IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

-79-

Regn.Nos. (1) OA 1386/88 Date of decision: 24.07.1992.
(2) OA 1600/88
(3) OA 1602/88
(4) OA 1626/88
(5) OA 1795/88
(6) OA 2337/88

(1) OA 1386/88
Smt. Padma Ravindernath and Others ..Applicants

(2) OA 1600/88
Shri Prabhu Dutt Sharma & Others ..Applicants

(3) OA 1602/88
Shri Nakli Ram & Others ..Applicants

(4) OA 1626/88
Shri Arvind Kumar ..Applicant

(5) OA 1795/88
S.E.R.C. Karamchari Sangh & Others ..Applicants

(6) OA 2337/88
Shri Anil Kumar & Others ..Applicants

Versus

Council of Scientific and Industrial Research (CSIR) and Another ..Respondents

For the Applicant ..Shri B.S. Charya, Counsel

For the Respondents ..Shri A.K.Sikri, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, 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 Shri P.K. Kartha, Vice Chairman(J))

As common questions of fact and law have been raised in this batch of applications, it is proposed to deal with them in a common judgment.

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2. There are 31 applicants in these six applications who have worked in various capacities in the office of the Structural Engineering Research Centre (SERC for short) which is one of the constituent units of the C.S.I.R. They are aggrieved by the impugned oral orders of termination of their services and their non-regularisation in suitable posts in the SERC.

3. At the outset, it may be stated that CSIR which is a Society registered under the Societies Registration Act, 1860 has been notified under Section 14(2) of the Administrative Tribunals Act, 1985, so as to bring it within the jurisdiction of this Tribunal (Vide notification dated 2.5.1986 applying the provisions of Section 14(3) to CSIR with effe[illegible]m 17.11.1986).

4. These applications were filed in the Tribunal in 1988. The question whether CSIR or its constituent units would come within the definition of 'industry' and whethe the persons employed by them in any capacity are 'workmen' within the meaning of the Industrial Disputes Act, 1947 was raised when the applications [illegible]e up for hearing in 1989. By judgment dated 25.10.1990, [illegible]ull Bench of the Tribunal held that the CSIR is an 'indu[illegible]y' within the meaning of Section 2(j) of the Act. Since there are different categories and classes of employees in the CSIR as also in a constituent unit, the Full Bench observed that the question whether a particular employee is covered by the

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definition of 'workmen' given in Section 2(s) of the Act should appropriately be decided by the Bench concerned on the basis of the relevant material and data.

5. The Full Bench remitted the cases to the Division Bench with the aforesaid observations. We have gone through the records of the cases carefully and have considered the rival contentions. We have also duly considered the case law relied upon by both sides*.

6. A somewhat similar question had arisen in the Supreme Court in CWP No.631 of 1988 in Kamlesh Kapoor and Others Vs. Union of India & Others relating to the casual workers in National Scientific Documentation Centre as also before this Tribunal in OA 194/1989 and connected matters (Shiv Prakash Tyagi and Others Vs. CBRI and CSIR) in the case of some employees of the Central Building Research Institute (CBRI) which are constitutent units of CSIR. By order

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* Case law relied upon by the learned counsel for the applicants.

Judgment of the Supreme Court in CWP No.631 of 1988 dated 5.12.1988 (Kamlesh Kapoor and Others Vs. Union of India and Others); Judgment of this Tribunal dated 22.11.1991 in OA 1941/89 and connected matters (Shiv Prakash Tyagi and Others Vs. Central Building Research Institute (CBRI) and CSIR).

Case law relied upon by the learned counsel for the respondents:-

AIR 1975 SC 1329; 1992(1) JT(SC) 394; 1990(7) SLR 630; 1993(4) SLR 155; AIR 1987 SC 1227; JT 1991(2) SC 573; JT 1990(3) SC 374; 1989(4) SLR 645

dated 5.12.1988, the Supreme Court disposed of the petition with the direction to Indian National Scientific Documentation Centre and SCIR with a direction "to prepare a scheme for the absorption of all persons who are working on casual basis for more than one year in INSDC and to absorb such of those persons who satisfy the scheme as regular employees in the respective posts held by them". The Supreme Court further directed that "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 member of days as regular employees". The Supreme Court, however, left open the question whether a writ can be issued to CSIR.

7. In the batch of applications filed in the Tribunal by Shiv Prakash Tyagi and Others, the question related to the practice of inviting quotations/tenders and appointing persons as helpers/peons etc. on contract basis such of those who quote the lowest rates and their non-regularisation. By judgment dated 22.11.1991, the Tribunal disposed of the applications 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 CSIR 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 order.

(iii) While preparing the scheme, the respondents shall duly take into account the qualifications and experience of the applicant 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 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 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".

