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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.3071/2001

New Delhi, this the 6th day of October, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Jai Parkash S/o Sh. Hari Har Mahto,
R/o H.No.123 A, Santi Marg,
Gali No.2, Mandawali, Fazalpur,
Delhi-92

... Applicant

(By Advocate Shri S.M. Garg)

VERSUS

Union of India through

1. Director General,
Council of Scientific & Ind. Research,
New Delhi
2. The Director,
National Physical Laboratory,
Pusa Road, New Delhi

... Respondents

(By Advocate Shri V.K. Rao)

ORDER

By the present OA, the applicant seeks directions to Respondents to re-engage him as a daily wager/casual labourer, grant him temporary status and regularization with all consequential benefits.

2. The facts, as stated, are that the applicant was engaged by Respondent No.2 as a daily wager on being sponsored by the Employment Exchange w.e.f. 05.06.1989 after completion of all the required formalities for the work/duties of a daily wager and posted him as a helper in the Pumping Station. He was disengaged along with other daily wagers w.e.f. 4.3.1990/6.3.1990 on verbal order without any rhyme and reason. His name appeared at serial No.52 in the list of daily wagers in NPL as per Annexure A-1. Despite the fact that he had





been in regular touch with Respondent No.2 for his engagement as casual labour/daily wager, he was not re-engaged though other daily wagers/casual workers were being engaged. The Registered Notice dated 01.08.2001 sent by the applicant followed by a reminder dated 6.9.2001 did not elicit any favourable response. Though the applicant is senior to one Shri Raj Kishore Misra, whose name was listed at serial No.54 in the list of daily wagers prepared by NPL, who was re-engaged vide order dated 12.03.2001, the applicant has not been extended the said benefit and not treated at par with the said Shri Raj Kishore Misra. The said Shri Raj Kishore Misra and 5 others were re-engaged in terms of the direction issued by this Tribunal vide order dated 13.12.2000 in OA No. 48/1997, and the respondents should not have lost sight of the claim of the persons senior like the applicant. Moreover, it is contended that the applicant's claim is fully covered by the Scheme prepared on the said subject by the CSIR in the year 1990, as modified in the year 1995. The respondents' action in ignoring the claim of the applicant over his junior is arbitrary, discriminatory and against the principles of natural justice and also impinges on the fundamental rights of the applicant as enshrined in Articles 14 and 16 of the Constitution of India.

3. Before noticing other facts and contentions, it would be relevant to notice some brief history about this litigation. Initially the aforesaid OA had been dismissed in limine "as time barred and also on merits", vide order dated 12.11.2001. The said order has been quashed and set aside by the Hon'ble Delhi High Court in Civil Writ Petition No.1901/2002 vide order dated 13.08.2002 holding that the OA was within limitation and the same was remanded to this Tribunal "for fresh determination on merits in accordance with law." After hearing the parties, the OA was dismissed once again vide order dated 11.09.2003. On a Review Application No.18/2005, the aforesaid order dated 11.09.2003 was recalled and it was held that the Scheme of 1990, as modified in pursuance of the direction of the Hon'ble Supreme Court vide order dated 10.08.1994 in Civil Appeal Nos.5299-5300 of 1993 and subsequently issued on 06.12.1995 being



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not noticed by the Tribunal was an error apparent on the face of record. In these circumstances, the OA has been heard on merits once again.

4. The respondents contested the claim laid in the OA on the ground of limitation as well as on merits. It is contended that the present OA is not maintainable, as it has been filed after more than a decade of his disengagement, which was effected in the year 1990. On merits, it is contended that the applicant has no locus-standi to file the present OA based upon the order dated 12.03.2001 engaging 6 persons in terms of the judgment and order of this Tribunal in OA No.48/1997 decided on 13.12.2000 inasmuch as the applicant was not a party in the said OA. Moreover, the implementation of the aforesaid order does not provide any cause of action to the applicant being a third party to the said proceedings. On merits, it was contended that the engagement of casual labourers depends on many circumstances including availability of work and seniority position. It was stated that the applicant was not senior to Shri Raj Kishore Misra inasmuch as Shri Misra was initially engaged as casual/daily wager on 22.08.1988 whereas the applicant was engaged on 05.06.1989. Shri Ram Prasad was re-engaged erroneously though he was senior to Shri Raj Kishore Misra.

