

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.347/2019

This the 16th day of October, 2019

Chhotubhai Harijan
Son of Bhikhabhai Harijan
Aged 49 years, Male
18, Desai Colony, Near Vishal Nagar,
Tarasasli, Vadodara- 390 009. Applicant.
(By Advocate : Shri V.V. Goswami)

VERSUS

1. Union of India
Notice to be served through
General Manager
Western Railway, Churchgate
Mumbai 400 020.
2. The Divisional Manager
Western Railway,
Divisional Railway Manager's Office
Pratapnagar, Vadodara 390 004..... Respondents

O R D E R (ORAL)

Per : Hon'ble Shri M.C.Verma, Judicial Member

1. The OA is at motion stage hearing and following Prayer
has been made therein :

"(A) The Hon'ble Tribunal be pleased to admit and allow this application.

(B) The Hon'ble Tribunal be pleased to quash and set aside the order dated 14.5.2019 at Annexure A issued by respondents authority whereby the applicant has not been granted regularization as per the orders of the Hon'ble Gujarat High Court and this Hon'ble Tribunal.

(C) The Hon'ble Tribunal be pleased to direct the respondents to consider the applicant's representation dated 22.4.2019 at Annexure B in light of the orders passed by the Hon'ble Tribunal and Hon'ble Gujarat High Court earlier in the interest of justice.

(D) Further, this Hon'ble Tribunal may be pleased to direct the respondent authorities to accord all the benefits of regularization to the present applicant in the interest of justice.

(e) To grant the any other and further relief/s as may be deemed fit in the interest of justice."

2. Facts as has been set out by the applicant in his OA are that he was serving as Part Time Safaiwala in the respondent's department, has served for period from 14.11.1981 to till August, 1992 and a certificate (Annexure A/5) to this effect has also been issued in his favour. That his service was orally terminated w.e.f. 01.9.1992 and thereafter he made numerous oral request but respondents did not pay any heed to his request. That in case of other similar situation person, the Hon'ble High Court of Gujarat had issued direction to the Railway Board on 08.12.2011, in SCA No.23431/2007 and allied matters

to consider the claim of the Safaiwala who were working when 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 and that said exercise shall be completed within a period of three months from the date of issuance of that order. Applicant pleaded further that some other persons had approached the Tribunal in year 2012-13 in bunch of OAs, including leading OA No.19/2013 and the Tribunal taking cue from aforesaid Order dated 08.12.2011 of the Hon'ble High Court of Gujarat passed in SCA No.23431/2007 and other like matters gave some direction to the respondents. That coming to know about the said decisions, applicant submitted to respondents to consider his request to reinstate with continuation in service and other consequential benefits. That time and again he made oral representation and he was assured that needful would be done in his case but when no heed was paid to his grievance, he approached the Tribunal in OA No.38/2019

and said OA was withdrawn at notice stage making submission that applicant wants to give his representation to the authority. That thereafter he gave representation dated 22.4.2019 (Annexure A-2) to the respondents but respondents, vide impugned order dated 14.5.2019 (Annexure A-1) rejected his request. Hence is this OA

3. Learned counsel Shri Vaibhav V.Goswami Advocate appearing for respondent while pressing the OA submits that case of the applicant is fully covered by the judgment of Hon'ble High Court of Gujarat dated 08.12.2011 passed in SCA Nos.23431/2007. He also urged that oral order of termination is *void ab initio* in law and thus the applicant is in continuous service. He also submits that there is no laches on the part of the applicant, applicant is illiterate poor person, he personally approached several time to the authority and every time he was given oral assurance that whatever may be outcome in case of other similar situated person, the same benefits shall be extended to him also.

4. Considered the submissions and perused the records. It is inquired from the learned counsel that applicant is seeking benefits under the Circular of 1997 of the Railway Board, said circular provides that the beneficiary can only be a person who was in service at the time of issuance of the said circular and when applicant's service has been terminated, as per pleading in OA in year 1992 how benefit of said circular can be extended to him and learned counsel answered that applicant was in service at that time, oral termination order is void ab initio and it can be construed that applicant was in service in 1997 and still is in service of respondent. Learned counsel vehemently contended that the case of the applicant is identical to those persons who had filed OA Nos. 389/2006, 685/2007 & 714/2007 and other like OAs and also urged that the ground in impugned order that the certificate is very old, more than 27 year old and the old record have already been destroyed can not be a legally tenable ground.

5. Have considered all above said aspect. The Impugned Order shows that applicant submitted the certificate showing that he working as Part time Safaiwala and has worked so till 07.08.1992. Operative portion of impugned order reads : "*However, your representation has been examined by the competent authority. Your claim is that you have worked as part Time Safaiwala from 14.11.1988 to 07.08.1992 on the basis of certificate issued by TFO (W) VS vide No.E/W/197/1/92-93 dated 07.08.1992. The document submitted by you is very old i.e. more than 27 years and the old record have already been destroyed as per guideline. In view of the above, your representation has been disposed of.*"
6. As noted it is pleaded in the OA that service of the applicant orally terminated in 1992. The certificate placed on record by the applicant, at Annexure A-5 has no date but having the year and month of issuance. It is of August 1992 and it is recorded therein that applicant is working under that office as part time Safaiwala since 14.11.1988 to till date on daily wages. The termination order, may be

oral but was never challenged by the applicant at any time and not even in present OA. The applicants of SCA appeared to be in service in 1997. Having taken note of entirety, I did not find a *prima facie* case for issuance of notice and that too after about twenty seven year of termination of service. There is not even any formal application or request concerning limitation. The OA stands dismissed.

(M.C.Verma)
Member (J)

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