

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1430/92
T.A. No.

199

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DATE OF DECISION 12.11.1997

J.C. Shawana & 9 Others

Petitioner

Shri B.B. Raval

Advocate for the Petitioner(s)

Versus

DG, CSIR & Anr.

Respondent

Shri A.K. Sikri

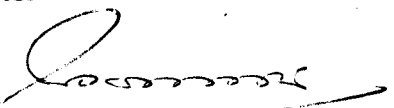
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.P. Biswas, Member(A)

The Hon'ble Mr.

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?


(S.P. Biswas)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1430/1992

New Delhi, this 12th day of November, 1997

Hon'ble Shri S.P. Biswas, Member(A)

S/Shri

1. Shri J.C. Ghawana
 2. Chandan Singh Manral
 3. Vidya Ram
 4. SriKishan
 5. M.S. Negi
 6. Bholu Thakur
 7. Laxmi Narain
 8. Ramesh Kumar
 9. O.P. Paswan
 10. R.K. Kaushik
- all working in the National Physical
Laboratory, CSIR, New Delhi

.. Applicants

(By Shri B.B. Raval, Advocate)

versus

1. Director General
Council of Scientific and Industrial
Research
Rafi Marg, New Delhi
2. Director
National Physical Laboratory
Dr. K.S. Krishnan Road
New Delhi-12

.. Respondents

(Shri A.K. Sikri, Advocate)

ORDER

A few admitted facts are sufficient for disposal of this original application. These are: The applicants as well as the juniors were engaged as casual daily wage Technicians Grade III in the pay scale of Rs.750-940 (Group D) and some daily wagers junior to the applicants have been considered and promoted as Grade II Technicians in the scale of pay of Rs.950-1500 (Group C). Of the three wings in the organisation, namely Scientific, Technical and Administration, all of them

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were engaged in various activities within the technical unit. All the applicants have been confirmed at different points of time in 1990-1991 in different posts shown against each in Annexure A-5, after they completed in-service training/trade test provided by the National Physical Laboratory (NPC for short) or acquired privately the necessary technical qualification. All of them - applicants and their juniors - carry with them a Serial No. in the Merit List as assigned to them by the respondents. As desired by the respondents, all the applicants did fill up the proforma designed by the respondents for the purpose of considering the applicants for promotion/absorption in Technician Grade II. For this purpose, all the casual labourers including those who have been promoted ignoring the superior claims of the applicants are governed by the Scheme called "Casual Labourer Absorption Scheme of March, 1990". All the applicants do possess entry level (Academic and Technical) qualifications required for regularisation/absorption in Technicians Grade II post and also fulfill all other terms and conditions stipulated in the aforementioned Scheme.

2. Applicants are aggrieved since several of their juniors - daily wage casual labourers - who were recruited in NPL 3-6 years after their appointments have been allowed to by Respondent No.1 - Council for Scientific and Industrial Research (CSIR for short) to

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steal a march over the heads of the applicants in terms of promotion to Technician Grade II in Group C. The applicants alleged that those promoted wrongly are juniors to them not only in terms of their appointment in the capacity of daily wagers but also attainment of temporary status. Consequently, they have sought for issuance of directions to the respondents to fill up the regular Group C posts of Technician Grade II only from the rank of applicants atleast from the date their juniors were appointed/considered, looking into their seniority and experience.

3. In the counter, respondents have only submitted that "at the time of absorption of the applicants in 1985, only Group D posts were available and the applicants were absorbed directly as per CSIR Scheme".

4. In the background of the scenerio aforementioned, the question arises is whether the respondents' stand in denying absorption/promotion to the applicants to Technician Grade II is sustainable in the eyes of law. Before we go into the legal aspects, yet another undisputed reality as regards merit list, date of appointment of the applicants vis-a-vis juniors are worthmentioning. The position is hereinbelow;

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APPLICANTS			JUNIORS		
Name/qualifi- cation	Sl.No. in Merit List	Date of joining	Name/quali- fication	Sl.No. in Merit List	Date of
S/Shri J.C. Ghawana Madhyama(Visharat)	2	3.11.74	Anis Parvej 10th	40	9.11.79
Vidya Ram High School	18	24.7.78	Suresh Chandra 10th	55	14.4.80
Bhola Thakur 10th	20	14.8.78	Man Bahadur 10th	59	June,80
R.K. Kaushik B.A.	24	21.10.78	Harish Bhat M. Com.	86	1.10.80
Sri Kishan B.A.	32	9.8.79	Hans Raj Hr.Secondary	98	5.8.83
Laxmi Narain 10th	35	20.8.79	Anup Kumar 10th	98	17.10.83
M.S. Negi 10th	38	17.7.79	Suman Bhardwaj B.A.	102	3.3.81
Ramesh Kumar Matric	66	23.6.80	M.K. Gandhi Sr.Secondary	109	1.5.81
Chandan Singh Intermediate	67	23.6.80	Mange Ram Matric	113	6.7.81
O.P. Paswan 10+2	107	28.4.81	Hawa Singh 10th	114	28.7.81
			Sultan Singh Matric	122	15.9.81
			O.P.S.Tomar B.Sc.	123	21.9.81
			N.K.Vats 10th) Name is) not in) the list	
			Uma Sethi Hr.Secondary)	

