel, Advocate, hence all these applications were heard together and are being disposed of by this common Order.

2. The crux of relevant facts, pleaded by respective applicants of O.A and the stand taken by the respondents in their corresponding reply concisely are as under :-

- (i) **OA 374/2012:**—The OA has been preferred with MA for condonation of delay, being MA No. Applicant pleaded that he, in year 2004 was appointed as Part-time Safaiwala, he worked as such under the respondents, without any break, till year 2006 and thereafter, his services were discontinued. He enclosed, with his OA copy of contract letter dated 25.10.2004 & 11.08.2005 as Annexure A/2, copy of muster roll as Annexure A/3 and has pleaded that as per circular dated 08.01.1997 of Railway Board (Annex.A/4) services of Part-time Safaiwala were required to be regularised and Western Railway issued circular dated 16.01.1997 (Annex.A/5) directing all the DPOs to sent proposal for creation of the post of Safaiwala. That he sent representations, on 05.12.2007, 27.08.2007, and 15.06.2012 (Annexure A/1), to absorb him on regular basis as a Safaiwala but no heed was paid and respondents filled up the post on regular basis. **Respondents** have filed their reply submitting that contention of applicant that he has worked for

three years is incorrect and in fact applicant had worked as part time Safaiwala purely on contract basis on certain terms and conditions, in two spells for one year only and that they have not violated any provisions and OA deserves dismissal.

- (ii) **OA NO. 40/2013** – The OA has been preferred with MA for condonation of delay, being MA No. 52/2013. Applicant pleaded that he was appointed as Casual Labour and had put in 260 days continuous service under IOW Godhra, passed the screening test, memo for medical examination was issued, he did pass medical B-1 category and was issued physical fitness certificate, dated 22.07.1986 (Annexure A/1). That IOW issued order for sanctioning temporary status. That he becomes entitled for the regular after year 1986, respondent did use to give assurance that as and when vacancy would fall, he would be called but he was not called for regularised post, though his juniors were regularised. That when was not re-engaged nor was offered any re-appointment he then, on 27.01.1986 sent representation for his re-engagement on regular basis and did approach the Authority on 19.03.1987. That on 11.05.1999 Railway Board issued letter for screening of Casual Labours born on the Live Register/Supplementary Live Register. That a letter dated 11.05.2001 of DRM (E) BRC has been issued (This letter copy of which is at Annexure A/8 shows that DRM (E) gave nod for appointment of 47 part time Safaiwala on 12 Stations, details of which are in the letter. That on 23.03.2005 he filed representation for his re-engagement on regular basis. That as per action plan for absorbing existing working substitute of Traffic Department. BRC division, he was called

and he filed application form (Annexure A/10) for his re-engagement on regular basis (Annexure A/10) dated 30.04.2006 is having heading “ *Application of Screening of Substitute*” and several column of it including column requiring detail whether presently applicant is on muster roll or not are blank. It shows the date of initial engagement of applicant as 10.02.1984. Applicant filed his representation dated 21.07.2012 for his re-engagement on regular basis, but no heed has been paid despite the fact that identical issues have been decided in favour of other employee as per Hon’ble High Court and Hon’ble Supreme Court judgments, hence, is this OA. **Respondents** have filed their reply submitting that looking into the facts and circumstances, no case made out in applicant’s favour and OA may be dismissed. Contention of applicant that he was granted temporary status is incorrect, as per IOW/GDA’s letter dated 23.05.1985 applicant was not eligible for TS as he had not completed 120 days and from a bare perusal of the letters produced by applicant, it is crystal clear that he was not screened at all. That the temporary status casual labours who were in Live Register prior to 1981 were only called for the screening because there was ban on engaging Casual Labours/Substitute after 14.07.1981. That applicant in his OA has repeatedly has pleaded regarding non-filling of vacancies of Safaiwala in Traffic Department and Medical Department which has no relevancy as far as case of applicant relates.

- (iii) **OA NO. 130/2013** – The OA has been preferred by nine applicants jointly with MA for joint application, being MA No. 147/2013 and application for condonation of delay, being MA

No. 148/2013. Applicants pleaded that they were appointed as Casual Safaiwala under the BRC Division as then Railway Minister had to visit Baroda Division from 07.09.1988 to 31.12.1988, they attached copy of their attendance sheet of period from 21.12.1988 to 30.12.1988 as Annexure A/1. That the respondents issued sanction for Temporary Labours on dated 20.12.1988 (Annex. A/3) and paid wages for the period of working. Respondents issued a List on 07.01.1993 to BRCP, BH and Anand whereby, it was directed to verify the service particulars of the incumbents and that applicants' names found placed in the same. That some applicants filed OA No.608/1994 which was decided on 23.03.1995 (AnnexA/7) and it was directed to place the applicants of that OA in Seniority List of Ex-Safaiwala for re-engagement in future vacancies and to intimate the position within three months. That the respondents instead of complying the Tribunal's order in its true spirit did pass a vague order. That applicants, thereafter preferred Representation (Annex.A/10) on 01.06.1998. That the Railway Board vide its letter dated 11.05.1999 (Annex.A/11) asked all the Zones to submit information regarding Casual Labours born in the Live Register / Supplementary Live Casual Register but a 'Nil' report was sent. It is contended that there are vacancies in Baroda Division in various Departments like Medical, Traffic, Carriage and Wagon and Diesel-shed, Vatava. Prayer has been made for direction to the respondent to re-engage the applicants.

Respondents have filed their reply submitting that looking into the facts and circumstances, no case is made out in applicants' favour and O.A. may be dismissed. They pleaded

that as per the approval of the General Manager applicants were utilised for a sporadic type work in year 1988, say Cleanliness of Lines, Sanitation etc. and that they were engaged on daily wages and were accordingly paid. That their services were dispensed with as their names did not find place in the Seniority List of Ex-casual Labours/Safaiwalas as their names were not borne on any Live Register which was a pre-condition for placing them on any seniority list. Respondents relying on Railway Board's Circular No. 48 has pleaded in their reply that-Casual Labour Cards need not be prepared and issued to the Casual Labours who are engaged for a very limited period say a week or ten days or a fortnight for work during emergencies, like restoration of bridges, flood relief, accident relief operations etc. The names of casual labours who were engaged for a very short duration viz. on occasion like restoration of bridges through communication, accident relief etc. are however, not required to be included in the live registers. Respondents have categorically stated that as per the decision of this Tribunal relied upon by the applicants in OA No.608/1994 decided on 23rd March,1995, respondents, pursuant to the direction of this Tribunal, passed a detailed speaking order considering the rules and provisions on the issue disentitling the applicants on certain grounds. Respondents have submitted that they have not breached Articles 14 and 16 of the Constitution and no case is made out by the applicants, hence, OA be dismissed. **Rejoinder** to reply has also been filed reiterating the contentions taken in the O.A. and stating that respondents have admitted that applicants were engaged as Safaiwala during 07.09.1988 to 31.12.1988. Applicants taking

plea that at top of Annex. A/4 it is written “ELA Casual Labour Salary Bill” and therefore it is Salary Bill and that words in Annex.A/3 are, “Sanction for Temporary Labourer” is written filed rejoinder denying that they were Casual Safaiwalas and contended that the statement of the respondent-department is misleading and that respondents are not placing/producing correct facts before this Tribunal.

