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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.Nos. OA 1941/89, OA 1989/89 Date of decision: 22.11.1991.
OA 1990/89, OA 1991/89
OA 1992/89 & OA 1993/89 ✓

- (1) OA 1941/89
Shri Shiv Prakash Tyagi & Others ..Applicants
Vs.
Central Building Research Institute (CBRI) & Council of Scientific & Industrial Research (CSIR) ..Respondents
- (2) OA 1989/89
Shri Ashwini Kumar Mishra & Others ..Applicants
Vs.
C.B.R.I. & Another ..Respondents
- (3) OA 1990/89
Shri Om Prakash & Others ..Applicants
Vs.
C.B.R.I. & Another ..Respondents
- (4) OA 1991/89
Shri Mam Chand Aggarwal ..Applicant
Vs.
C.B.R.I. & Another ..Respondents
- (5) OA 1992/89
Shri Ramesh Chand ..Applicants
Vs.
C.B.R.I. & Another ..Respondents
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(6)

OA 1993/89

Shri Sanjay Kumar

..Applicant

Vs.

C.B.R.I. & Another

..Respondents

For the Applicants in (1) to (6) Shri B.S. Charya,
Counsel

For the Respondents in (1) to (6) Shri A.K. Sikri,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)
THE HON'BLE MS. USHA SAVARA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

CSIR which is a Society registered under the Societies Registration Act has under its control more than 42 constituent units including the CERI located at Roorkee. The applicants in these applications have worked in the CERI in various projects and in various capacities such as draftsmen, tracers, compounder, LDC, carpenter, helper or peons. They are claiming regularisation in their respective posts and regular pay scales. They have also called in question the practice of inviting quotations/tenders and appointing on contract basis those who quote the lowest rates. As common questions of fact and law are involved, it is proposed to dispose them of in a common judgment.

2. There are 17 applicants in OA 1941/89; 3 in OA 1989/89; 5 in OA 1990/89; and 1 each in OA 1991, 1992 and 1993/1989. The applicants in OA 1941/89 belong to the above mentioned categories. The applicants in OA 1989/89 belong to the category of Junior Laboratory Assistant/Tracer. Applicants in OA 1990/89 belong to the category of helper/peon. Applicant in OA 1991/89 belongs to the category of carpenter. Applicant in OA 1992/89 belongs to the category of compounder. Applicant in OA 1993/89 belong to the category of LDC. The period of service rendered by them in the CERI has been mentioned in these applications. Broadly speaking, the position is as follows:-

<u>*OA No.</u>	<u>Period</u>	<u>Remarks</u>
1941/89	1980-1988	with breaks
1989/89	1981-1984	-do-
1990/89	1983-1988	-do-
1991/89	1988	-do-
1992/89	1981	-do-
1993/89	1988	-do-*

3. The case of the applicants is that CERI (respondent No.1) undertakes the development of packages of technology for an integrated approach to improve Rural Housing and Environment. It also takes up Planning, Design and Construction of Housing in Urban Areas for Improved Environment and Economy apart from Space Planning, Machine, Foundation, Corrosion of Materials, Strengthening of Damaged Structures, Fire & Environmental consideration of

Buildings with reference to Fertiliser Industries.

Respondent No.1 is also instrumental in setting up Architecture and Physical Planning including Planning guidelines of Human Settlement in Relation to infrastructure facilities and the Energy Conservation. With regard to Building Materials, respondent No.1 undertakes development of bricks and tiles from waste materials, development of low temperature cements, development of Portable Paddle Type Batch Concrete Mixer, development of Computer Package for Structural Analysis, development of Instrumentation to study Wave Propagation in Materials other than Concrete, Performance Assessment of Materials, Structures in Fire, Fire-fighting and Technical Aid to Industries, Housing for Disaster affected areas.

Respondent No.1 also renders Overseas services. It undertakes different projects involving the aforesaid work and services.

Rates are quoted by respondent No.1 and upon acceptance of the terms and conditions of the agreement including the rates, they proceed to take up the work at different stages.

The rates quoted by respondent No.1 includes cost of material, expenses on labour and other overhead expenses.

Respondent No.1 not only handles consultancy services through Research & Development Section but also undertakes sponsored projects for purposes of construction etc. In the year 1987 itself, the respondent No.1 had undertaken 40 consultancy and

sponsored projects and it earned a profit of Rs.150 lakhs. In Bhutan, the construction technique evolved by respondent No.1, was successfully adopted through Royal Insurance Corporation, Bhutan. The construction work of large number of buildings was undertaken and respondent No.1 made profits of 15% of the total cost in that project.