5. The laws and rules that would govern promotion or regularisation of the daily wage casual labourers are now well settled. Provision of security in service by regularising the casual employment within a reasonable

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period has been accepted as constitutional goal for our socialistic pattern as has been held by the Hon'ble Supreme Court in Grih Kalyan Kendra Workers Union Vs. UOI & Ors. (1991) 1 SCC 619. No employee has a right to promotion but he has only the right to be considered for promotion according to the rules. Chances of promotion are not conditions of service and are defeasible (Please see Syed Khalid Rizvi Vs. UOI, 1994 SCC (L&S) 84). However, right to be considered according to one's own turn arises from Article 14 and 16 of the Constitution and this cannot be denied in terms of law. If any authority is required for this proposition, it is available in Arumugham Vs. State of Tamil Nadu, 1991 Supp.(2) SCC 199. Authority is also legion in respect of rules and regulations that have to be followed for regularisation/termination of casual workers. The law has been laid down by their Lordships of the Apex Court in the judgements of Inder Pal Yadav Vs. UOI (CMP No.3797/85, 110/85, 10940/87) decided on 20.7.87 and Ghaziabad Development Authority & Ors. Vs. Shri Vikram Chaudhary and Ors. JT 1995(5) SC 536. In short, "First come first serve" and "last to come first to go" are the basic criteria respectively for regularisation, disengagement and re-employment of casual labourers.

6.. When the case came up for hearing on 15.7.97, respondents were directed to clarify the position in respect of para 4.1 and 2(G) of the reply statement.

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7. These two relate to the requirement of prescribed qualification necessary for absorption in Group C. Respondents were also directed to provide details of the Recruitment Rules for filling up posts of Technicians in Grade II. Instead of directly replying to the queries, respondents submitted that when the turn for applicants came up for absorption, there were only Group D posts available and the applicants were absorbed accordingly. During the course of pleadings, we also asked the respondents' counsel to indicate the rationale adopted in ordering promotion to the juniors and the reply was that persons already absorbed in Group I/D could not be considered again for absorption against Group II/C, since they have already derived the benefits of absorption and that absorption also depends upon the availability of the post at a given point of time. In other words, since seniors stand already absorbed in lower category and that there were no vacancies of higher scale posts at the relevant time of subsequent consideration, their cases for absorption in promotional grade could not be reconsidered, notwithstanding the rules of seniority. I do not consider that the criterion followed by the respondents can be held to be correct in law. I also find that options were called for and given in time by the applicants for the purpose of considering them for promotion. It is true that asking for option of candidates is only a discretionary matter and the Government is not bound to select the

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~ candidates on the basis of options obtained. But the respondents were bound to prescribe an objective and rational method of selection of candidates depending upon the job necessity/ requirement and fulfilment of necessary qualifications prescribed for the post. The fact that consideration has not taken place though the applicants were within the eligibility zone of promotion and possess necessary and desirable qualification and are senior enough for consideration of promotion has not been denied by the respondents. Appointment of junior candidates by pick-and-choose, without adhering to the principle of seniority, is unsustainable in law. In these circumstances, arbitrariness is writ large on the face of R-3 order dated 25.5.91 issued by CSIR. It is in violation of the law laid down by the Apex Court in Arumugham's case (supra).

8. In the result,

- (i) The OA is allowed. Annxure R-3 order dated 25.5.91 is bad in law and cannot be sustained.

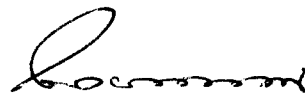
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(ii) Respondents shall consider candidatures the applicants for promotion to Technician Grade II, and if found fit, shall be promoted to that grade from the date of promotion of their juniors. This shall be done within a period of three months from the date of receipt of a certified copy of this order.

(iii) There shall be no back wages/pay since the applicants have not officially shouldered the responsibility of Grade II Technicians.

(iv) On promotion, the seniority of the applicants vis-a-vis others in the capacity of Grade II Technicians, shall accordingly be determined in accordance with rules. There shall be no order as to costs.


(S.P. Biswas)
Member(A)

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