5. The applicant contested the respondents' plea by filing detailed rejoinder and stating that the respondents' objection about the maintainability of the OA is not tenable in law as the Hon'ble High Court of Delhi in its order dated 13.08.2002 directing the Tribunal for fresh determination on merits in accordance with law.

6. I have heard the learned counsel for both sides and perused the pleadings on record carefully.

7. As far as the preliminary objection regarding maintainability of the OA is concerned, it is an undisputed fact that the matter was remanded to this Tribunal by the Hon'ble High Court for fresh determination on merits in accordance with



law and, therefore, the objection on limitation, as projected by the respondents, is over-ruled. As far as the objection raised by the respondents about the maintainability of the OA being a third party to the judgment and order dated 13.12.2000 in OA No.48/1997 is concerned, it is not denied that direction of the Tribunal in the aforesaid order clearly observed that "while implementing the aforesaid directions, the respondents should not lose sight of the claim of persons senior to the present applicants". It is also not denied that the said order and judgment has been implemented by re-engaging the 6 persons vide order dated 12.03.2001, who were basically the applicants in the said OA. Shri S.M. Garg, learned counsel for applicant seriously contended that length of service had been the guiding factor and the applicant had rendered 208 days of service in the year 1989 and 88 days in the year 1990, while Shri Raj Kishore Misra had rendered 9 days of service in 1988, 212 days in 1989 and 45 days in the year 1990. Taking a cumulative effect of all these, it was contended that the applicant had rendered more length of service as compared to the said Shri Raj Kishore Misra. It is further contended by the applicant in specific in para 4.6 of the OA that the respondents after disengaging the applicant in mid 1990 got the works of Chowkidars/Malis etc, which were always available with them, discharged through a contractor, which contention has not been rebutted.

8. Shri V.K. Rao, learned counsel, on the other hand, contended that the judgment rendered by this Tribunal in OA No.48/1997 was not a judgment in rem and was a judgment in personam and, therefore, its benefit cannot be extended to the applicant in the present OA. It was further contended that there were a number of persons who would find place in between Shri Raj Kishore Misra and the applicant and any relief granted to the applicant at this stage would open a pandora box. There are large number of persons who were also disengaged like the applicant in the year 1990, but had not been re-engaged thereafter. Shri V. K. Rao also contended that this Tribunal, while dismissing the OA vide order dated 11.09.2003, repelled the applicant's contention that Shri Raj Kishore Misra



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was junior to him. It was further contended that the said finding can once again be reiterated and arrived by this Bench, though the said order had been recalled vide order dated 22.08.2005 in RA No.18/2005. It was also pointed out that vide Circular dated 22.07.1997 CSIR clarified that 1995 Scheme was not in suppression of earlier Scheme of 1990, but is an extension of the same.

9. Before I proceed on merit, it would be relevant to notice the Scheme framed by the respondents in the year 1990, which had come up for consideration before the Hon'ble Supreme Court in Civil Appeal Nos.5299-5300/1993, C.S.I.R. & Anr. vs. Suresh Prasad Thakuar & Ors. decided on 10.8.1994 whereby the Hon'ble Supreme Court disposed of the said appeals and directed the appellants therein to implement the direction issued by this Tribunal in terms of the modified Scheme, as directed by the Tribunal. This Tribunal in the aforesaid case had specifically held that those who had worked for 240 / 206 days (in the case of 6 days/5 days' work respectively) in a year prior to 5.12.1988 will have priority over the others in absorption. They would also be entitled to absorption in the existing or future vacancies. Those who have worked for lesser period should also be considered for absorption "in accordance with length of service put in by them." A further direction was also issued that a list of casual labourers who had been engaged prior to 5.12.1988 irrespective of whether they were presently in engagement should be prepared on the basis of their length of service in accordance with the Scheme to be modified to the extent indicated above with a view to their absorption in the available vacancies or vacancies arising in the future.