- (iv) **OA No. 432/2013:-** The OA has been preferred with MA for condonation of delay, being MA No. 424/13. Applicant pleaded that without any break he had served the respondents for seven years from March 1994 to 2000, he was regularly paid wages and Pay voucher is Annexure A/1. That his name is there at Sl. No.1 in summary of arrears of part-time Safaiwalas working in BRC. That instead of regularising him, respondents terminated his services. That in view of Railway Board’s letter dated 16.01.1996 respondents had to discontinue services of part time Safaiwalas and in their place, full time Safaiwalas had to be engaged. That in Railway Board’s letter dated 08.01.1997 (Annex.A/3) it is stated that part time Safaiwalas may be recruited as Full Time Safaiwala subject to their fulfilling the medical examination. That respondent-department issued letter dated 29.09.2006 to all the Departmental Heads asking for details of Part Time Safaiwala / Substitutes in prescribed performa and applicant also has filled up the same for screening. That applicant also sent his representation for his absorption on regular basis as Safaiwala, in year 2003 and also one another representation (Annexure-A/2) was sent on 19.08.2012 but his case was not considered. Prayer has been

made for direction to respondents to re-engage the applicant with all consequential benefits. **Respondents** have filed their reply stating that it could not be ascertained whether applicant had worked as part time Safaiwala in office of SS-ND or SS-BRC or DC-Pay-BRCP as the material supplied by the applicant is not sufficient. That Pay Voucher(s) alone is not sufficient enough to ascertain proof of continuity of his service and that respondents have no record in this connection to verify details of case of the applicant as all the files, pay vouchers etc., which could be relevant has since been destroyed. That applicant, if he had a certificate of having served as part time Safaiwala from 1994-1997, has been as pleaded by him, he ought have claimed his regularisation in year 1997 itself or in 1998 as per Railway Board's letter of 1997 but, he did not claim regularisation at that time and waited for more than a decade. That no representation of applicant was received by the Senior DFM nor any proof has been produced indicating that representation was ever served, so his version that he submitted representation to the DRM-BRC in 2003 and 2012 for absorbing him on regular basis as Safaiwala, cannot be accepted. That in fact, applicant never approached the respondent-department for his regularisation and, on going through the aforesaid reply, it is clear that there is no case in favour of applicant and therefore, this OA may be dismissed summarily. **Rejoinder** reiterating stand taken in the OA has been filed by applicant.

- (v) **OA NO. 245/2014:** –Applicant pleaded that without any break he had served the respondents from year 1996 to 2000, he was regularly paid wages and copy of attendance register of Feb

1996, March 1997, April 1997 and & of January 1998 to December 1998 is Annexure A/2. That his name is there, at Sl. No.5, in list of summary of arrears of part-time Safaiwala working in SS-ND, Annexure A/3 and that instead of regularising him, respondents terminated his services. That in view of Railway Board's letter dated 16.01.1996 respondents had to discontinue services of part time Safaiwalas and in their place full time Safaiwalas had to be engaged. That in Railway Board letter dated 08.01.1997 (Annex.A/3) his working period has been shown from 1994 to 2001. That he filed representation in year 2000 followed by reminders in 2006 and 2012 respectively for his absorption on regular basis as Safaiwala but respondents' did not pay any heed. That as per order dated 29.09.2006 he filled up the prescribed form for screening as substitute. The respondents discontinued the services of part time Safaiwalas, according to the instructions received from the Railway Board. That respondents have rejected applicant's claim vide order dated 19.11.2013 on the ground that he was engaged on 10.01.1997 i.e. after issuance of the Railway Board's Circular dated 08.01.1997. Prayer has been made for direction to respondents to engage the applicant on regular basis with all consequential benefits. **Respondents** have filed their reply stating that that they rightly have rejected the claim of applicant as he was not engaged after issuance of Railway Board's Circular dated 08.01.1997. It has been pleaded that applicant was working as part-time Safaiwala at Nadiad Station but not from year February 1996, as stated, as has been pleaded in OA, he has worked from 10.01.1997 to till 05.02.1999 and after that he himself stopped coming. The applicant did not

work in February 1996 as is clear from Annex.R/2 filed with the reply along with the Muster-roll. That applicant's so called representation(s) were never received in the office of respondent-department. That respondents have acted absolutely as per the Rules and Instructions and further based on decisions rendered by Hon'ble High Court of Gujarat while dealing with matters of part-time Safaiwalas and after considering the issue in entirety, the impugned speaking order was passed. It is therefore, prayed that OA may be dismissed.

- (vi) **OA No. 316/2014** – The OA has been preferred with MA for condonation of delay, being MA No. 191/2013. Applicant pleaded that she was appointed as Part Time Safaiwala in year 1999 and without any break had worked for more than 13 years. That respondent also did issue certificate dated 08.10.2005 certifying that she was working for last three years (No such Certificate dated 08.10.2005 is on record) and that another Certificate dated 06.03.2013 (Annex. A/2), reveals that she is working as Safaiwala for cleaning of office on daily wages basis from Sept 2012. That the Railway Board vide letter dated 16.01.1997 (Annex.A/6) issued Instructions to discontinue part time Safaiwalas' by replacing full time Safaiwala and all Zonal-in charges were required to send proposal for the same. That as per direction of the Court, respondents' had issued a Notification dated 31.05.2012 and has regularised those part-time Safaiwalas whose total service was only 50 days. That on 11.05.1999 Railway Board issued letter to all the General Managers for screening of Casual Labours working in the Live Register or in Supplementary Live Register but respondents

failed to consider the same. That despite availability of large number of vacancies respondents did not consider applicant's regularisation. That as per RBO No. 137/2010 also, applicant is entitled for regularisation but respondents failed to implement the same. That she made several representations viz. on 12.07.2005, 22.03.2007, 23.09.2012 for her absorption on regular post of Safaiwala but respondents did not pay any heed. That she filed OA No. 398/2012 which was disposed of on 06.03.2013 with direction to the respondents to decide applicant's representation and his representation thereafter was rejected, vide letter dated 24.05.2013 Annexure-A, on the ground that her case does not cover under the scheme. Prayer has been made for quashing of letter dated 24.05.2013 (Annexure-A) and, for direction to the respondents to engage the applicant on regular basis, with all consequential benefits.

Respondents have filed their reply stating that they rightly have rejected the claim of applicant as she was never engaged by the Railway Administration as part time Safaiwala , she was given Safai work on contract basis at CSI/ND Office vide letter dated 10.03.2006, for year 2006-2008 @ Rs 30/- per day and her contract terminated automatically after completion of period. That the Safai work was done by the applicant on the basis of contract allotted to him for first one year and after that twice for two years, thus he had no right to ask for regularisation as the work was allotted on contract basis. The Circular of Railway Board, relied upon by applicant is not applicable in her case as she was not in service as part-time safaiwala when it was issued. Even as per instructions given by

the Railway Board, applicant does not come under that zone so merely stating of such circular would not be helpful to her. Applicant is not entitled to any relief and OA being devoid of merit be dismissed.