8. The SLP Nos. 5502-07/91 filed by the CSIR against the aforesaid judgment were dismissed by the Supreme Court with the following observations:-

"We do not agree that the directions issued by the Tribunal will operate as precedent in respect of similar situation in all the laboratories. The directions issued must be understood to and confined to the facts and circumstances of the case. Thus understood, and having regard to the facts and circumstances of the present case, the directions issued do not appear to us extravagant or impermissible".

9. In view of the aforesaid observations, the learned counsel for the respondents argued that the decision of this Tribunal in Shiv Prakash Tyagi's case would not constitute a binding precedent. The learned counsel for the applicant submitted that the applications before us deserve to be disposed of with similar directions as in Shiv Prakash Tyagi's case, in the interest of justice.

10. In the case of the applicants before us, there is divergence in the versions of both parties as regards the nature of the engagement, dates of engagement, the period of service rendered, entitlement to regularisation and the existence of vacancies in the office of SERC. Apart from this, the respondents have submitted that the Supreme Court has held in Sabarjeet Tiwari Vs. Union of India & Others, AIR 1975 SC 1329 that CSIR is not an agency or instrumentality of the Central Government within the meaning of Article 12 of the Constitution of India and consequently, the protection of Articles 14 and 16 would not be available to the applicants before us.

11. The admitted factual position is that the applicants have worked for l.. > than 240 days, though there had been technical breaks in be..ween. Their period of service is spread over the period 1985 to 1988, ranging from one to three years. They belong to various categories

such as Clerks, Typists, Steno-typists, Helpers, Sweepers, Librarians, Library Assistants, Drivers, Attendants, Guards, Storekeepers, Malis, Bar Binders etc. Applicant in OA 1626/88 was engaged as a 'contract labour' for driving the SERC vehicle. SERC Karmachari Sangh which is an Association of employees has also espoused the applicants' case in OA Nos. 1795/88 and 2337/88.

12. The stand of the applicants is that they were appointed after due selection and verification of their qualifications, that they have been registered with the Employment Exchange and that they have worked in their respective assignments during the period of their engagement in the same manner as regular employees but they were discriminated against in regard to their pay and other conditions of service. As against this, the stand of the respondents is that the CSIR decided to relocate SERC, Roorkee and shift the office to Ghaziabad in 1986. In view of this shifting process, the services of the applicants had to be "hired" for helping the regular staff in doing the specific job of weeding out of old records, tracing out old records, files, packing of records, transportation and help in shifting of these records at SERC, Ghaziabad. According to them, it was a temporary phenomenon and since the specific job came to an end, there was no necessity to engage the applicants and there is no work in which they could be engaged. The applicants were not engaged on the basis of sponsorship by the Employment Exchange.

13. On 9.8.1988, the Tribunal passed an interim order directing the respondents to maintain status quo as of that date. After hearing the learned counsel for both parties, the interim order was modified on 9.2.1989 to the effect that the liability of the respondents to continue the applicants in service and to pay them pay and allowances hereafter would be dependent on the availability of any work to be assigned to them and to the budgetary constraints, referred to by the learned counsel for the respondents. This would, however, be subject to the final outcome of the application. It was also made clear that no outsider shall be appointed and if the necessity arose, the applicants would be given preference. For the period of service upto that date, the question whether the applicants should be paid would abide the outcome of the present application.

14. In our opinion, for the disposal of the present applications, it is not necessary to go into the question whether SERC is an 'industry' and whether the applicants are 'workmen' within the meaning of the Industrial Disputes Act, 1947 or whether the applicants can invoke the protection of Articles 14 and 16 of the constitution of India. We leave open these questions.

15. The applicants were not given any letters of appointment. They were paid every month consolidated pay or wages which is much lower than those paid to the regular

Class III and Class IV employees performing similar jobs. This is borne out from the copies annexed to the applications of the contractual bills indicating the designation, period of work, number of days of work and the rate per month. There is nothing on record to indicate that their appointment were on regular basis after going through the normal process of selection in accordance with the relevant recruitment rules. On the basis of the material on record, it would be apparent that the status of the applicants was somewhat similar to that of casual workers or employees. It would not, therefore, be possible to hold that they would be entitled to automatic regularisation merely because they have put in one to three years of service specially when regular appointments are to be made in accordance with the relevant recruitment rules. The plea of the respondents is that the casual engagement of the applicants had to be terminated due to the shrinkage of work and the absence of budgetary sanction. They have averred that after terminating the services of the applicants, they have not recruited any fresh persons in casual employment. No material has been placed before us to disprove the above assertions.