4. The applicants have stated that the nature of work performed by the workers including the applicants has been as employees/servants. To carry on its activities respondent No.1 requires the services of employees as Draftsman, Clerk, Helpers, Peons, Carpenters, Tracers, Lab. Asstts., Technicians, Masons, Electricians, Mechanics, Drivers etc. because there is a regular building construction activity undertaken by respondent No.1.

5. None of the applicants can be termed as independent contractor as is evident from the nature of service rendered by them and other attendant circumstances. The applicants act under the direct control and supervision of respondent No.1. They are bound to conform ^{with} ~~all~~ the orders given to them from time to time in the course of their work. None of them is like an independent contractor who may be entirely independent of any control or interference or who may merely undertake to produce a specified result employing his own means to produce that result. To a Draftsman or tracer, the entire material is provided by respondent No.1. The applicants and other similarly employed persons are required to attend at the place of

work of respondent No.1 at Roorkee regularly at the specified time or duty hours between 8.45 AM to 5.30PM with 45 minutes lunch break. The attendance record is maintained. In case any of the applicants or others require leave, they have to apply for leave and obtain sanction for that. The applicants have been working under the control of the officials of respondent No.1 not only with regard to the nature of work to be performed by each one of them but also as to the manner in which the concerned applicant has to execute the work. The work of Tracer or a Draftsman is to make out drawings on the specifications and guidelines given by the superior officials. The clerks are required to undertake various types of clerical duties. The Helpers or Peons take up the normal work of despatch of Dak, distribution of dak, taking the files from one table to another and do all other type of work as is normally required to be done by Peon/Helper. His duties are of manual nature. The officials of respondent No.1 exercise the right of supervision and control over the work done by the applicants. The performance of work of the applicants is not restricted to any specified type even though this may be mentioned in the so-called work award document. They are required to do all such work as may be assigned from time to time.

6. According to the respondents, the applicants were engaged on contractual basis to do the specified job/work which had arisen due to the project(s) undertaken by the

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respondent No.1 which are not ~~the~~ ^{the} part of regular functions of the respondent No.1, but are sponsored projects and funded by the outside agencies. The applicants are not the employees of the respondents. Rather, they are engaged on contract basis to do the specified work and are paid on the basis of amount of work done. For getting the said work done, the respondent No.1 invited the tenders. Most of the applicants submitted their tenders pursuant to the said NIT and on that basis, the applicants were awarded the work which had arisen from time to time. The particular amount of work in a particular duration is awarded to the applicants, who, after completing the work, submit their bills as contractor and are paid according to the said bills. The applicants are, thus, not employees of the respondents and, there is no relationship of employer and employee. They are merely contractors and the question of regularisation of their alleged services does not, therefore, arise.

7. The respondents have further stated that there is no relationship of master and servant between the parties. CERI recruits employees on regular basis against the sanctioned strength, depending on the requirement of the staff for such activities. Apart from these activities on

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regular basis, the CBRI also undertakes sponsored projects for doing research in specified fields as sponsored by the outside agencies. If and when respondent No.1 undertakes such projects, its cost is estimated and informed to sponsoring agency. The said project is to last only for the purpose and duration for which it is undertaken. In estimating the cost of project for intimating the same to the sponsoring agency, cost of labour to be engaged on contract only for the duration of the project is also taken into consideration.

Accordingly, on the basis of these estimates, the sanction is given to carryout the work on contract as per the requirements of the project(s). If the work is given to a person on contract as in the instant case, it is only against that particular project and not against the regular R&D activity of CBRI. Since the project is of temporary/specified duration for which requirements are fixed/of temporary nature and the work is to be taken according to the said requirements, there is nothing wrong in awarding the work on contract. Keeping ^{this} ~~in~~ view, ^{the} ~~this~~ and ~~entire~~ work requirement, generally tenders are issued and on the basis of quotations received the work is awarded. Once the project comes to its end and/or requirement of work is accomplished by the contractor, the contract ceases to exist. As and when there is again need of getting some specified work/job in that project and/or other project done, the work may be assigned to the same or other contractor, again which is to last for the

period of that contract. This is exactly the position of applicants who were given the work on contract against sponsored projects which is outside the main/regular activity of CERI and not a part of main/regular R&D activities.