- (vii) **OA NO. 335/2014** – The OA has been preferred with MA for condonation of delay, being MA No. 205/2014. Applicant pleaded that he, in year 2008 was appointed as Part-time Safaiwala and he worked as such under the respondents, without any break till year to 2012. That letter Annexure A/2 of respondents also speaks that he has worked from year 2009 to year 2012. That WREU, vide its letter of year 2011, Annexure A/4, requested the respondents to absorb him as substitute but it was turned down. That as per Railway Board's letter dated 06.02.1997 the services of part time Safaiwalas had to be discontinued to replace them by full time Safaiwalas. The respondents' vide letter dated 09.01.1998 sanctioned post of Safaiwala. The Railway Board instructed all the General Managers' vide letter dated 11.05.1999 for screening of Casual Labours of Live Register/Supplementary Live Register. That Railway Recruitment Cell, Mumbai advertised about 508 posts for Safaiwala for Baroda, Rajkot and other Divisions of the Western Railway. Respondents issued a Notification as per the Court's order dated 31.05.2012 to engage Safaiwalas on regular basis. That while disposing of the OA 88/2012 on 06.03.2013, this Tribunal directed the respondents to decide representation dated 25.03.2013 of applicant but his representation was rejected vide letter dated 24.05.2013, Annexure A. Prayer has been made for quashing of letter dated 25.03.2013 Annexure A and for direction to respondent to engage the applicants on

regular basis, with all consequential benefits. **Respondents** have filed their reply pleading that applicant was engaged on part time basis, that the Circular of Railway Board, relied upon by the applicant, is not applicable in his case, as he was not in service as part time Safaiwala when said circular was issued. That even as per instructions of the Railway Board, applicant does not come in the zone of consideration. It is further pleaded that the persons who were working at the time of issuance of Railway Board's Circular of January 1997, said Circular applicable to them only and applicant cannot claim any benefit of this circular and that they have not violated any provisions and OA deserves dismissal.

- (viii) **OA NO. 336/2014:**—The OA has been preferred with MA for condonation of delay, being MA No. 206/14. Applicant pleaded that he, in year 2001 was appointed as Part-time Safaiwala and he worked as such under the respondents, without any break till year to 2008. That as per Instructions received from the Railway Board, vide letter dated 16.01.1997 (Annex.A/5) applicant's continuance as Safaiwala was discontinued to make place for regular Safaiwala. Applicant filed OA No. 78/2012 wherein, this Tribunal directed, on 06.03.2013 to decide applicant's representation dated 25.03.2013 which was rejected vide order dated 24.05.2013 on the ground that applicant's case does not cover under the scheme. As per Tribunal's order, respondents issued a Notification dated 31.05.2012 to regularise the part time Safaiwala. That respondents have sanctioned post of Part-time Safaiwala vide letter dated 09.10.1998. That the Railway Board issued letter to all the General Managers on 11.05.1999 for the screening of Live Register / Supplementary Live

Register but, respondent-department had failed to consider the same. That the respondents issued a Memorandum for appointment of Safaiwalas on 11.05.2001 but respondents did not regularise the applicant despite having clear vacancies. That as per the RBO No. 137/2010 respondents issued a letter for continuance of substitutes in Railway Department and their service will be counted for full pensioner's benefits from the date of completion of four months continuous service provided it is followed by absorption in regular service without break. Prayer has been made for direction to respondent to engage the applicants on regular basis, with all consequential benefits.

Respondents have filed their reply pleading that applicant's contract was for two years and hence question of termination does not arise. That the Circular of Railway Board, relied upon by the applicant, is not applicable in his case, as he was not in service as part time Safaiwala when said circular was issued. Applicant started working from April 2002 whereas Railway Board letter was issued on 08.01.1997. That even as per instructions of Railway Board, applicant does not come in zone of consideration, the persons who were working at the time of issuance of Railway Board's Circular of January 1997, said circular applicable to them only and applicant cannot claim any benefit of this circular. It is also pleaded that additionally, as per Annex. A/4 applicant has not qualified the prescribed medical examination nor submitted any Medical Fitness Certificate for the recruitment of Safaiwala. That appointment of substitutes in Railways is on different footing, though it is applicable to casual labours but limited to only those casual

labourers who have completed 180 days without any break and applicant has no right to claim on the ground of casual labourers as he was not a Casual Labour. That they have not violated any provisions and OA deserve dismissal.

- (ix) **OA NO. 339/2014** :— The OA has been preferred with MA for condonation of delay, being MA No. 208/2014. Applicant pleaded that he, in year 2001 was appointed as Part-time Safaiwala and he worked as such under the respondents, without any break till year to 2008. The Railway Board issued Instructions on 06.02.1997 to discontinue part time Safaiwalas to fill up the post by full time Safaiwala subject to their qualifying medical examination and subject to age relaxation. Respondents have sanctioned post for Part-time Safaiwala vide letter dated 09.10.1998. The Railway Board instructed the General Manager vide letter dated 11.05.1999 for screening of Casual Labour in the Live Register / Supplementary Live Register. Respondents' have issued Notification dated 31.05.2012 as per direction of the Court to engage Safaiwala on regular basis. Applicant approached this Tribunal in OA No. 53/2012 which was disposed of on 06.03.2013 directing the respondent to dispose of representation of the applicant which was rejected on 24.05.2013 on the ground that his case was not covered as per the scheme, hence this O.A. **Respondents** have filed their reply pleading that applicant had worked in between 2002 to 2008, on contract basis and had no right for reengagement or regularisation in view *of Uma Devi's* judgment. As regards the applicability of Circular of the Railway Board dated January 1997, it is pleaded that applicant

cannot claim as the same was on different footings. Respondents' have thus not violated any provision and the Circular referred to by the applicant is not at all applicable to the case of applicant.

- (x) **O.A. No. 212/2015** - The OA has been preferred with MA for condonation of delay, being MA No. 178/2015. Applicant pleaded that Applicant worked as Part-time Safaiwala during year **1996 to 2009**, without any break and was paid wages regularly. That according to the Instructions of the Railway Board, the services of the part-time Safaiwala was discontinued to fill the post by full time Safaiwala subject to their qualifying medical examination and subject to age relaxation. The Railway Board instructed the General Manager(s) for the screening of Casual Labours in the Live Register / Supplementary Live Register vide letter dated 11.05.1999. The applicant sought regularisation but his request was not acceded to. Applicant previously filed OA No. 14/2015 which was disposed of on 19.01.2015 with liberty to file a fresh O.A. **Respondents** have filed their reply stating therein that applicant was engaged for cleaning and sweeping work on contract daily rate basis, vide letter dated 29.04.1996 on specific terms and conditions and as per Clause 6 of the Terms and Conditions, he is not entitled to claim anything from the Railways, thus question of regularisation does not rise. That the contract was of period from 01.04.1996 to 01.03.1997 but applicant, giving application dated 31.12.1996 discontinued the work on 31.12.1996 and for subsequent period another person had to engage. That applicant has no right for reengagement or regularisation in view of **Uma**

Devi's judgment. That as regards the applicability of Circular of the Railway Board dated January 1997 relates, it is pleaded that applicant cannot claim benefit under this circular as it is on different footings.

