

Central Administrative Tribunal, Principal Bench

O.A. No. 2586/2004

New Delhi this they day of 15th day of December, 2004

Hon'ble Mr. Justice M.A. Khan, Vice-Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Indu Shekhar
Aged about 30 years
S/o Shri L.P. Jaiswal
R/o 282, Bhoorgaon, Panditwar,
Phase-II,
Dehradun.Applicant

By Advocate: Shri T.S. Pandey.

Versus

1. Union of India
Ministry of Science and Technology,
1, Rafi Marg, New Delhi
through its Secretary.
2. Council of Scientific and Industrial Research
1, Rafi Marg, New Delhi through its Director General.
3. Indian Institute of Petroleum Mokam (PO)
through its Director.Respondents

By Advocate: Shri V.K. Rao.

ORDER (ORAL)

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed this OA for quashing the Notification dated 1.10.2004 and for a direction to the respondents to absorb/regularize the applicant on the post of Technician Grade-III of Group 'C' equivalent to the post of Project Assistant in the pay

Mac Lallen

scale of Rs.4500-7000 w.e.f. the date of completion of 240 days in service without subjecting to the requirement of interview and the consequential benefits.

2. Briefly stated the facts are as follows. The applicant was engaged initially as Project Helper under the sponsored project on 17.2.1995 on the wages of Rs.1500/- in the Indian Institute of Petroleum, Dehradun which is one of the Laboratories under the Council of Scientific and Industrial Research, New Delhi. Later he was upgraded and engaged as Project Assistant on wages of Rs.3000/- w.e.f. 1.10.1999 and his term of engagement as Project Assistant was extended from time to time under different sponsored projects and was lastly paid wages at the rate of Rs.4500/- plus Dearness Allowance. The applicant had been continuously working for a period of more than 240 days. He staked his claim for his regular employment with the respondents. Some of the similarly situated persons were also not absorbed in regular service by the respondents. They filed OA No.1292/99 which was disposed off by the Tribunal on 17.11.1999 directing the respondents to prepare a Scheme in the pattern directed by the Hon'ble Supreme Court and to consider the absorption of the applicants in the OA in terms of the said Scheme against regular vacancies as and when they arise. Certain other directions were also given. The respondent No.2, CSIR, then vide Office Memorandum dated 14.2.2001 formulated a Scheme ~~of~~ IIP Casual/Contractual Workers Absorption Scheme 2000~~)~~ (the Scheme) for absorption of the Casual/Contractual Workers. Benefit of this Scheme was available to the applicant also. Pursuant to the order of the Tribunal dated 17.11.1999 (Annexure-4), the Director of the respondent No.3, Indian Institute of Petroleum, Dehradun, thereafter issued a joint seniority list of the employees working with it vide Office Memorandum dated 2.1.2002. The name of the applicant figured at

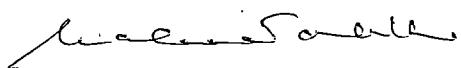
.....

S.No.7 of the said list (Annexure-5). Still the services of the applicant were not regularised. Some of the similarly situated workers like the applicant filed OA 546/2002 which the Tribunal disposed off on 9.8.2002 directing the respondents to consider the applicants of that OA for regularisation/absorption as per their Scheme within a period of 3 months from the date of the receipt of the order. It is alleged that the respondents instead of absorbing the applicant and other similarly situated persons, straightaway issued advertisement dated 1.10.2004 inviting applications for filling up the post of Technician Grade-III in the pay scale of Rs.4500-7000 by direct recruitment from the open market which is in transgression of the respondents' Scheme dated 4.2.2001. The applicant has already become over-age for direct recruitment against the post of Technician Grade-III as such he would be deprived of even applying for the posting. In terms of the Scheme dated 14.2.2001 framed by the respondents, no fresh recruitment from outside would be made by the respondents until the eligible causal/contractual workers identified under the Scheme are absorbed, which the respondents by issuing Notification dated 1.10.2004, is violating. Hence the OA.

