

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

OA No. 451 of 2015

**Present:** Hon'ble Mr. Gokul Chandra Pati, Member (A)  
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Radhakanta Sahoo, aged about 58 years, S/o Late Laxman Sahoo, permanent resident of Vill./PO/PS- Begunia, Dist.-Khurda, presently working as Driver in N.N.M.B. (National Nutrition Monitoring Bureau), Odisha Unit, Regional Medical Research Centre, Chandrasekhpur, Bhubaneswar-751203.

.....Applicant

## VERSUS

1. Union of India represented through the Secretary to the Govt. of India, Department of Health & Family Welfare, Department of Health Research, Nirman Bhawan, New Delhi-110029.
2. Director General, Indian Council of Medical Research (ICMR), Ansari Nagar, New Delhi- 110029.
3. Director, National Institute of Nutrition, Jamal-Osmania PO, Hyderabad, Telengana-500007.
4. Director-cum-Officer-in-Charge, Regional Medical Research Centre, NNMB Odisha Unit, Chandrasekharpur, Bhubaneswar, Dist.-Khurda, Odisha-751203.
5. Director (Expenditure), Ministry of Finance, Department of Expenditure, North Block, New Delhi-110001.

### .....Respondents.

For the applicant : Mr.S.K.Ojha, counsel  
Mr.S.K.Nayak, counsel

For the respondents: Mr.S.Bhera, counsel

Heard & reserved on : 6.11.2020 Order on : 18.11.2020

## O R D E R

**Per Mr. Gokul Chandra Pati, Member (A)**

The applicant has filed the present OA seeking the following reliefs :

- (i) To admit this OA and call for the records and upon hearing the parties be pleased to quash the order of termination dtd. 05.06.2015 (Annex A/6) holding that the same is illegal and opposing the decision of ICMR;
- (ii) To direct the Respondent No.2 & 3 to issue order of accommodation against supernumerary post simultaneously as per decision of the High Level Appraisal Committee of ICMR;
- (iii) To direct the Respondent No.2 & 5 to absorb the applicant against the regular post taking into account the judicial pronouncement in Annex. A/2 & A/3.
- (iv) To direct the Respondents to extend the consequential benefit to the applicant forthwith;
- (v) And/or pass any other order/orders as deemed fit and proper.”

2. The applicant was working as a driver under the National Nutrition Monitoring Bureau (in short NNMB) under the Indian Council of Medical Research (in short ICMR) on 12.9.1980 on temporary basis for duration of the research project vide the appointment order at Annexure-A/1 of the OA. He is aggrieved by the order dated 5.6.2015 (Annexure-A/6) by which the applicant was informed that his services will not be required after 31.7.2015 A.N. in view of the closure of the project in which he was working. He claimed that the ICMR vide letter dated 3.3.2015 (Annexure-A/5) has informed that after closure of long run projects, the staff with 10 or more years of service be retained by creating supernumerary posts till their claim for regularization is considered and though he was entitled for the benefit as per the letter dated 3.3.2015, his service was being terminated.

3. Vide order dated 27.7.2015, while considering the OA for admission, it was directed by this Tribunal that "the status quo in respect of continuance of the applicant in the present post will be maintained until further orders." Accordingly, the applicant was continued in service till he retired on 30.11.2016.

4. After exchange of the pleadings, the matter was considered by this Tribunal and vide order dated 16.2.2018, the OA was partly allowed following the judgment of Hon'ble Mdras High Court in the case of Indian Council of Medical Research vs. Smt. K. Rajalakshmi & Anr. [2005(1) CTC 488] wherein direction for regularization by the Tribunal (Madras Bench) was upheld with the modification that service of Smt. K. Rajalakshmi would be regularized from the date of her initial appointment. Accordingly, direction was issued in the case of the present applicant to regularize his services w.e.f. his date of joining in service with consequential retirement benefits. The respondents challenged the order dated 16.2.2018 in W.P. (C) No. 10159/2018 which was disposed of by Hon'ble Orissa High Court vide order dated 21.8.2019 remitting the matter to the Tribunal for fresh consideration in view of the fact that the decision of Hon'ble Madras High Court in the case of Smt. K. Rajalakshmi (supra) has been quashed by Hon'ble Apex Court in Civil Appeal No. 4349/2006 vide judgment dated 17.1.2007.

5. After the order dated 21.8.2019 of Hon'ble High Court, the applicant filed an Additional Affidavit dated 24.1.2020 (in short AA) citing the order dated 20.3.2013 of Hon'ble Delhi High Court in W.P. (C) No. 1554/2003 (Annexure-A/8) in respect of 121 project employees of another project of the ICMR. Direction was issued in the said judgment to regularize the employees from the

date of their initial appointment. Accordingly, the ICMR has created 121 posts and regularized those employees.

6. The respondents have filed parawise comments to the additional affidavit stating that the order of Hon'ble Delhi High Court was in respect of another project and it is not applicable to the applicant's case. The respondents have relied on the judgment dated 17.1.2007 in the case of Indian Council of Medical Research and Ors. vs. K. Rajyalakshmi in Civil Appeal No. 4349/2006 in which similar claim of the project staff of the NNMB project was disallowed. The respondents have also relied on the order dated 7.2.2017 of Mumbai Bench in OA No. 158 to 161 of 2015 and of the Principal Bench in OA No. 659/2014.