3. Learned counsel Ms. S.S.Chaturvedi, appearing for applicants of all the OAs at thresh hold, placed on record a Compilation of documents and submitted that these documents relates to all ten OAs. The documents comprising the Compilation are; (i) Annexure P-1, Pay Roll for the period from November, 1999 to April, 2002 (ii) Annexure P-2 & Annexure P-3 Muster Roll for the period of October, 1996 & Payment-sheet of May, 1998 respectively and (iii) Annexure P/4 copy of sanctioned post/vacancy position as was on 24.01.1994.

4. Learned counsel urged that grievance of the applicants are that they were appointed as Part Time Safaiwala by the Railways, they served the Railway Department for years together. That the Railway Department framed Policy for regularisation of Part time Safaiwala and for recruitment/regularization in Group 'D' Post of applicants' like candidates but applicants were not regularised and rather their services were terminated. She contended that Railway Board in year 1997, vide Circular dated 8th January, 1997 had directed that persons engaged as part time Safaiwala or on Contract as Part- time Safaiwala by Railways, be recruited as Safaiwala and their examination may be taken by relaxing their age but respondents authority ignored the circular of the Railway Board. That had the respondents' acted within time in accordance with the said circular of Railway Board dated 08.01.1997, the applicants would have become regular and there would not have been any grievance that respondents are not regularising their services.

5. Ms. S.S. Chaturvedi then refers factual aspects of each OA to highlight that applicants deserve relief of regularization and urged further that previously similarly situated other Part Time Safaiwalas has filed OA before this Tribunal and the Tribunal has directed for their regularisation and that Orders passed by the Tribunal were upheld by Hon'ble High Court. She placing reliance upon decisions/Orders : (i) Decision dated 09.10.2007 passed by Hon'ble Supreme Court in case titled *U.P. State Electricity Board vs Pooran Chandra Pandey & Others*, (ii) Judgment dated 08.12.2011 passed by Hon'ble High Court of Gujarat in case titled *UOI Versus Sanjaybhai Johnbhai Makwana* in SCA No. 23431/2007 & batch, (iii) Decision dated 11.04.2011 passed by Hon'ble High Court of Gujarat in case titled *UOI Vs. Sunil Manubhai Waghela* in SCA No.4680/2011, (iv) Decision dated 23.03.2007 passed in OA No.714/2005 by Ahamadabad Bench of Central Administrative Tribunal and (v) Decision dated 04.06.2007 in case titled *Vithal Kondiba Versus & one another Vs. UOI*, passed in OA No.467/2005 by Bombay Bench of Central Administrative Tribunal. Ms. S.S.Chaturvedi and contended that case of applicants are squarely covered by aforesaid decision/Order.She also referred Circular dated 08.01.1997 of the Railway Board.

6. Refuting the submissions, learned counsel Shri M.J.Patel, appearing for respondents urged that applicants are not entitled to relief, as has been claimed. He disputed the factual aspect as has been pleaded in the OA or pressed for by applicants' side during submissions at Bar and submitted that as far as applicants of these OAs in hand relates some of applicant were purely on contract basis and has discontinued the work prior to coming into existence of Railway Board circular dated 08.01.1997 and none of them was in

service when said circular was issued and therefore they cannot claim benefit under Railway Board circular dated 08.01.1997 and that their service had been discontinued more than a decade ago, record of some of them has also been destroyed also. He also urged that applicant of OA, relating to whom decision/judgment, relied upon by the counsel for applicants pertains had served continuously for more than a decade or so whereas present applicants had served only from few days to 2-3 years. He argued that facts in case decision/judgment relied upon by the counsel for applicants were distinguishable and cannot be applied in case in hand. He also urged that applicants of OA Nos. 374/2012, 40/2013, 130/2013, 432/2013, 245/2014, 316/2014, 335/2014, 336/2014, 339/2014 & 212/2015 had worked as Part Time Safaiwala only for one year in two spells purely on contract basis on certain terms and conditions and applicants of OA No.130/2013 had worked for only few months in year 1988.

7. Considered the submissions and perused the record minutely. Claim of applicants of aforementioned bunch of ten OA mainly stem from Circular of the Railway Board No. E(G)97EC211 dated 08.01.1997 so it is necessary to take note of said Circular of the Railway Board and the operative portion of the Circular is reproduced below :

“-----Subject : Cessation of cleaning contracts and making available alternative departmental arrangements

*1. [No.E(G)97EC2/1 dated 8.1.97]
Board had earlier directed that entire contracts for safai work should not be renewed on their expiry and no fresh contract for such work should be entered into (Board's letter No. 96/LMB/1 departmental 11/7 dated 8.8.96 connected. In the absence of date in regard to the number of contracts in existence and implications of switching over to departmental arrangements, Board had permitted the Railways to extend the existing contracts for a further period upto 31.12.1996.*

With effect from 1.1.1997, Safai work involved in office premises service buildings, stations, residential colonies and coaching maintenance depot's should be done departmentally Group C and D posts as considered essential and necessary may be created with the personal approval of the General Manager and with finance concurrence. While creating posts, surplus posts available elsewhere may be taken into consideration. Such posts may be created without an immediate matching surrender in view of the urgency involved. Matching surrender of equal monetary value shall, however, be ensured by 31.12.97 and confirmation to the effect given to Railway Board.

Where safai contracts are for removal of collected garbage and its dumpint at a permitted location involving transport and where cleaning of safai work is thus not involved, contractual arrangements may continue.

Board have earlier, vide letter No. E(MG)11/91/RR-1/21 dated 29.1.1995 circulated under P.S. No. 11147/96 permitted the General Managers to recruit safaiwalas. Making use of this delegation, new recruitment as is necessary for the posts now created may be done. While doing so, existing instructions on the subject may be followed.

Where part time safaiwalas/substitutes have been directly engaged by Railway, such safaiwalas / substitutes may be recruited as safaiwalas, subject to their qualifying the prescribed medical examination Board approve of age relaxation in this regard.

The above instructions are applicable to all departments (e.g. Commercial, Medical, Civil Engineering, Mechanical etc.) for the Railway where contract for safai work have been awarded. Railways may confirm at the earliest about departmental arrangements having been made.

This letter issues with the concurrence of the Finance Directorate and the approval of the Board."

8. The Circular dated 08.01.1997 was issued clarifying the earlier letter dated 08.08.1996 for policy decision of cleaning contracts and making available alternative departmental arrangements. It has been

made effective from 01.01.1997 and it provides that where part-time Safaiwalas / substitutes have been directly engaged by Railway, such Safaiwalas / substitutes may be recruited as Safaiwala, subject to their qualifying the prescribed medical examination. Board also approve of age relaxations in this regard. The Railway Board clearly has directed that such part-time sweepers who were directly engaged by the Railways be recruited as Safaiwalas and their medical examination may be taken by relaxing their age. Use of terminology “*With effect from 1.1.1997*” indicates that part-time Safaiwalas / substitutes engaged and in job on said date are entailed to benefit of this Circular and such part-time Safaiwalas / substitutes may be recruited as Safaiwala

9. Ms.S.S. Chaturvedi to fortify her submission that previously similarly situated other Part-time Safaiwalas has been given relief of regularisation has cited some decision also. Though broad resemblance of those case, with case in hand may be there but mere broad resemblance to another case is not at all decisive, however I am taking note of some of decision/ judgment relied upon by Id. Counsel for applicant.

