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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

DATE OF DECISION: 21.07.1993

CCP 380/92 in	Shri Mam Chand Aggarwal	Applicant
OA 1991/89		
	C.S.I.R.	Respondents
CCP 381/92 in	Shri Ashwani Kumar Mishra	Applicant
OA 1989/89		
	C.S.I.R.	Respondents
CCP 382/92 in	Shri Om Prakash and others	Applicants
OA 1990/89		
	C.S.I.R.	Respondents
CCP 383/92 in	Shri Shiv Prakash Tyagi	Applicant
MP 3687/92 in		
OA 1941/89	C.B.R.I., C.S.R.I	Respondents
CCP 384/92 in	Shri Sanjay Kumar	Applicant
OA 1993/89		
	C.S.I.R.	Respondents

For the applicants : Shri B.S. Charya, Counsel  
For the respondents : Shri A.K. Sikri, Counsel

CORAM:

The Hon. Mr. Justice V.S. MALIMATH, Chairman  
The Hon. Mr. S.R. ADIGE, Member(A)

J U D G E M E N T (Oral)  
(delivered by Justice V.S. MALIMATH, Chairman)

The petitioners in this OA have sought for enforcement of the judgement rendered by the Tribunal in OA 1941/89 and connected cases, delivered on 21.11.1991.

2. Out of the petitioners, Shri Harish Kumar and Shri Ashok Kumar having declined the offer of appointment, have no grievance to make. So, we confine our attention to the complaint of the other petitioners. It is necessary to extract the directions, which the respondents were required to comply with, which are given in para-17 of the judgement and read as follows:-

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 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 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."

3. The only grievance which can legitimately be examined in the contempt of court proceeding, is as to whether, the aforesaid directions have been violated by the respondents.

✓ If we examine the directions given it becomes clear that the

Tribunal ordered a scheme to be prepared to help the employees who had secured employment on contractual basis. By the aforesaid directions the Tribunal has tried to grant certain benefits to those who have worked or are working on casual or contractual basis for more than 240 days in a year. The directions are aimed at ensuring that they are absorbed as regular employees in the respective posts. Though this is the object of allowing the application, it is necessary to bear in mind that the benefit of the directions was not limited to the petitioners before the Tribunal. A positive direction has been given to prepare a scheme on rational basis so as to accommodate all persons including the applicants who have worked or are working for more than 240 days in a year, with a view to secure their absorption as regular employees. The respondents in complying with these directions for preparing a scheme were required to bear in mind not only the claims of the petitioners in the application but of others who are similarly situated. This exercise obviously took some time and which resulted in delay in compliance. An application for extension of time for compliance of the judgement was filed vide MP 3687/92. Having regard to the fact that earnest effort was made and the scheme has ultimately been prepared, we are inclined to allow the application and grant extension, as prayed for.

The respondents have prepared the scheme, a copy of which has been placed before us. It is obvious that the second direction in the judgement is complied with. A list has been prepared for absorption of all those who are eligible in different categories of posts. The third direction is to give relaxation of age to the extent of service already rendered as casual or contractual workers. There is no

complaint in this behalf as a suitable provision has been made in the scheme. Hence the third direction is also complied with. The fourth direction is that until a scheme is prepared and absorption takes place, the applicants should be accommodated or adjusted in any of the ongoing projects and paid the minimum salary payable to a regular employee in a comparable post on monthly basis. This has also been done. All the petitioners before us are continued and are being paid the minimum salary payable to them in respect of the post held by them. The last direction is to restrain the respondents from engaging persons with lesser length of service or to make fresh recruitments over-looking the preferential claims of the applicants. There is no complaint in this behalf also. We are, therefore, satisfied that the directions in the judgement have been duly complied with.

5. Shri B.S. Charya, learned counsel for the petitioners maintained that what has been done to which we have adverted already in the previous paragraph does not amount to full and faithful compliance of the judgement of the Tribunal. We shall, therefore, deal with these contentions.

6. We find that most of the contentions urged by Shri B.S. Charya do not bear on the question of non-implementation of the directions of the Tribunal. The grievance which is highlighted and which we will presently examine is about not properly giving effect to the scheme prepared. We must say at the outset that what we are to examine in the Contempt of Court proceedings is non-implementation of the directions of the Tribunal. We are not concerned with the question as to whether in the matter of implementation or giving effect to the scheme, any errors have been committed. We should make it

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clear that if the action taken by the respondents is not faithful compliance with the scheme prepared or any factual error has crept in, it is open to the petitioners to bring them to the notice of the authorities concerned and if they are not rectified, they will be at liberty to work out their rights in accordance with law. We would like to make this position clear before examining the several contentions of Shri B.S. Charya.

7. It was maintained that there is no justification for including in the list prepared in accordance with the scheme, persons who have not actually worked with the respondents, persons who have left the service long back and persons who have accepted other appointments etc. The direction No.2 in the judgement of the Tribunal, as already discussed, mandates the respondents to prepare a scheme for absorption of all persons including the applicants, who have worked or are working on casual or contractual basis, for more than 240 days. Whether or not, a person is now working, his name has to be included in the list, if he satisfies the condition of having worked for more than 240 days on a casual or contractual basis in a year. Hence, even those who had left the service long back but have completed 240 days of service were required to be included in the list prepared in accordance with the scheme. Therefore, petitioners cannot make any grievance about it. Another complaint is about the names being arranged of all those persons who are qualified for inclusion in the list, taking the date of engagement into account. We do not find any direction in the judgement of the Tribunal requiring the respondents not to take the date of engagement as a criteria for assigning ranking in the list.

Besides, the criteria cannot be regarded as irrational or unreasonable. We, therefore, do not see any reason to accept the contention.