8. On 29.9.1989, the Tribunal passed an interim order directing the respondents to maintain status quo as regards the continuance of the applicants in their respective posts. On 16.11.1989, after hearing both parties, the Tribunal modified the interim orders to the effect that the respondents shall consider appointing the applicants in any of the ongoing projects as a first preference to any other persons including their juniors. They were also restrained from retaining any juniors in any of the projects after the expiry of their period of engagement. The learned counsel for the applicants had stated that in some cases, the applicants had been disengaged before the expiry of the period of contract and that the employees concerned would be entitled for payment upto the end of the contractual period. The Tribunal observed that this was a point which had to be considered along with the main application at the time of final hearing.

9. The applicants filed MP 2839/89 praying for appointment of a commission for the purpose of visiting Roorkee and examining the records of CERI, recording the statements of the Director and other concerned

officials of CBRI, to ascertain all the relevant facts and particulars, to submit a report to this Tribunal in respect of the projects pending with CBRI after 30.11.1989 and prepare a complete list of employees with reference to their initial date of engagement/appointment. By order dated 12.10.1990, the Tribunal expressed the opinion that this was not a fit case in which the Tribunal should issue a Commission, as the issues raised in the main application could be disposed of on the basis of the pleadings of both the parties.

It was also observed that the appointment of such a Commission would not serve the purpose of expeditious disposal of the main application.

We have gone through the records of the case carefully and have considered the rival contentions.

We have also duly considered the case law cited on behalf of both parties.* The learned counsel for the

Decisions relied upon by the applicants:

Order dated 5.12.1988 in Writ Petition (Civil) No.631/88 in Kamlesh Kapoor and Others Vs. Union of India; 1990 (12) ATC 757; 1990(13) ATC 478.

Cases relied upon by the respondents:

1988(3) SLJ 175; JT 1991(3) 525; 1989(2)SLJ 658(CAT); 1990(12) ATC 625; 1990(13) ATC 142; JT 1990(3) SC 374; 1986(4) SLJ 917(CAT); 1987(2) SLJ 394(CAT);

respondents stated such of those applicants who could be retained for work in connection with the ongoing projects have been retained by CBRI and that the applicants who have not been retained will be given employment depending on the availability of work. The learned counsel for the applicants submitted that the work is of a perennial nature and with the completion of some projects other projects are taken on hand by CBRI.

11. The learned counsel of the applicants heavily relied upon the following order passed by the Supreme Court on 5.12.1988 in Kamlesh Kapoor and Others Vs. Union of India & Others:-

"We have heard the petition. The petitioners are working as casual workers in National Scientific Documentation Centre which is a unit of CSIR for a number of years. Their complaint is that their services have not been regularised even though they have put in sufficiently long number of years of service. Having regard to the facts and circumstances of this case we issue a direction to Indian National Scientific Documentation Centre and CSIR to prepare a scheme for the absorption of all persons who are working on casual basis for more than one year in NSDC and to absorb such of those persons who satisfy the scheme as regular employees in the respective posts held by them. The scheme shall be prepared within one year. Until the scheme is prepared and the question of absorption is settled, the services of the casual workers shall not be terminated and they shall be paid with effect from 1.12.1988 the minimum salary payable to a regular employee in a comparable post on monthly basis subject to the condition that the petitioners work for the same number of days as regular employees. The question whether a writ can be issued to CSIR is however left open. The petition is disposed of accordingly".

12. As against the above, the learned counsel for

the respondents relied upon the following order passed by the Supreme Court in Dr. V.P. Chaturvedi and Others Vs. Union Of India and Others, 1991(2) SCALE 325:-

*The common aspects in all the three proceedings are that the petitioners before the Court are Research Scholars connected with Projects entrusted to different Institutions. They are before the Court for security of employment and improvement of conditions of service.