10. In *U.P. State Electricity Board vs Pooran Chandra Pandey and Others*, cited ibid writ petitioners were daily wage employees of the Cooperative Electric Supply Society, the Society had been taken over by the Electricity Board on 03.04.1997 and in minutes of the proceeding of taking it was mentioned that the daily wage employees of the Society who are being taken over by the Board will start working in the Electricity Board in the same manner and position and pursuant to the said proceeding, the writ petitioners were absorbed in the service of the Electricity Board. Electricity Board had taken a

decision on 28.11.1996 to regularize the services of its employees working on daily wage basis from before 04.05.1990 on the existing vacant posts. The contention of the writ petitioners was that since the Society had been taken over by the Electricity Board, the decision dated 28.11.1996 taken by the Electricity Board with regard to its daily wage employees will also be applicable to the employees of the Society who were working from before 04.05.1990 and whose services stood transferred to the Electricity Board and who were working with the Electricity Board on daily wage basis. It was held by the learned Single Judge in his judgment dated 21.09.1998 that there was no ground for discriminating between two sets of employees who are daily wagers, namely, (i) the original employees of the Electricity Board and (ii) the employees of the Society, who subsequently became the employees of the Electricity Board when the Society was taken over by the Electricity Board. This view of the learned Single Judge was upheld by the Division Bench of the High Court and Hon'ble Supreme Court uphold the view taken by the Division Bench and the learned Single Judge and observed that the proceeding dated 03.04.1997 makes it clear that the employees of the Society should be deemed to be the employees of the Electricity Board with continuity of their service in the Society, and it is not that they would be treated as fresh appointees by the Electricity Board when their services were taken over by the Electricity Board and in this view of the matter, the writ petitioners were held entitled to the benefit of the order of the Electricity Board dated 28.11.1996 and were given the same status and benefit of regularization in the similar manner as it was given to the employees of the Board.

11. In *UOI & Ors. Vs. Sunil Manubhai Waghela* respondent Sunil Manubhai, was engaged for cleaning the premises of Railway station, he challenged his termination order dated 01.04.2002 before the Tribunal, in OA No. 483/2002. The Tribunal disposed of the OA with directions, which includes the direction that if Safaiwalas have to be engaged on a full time basis then the applicants should be given first preference in terms of the Railway Board Circular of 06.02.1997 and give them posting subject to their qualifying the prescribed medical examination. The order passed by the Tribunal was not accepted by the respondent of the OA and applicant filed an Execution Petition, No. 04/2009 and while disposing of the said E.A., the Tribunal observed that there is a complete lack of application of mind so far as engagement of Sunilbhai M. Vaghela is concerned. The Tribunal then directed the competent authority to reconsider the case of the applicant and make appropriate order in consonance with the order of this Tribunal. In compliance of order passed in EA, respondent-department holding that respondent (Sunil Bhai M. Vaghela) did not have the requisite educational qualification viz. VIII pass as prescribed in the RBE No. 277/98 rejected his request for appointment as Substitute in Railways. The respondents of the SCA again knocked at the door of the Tribunal and the Tribunal dictated that as per directions of this Tribunal in OA No. 483/2002, respondents were required to regulate applicant's engagement in terms of Railway Board circular dated 08.01.1997 and said directions were also reiterated while passing order in E.A. No. 4/2009 dated 23.02.2010. When the matter came on the file of Hon'ble High Court, the Hon'ble High Court observing that the order dated 05.11.2004 became final and binding between the parties and that it was not open to the respondents to sit over the order of the Tribunal and to pass an

order without considering the Circular dated 08.01.1997 dismissed the S.C.A.

12. In *Vithal Kondiba Versus & one another Vs. UOI*, cited *ibid*, the undisputed fact before Bombay Bench of Central Administrative Tribunal were that both applicants initially were engaged on part-time basis, but subsequently were engaged for full time of eight hours for doing the job of Sweeper, Gardener and other connected work. It is also evident from the decision that they have been working for years together regularly and continuously in a satisfactory manner, without any complaint as regards their work and conduct. In said facts those applicants were directed to be regularised with consequential benefits as they have continuously been working for the last 11 to 15 years and there was work of permanent and regular nature against which the applicants have been working for the last so many years.

13. In decision in *UOI Versus Sanjaybhai Johnbhai Makwana*, delivered by Hon'ble High Court of Gujarat, cited *ibid* and relied upon by applicant's counsel, grievance of the applicants of OAs, namely of OA No.714 of 2005, OA No.685 of 2005 and OA No.389 of 2006, was that they were appointed part time Safaiwalas in year 1995, 1996 and 1997 on contract basis by the Railways and not through any contractor or any agency and the Railways directly appointed them on contractual basis. These part-time sweepers continued for 10 to 13 years. The Tribunal issued a direction to the General Manager, Western Railways that in consultation with the Railway Board, appropriate guidelines in respect of part time Safaiwalas governed by 1997 Circular be issued so that their cases may be considered within three months and after issuance of these guidelines, the decision in the individual matter shall be taken within

one month thereafter. The Tribunal's order was challenged on file of Hon'ble High Court and counsel for respondent fairly informed the Court that under the interim order of the Court, those part-time Safaiwalas are continued and they have been regularized also. However, the Hon'ble High Court observing that all those Safaiwalas continued for a period of 10 or more years and in year 2005, new Rules for recruitment of Group D employees were framed, disposed of all Writ Petitions with a direction to the Railway Board to consider the claim of respondents Safaiwala who were working when the Circular of 1997 was issued and who were directly engaged by the Railway Board on contract basis for regularization/recruitment by relaxing their age after taking medical test. The aforesaid exercise had to be completed by the Railway Board within a period of three months from date of order.

14. Bare perusal of **Pooran Chandra Pandey's** case shows that the issue evolved was centred around whether the writ petitioners, who were daily wage employees of the Cooperative Electric Supply Society which had been taken over by the Electricity Board and were absorbed in the service of the Electricity Board, legally could be treated differently in regularization of the services, with employees directly engaged on daily wage basis by Electricity Board. In **Sunil Manubhai Waghela's** case Tribunal's order to consider case of **Sunil Manubhai Waghela** for regularization in view of Circular dated 08.01.1997 was not accepted by the respondents and after reiteration of direction in Execution Petition respondents passed order that applicant was not fulfilling the requisite educational qualification and thereafter the Tribunal did pass order that Circular dated 08.01.1997 is subject to qualifying the prescribed medical examination only. In said backdrops Hon'ble High Court observing that earlier Order

passed by the Tribunal has already attained finality, dismissed the SCA. The colour of decision of these two case is not matching with the colour of case in hand, even remotely. In ***Vithal Kondiba's & Sanjaybhai Johnbhai Makwana's*** case though broad resemblance is there that original applicants of those case were extended benefit of taking recourse of Circular dated 08.01.1997 but other facts, having bearing on relief are in quite contrast. Original applicants of those two case continued as Safaiwalas for a period of 10 or more years, they were in service when circular dated 08.01.1997 was issued. The question now raise whether applicants of OAs in hand can be extended any benefit taking recourse of those decisions and can be said to be on same footings?