8. We shall deal with the other contention about the list being final. The learned counsel for the respondents Shri A.K. Sikri submitted during the course of the arguments that the list produced may be recorded as a final one. This is not the correct understanding of the position. Having regard to the nature of the problem, the respondents are required to tackle in the matter of preparation of list of persons, who are now working and who have worked earlier. While doing so, there is always a possibility of error being committed. As and when, the errors are brought to the notice of the administration about the wrong inclusion of the names of the persons, it is the duty of the administration to remove their names. There may also arise situations where according to the scheme persons eligible at one point of time may cease to be eligible at a subsequent point of time. Also that those who are in employment in any Governmental or semi-Governmental organisation, as in para-2 of the scheme, would not be benefitted by the scheme. Such a contingency may arise any time after the scheme is prepared and published. It is, therefore, not possible to proceed on the basis that the list is final and not amenable for modification or that everyone included in the list must get regularised in service.

9. Another contention was about the clause-e of para-5 of the scheme, which reads as follows:-

"Casual/Contractual workers who do not appear in test and/or interview in spite of age relaxation or who are not successful in two chances in a period of six months, will be removed from casual/contractual engagement with one month's notice or payment in lieu thereof."

10. It was contended that this clause is clearly in conflict with the directions of the Tribunal. Before we examine this contention, we would like to record the clarification furnished by Shri A.K. Sikri about this clause. He made it clear that the test or interview contemplated by this para. is not for the purpose of making selection to accord regularisation only to the most deserving among those included in the list. It was clarified that the test or interview is only for the purpose of ascertaining that the candidate has the minimum eligibility for the post. Now the question for consideration is whether the prescription of such a condition in the scheme is something which is in violation of the judgement of this Tribunal. Para-2 of the direction in the judgement requires the respondents to prepare a scheme on a rational basis for absorption of all persons including the applicants who have worked or are working on casual or contractual basis for more than 240 days in a year. The expression of 'rational basis' is of significance. For the purpose of absorption, the respondents are required to prepare a rational scheme. It does not mean that it is a scheme for absorption of everyone who has put in 240 days of service in a year. The respondents, were, therefore, entitled to prepare a rational scheme, prescribing therein, such conditions as can be regarded as reasonable and justifiable having regard to the object of according absorption. As the scheme is for the

purpose of absorption, it is obvious that the absorption must be of persons who possess the minimum eligibility and suitability for the post. The respondents, were, therefore, entitled to prescribe a condition in the scheme that they would absorb only such of them who have the basic minimum eligibility and suitability for the post. This is precisely what has been prescribed in para-2(e), in the light of the explanation by Shri A.K. Sikri given during the course of arguments. We, do not, therefore, find any infirmity in this condition either.

11. The most important contention of Shri Charya, learned counsel for the petitioners is in regard to the inclusion of some persons in the list in different categories, some of whom obviously have been placed in the appropriate categories above the petitioners. Shri Sikri, counsel for the respondents rightly and fairly submitted at the outset that the respondents made an earnest effort to ascertain the relevant facts for the purpose of preparing the list. If there are any inaccuracies or mistakes or omissions, he submitted, it is open to any of the petitioners to bring them to the notice of the authorities, whereupon, the same would be scrutinised and if there is any error the same would be suitably rectified. This, in our opinion, should take care of the grievance of the petitioners in this behalf. As already stated the contempt of court proceeding is to ensure that the directions of the judgement have been complied with, namely, the scheme has been implemented in accordance with the directions.

12. Another complaint of the petitioner is about the payment of bonus and other benefits. Our attention was drawn by the respondents to direction No.4 which states that 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.

13. The minimum salary payable to regular employee is paid to the petitioners on monthly basis is not disputed. As the direction in this case is to pay emoluments until regularisation takes place, the petitioner cannot have any grievance at this stage before the regularisation in service on the ground that they have not been paid other emoluments normally been paid to regular employees. As the minimum of the salary of the post concerned is being paid, the direction No.4 cannot be regarded as having been violated. As and when the absorption takes place, it is obvious that the person employed in service would receive monetary benefits in the same manner, in which, a regular employee of Government service would be entitled to receive in respect of the said post.

14. Our attention was drawn to the list of helpers which contains 25 names where the scale of pay for Group-1 is given as Rs.750-940. So far as Shri Mam Chand Aggarwal is concerned, his name is included in Sl.No.18. It was pointed out that in fact he has been taken as Lower Division Clerk. This is prima facie opposed to the list prepared in accordance with the scheme. The learned counsel for the respondents stated that the name of Shri Mam Chand Aggarwal has rightly been included in the list of Helpers and his case for regular absorption can be considered on the basis of his ranking.

therein, for the post of Helper. He submitted that as the post of Lower Division Clerk became vacant and an adhoc appointment was required to be made, as Shri Mam Chand Aggarwal possesses the qualification for the said post, he has been given such adhoc appointment as a Lower Division Clerk. It only means that this is an adhoc arrangement and that so far as regularisation of services of Shri Mam Chand Aggarwal is concerned, the same would be made only in accordance with the ranking as per the list prepared. We make it clear that if a representation is given, the authorities shall take a decision thereon. If the petitioner is still aggrieved, he is entitled to work out his rights in accordance with law.

15. So far as Shri Rakesh Chand, Helper at Sl.No.11 of the list is concerned, he has also a case for inclusion in the list of Skilled Carpenter. He is entitled to make a representation in this behalf and the respondents shall take a decision for his inclusion in the appropriate list. If the petitioner is aggrieved with the decision of the respondents, he shall work out his rights in accordance with law.

16. For the reasons stated above, these proceedings are dropped and the C.C.P.s dismissed.

(S.R. ADIGE)

MEMBER(A)

(V.S. MALIMATH)

CHAIRMAN

21.07.1993

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