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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.457/94

New Delhi: 31. 3 , 1995.

HON'BLE MR. S.R.ADIGE, MEMBER (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J).

1. Sh. Sat Narain, Helper 'A',  
s/o Sh. Amar Singh,  
F & A O, CRRI,  
Mathura Road,  
New Delhi.
2. Sh. Nihender Singh, Helper 'A',  
s/o Sh. Girdhari Singh,  
(CSFP) CRRI, Mathura Road,  
New Delhi.
3. Sh. Asif Hussain, Helper 'A'  
S/o Sh. Mansoor Hussain,  
C.O. (Civil), CRRI,  
Mathura Road, New Delhi.
4. Sh. Satbir Singh,  
s/o Sh. Randhir Singh,  
Helper 'A', C.S. (SSRR) CRRI,  
Mathura Road, New Delhi.
5. Sh. Amin Ali, Helper 'A',  
s/o Sh. Aziz Khan,  
C.S. (T & T) CRRI,  
Mathura Road, New Delhi.
6. Sh. Sanjay Kumar, Helper 'A',  
s/o Shri Amar Singh,  
CS (ILT) CRRI,  
Mathura Road, New Delhi.
7. Sh. Daya Ram, Helper 'A',  
s/o Sh. Khedu Ram,  
C.O. (Civil) CRRI,  
Mathura Road, New Delhi.

.....Applicants.

By Advocate Shri Vivekanand..

Versus

1. Council of Scientific & Industrial  
Research through its Joint Secretary (Admn),  
Rafi Marg, New Delhi - 110001.
2. Central Road Research Institute,  
through its Director, Mathura Road,  
New Delhi

.....Respondents.

By Advocate Shri V.K.Rao.

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JUDGMENT

By Hon'ble Mr. S.R. Adige, Member (A).

In this application, Shri SatNarain and 6 others, all working in the Central Road Research Institute (CRRI), New Delhi have prayed for following reliefs:

- "a) to set aside decision No. 14(ii)/90-E. II dated 6.3.93 of the CSIR only to the extent and so far as it speaks of absorption and regularisation of the applicants in Group 'D' post instead of Group 'C' post and also the letters/ replies dated 7.6.93 (Annexure-13) and 13.12.93 (Annexure-29 to Annexure-35), the same being illegal, unlawful, unjustified, arbitrary and unequitable.
- b) to direct the respondents to absorb/ regularise/ appoint the applicants in Group 'C' (Group-II Grade-I) post in the pay scale of Rs. 950-1400/- w.e.f. their respective dates of absorption regularisation/ appointment in the CRRI (I.E. 27.8.93) with all consequential benefits of arrears of pay and allowances, seniority assessment-promotions."

2. Shortly stated, the CRRI Staff Association had filed O.A.No.108/87 on behalf of 45 Workmen of that Institute alleging that the services of these Workmen had been terminated on 1.4.86 without any cause or reason. A prayer was made that these aggrieved Workmen be reinstated w.e.f. 1.4.86 with full back wages. In that O.A., it was contended that the aggrieved workmen were appointed by the CRRI MANAGEMENT as Enumerators on daily wages after a proper merit selection through a Selection Committee from amongst a number of candidates sponsored by the Employment Exchange, after passing a test and interview. It was contended that the applicants were given specialised training in the specialised work of Enumerators and were deputed with senior scientists in different departments of CRRI to work as their subordinates on the routine work of Research and

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Development carried out by CRRI and the duties of Enumerators were technical in nature such as collecting scientific data and survey in the field and processing the data etc. It was further stated that the minimum grade of Enumerator in CRRI was Rs.950-1500/- but the aggrieved employees were paid much below this scale total at Rs.500/- while the regular Enumerators were getting Rs.1200/- p.m. It was alleged that the aggrieved workmen represented to the CRRI to increase their salary and the CRRI after becoming annoyed with the demand of aggrieved employees, had decided to teach them a lesson and accordingly terminated their services w.e.f. 31.3.86.