15. In ***Ambica Quarry Works vs. State of Gujarat & others*** (1987) 1 SCC 213 (vide para 18) Hon'ble Supreme Court observed that the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. In ***Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd.*** (2003) 2 SCC 111 (vide para 59), Hon'ble Supreme Court observed that it is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In ***Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another*** (AIR 2004 SC 4778) Hon'ble Supreme Court holding that a decision cannot be relied on without disclosing the factual situation and also observed that court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations

must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

16. Case of applicants of these ten OAs can broadly be divided into three categories, viz.(i) applicants who engaged prior to 08.01.1997 and were in job on 08.01.1997, (ii) applicants who though were engaged prior to 08.01.1997 but were not in job on 08/01/97& (iii) Applicants who were engaged after 08.01.1997. Needless to say the date 08.01.1997 is of vital importance as Circular of the Railway Board No. E(G)97EC211 is of 08.01.1997. It is now time to advert to factual aspect qua period and tenure during which applicants did the job of cleaning whether on appointment as Part-time Safaiwala or on contract and position emerged is :-

A. Applicant of OA 374/2012 pleaded that after appointment as Part-time Safaiwala, he had worked from 2004 to till year 2006 when his services were discontinued and his counsel during argument has also argued he had worked from 2004 to till year 2006. Respondents have pleaded that he has not worked for three years but had worked as part time Safaiwala on contract basis, in two spells for one year only. Submission of Learned counsel is that even if it tenure is assumed as correct despite he was not in service when circular dated 08.01.1997 was issued. Work Order Annexure A-2 reveals that he was assigned cleaning of RPF office & barracks on purely contract basis @ Rs. 25 per day, in two spells for period 01.11.2004 to 31.03.2005 and from 01.04.2005 to

31.03.2006. Muster Roll Annexure A-3 reveals the payment from November 2004 to September 2005. Having taken note of entirety it can be said that he has worked continuously, with notional absence of one or two days in a month, from 01.11.2004 September 2005 as Safaiwala on contract basis.

B. Applicant of OA No. 40/2013 pleaded that he was appointed as Casual Labour and had put in 260 days continuous service under IOW Godhra, passed the screening test, did pass physical test and certificate, dated 22.07.1986 was issued, IOW issued order for sanctioning temporary status, he become entitled for the regular after year 1986, he was not called for regularised post, though his juniors were regularised. That when was not reengaged nor was offered any re-appointment then he, on 27.01.1986 sent representation for his re-engagement on regular basis. Respondents have pleaded that he was not granted temporary status, letter dated 23.05.1985 of IOW/GDA's shows that he was not eligible for TS as he had not completed 120 days. Applicant's counsel has argued that applicant has worked as Casual Labour in different spells i.e. from 10.2.1984 to 20.4.1984, 26.11.1984 to 20.12.1984 and 27.12.1984 to 02.7.1985; she did point his Yellow card Annexure A-2. Counsel for respondents has urged that applicant was not eligible for Temporary Status as he has not completed 120 days; he was not screened at all. That Temporary Status of casual labourers who were in Live Register prior to 1981 was only called for the screening because there was ban on engagement of casual labour/substitute after 14.07.1981. At the threshold it is noted that pleading as has been made is scanty, it is not even disclosed as to when applicant was appointed and when his service was discontinued. According to respondent he has not completed period

of 120 days as casual labour. Though physical fitness Certificate dated 22.07.1986 of applicant of his medical fitness in Grade BEE ONE is there but applicant has also pleaded order for sanctioning temporary status was also issued but no such certificate is there with the record. Yellow card Annexure A-2 is the Xerox copy and no signature impressions of its issuing authority is there, the seal affixed is not legible. Anyhow as per this card applicant from 10.02.1984 to 02.07.1985, has worked in three spells in span of period of about 281 days (70+25 +186) as casual labour.

C. O.A. No. 130/2013 has been preferred by nine applicants jointly, they as per their pleading were appointed as Casual Safaiwala under the BRC Division as then Railway Minister had to visit Baroda Division from 07.09.1988 to 31.12.1988. Respondents have pleaded that applicants were utilised for a sporadic type work in year 1988, say cleanliness of lines, sanitation etc. and that they were engaged on daily wages and were accordingly paid. That their services were dispensed with as their names did not find place in the seniority list of ex-casual labour/Safaiwalas as their names were not borne on any Live Register which was a pre-condition for placing them on any seniority list. Respondents relying on Railway Board's Circular No. 48 has pleaded in their reply that "Casual labour card need not be prepared and issued to the casual labour who are engaged for a very limited period". Applicant's Counsel fairly conceded that exact working period of applicants is not known but she urged that they had worked for long. She referred Annexure A-1 to Annexure A-6 and submitted that similarly situated applicants of OA No.608/1994 were given relief by the Tribunal, vide decision dated 23.03.1995 (Annexure A-7) and added that assurance of the respondents to consider the case of the

similar employees in future vacancy is Annexure A-8. **Counsel for respondents** urged that applicant have worked as casual Safaiwala and their service were utilised for specific work on Railway during the period from 07.08.1988 to 31.12.1988 on daily wages and were paid accordingly and their name were not borne on any Live Register. **To advert** to when undersigned perusal the Annexure did find that copy of Live Register/ Attendance Register, Annexure A-1, reveal that it is the Attendance Sheet and surprisingly out of nine only name of four applicants are there in this sheet and it is of period from 21.12.1988 to 30.12.1988. Sanction letter Annexure A-2 is not thoroughly legible, however it can be deduced that it was issued on 09.01.1989, relates to appointment of 20 persons w.e.f. from. 21.12.1988 and its typed copy, at page 18-A and though it is showing name of twenty appointee but name of applicants number 7 to 9 are not there in this sheet. Name in annexure A-3 & A-4, more or less is on same pattern. Annexure A-5 comprises of six certificates, in favour of six applicants and the certificate reveals that they worked satisfactorily from period 23.12.1988 to 30.12.1988. Annexure A-6 again is not legible. From material available it is manifest that applicants have worked as casual Safaiwala and their service were utilised for specific work for very short period since 21st Dec.,1988, may be for less than a month. Case of applicant is on different footings than the case of applicants of case, decision of which is at Annexure A-7.