3. The respondents contesting the OA contended that the applicant was engaged in different sponsored projects and did not have any right to the regularisation in the service. Every-time the applicant was engaged, he signed a fresh terms and conditions. The engagement tenure of the applicant was given in the form of a chart in different sponsored schemes and the tenure was given in the form of a table in para 3 of the counter. The Project Assistants and Casual Workers of the Institute were working for specific terms and conditions and their job was not of a regular nature. Therefore, there was no question to regularize them in service. In pursuance to the order dated

.....

17.11.1999 passed by the Tribunal in OA 1292/1999, the respondent No.2, CSIR, had framed a Scheme named as "IIP Casual/Contractual Workers Absorption Scheme 2000". However, a seniority list was prepared by the respondent No.3 for the absorption of Casual Workers or Projects Assistants working with respondent No.3 against the externally funded sponsored project. It was a tentative list prepared only for a specific purpose of absorption. When a Causal Worker or Project Assistant who fulfilled all the educational qualification and age, was simultaneously recommended by the Selection Committee for his/her absorption against a regular post with the respondent No.3 Institute, then only the seniority would be counted and if for a single post, two workers were recommended by the Committee, then the senior-most person would be given opportunity to be absorbed. After framing the Scheme by respondent No.2, the respondent No.3 Institute started the process of absorption of Casual/Contractual Workers and Project Assistants. Meanwhile certain casual workers under the umbrella of Bhartiya Mazdoor Sangh filed a Writ Petition No.93(SB)/2003 against the respondents before the Hon'ble High Court of Uttarakhand at Nainital. Some of the Project Assistants also filed a Writ Petition No.182 (S/B)/2004 and Writ Petition No.318(S/B)2004 before the Hon'ble High Court of Uttarakhand. The Hon'ble High Court on 16.12.2003 directed maintenance of status quo till further orders. That order was vacated on 2.9.2004. The absorption process which was held up has again been started by the respondent No.3 Institute. It is clear from the Scheme that those workers who possessed the minimum educational qualification and age would only be considered for absorption with the respondent No.3 Institute. The Scheme further envisaged that the regularisation would be considered at the entry level/grade of Group



10

‘C’ or Group ‘D’ post “Technical or Non-Technical as the case may be” and further it has been specified in the Scheme that no direct recruitment in Group ‘C’ post whether technical or non-technical from outside candidates would be made by IIP until the eligible casual/contractual workers identified under the Scheme are absorbed. The absorption is to be restricted only to Group ‘C’ and Group ‘D’ in the Non-Technical and Group I and II in the Technical Cadres, irrespective of the Casual/Contractual Workers even having higher qualification, as clarified by the respondent No.2 vide letter dated 16.3.2001 (Annexure R-2). In accordance with the provisions of the Central Civil Services (Control Classification and Appeal) Rules, 1965, a civil post carrying a post or scale, the maximum of which is Rs.4590/-, is classified as Group ‘C’ post and a post carrying a pay scale of maximum of Rs.3200/- or less is classified as Group ‘D’ post. It is stated by the respondents that there were broadly two category of employees working with the respondent No.3 Institute on regular post - (i) Administrative (Non Technical) and (ii) Technical. The classification as well as the entry level pay scale of the Administrative and Technical Cadre have been appended in the form of a table in para 4 which is as under:-

“Administrative Cadre	Entry Level Pay Scale	Technical Cadre	Entry Level Pay Scale
Group A	Rs.8000	Group IV (Scientific)	Rs.8000
Group B	Rs.6500	Group III (Technical)	Rs.4500
Group C	Rs.3050	Group II (Technical Support Staff)	Rs.3050
Group D	Rs.2550	Group I (Helpers)	Rs.2550”

checked and true

4. It is further stated that entry level initial pay of Group 'C' and 'D' is equivalent to the entry level Group I and II. Since Group III is having more than entry level pay than that of Group 'C' and Group 'D', the Casual Workers/Project Assistants cannot be considered for absorption against Group III posts. The Notification (advertisement) dated 1.10.2004 is for recruitment on Group III post. The applicant is being considered against the post of Group II, for which he had applied. The applicant had also submitted his application for the post of Group III in response to the Notification dated 1.10.2004. His candidature would be considered along with the outsiders and if he was recommended by the Selection Committee, he would be appointed. All vacant posts under Group 'C' and Group 'D'/Group 'I' and Group 'II' available with the respondent No.3 Institute had already been notified on the Notice Board of the Institute long back. The applicant cannot challenge the Scheme as his candidature is being considered for Group II post by the respondent No.3 under the Scheme as well as for Group III post along with others. It is also alleged that the applicant had already applied for Group I and Group II post for absorption and for Group III post for consideration. His candidature is to be considered in Group 'I' and Group 'II' as per the directions of this Tribunal in OA 1292/1999 'Casual/Contractual Workers Absorption Scheme 2000' and the Rules of the Government of India and the CSIR. The applicant cannot be absorbed against the post notified vide Notification dated 1.10.2004 but his candidature would be considered along with others for appointment. The absorption is restricted to Group 'C' and Group 'D' entry level only. It is requested that the OA be dismissed.