16. Sometime in 1990 regular vacancies arose due to the creation of various categories of posts. The learned

counsel for the respondents stated at the Bar that when these posts were advertised, the respondents had written to the applicants individually asking them to apply for the same but none availed of the opportunity given to him. He produced before us a bunch of such communications returned by the applicants apparently on the belief that they were not required to undergo another process of selection as they had been duly selected at the time of their initial appointment. The case of the applicants had also been taken up by the SERC Karmachari Sangh, Ghaziabad in which they had contended that the vacant posts should be filled from amongst the candidates who had filed applications in this Tribunal, that according to the order passed by the Tribunal on 9.2.1989, "no outsider shall be appointed and if the necessity arises the applicants will be given preference" and that the filling of the vacancies through open advertisement as proposed by the respondents amounted to contempt of court. The SERC Karmachari Sangh which is also an applicant in OA 1795/88 had addressed communnications to the above effect to the respondents on 26.03.1990, 27.03.1990 and 17.10.1991.

17. The learned counsel for the applicants submitted that in view of the order dated 9.2.1989 passed by the

Tribunal, mentioned above, the respondents should have sought further directions of the Tribunal before initiating the process for filling of the regular vacancies. As against this, the learned counsel for the respondents submitted that the order of the Tribunal dated 9.2.1989 did not restrain the respondents from filling up of the regular vacancies in accordance with the relevant recruitment rules provided the applicants were also given an opportunity to be considered for such appointment and they did so in the instant case. As a matter of fact, neither the applicants nor their Association took steps to initiate contempt proceedings against the respondents. They also did not move the Tribunal to restrain the respondents from filling of the regular vacancies through open advertisement.

18. The question whether the applicants are entitled to any relief, and if so, to what extent, has to be considered in the light of the foregoing factual background and discussion.

19. We cannot dispose of these applications on the lines of the directions given by the Tribunal in Shiv Prakash Tyagi's case or of the Supreme Court in Kamlesh Kapoor's case, mentioned above, as there is no similarity in the factual situations. In these applications before us, the respondents are stated to have already filled up the posts newly created by them on regular basis in accordance with the relevant recruitment rules after giving the applicants an opportunity to apply for the same. The applicants did not consciously

apply for the same on the ground that going through a process of selection was unnecessary in their case, as they had already been duly selected and appointed and what remained to be done was to regularise their services and to grant them regular pay scales.

20. The applicants have contended that there are vacant posts even now in the office of the respondents and that they should be considered for regularisation against those posts. This has been denied by the respondents. In this context, we cannot ignore the fact that the applicants have served the respondents for periods ranging from one year to three years. The respondents have submitted in their counter-affidavit that as and when there are regular posts and they hold selection, they would consider the applicants as well along with other candidates who apply, in accordance with the recruitment rules. There is nothing on record to indicate that the work and conduct of the applicants were not upto the mark. The learned counsel for the applicants submitted that the applicants would be willing to join at Ghaziabad or Roorkee, depending on the availability of vacancies. It may well be that some of the applicants would have become overaged by now. Keeping these aspects in view, the applications are disposed of

on the following lines:-

(i) The applicants may furnish to the respondents their biodata together with supporting documents regarding their age, educational qualifications and experience, if this has not already been done, within a period of four weeks from the date of receipt of this order.

(ii) In case the applicants furnish to them the biodata as in (i) above, the respondents shall consider the suitability of the applicants for appointment to the regular posts commensurate to their qualifications and experience in any of the available vacancies at the offices at Ghaziabad/Roorkee, after giving them relaxation in age to the extent of service rendered by them.

(iii) In case vacancies are not available, the names of the applicants should be borne on a separate register to be maintained by them for consideration along with other eligible candidates as and when vacancies arise at Ghaziabad/Roorkee and the applicants should be duly informed about the same.

(iv) The respondents shall not fill up any regular vacancies in the future in the categories to which the applicants had been appointed on casual basis without considering their suitability and availability for appointment along with the other eligible candidates.

In that case, they shall also consider giving them relaxation in age to the extent of the service already put in by them.

(v) In case any need arises for engagement of persons on casual basis, the applicants should be given preference over outsiders.

(vi) In the facts and circumstances, the respondents shall pay to the applicants within a period of two months from the date of receipt of this order the wages for the period from 9.8.1988 to 9.2.1989 when the interim order passed by the Tribunal was in operation.

(vii) We leave open the question whether the SERC is an 'industry' and whether the applicants are 'workmen' within the meaning of the Industrial Disputes Act, 1947 and whether the applicants are entitled to the protection of articles 14 and 16 of the constitution.

(viii) There will be no order as to costs.

(ix) Let a copy of this order be placed in all the case files.

(B.N. DHOUNDIYAL)
MEMBER (A)
24.07.1992

(P.K. KARTHA)
VICE CHAIRMAN(J)
24.07.1992

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