2. In Writ Petition 999 of 1988, along with Writ Petition No.1043 of 1989 we gave our judgment on March 22, 1990. We then indicated;

*The Institute set up by Statute is intended to carry on research in a continuous way to improve the level of medical knowledge. Under the Act the Institute is an autonomous body though the Chairman thereof is no other than the Union Minister of Health. It is true that the Institute is entrusted from time to time with research projects by the World Health Organisation, the Indian Council of Medical Research and other government semi-government bodies. It is appropriate that the Scheme should be evolved by the Institute in coordination with the Health Ministry and the Indian Council of Medical Research so that a team of researchers is built up to meet the general requirements of research. It is quite possible that certain projects would require specialised hands and on such occasions a special team could be set up on casual basis by drawing the competent hands from different institutions for a period but to keep up the tempo of research if a team of researchers is built up, it would be convenient for the Institute for purposes of discipline and control as also for efficiency. The Health Ministry must also sponsor continuous research projects in the field of medicine and health and for such purpose several projects should be listed out from time to time and entrusted to the respondent-Institute as also a similar Institute at Ghandigarh and to institutes as and when set up elsewhere. This would assist in updating relevant medical information and knowledge, apart from building up a scientific tone and temper for general circulation. We commend that the Institute initiates serious action in this regard without delay and we suggest that the Ministry of Health and the Indian Council of Medical Research collaborate with the Institute to work out the same".

3. Pursuant to our observations the Ministry of Health appears to have taken some action and particulars relating thereto have been placed before us. On that occasion we indicated that those who have put in 15 years of research work should immediately be regularised and a core cadre could be built up. The Health Ministry has no objection to a core cadre of researchers being created. The Indian Council of Medical Research ('ICMR' for short) is actually the organisation set up for the research purposes and as we gather the Union of India in the relevant Ministry meets its expenditure on research by funding. The Court does not have the adequate technical knowhow but we are of the view that if appropriate coordination is made and the Health Ministry, ICMR and the Institutes where research is carried on tie up their operations more useful work can be done and simultaneously the researchers would have better terms of employment. All the Institutes where research is carried on may not be at the national capital. What is necessary is the emergence of a small monitoring unit which would finalise the various research projects well in advance and receive offers of projects from organisations like World Health Organisation or other bodies.

4. No consideration has been given as to why the drug manufacturers in India who have engaged themselves in a very lucrative trade should also participate in research programmes. Quality of work in research institutes specialised in their fields is bound to be better than research carried on by the manufacturers themselves. A scheme could be evolved by which established drug manufacturers could be required to participate in such programmes by supporting particular research projects which the monitoring body could allot. Continuing research not only keeps up the level of knowledge but also helps the enhancement of efficiency of treatment of diseases and in the matter of proving relief to the patients.

5. Mr. Venkataramani seriously presses before us that the researchers should have some scheme where within two or three years they could - as in other Government service - be made permanent and given guarantees of service. When we gave our final decision in Writ Petition No. 999/1988 we had no intention of creating a permanent cadre of the type Mr. Venkataramani argues about. In fact project-wise research helps to generate better efficiency than a regularised research organisation. Once service guarantees are provided and security of service is available, the flow of inspiration from within perhaps slows down. We had, therefore, thought that those who had put in long period of research work should only be provided security so that in the later part of their service life, they may not be put to inconvenience.

6. We have no objection to core cadre being built up and if the Health Ministry is of the view that there should be a core cadre, perhaps, it can quickly be set up and such of the researchers who have put in a more or less continued period of work could be brought into the cadre at the first instance on regular basis. The Committee which the Union of India has perhaps to set up may look into this matter thoroughly and give shape to the idea we have conveyed by our judgment.

7. The Patel Chest Institute seems to be more or less a permanent feature and researchers therein may be continued against the programmes available. The funding of course has to be ultimately done by the Health Ministry and the manner of funding may be determined by it. The researchers who have worked in the All India Institute of Medical Sciences should be continued upon availability of its programmes but those who have put in longer periods may be absorbed in available vacancies. We are aware of the stand taken by Committee that researchers may be treated as in service candidates when regular vacancies occur for absorption. This has our approval.

8. We adjourn these matters by two months to receive a comprehensive response from the Union Government in the Health Ministry so that we would have the opportunity of examining the comprehensive scheme and then make a final order.

Call on 4.10.1991.