7. We have heard learned counsel for the applicant who has also submitted a written note broadly reiterating the pleas in the OA. It is submitted that another applicant Haraprava Sahoo, whose service was terminated with the applicant, had also approached the Tribunal and she was adjusted by respondents in another project till her retirement. It is also stated that there are so many employees of ICMR who were appointed initially on temporary basis in different projects and were regularized subsequently as per the details enclosed with applicant's AA. It is submitted that the list would the employees who were regularized even without any judicial order in their favour and that the drivers appointed after the applicant have been regularized. Learned counsel for the applicant also submitted that the project under which the applicant was working, is continuing as stated in the AA.

8. Learned counsel for the respondents was heard. He submitted that he has filed a parawise comments to the AA in which the judgment of Hon'ble Apex Court in the case of K. Rajyalakshmi (supra) in Civil Appeal No. 4349 of 2006 has been enclosed and the said judgment fully covers the present matter since the employee in that civil appeal was also an employee of the NNMB under ICMR, which was closed down in 16 centres by the respondents after a review by High Level Appraisal Committee and all the temporary project staffs were discontinued. He also cited the judgment dated 6.2.2015 of the Principal Bench of this Tribunal in OA No. 659/2014 (Dr. Kulbhusan Sehgal vs. UOI) in which the OA was dismissed. Learned counsel relied on some other cases for which copies of the judgments have been enclosed with the parawise comments dated 4.6.2020. A written note of submissions has also been filed by learned counsel for the respondents.

9. We have considered the submissions and pleadings by the rival parties including the judgments cited by them. In this case the applicant has already

retired on 30.11.2016 while continuing in service till that date by virtue of the interim order of the Tribunal. **Hence, the only issue that is required to be decided in this case is whether the applicant's claim for absorption or regularization against a regular post can be considered retrospectively in view of the grounds advanced by the applicant.** Applicant in the OA had relied on the judgments of Hon'ble Madras High Court in the case of K. Rajyalakshmi at Annexure-A/2 of the OA and of this Tribunal (Jabalpur Bench) at Annexure-A/3 in similar cases. But since the judgment of Hon'ble Madras High Court at Annexure-A/2 has been set aside by Hon'ble Apex Court in the case in the Civil Appeal No. 4349 of 2006, the judgments relied upon in the OA will be of no assistance to the applicant.

10. In the Civil Appeal No. 4349 of 2006, it was held by Hon'ble Apex Court as under:-

"Appellant No. 1 - Indian Council of Medical Research ("ICMR") is a society registered under the Societies Registration Act. It is engaged in research activities in the field of medicine. It carries out various research activities through various schemes/projects. One of such projects is called "National Nutrition Monitoring Bureau". The said project was carried out in the States of Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Maharashtra, Madhya Pradesh, Orissa, West Bengal and U.P. For the aforementioned purpose, the Central Government admittedly grants grant-in-aid on year to year basis.

2. Respondent herein was appointed by reason of an offer of appointment dated 1.4.1975. The terms of appointment demonstrates that the same was also on year to year basis. The post was also on year to year basis as the grant-in-aid of the Central Government in relation to the said project was on that basis. However, the project continued for a long time for one reason or the other. Respondent prayed for regularisation of her services, but the same having been rejected, she approached High Court of Madras seeking for a direction to the respondents to regularise her services with retrospective effect from such date as it deemed fit and proper. The said writ petition was ultimately transferred to Central Administrative Tribunal, Madras, in view of a notification issued by the Central Government under the Administrative Tribunals Act, 1985.

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6. Before the Tribunal, the Union of India was not impleaded as a party respondent. No prayer, thus, in our opinion, could have been made for a direction to the Union of India to make the project a permanent one. The question, therefore, which was required to be taken into consideration by the Tribunal was as to whether, despite the fact that a long number of years have passed, the services of the respondent could have been directed to be regularised despite the fact that her appointment was on a purely adhoc basis on a temporary post.

7. It has not been denied or disputed that the project being on an yearly basis, post could not have been sanctioned on a regular basis. Having regard to the fact that the appellant herein was bound to implement the project of the Central Government in terms of the grant-in-aid scheme, it could not have taken a decision on its own for making the project a permanent one. In absence of Union of India, therefore, in our opinion, the Tribunal and consequently the High Court committed a manifest error in entertaining the question as to whether the project should have been made a permanent one or not. Keeping in view the fact that the project could not have been directed to be made a permanent one at the instance of the appellant, the question of invoking the doctrine of fairness, in our opinion, did not arise. In service jurisprudence, it is well known, that creation or sanction of a post is essentially an executive function."

11. As observed in the above judgment, since Union of India was not a party before the Tribunal, no direction could have been given to make the project in question to be permanent. Though in this OA, Union of India has been made a party, but there is nothing on record to show that the NNMB project was made permanent by the Union of India before retirement of the applicant. From the pleadings on record, the applicant had willingly accepted his appointment on temporary basis being coterminous with the duration of the NNMB project.