3. The respondents challenged the contents of that O.A. and stated that some persons had been engaged(not appointed) on daily wage basis for doing temporary work of enumeration. No appointment letters were issued as the engagement of these persons was purely on daily wages for limited facets of work and was purely temporary in nature and these persons very well knew that the said engagement would come to an end when the facet of work was complete and as the services of these persons were no longer required, the same were discontinued w.e.f. 31.3.86. It was further stated that although the names of the persons were obtained through the Employment Exchange, there was no selection in the engagement of daily wagers, and there were no regular vacancies either, and, therefore, question of selecting these persons after a proper merit selection does not arise. It was contended that the CSIR under which the CRRI functions, has its own detailed rules for making proper selection on regular

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basis and no such procedure was followed while engaging the daily wagers.. Further more, it was stated that there was no post of Enumerator in the CRRI, and, therefore, question of appointing these persons as Enumerators does not arise at all. It was further stated that no specialised training was imparted to these persons and these persons were only attached with the Scientists to render necessary help to them for a particular project for which they were engaged. These persons did not perform the duties of technical nature and even non-skilled/ordinary person could perform the work assigned to them. to that O.A.,

4. In their rejoinder/ the applicant reiterated their earlier contentions. That O.A. was disposed of by judgment dated 26.5.92. It was noted in that judgment that the applicants were workmen and having worked continuously for over 240 days in 12 calendar months, they had acquired a particular status and their services could not have been terminated in the manner in which it was done by the respondents. The Tribunal held that the termination of the applicants' services were illegal, and the application was allowed with a direction to the respondents to reinstate them in service and consider their cases for regularisation provided the CRRI required their services on a long term basis. In doing so, the applicants were <sup>to be</sup> given preference over the outsiders and those who <sup>had</sup> served the CRRI on daily wages for a lesser period. In case the CRRI was unable to absorb them due to administrative compulsion, they were further directed to proceed further in accordance with law following the principle

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of 'Last Come First Go'.

5. The applicants in the present O.A. who were amongst those who had filed O.A.No.108/87, now contend that the respondents have regularised the applicants against Group 'D' posts (Scale Rs.750-940/-), whereas the applicants are entitled to be regularised against Group 'C' posts (Scale Rs.950-1400/-). They claim that they all were appointed as Enumerators on casual/adhoc basis with minimum basic pay of Rs.950/- plus allowances in Group-II grade I post for working with scientists for doing the technical works of collecting data, taking measurements, conducting surveys etc. They state that they were appointed in the year 1984-85 and their educational qualifications range from 12th pass to Post Graduate Degree. They contend that the minimum qualification for appointment to Group 'C' post (Scale Rs.750-940/-) is ITI Trade Certificate or matriculation plus two years experience and all of them possess these minimum qualifications as also the work experience. They state that consequent to the Tribunal's judgment dated 26.5.92 in O.A.No.108/87, the respondents reinstated them vide order dated 6.8.92 w.e.f. 1.4.86 on the same terms and conditions which governed their employment prior to 1.4.86 and the applicants were called upon to report for work on or before 7.9.92 which they did and the applicants were accordingly working in Group C posts. They contend that thereafter they requested the respondents that as their reinstatement w.e.f. 1.4.86 was on the same terms and conditions as before, with minimum basic pay of Rs.950/-, they be paid their wages accordingly, and upon their

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On that request, the Personnel Department of the respondents enquired as to whether they were performing the job of the Helpers or Mistry, in order to ascertain whether they should be paid Rs. 750/- or Rs. 950/-. In response to this, the respective concerned departments informed the Personnel Department of the respondents that the applicants were performing the technical work of taking measurements, calculation of areas & quantities etc. and they <sup>were</sup> accordingly given the minimum basic pay of Rs. 950/- plus usual allowances. Meanwhile, in compliance with the directions of the Tribunal to consider regularisation of applicants' services in case their services were required on long term basis, the respondents are said to have absorbed them in Group 'D' posts in the scale of Rs. 750-940/-, instead of Group 'C' posts. It is alleged that the respondents though admitting that the applicants were drawing the wages of Group 'C' employees, and also performing the duties of Group 'C' employees, have arbitrarily and unjustifiably regularised them against Group 'D', instead of Group 'C' against which this O.A. has been filed.