13. It is worth observing that there is no allegation by the respondents that the conduct and performance of the applicants in their respective posts was not upto the mark. They have worked in the various projects of CERI which has multifarious activity. The project work of C.B.R.I. is almost continuous. A Full Bench of this Tribunal has held in Padma Ravinder Nath & Others Vs. C.S.I.R. (Vide judgment dated 25.10.1990 in OA Nos. 1386, 1600, 1602, 1626, 1795 and 2337 of 1988) that the CSIR is an 'industry' within the meaning of Section 2(J) of the Industrial Disputes Act, 1947. So far as the constituent units of CSIR are concerned, the Full Bench has observed that the determination of the question as to whether or not a particular unit is an industry shall have to be determined in the light of the tests laid down by the Supreme Court in Bangalore Water Supply Sewerage Vs. A. Rajappa, 1978(2) SCC 213. Since there are different

categories and classes of employees in the CSIR as also in a constituent unit, it was further observed that the question as to whether a particular employee was covered by the definition of 'workman' given in Section 2(s) of the Industrial Disputes Act, 1947, should appropriately be decided by the Bench concerned on the basis of the relevant material and data.

14. The reliefs sought by the applicants are for regularisation of their services on completion of 240 days of service, for granting them pay scales on par with regular employees and for restraining the respondents from terminating their services. Though they have referred to the protection under the Industrial Disputes Act, 1947, in the grounds set out in the applications, no relief has been sought in terms of the said enactment. They have also alleged violation of Articles 14 and 16 of the Constitution. In our opinion, for the purpose of disposing of the present applications, it is not necessary to consider the question whether or not the C.B.R.I. is an 'industry' and the applicants are 'workmen' within the meaning of the Industrial Disputes Act, 1947. We are principally concerned with the constitutional mandate

enshrined in Articles 14 and 16 of the Constitution and its alleged infraction^a by the respondents in the instant case.

15. In our opinion, the practice of inviting tenders and awarding contracts to employees on the basis of competitive rates is a retrograde step, having regard to the fact that the nature of the activity of the CBRI and the nature of the work done by the applicants ~~which~~ have all the trappings of master^a/servant relationship. The existing practice cannot be said to be fair and just. There is an element of discrimination in the matter of remuneration for the work done and other conditions of service between the applicants and ^{the} regular employees and this has been ^{perpetrated} ^a for some years by now. We cannot also ignore the human element involved.

16. The applicants belong to comparatively lower strata of Society. In our opinion, the observations made by the Supreme Court in its order dated 14.8.1991 in Dr. V. P. Chaturvedi's case, relied upon by the learned counsel for the respondents, may not be quite appropriate to the factual situation before us. The researchers of the ICMR with which that case dealt with cannot be treated on par with the low paid employees, such as those before us. The applicants are comparable to the category of supporting staff in a research establishment dealing with ongoing projects. They have

by now gained adequate experience in the tasks assigned to them. As a model employer, the CBRI is bound to make a realistic appraisal of their requirements of such supporting staff to assist in the conduct of their various projects and provide security of tenure and other conditions of service to the applicants and those similarly situated who have worked with them for some years on contract basis.

17. In the light of the foregoing discussion, the applications are disposed of with the following orders and directions:-

(i) We hold that the practice of inviting quotations/tenders from eligible persons and appointing those who quote lower rates as the supporting staff of various categories for assisting in the execution of various projects undertaken by the CBRI on an almost continuous basis is neither fair nor just and is violative of Articles 14 and 16 of the Constitution.

(ii) The respondents are directed to prepare a scheme on rational basis for the absorption of all persons (including the applicants), who are working or have worked on casual or contractual basis with the CBRI for more than 240 days in a year with a view to their absorption as regular employees in the respective posts held by them. For reckoning the period of 240 days, the breaks in between, should be ignored. The scheme shall be prepared within a period of six months from the date of communication of this

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order.

(iii) While preparing the scheme, the respondents shall duly take into account the qualifications and experience of the applicants and those similarly situated. The respondents should give them relaxation in age to the extent of the period of service already put in by them in casual or contractual basis. They should also relax the qualifications ^{and α} experience, if necessary, treating them as forming a separate block for the purpose of regularisation.

(iv) Until the scheme is so prepared and the question of absorption is settled, the applicants should be accommodated/adjusted in any of the ongoing projects undertaken by the respondents. They shall ^{also α} be paid with immediate effect the minimum salary payable to a regular employee in a comparable post on monthly basis.

(v) The respondents are restrained from engaging persons with lesser length of service or fresh recruits overlooking the preferential claims of the applicants and those similarly situated, for doing similar type of work, till they are regularised in accordance with the scheme. The interim orders already passed are accordingly made absolute. α

Let a copy of this order be placed in all the
six case files.

There will be no order as to costs.

(USHA SAV-RA) 22.11.91
MEMBER (A)

(P.K. KARTHA)
VICE CHAIRMAN (J)