5. In the rejoinder the applicant has reiterated his pleas and has denied the allegations made by the respondents.

Macanul Ali R.

10

6. The respondent No.2, CSIR, has framed a Scheme (IIP Casual/Contractual Workers Absorption Scheme 2000) for absorption of Casual/Contractual Workers including the Project Assistants, a copy of which is at page 38 of the paper book. The applicant is covered by this Scheme. The relevant provisions of the Scheme are extracted below:-

“4. Terms and conditions of regularisation:

- (a) Casual/Contractual Workers should be educationally qualified for the posts for which they may be considered for absorption. Their absorption will be only against the vacancies available and/or those arising in future in Group-D- or C category of posts in IIP, by following the procedure prescribed for the post in the relevant recruitment rules.
- (b) Whenever age limit is prescribed, it will be determined after allowing age relaxation to the extent of the period of service already put in by them on casual basis in IIP.
- (c) Orders on reservation issued by GOI from time to time and made applicable to CSIR shall be applied for implementation of the Scheme.
- (d) Casual/Contractual workers who do not appear in test and/or interview in spite of age relaxation or who are not successful two chances in a period of six months will be removed from the casual/contractual engagement with one month's notice of payment in lieu thereof.

5. General Conditions:

- (a) Regularisation will be considered at the entry level/grade of post of Group 'C' or Group 'D' posts (technical or non-technical as the case may be).
- (b) No direct recruitment in Group 'C' or Group 'D' posts (technical or non-technical) from outside candidates shall be made by IIP until the eligible casual/contract workers identified under this scheme are absorbed.
- (c) Casual/Contractual Workers on regularisation will not be entitled to any benefits for the past period of casual/contractual service rendered by them as casual/contractual workers.

Enclosed a/c



7. In accordance with this Scheme, the Casual/Contractual Workers who are educationally qualified for the post will be considered for absorption in Regular Service against available vacancies in Group 'D' or Group 'C' category of posts by following the procedure prescribed for the post in the relevant Recruitment Rules. Further the regularisation is to be considered "at the entry level/grade of post of Group 'C' or Group 'D' posts (Technical or Non-Technical as the case may be)". There would not be any direct recruitment to such post from outside candidates. Only eligible casual/contractual workers identified under the Scheme are absorbed. The applicant is aggrieved by the direct recruitment which is proposed to be made by the respondents to the post of Technical Assistant Group III (scale of Rs.4500-7000) by Notification dated 1.10.2004 (Annexure A-1). According to him, the post of Technical Assistant Group III is a Group 'C' post and in accordance with IIP Casual/Contractual Workers Absorption Scheme 2000 framed by the respondents, he is entitled to be considered for regularisation on this post and that no direct recruitment to Group 'C' or Group 'D' post is permissible under the Scheme. Only the eligible casual/contractual workers identified under the Scheme were to be absorbed. Accordingly, proposed direct recruitment to the post of Group III was in transgression of the Scheme formulated by the respondents for regularisation of the service of identified Casual/Contractual Workers (including Research Assistants). This Scheme was framed by the respondents in compliance with the directions of this Tribunal in OA No. 1292/1999 vide order dated 17.11.1999.