D. Applicant of *O.A. No. 432/2013* pleaded that without any break he had served the respondents for seven year from March 1994 to 2000, that instead of regularising him, respondents terminated his services. **Respondents** have pleaded that it could not be

ascertained whether applicant had worked as part time Safaiwala, as the material supplied by him is not sufficient, respondents have no record in this connection to verify details of case of the applicant as all the files, P.Os, Paid Vouchers etc. which could be relevant has since been destroyed. That applicant if he had certificate of having served as part time Safaiwala from 1994-1997, as pleaded by him, he ought have claimed his regularisation in year 1997 itself or in 1998 as per Railway Board's letter of 1997 but he did not claim regularisation at that time and waited for more than a decade. Applicant's counsel has urged that applicant did work as Part Time Safaiwala from March 1994 to 12.02.1997 and was working at the time of promulgation of Circular dated 08.01.1997 and to fortify her said submissions she referred Annexure A-1. Counsel for respondents urged that no record of this applicant is in the office of the respondents as all files, pay voucher etc have been destroyed as same were beyond their preservation period. To advert to factual aspects when I had the glance of Annexure A-1, the so called pay slip of applicants for period from February, 1996 onwards as submitted by Applicant's counsel, I did find that it comprised of a certificate and some pay orders. The certificate issued is having certification that applicant is working in the office of issuing authority as Part time Safaiwala since March 1994. The date of this certificate appears to be 12.02.1997 but it is not clear who is its issuing authority. It is very fade zerox copy and at signature place fade illegible impression of some signature is there and impression of seal is also not clear. The pay orders are also fade zerox copy, however their typed copy shows that applicant was paid on account of part time Safaiwala in month of Jan. 1996. After January 1996 attached pay order are of

December 1998, April 1999, May 1999, September 1999, October 1999 & December 1999. There is no document of year 1997 much less of period when Circular of 1997 was issued. It cannot be ascertained from material available whether the applicant had worked, as Part Time Safaiwala from 1994 to 2000 continuously as has been pleaded. Moreover during argument the stand of applicant is at variance, her counsel has argued that applicant did work from March 1994 to 12.02.1997.

E. Applicant of OA No. 245/2014 pleaded that without any break he had served the respondents from year 1996 to 2000 and that instead of regularising him, respondents terminated his services. That respondents have rejected applicant's claim vide order dated 19.11.2013 on the ground that he was engaged on 10.01.1997 i.e. after issue of Railway Board's Circular dated 08.01.1997. **Respondents** have pleaded that that they rightly have rejected the claim of applicant as he was engaged after issuance of Railway Board's Circular dated 08.01.1997. It has been pleaded that applicant was working as part-time Safaiwala at Nadiad Station but not from year February 1996, as has been pleaded in OA, he has worked from 10.01.1997 to till 05.02.1999 and after that he himself stopped coming. The applicant did not work in February 1996 is clear from Annex.-R/2 filed with the reply along with the Muster-roll. Applicant's counsel has urged that applicant did work as Part -Time Safaiwala from year 1996 to 2000, which stand established by Annexure A/2 and he deserve relief. It is the submissions of learned counsel for respondents that he had worked as Part-Time Safaiwala at Nadiad Station for the period from 10.01.1997 to 05.2.1999 and thereafter he himself he has not come

to do the work. He did not work in February 1996 as has been averted in the pleadings but worked from January 1997. Muster Roll of February, 1997 filed indicates that applicant was not in the job and therefore by no fetch of imagination he was entitled to benefit of regularisation. To advert to factual aspects when I had the glance of Annexure attached, I did find that Annexure 2, the muster roll is comprised of 29 sheets, running from page 15 to page 43 of the OA. The first sheet is that of February 1996, the second is of March 1997, second last is of November 1999 whereas month & year of last sheet is not ascertainable. Applicant herein is Bharat M. Purbia and no such name is there in muster roll of Feb 1996. At Sl. No. 5 originally written name has been struck off in a way to make it non legible and underneath said struck of name, name 'Bharat Kumar Magan Bhai' has been written, Initial in token of marking attendance is from 1st Feb. to 12th Feb and thereafter alphabet "A" has been written underneath date 13th to 15th February and rest column of the month are blank. Name of Bharat M. Purbia or. Bharat Kumar Magan Bhai is not there in next two sheets but name of Bharat Mangan found mentioned in muster Roll of January 1998 and in following sheets also. Annexure A/3 is summary of arrears of period from April 1994 to Jan 2001, seven name, including Bharat Mangan are there in this annexure and though other six have been shown paid thousands of rupees as arrear, Bharat Mangan has been shown amount paid as nil. From documents and material available it cannot be deduced that applicant was working continuously since February 1996 or he was working on crucial date of Railway Board Circular of 1997.

F. Applicant of OA No. 316/2014 has pleaded that she was appointed as Part-Time Safaiwala in year 1999 and without any break had

worked for more than 13 years. That respondent also did issue certificate dated 08.10.2005 certifying that she was working for last three years and that another certificate dated 06.03.2013 reveals that she is working as Safaiwala for cleaning of office on daily wages basis from Sept 2012. That despite availability of large number of vacancies respondents did not consider applicant's regularisation. That as per RBO No. 137/2010 also, applicant is entitled for regularisation but respondents failed to implement the same. That she filed OA No. 398/2012 which was disposed of on 06.03.2013 with direction to the respondents to decide applicant's representation and his representation thereafter was rejected, vide letter dated 24.05.2013, on the ground that his case does not cover under the scheme. **Respondents** have filed their reply stating that that they rightly have rejected the claim of applicant as she was never engaged by Railway Administration as part time Safaiwala , she was given Safai work on contract basis at CSI/ND Office vide letter dated 10.03.2006, for year 2006-2008 @ Rs 30/- per day and her contract terminated automatically after completion of period. That the Safai work was done by the applicant on the basis of contract allotted to him for one year and after that twice for two years, thus he had no right to ask for regularisation as the work was allotted on contract basis. The Circular of Railway Board relied upon by applicant is not applicable in her case as she was not in service as part-time Safaiwala when it was issued. Even as per instructions given by the Railway Board, applicant does not come under that zone so merely stating of such circular would not be helpful to him. **To advert to** factual aspects when I had the glance of Annexure attached, I did find that Annexure 2 comprising of two certificates, both purportedly issued by Senior Section

Engineer (Signal) Naiad issued, the first which is dated 08.10.2005 speaks that applicant is working as Part time Safaiwala in his office since last three years and the second which is dated 06.03.2013 speaks that applicant is working from September 2012 as Safaiwala on daily wages. Annexure 3 comprising of three pay order whereby payment to applicant was made, These three Pay Orders are dated 20.9.2006, 03.08.2006 & 16.05.2007. From documents and material available, it cannot be deduced that applicant was working continuously since February 1996 or he was working on crucial date of Railway Board Circular of 1997 nor, it is known whether at present applicant is working or not in the office of respondents.

G. Applicant of OA NO. 335/2014 has pleaded that he, in year 2008 was appointed as Part-time Safaiwala and he worked as such under the respondents till year to 2012. That while disposing of the OA 88/2012 on 06.03.2013 this Tribunal directed the respondents to decide representation dated 25.03.2013 of the applicant but his representation was rejected vide letter dated 24.05.2013. **Respondents** have pleaded that applicant was engaged on part time basis, that the Circular of Railway Board, relied upon by the applicant is not applicable in his case, as he was not in service at the time when said circular was issued. Applicant's counsel took the stand that applicant case is covered by Order of the Hon'ble High Court passed in SCA No.4680/2011. Counsel for respondents contended that applicant was not serving at the time of issuance of circular dated 08.1.1997 and therefore he is not coming within zone of consideration.