6. The respondents have challenged the contents of the O.A. and in their reply they state that the applicants cannot be regularised in Group 'C' posts as there are no vacant posts available in Group 'C'. They further state that a lenient view had been taken in absorbing these applicants in Group 'D' posts where the regular posts were available. It is contended that the Tribunal's judgment dated 26.5.92 in O.A.No.108/87 nowhere mandated them to <sup>absorb</sup> these applicants in Group

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'C' posts.' It was further stated that pursuance to that judgment in O.A.No.108/87, the applicants were engaged on monthly basis only and were paid monthly wages with the minimum pay of Rs.950/- plus D.A.. Keeping in view the need of the Institute for having the services of the Helpers which are Group 'D' posts, the applicants have been absorbed in this Group 'D' posts. It is contended that none of the applicants possess any scientific/technical or professional qualifications commensurate with scientific/technical/professional requirements of the Institute. It has been emphasised that in pursuance to judgment in O.A.No.108/87, the respondents have regularised the applicants in Group 'D' posts in the scale of Rs.750-940/- and there is no infirmity or illegality in the action of the respondents.

7. In their rejoinder, the applicants have reiterated the contents of the O.A. and strongly contended that the averment of the respondents that no Group 'C' posts are available, is incorrect. An unsigned statement has also been filed by the applicants showing what purports to be the staff position in CSIR on 12.12.94 on the basis of which it is contended that the vacancies in Group 'C' are available.

8. We have heard Shri Vivekanand for the applicants and Shri V.K.Rao for the respondents at some length. We note that now the New Recruitment and Promotion Scheme of CSIR, under which the CRRI operates, the posts in Grade II Group I corresponding to Group 'C' posts with pay scale Rs.950-1400/- requires minimum <sup>SSIC</sup> qualification as matriculation/plus two years' experience or ITI Trade Certificate. All the applicants appear to

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possess the experience qualifications and most, if not, all of them also appear to possess the minimum educational qualifications. In the respondents's own office memorandum dated 7.6.93 (Annexure-A13), it has been stated that the applicants were earlier working as Casual Workers of Group 'C', and from the reply dated 28.10.92 (Annexure-A7) to the O.M. dated 12.10.92 (Annexure-A6), it is clear that at least some of the applicants were working on the scale higher than that of Helper Rs.750/- and were, therefore, paid wages of a Mistry at the rate of Rs.950/- p.m.

9. Coming to the question of regularisation, the respondents contend that no posts in Group 'C' are vacant, the Tribunal's earlier judgment did not mandate them to regularise the applicants in Group 'C' and the vacancies exist at Group 'D' level and hence the applicants have been regularised in Group 'D'. On the other hand, the applicants aver that the vacancies in Group 'C' do exist, and if they do not exist, the respondents should be directed to create an adequate number of Group 'C' posts against which they can be regularised (Paragraph 4(x) and (xi) of the rejoinder.)

10. We are fully conscious of the fact that it is not within our jurisdiction to direct the respondents to create ~~the~~ posts, which is purely an executive function. The question whether an adequate number of Group 'C' posts are available at this point of time or not, is a question of fact, and in the absence of all the relevant records, we are handicapped in pronouncing conclusively on this score and nor do we propose to conduct a roving enquiry.

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11. However, having regard to the educational and experience qualifications of the applicants, and the fact that the respondents themselves admit that the applicants were working at Group 'C' level (albeit on casual basis) earlier, we direct that if and when suitable vacancies in Group 'C' (Group II Grade I) are, or become available with the respondents which are required to be filled on a regular and long term basis, the respondents shall consider the cases of the applicants for regularisation against those posts along with other candidates who might also be eligible, strictly in their turn, and in accordance with the extant rules and instructions on the subject. In the event, that after such consideration, the respondents reject the applicants' claim for such regularisation they will record their reasons for doing so. Till then the applicants will be entitled to pay protection in the scale of Rs.750-940/- together with arrears, if any, from the date of their regularisation in Group 'D', which should be paid to them, if not already paid, within three months from the date of receipt of a copy of this judgment. This O.A. is disposed of accordingly. No costs.

*Lakshmi Swaminathan*  
( LAKSHMI SWAMINATHAN )  
MEMBER (J)

*S.R. Adige*  
( S.R. ADIGE )  
MEMBER (A)

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