8. The short question which arises for consideration is whether the applicant is entitled to be considered under the aforesaid Scheme for his regularisation on the post of



Technical Assistant Group III. A perusal of para 5 of the Scheme, which has been reproduced above, discloses that the regularization of the Casual/Contractual workers will be considered at the entry level/grade of Group 'C' or Group 'D' posts whether Technical or Non-Technical as the case may be. Further that there would not be any direct recruitment to such post from outside candidates. The eligible casual/contractual workers identified under the Scheme are to be absorbed first. The question is whether the post of Technical Assistant Group III is the entry level post in Group 'C'. Respondents have categorically stated that it is not the entry level post in Group 'C'. A table has also been given in the counter in para 4(viii) which shows that Group II Technical Supported Staff at the entry level pay scale of Rs.3050/- was equivalent to the entry level pay scale of Group 'C' employees in the administrative cadre. As per this chart, the Group III Technical was an equivalent to Group 'B' which carried the entry level pay scale of Rs.6500/-. In para 4(viii) of the counter the respondents have further contended that as per CCS (CCA) Rules, 1965 'A Central civil post carrying a pay or a scale of pay with a maximum of over Rs.4590/-' is classified as Central Civil Services Group 'C'. Conversely the applicant has filed extract of CCS (CCA) Rules, 1965, according to which 'A civil service post carrying pay or a scale of pay with a maximum of over Rs.4000/- but less than Rs.9000' is classified as Group 'C'. According to the learned counsel for the applicant the post of Technical Assistant Group III which carried the pay scale of Rs.4500-7000 fell in this category. But there is not a whisper of allegation in the OA or even in the argument advanced on behalf of the applicant that the post of Technical Assistant Group III was the entry level of Group 'C' post or that the Recruitment Rules for the post of Technical Assistant Group III have not classified this post in Group III

marked and filed

Technical which in classification was equivalent to Group 'C' of Administrative cadre.

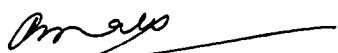
In the rejoinder to the counter in reply to the allegation made by the respondents about the post of Technical Assistant Group III being a Group 'B' post and not an entry level post of Group 'C', the applicant has simply alleged that no reply is called for as allegation made in corresponding paras of the OA are not denied. It was added that assertion made in para under relief are partly misrepresentation of facts as well as law, which shall be placed by the counsel for the applicant at the time of hearing. Under the Scheme the applicant could be absorbed or regularised in service only in the entry level grade. As per the table given in the counter, the entry level Technical Support Staff is in Group II which is the entry level post equivalent to Group 'C' Administrative post. It is not contended nor is it argued that the respondents No.2 and 3 have not classified their services in the Groups which are mentioned in the table given in para 4(viii) of counter (internal page 10). The respondent No.2 CSIR is a Registered Society and not the department of the Central Government. In the absence of a cogent evidence to the contrary, there is no reason for us to discard this table and hold that the post of Technical Assistant Group III advertised, is a Group 'C' post within the purview of IIP Casual/Contractual Workers Absorption Scheme, 2000. Schemes speaks of Group 'C' or 'D' Technical or Non-Technical posts. If the grouping of the posts in the respondents No.2 and 3 are as shown in the table in para 4(viii) of the counter, the respondents cannot be faulted for resorting to direct recruitment for filling up the post of Technical Assistant Group III which is a Group 'B' post. It will not be violative of any provision of this Scheme or order of the Tribunal. The applicant, therefore, could not claim that he was

Leave a mark

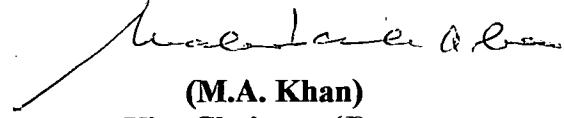
eligible for his consideration for appointment to the post of Technical Assistant Group III under the Scheme.

9. It will also not be out of place to mention that the applicant had already applied for his appointment to the advertised post in response to the Notification dated 1.10.2004 and it is under consideration of the respondents. It is also pertinent to note that the respondents had clearly mentioned in the counter that the absorption of the applicant in accordance with the terms of the Scheme was also under consideration. The applicant wants his regularisation on the advertised post under the Scheme not de hors of it. Under the Scheme, he could be appointed only at the entry level post of Group 'C' or 'D'. The post of Technical Assistant Group III is not an entry level post of these Groups and is not available for regularisation of the applicant.

10. As a result of the above discussion, we do not find any merit in the contention of the applicant and the OA is dismissed but without cost.


(S.K. Malhotra)

Member (A)


(M.A. Khan)

Vice Chairman (J)

Rakesh