12. Learned counsel for the applicant has cited the case of 121 project employees of the Integrated Disease Vector Control (in short IDVC) project, who had moved the Principal Bench for regularization by filing an OA which was dismissed. The employees then approached Hon'ble Delhi High Court in W.P. (C) No. 1554/2013 (Annexure-A/8 of the AA filed by the applicant), which was disposed of vide order dated 20.3.2013 (Annexure-A/8 of the AA) with the following direction to the respondents:-

"6. We adopt the reasoning of the Division Bench of the High Court of Judicature at Madras and thus dispose of the instant writ petition declaring that the law declared by the Madras High Court, which it actually does, shall govern all Project employees who are the members of the first petitioner."

13. The applicant in his AA has enclosed the orders issued in 2015 by the respondents to regularize the project employees who were parties in the case before Hon'ble Delhi High Court and claims that his case should also be considered in a similar manner. However, it is not demonstrated by the applicant if the terms and conditions of the project in question in the judgment dated 20.3.2013 of Hon'ble Delhi High Court are similar to the NNMB project.

14. The respondents in their reply to the AA have relied on a number of judgment of Hon'ble Apex Court in the case of Secretary, State of Karnataka vs. Umsdevi & others, 2006 (4) SCC and in a number of other cases to oppose the claim of regularization. The judgment of the Principal Bench of this Tribunal in OA No. 659/2014 in the case of Dr. Kulbhusan Sehgal vs. UOI in which the ratio of Umadevi judgment has been applied to dismiss the OA.

15. From the facts of the case, it is noticed that after appointment of the applicant on temporary basis as a project employee on 12.9.1980, the question of his regularization in service was never raised by the applicant till filing of this OA after the respondents issued the order date 5.6.2015 (Annexure-A/6 of the OA) terminating the applicant's service due to closure of the NNMB project. By virtue of the interim order dated 27.7.2015 passed in this OA, the said order dated 5.6.2015 was inoperative and the applicant continued in service till his retirement on 30.11.2016. Regarding applicability of the judgment dated 20.3.2013 (Annexure-A/8 of AA) in W.P. (C) No. 1554/2003, the employees in

that case were appointed under the Malaria Research Centre under the IDVC project and the judgment was based on similar judgment of Hon'ble Madras High Court in the case of UOI vs. R. Srinivasan as observed in the said judgment. Further, the concerned employees had first approached the Tribunal for regularization of their services and such request was rejected by the Tribunal. Thereafter, they moved Hon'ble Delhi High Court in the aforesaid writ petition in the year 2003. There is nothing on record that the applicant had agitated his grievance relating to regularization of his service in the year 2003 when the petitioners in W.P. (C) No. 1554/2003 agitated their grievance. Even after the judgment dated 20.3.2013 was passed by Hon'ble Delhi High Court, no action was taken by the applicant to move appropriate forum for redressing his grievance pertaining to regularization till 5.6.2015 when termination order was issued to him.

16. In the judgment in the case of Umadevi (supra), there was a direction for regularization of the temporary employees who were not appointed illegally, for regularization as a one-time measure with certain stipulations. There is nothing in the pleading of the applicant as well as in his AA if his case was considered for the same since he had completed more than 10 years of service on the date of the said judgment i.e. 10.4.2006. Clearly, the applicant remained silent after Umadevi judgment till 2015 and did not claim regularization as per the directions in the said judgment. If services of some of the drivers appointed after the applicant were regularized, no action was taken by the applicant to claim similar benefit disclosing the details of such drivers.

17. Regarding the claim for same benefit as per a Court judgment in another case, Hon'ble Apex Court has laid down the law in the case of **State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors., (2015) 1 SCC 347.** In the said judgment, after examining a the decisions on the question whether similarly situated government employees should be granted the benefit of an order passed by a Court in another case, had examined the issue in the context of discrimination and equal treatment under Article 14 of the Constitution with reference to the principles of delay and laches and it was held by Hon'ble Apex Court as under:-

“22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well- recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

18. In this case, it has not been shown by the applicant how the judgment dated 20.3.2013 (A/8) for the project employees of another project will be applicable to the project in which the applicant was appointed. In order to get the same benefit as allowed in the judgment dated 20.3.2013 (A/8), the applicant is required to show that there is no delay on his part to agitate his claim before appropriate forum unless the judgment relied upon by him is shown to be the judgment in rem. In absence of any plea that the judgment at Annexure-A/8 is the judgment in rem, the facts and circumstances of the case as discussed earlier reveal that the applicant’s case is hit by delay and laches and he will be treated as a fence-sitter in terms of the paragraph 22.2 of the judgment in the case of Arvind Kumar Srivastava (supra).

19. In the circumstances as discussed, we are unable to agree with the applicant’s case and are of the view that no case has been made out to call for any interference in the matter. The OA being devoid of merit, is accordingly dismissed with no order as to cost. However, it is clarified that this order will not stand as a bar if the respondents decide to extend the benefit of regularization to the applicant in terms of their policy in accordance with law.

SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