10. In pursuance of the aforesaid judgment, the respondents revised the said Scheme of 1990 which was known as Casual Workers Absorption Scheme of 1990 and the revised Scheme was approved by the Governing Body of ICSR in its 140th meeting held on 31.10.1995. Accordingly, the revised Scheme of 1995 was issued vide communication dated 6.12.1995, the relevant portion of which reads as under:-

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"ABSORPTION OF CASUAL WORKERS IN CSIR

1) *Name of the Scheme: - This Scheme shall be called "Casual Workers Absorption Scheme of CSIR, 1995" and will supersede all the earlier schemes on this subject operating in CSIR and its National Labs/Instt.*

2) *Administration of Scheme:- The CSIR hereinafter referred as "Council" will administer the scheme.*

3) *To whom Applicable:- The Scheme being a one-time measure will be applicable to the workers engaged on casual basis and paid either on daily wage or monthly basis at CSIR Headquarters and its National Labs./Instt. and will also include casual workers engaged in a sponsored project/bilateral or any time bound project scheme. Casual workers will include contract workers directly engaged by the CSIR Labs/Instt. and being paid their wages on monthly basis.*

4) *Scope of the Scheme: The Scheme will be applicable to Casual Workers initially engaged through Employment Exchange or otherwise prior to 5.12.1988 but had not been regularized for want of regular vacancies or whose services have been dispensed with for want of regular vacancies and who had worked for 240 days/206 days including Sundays and Holidays (in the case of six days/five days a week respectively) in a year prior to 5.12.1988 will have priority over the others in regard to absorption. Those who have worked for lesser period may be considered for absorption in accordance with the length of service put in by them. (emphasis supplied)*

11. On bestowing my careful consideration to the entire aspect of the matter, I find that in terms of para 4 of the 1995 Scheme, those who had worked for lesser period than 240 / 206 days are also entitled to be considered for absorption in accordance with "length of service" put in by them. If the length of service is the criteria, as noticed in the Scheme of 1995, and the said Scheme is applicable to not only casual labourers but also to contract workers directly engaged by CSIR in terms of Para-3 of the aforesaid Scheme, I find that in terms of list of daily wagers prepared by the Respondents, the applicant had put-in more longer service i.e. 208 days and 88 days in the year 1989 and 1990 respectively in comparison to the said Shri Raj Kishore Misra, who had put-in 9 days, 212 days and 45 days service in the years 1988, 89 and 90 respectively. As such the applicant was senior to the said Shri Raj Kishore Misra. It is otherwise also settled law that a senior in such circumstances be given

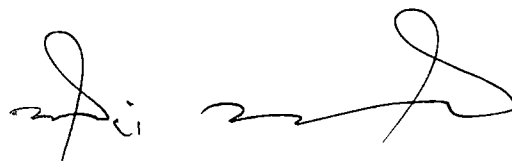
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preference for re-engagement as well as regularization. When the respondents' own scheme requires and mandate that the length of service should be the criterion, applicant being fulfilling the said requirement cannot be ignored even for re-engagement, what to talk of absorption. Therefore, I am of the firm view that the applicant is entitled to the benefit of the order dated 13.12.2000 passed by this Tribunal in OA No. 48/1997. I do not find any justification in the respondents' contention. The applicant is entitled to be treated at par with his junior i.e. Raj Kishore Misra, who was re-engaged vide order dated 12.03.2001.

12. Under these circumstances, the OA is allowed and the respondents are directed to make every effort to re-engage the applicant as daily wager/casual labour within a period of three months and thereafter regulate the relief of grant of temporary status and regularization in accordance with the aforesaid Scheme of 1995.

No costs.



(Mukesh Kumar Gupta)
Member (J)

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