- H. Applicant of OA No. 336/2014 has pleaded that he, in year 2001 was appointed as Part-time Safaiwala and he worked as till year to 2008, he filed OA No. 78/2012 and the Tribunal directed to decide applicant's representation dated 25.03.2013 and that his representation was rejected vide order dated 24.05.2013 on the ground that applicant's case does not cover under the scheme. **Respondents** have pleaded that applicant's contract was for two years and hence question of termination does not arise. That the Circular of Railway Board, relied upon by the applicant is not applicable in his case, as he was not in service as part time Safaiwala when said circular was issued. It is also pleaded that additionally, as per Annex.A/4 applicant has not qualified the prescribed Medical examination nor submitted any Medical Fitness Certificate. That appointment of substitute in Railways is on different footing and it is applicable to casual labours but limited to only those casual labours that has completed 180 days without break and applicant has no right to claim on the ground of casual labours as he was not Casual Labours. **Applicant's counsel** took the stand that applicant case is covered by Order of the Hon'ble High Court passed in SCA No.4680/2011. **Counsel for respondents** contended that applicant was not serving at the time of issuance of circular dated 08.1.1997 and therefore he is not coming within zone of consideration.
- I. Applicant of OA No. 339/2014 pleaded that he, in year 2001 was appointed as Part-time Safaiwala and he worked as such under the respondents, without any break till year to 2008. Notification dated 31.05.2012, as per direction of the Court to engage Safaiwala on regular basis was issued. That applicant approached this Tribunal in OA No. 53/2012 and the Tribunal directed to decide applicant's

representation and his representation was rejected on 24.05.2013 on the ground that his case was not covered as per the scheme. **Respondents** have pleaded that applicant had worked in between 2002 to 2008, on contract basis and had no right for reengagement or regularisation in view of *Uma Devi's* judgment or as per Circular of the Railway Board dated January 1997. **Applicant's counsel** took the stand that applicant case is covered by Order of the Hon'ble High Court passed in SCA No.4680/2011. **Counsel for respondents** contended that applicant was not serving at the time of issuance of circular dated 08.1.1997 and therefore he is not coming within zone of consideration. That appointment of substitute in Railway was applicable to those casual labourers who have completed 180 days without break in service and the case of the applicant is on different footing as he was not casual labour.

- J. Applicant of O.A. NO. 212/2015 pleaded that he worked as Part-time Safaiwala from year 1996 to 2009, without any break and was paid wages regularly. **Respondents** have pleaded that applicant was engaged for cleaning and sweeping work on contract daily rate basis, vide letter dated 29.04.1996 on specific terms and conditions and as per clause 6 of the terms and conditions she is not entitled to claim anything from the Railways, thus question of regularisation does not rise. That the contract was of period from 01.04.1996 to 01.03.1997 but applicant, giving application dated 31.12.1996 discontinued the work on 31.12.1996 and for subsequent period another person had to engage. **Applicants counsel** to fortify that applicant did work from year 1996 to year 2009 took the undersigned to Work Orders, Annexures A-2, A-3 & A-4 and certificate for the satisfactory Annexure A-5. She also contended that the applicant was working at the time of promulgation of

Circular dated 08.01.1997, vacancies were also there in Baroda Division but applicant was not regularised whereas other Part Time Safaiwala were regularised. She referred Annexure A, being the order of regularization of other Part Time Safaiwala. **Counsel for respondents** urged that applicant was purely on contract basis and has discontinued the work on 31.12.1996 by giving her application of even dated 31.12.1996 and therefore, she cannot claim benefits under of *Uma Devi's* judgment or under circular dated 08.01.1997. **To advert to** factual aspects when I had the glance of Annexure attached and referred to, I did find that Work Orders, Annexure A-2 to Annexure A-4 are three cleaning contract letter whereby contract for cleaning latrine, urinals office premises etc at the rate of Rs. 26/- per day was given to the applicant. Annexure A-2 bears date 08/6/2005 and through this letter cleaning contract of year 2005-2006 was given. Annexure A-3 bears date 26.07.2007 and through this letter cleaning contract of year 2006-2007 was given. Annexure A-4 bears date 07.12.2008 and through this letter cleaning contract of year 2008-2009 was given. Certificate Annexure A-5 having certification that work of applicant in year 2007-2008 & 2008-2009 was satisfactory. From documents and material available it cannot be deduced that applicant was working continuously since Feb. 1996 or she was working on crucial date of Railway Board Circular of 1997 nor it is known whether at present applicant is working or not in the office of respondent.

17. It is indisputable from appraisal of records that applicants of OA Nos. 374/2012, 316/2014 335/2014, 336/2014, 339/2014 were engaged at later stage, after coming into existence of Circular of the Railway Board dated 08.01.1997. Though, applicant of OA No. 40/2013, has claimed his engagement before 8-9 years of issuance of Circular but it has found that he worked in three spells sometime in the year 2004-2005. Service of applicants of O.A. No. 130/2013 were utilised for specific work only for few months in year 1988 and they were paid accordingly at that time. Applicant of OA No. 432/2013 though claimed to have served the respondents in period 1994-2000 but no record to substantiate this assertion was available, it cannot be established that said applicant was also in job at the time of issuance of Circular of 1997. Applicant of OA No. 245/2014 claims rendering service from 1996-2000 but, the categorical averment of respondents is that he worked as part time employee from 10.01.1997 1997 to 05.02.1999 on contract basis. Applicant of OA No. 212 though claimed that he worked as part-time Safaiwala during 1996-1999 without break but the stand of the respondents was that contract was of the period from 01.04.1996 to 01.03.1997 and after 31.12.1996 she did not come for work and the work had to be assigned to other.

18. The Part-time Safaiwalas who had rendered service of 10-15 years were directed to be regularised through judgment relied upon by applicants' counsel. Applicants of this bunch of ten OAs were not in service when the Circular dated 8th January, 1997 was issued, services of some of them were discontinued long back before coming into existence of the Railway Board's Circular and some of them came in service after coming into existence of said Circular dated 08.01.1997, they had not continued for a fairly long spell and their services or their contract had terminated long back, may be more than 15-16 years ago and in one case,

the service rendered claimed to be is that of year 1986-87. Their services, as noted above, discontinued a decade ago or more than a decade ago. Whether agitating the claim after such long period cannot be said to be suffering from laches ? No germane reason ordinarily could be there for such long spell of delay, nor any such germane reason has surfaced in their applications for condonation of delay.

19. From aforesaid discussions on factual and legal scenario, it is manifest that none of the O.A. is meritorious and thus all the ten O.As of this bunch deserve dismissal. Accordingly, the O.As Nos. 374/2012, 40/2013, 130/2013, 432/2013, 245/2014, 316/2014, 335/2014, 336/2014, 339/2014 and 212 of 2015 are dismissed. Parties are left to bear their own cost.

20. Before parting, it is significant to note that at the time of final hearing, Board was not reflecting pendency of any MA, except two MAs viz. M.A. No. 147/2013 & 178/2015 nor any MA was pressed for by any party to lis. However, when I perused the records while dictating final Order/Judgment, it transpired that order on some Miscellaneous Applications, meant to say the MAs were not there. Anyhow, to avoid complication it is directed that any M.A. filed for joint application, if is lying pending would be deemed to be allowed and MAs filed for condonation of delay or any other MA, if is lying pending in either of these OAs, the same shall be deemed to be disposed of in view of the observations made in the Order whereby its related OA has been dismissed. A copy of this order be placed on record of each O.A. while the main order shall be kept in O.A. No. 374/2012.

(M.C.Verma)
Judicial Member

(Devendra Chaudhary)
Administrative Member

