

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2095/93

New Delhi this the 21st day of July, 1999. 10

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

1. Vidya Ram
2. Sri Kishan
3. M.S. Negi
4. Bholu Thakur
5. J.C. Ghawana
6. Chandan Singh Mandal
7. Laxmi Narain
8. Ramesh Kumar
9. O.P. Paswan
10. R.K. Kaushik

...Applicants

(All employed as Helper 'A'/Malis
unskilled in the National Physical
Laboratory, C.S.I.R., New Delhi)

(By Advocate Shri B.B. Raval)

-Versus-

1. Director General,
Council of Scientific and
Industrial Research,
Government of India,
Rafi Marg, New Delhi.
 2. The Director,
National Physical Laboratory,
Dr. K.S. Krishnan Road,
New Delhi.
 3. Shri Anis Parvez,
Technician Grade II (Electrical)
 4. Shri Mahesh Kumar
Technician Grade II (Electrical)
 5. Shri Anup Kumar Agnihotri,
Technician Grade II
 6. Shri Suresh Chandra Yadav,
Technician Grade II
 7. Shri Mange Ram,
Technician Grade II
 8. Shri Sultan Singh,
Technician Grade II
 9. Shri Hans Raj
Technician Grade II
 10. Shri O.P.S. Tomar,
Technician Grade II
 11. Ms. Suman Bhardwaj
Technician Grade II
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12. Shri Man Bahadur,
Technician Grade II

13. Shri Harish C. Bhatt,
Technician Grade II

14. Shri Hawa Singh
Technician Grade II

15. Shri Nand Kishore Vats
Technician Grade II

16. Mrs. Uma Sethi,
Technician Grade II

... Respondents

(From Respondents Nos. 3 to 16 all are employed in the National Physical Laboratory, Dr. K.S. Krishan Marg, New Delhi-12).
C/o Respondent No.2

(Respondents 1 & 2 By Advocate Shri V.K. Rao)

(None for respondents 3-16).

O R D E R

By Reddy. J.-

Heard the learned counsel for the applicants and respondents 1 & 2. None appeared for respondents 3 to 16.

2. The applicants initially joined as daily wagers from November, 1974 onwards in the respondents laboratory. They were regularised as Helpers/Malis etc. in Group I (Technical) and Group 'D' (Non-Technical) in 1985. They were also confirmed in service on the basis of the recommendations of the DPC in 1990. However, in 1991 the respondents have recruited respondents ³⁻¹⁶ ~~3-9~~ to Group 'C' posts in the pay scale of Rs.950-1500 w.e.f. 9.12.91. There upon the applicants filed the OA ³⁻¹⁶ ~~3-9~~ questioning the direct absorption of respondents ~~3-9~~ in Group 'C' posts.

(X) Corrected vide Court's order dated 7.10.99

[Signature]

[Signature]

3. It is contended by the learned counsel for the applicants that the action of the respondents is wholly discriminatory and violative of the recruitment rules for the Group 'C' posts. It was further contended that the applicants were qualified and eligible for promotion in Group 'C' posts, the respondents 1 and 2 ought to have promoted the applicants instead of directly bringing respondents ³⁻¹⁶ ~~3-9~~, who were only daily wagers, over the heads of the applicants. The action of the respondents 1 and 2 is violative of Articles 14 & 16 of the Constitution. The learned counsel for the respondents contends that the proposed action was taken in accordance with the clarification given by the CSIR. The applicants have already got the benefit of absorption, hence they could not be considered again for absorption against Grade II/Group C posts. It is further contended that as the procedure for promotion normally takes time, the respondents thought of appointing the daily wagers to Group C posts.

4. The facts are not in dispute. The regularisation of the applicants in Group 'D' posts has been admitted. It is not in dispute that the applicants are eligible to be promoted to Group II/C posts. It is not their case that there are no persons available from Group D to be appointed to Group C posts. Respondents 1 and 2, however, sought to place reliance on CSIR letter dated 25.9.91. The reasoning given in this letter is peculiar and illogical. It states that as the applicants were already given the benefit of absorption into Group D posts they could be denied the absorption to Group C

(X) corrected vide court's
order dated 7.10.59

CAB

posts. The question here is not whether giving any benefit to one person or the other it is whether the procedure followed was lawful or not. Since the applicants are entitled under the Rules to be promoted to Group C posts there cannot be any justification for appointing, respondents ^{3-16, ⑧} ~~3-9~~ fresh daily wagers who were only seeking to be absorbed into Group 'D' post, to Group 'C' posts directly over the heads of the applicants. This is a clear case of discrimination which is hit by Articles 14 and 16 of the Constitution. The letter of the CSIR cannot override the constitutional guarantee of equality before law. The daily wagers who are nowhere in the picture cannot be pitchforked to the higher post, thus enabling them to steal a march over the applicants. In our view the action of the respondents No.1 and 2 in appointing respondents ^{3-16, ⑧} ~~3-9~~ is illegal.


5. We are supported in our view by the view taken by Hon'ble Mr. S.P. Biswas in OA-1430/92 J.C. Ghawana & Ors. vs. Director General, CSIR & Anr. which is on all fours to the facts of the present case.

6. In view of the above discussion the OA is allowed. The appointments of respondents ^{3-16 ⑧} ~~3-9~~ in Group 'C' posts are hereby quashed. The respondents 1&2 are directed to consider the applicants for promotion to Grade II/Group C posts and the applicants shall be promoted to that grade from the date of promotion of their juniors. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

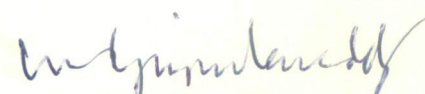
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⑧ Corrected vide Contd's
order dated 7.10.98

7. The applicants, however, are not entitled to any back wages, as they have not performed any service ^{for} ~~to~~ Grade II/Group C posts. There shall be no order as to costs.


(R.K. Ahooja)
Member(A)

'San.'


(V. Rajagopala Reddy)
Vice-Chairman(J)