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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**OA No.1390/2021
MA No.1802/2021**

This the 27th day of July, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy,
Chairman**

Hon'ble Mr. A.K. Bishnoi, Member (A)

1. Dr. Abid Hussain
S/o Sh. Abdul Faiz
R/o 22B, DDA Flats, New Ranjeet Nagar,
New Delhi-110008
2. Dr. Tarannum Ara
S/o Md. Shamim
R/o 2391, 18 floor, Mandir Wali Gali,
Shadipur, Patel Nagar, New Delhi-110008
3. Dr. Mohd. Danish Mehfooz
S/o Sh. Md. Abu Noman
R/o 2391, 1st floor, Mandir Wali Gali
Shadipur, Patel Nagar, New Delhi-110008
4. Dr Arshad Yar Khan
S/o Sh. Idris Ahmad Khan
R/o B-53, 2 floor Gal No 6
Joshi Colony IP Extension
Patparganj, New Delhi-110092
5. Dr. Ajaj Ahmad
S/o Sh. Abdur Rauf
R/o X-13C,
DDA Flats, New Ranjeet Nagar
New Delhi-110008
6. Dr. Hakimullah Khan,
Son of Abdul Shakur,
R/o B-53, Second Floor,
Gali No.6, Jpshi Colony,
I.P.Estension, Patparganj,
New Delhi-110092.

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7. Dr. Syyed Ubaidussalam
s/o Syyed Tusuf li R/o D-204
Third Floor, Abul Fazal Enclave
Jamia Nagar, Okhla,
New Delhi-110025
8. Dr. Badar Iqbal
s/o Sh. Mozaffar Ahsan Islahi
R/o N-71A, Abul Fazal Enclave, Thokar No.5
Okhla, New Delhi-110025
9. Dr. Abdul Majeed,
S/o Nazir Ahmad
C/o Sujauddin Kasmi
R/o 78-C, Gali No. 9, Noor Colony
Wazirabad, Delhi
10. Mr. Vishal Shrivastava
S/o Sh. Dharmatma Singh
R/o RZF-2/123A, Street No. 5, Mahaveer Enclave,
Palam, New Delhi-110045
11. Dr. Mohd. Sufiyan
Son of Mohd. Hashim
R/o A-18/144-C, DDA Flats
Inderlok, Delhi-35
12. Dr. Tufail Ahmad
S/o Sh. Iftekhhar Ahmad,
R/o 246/58, Gali No. 5, East School Block
Allah Colony Mandawali, Fazalpur
New Delhi-110092.
13. Dr. Nafia Jilani
D/o Ateeq Jilani
R/o H No. 7, Gali No. 1, Aram Park,
Shastri Nagar, Delhi-31.

....Applicants
(By Advocate: Sh. Javed Ahmed)

Versus

1. Union of India Through,
Secretary, Ministry of Ayush
AYUSH Bhawan,
B Block, GPO Complex, INA,

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New Delhi-110023

2. Ministry of Science and Technology through,
Director General,
Council of Scientific and Industrial Research
Anusandhan Bhawan, 2, Rafi Marg
New Delhi-110001
3. Traditional Knowledge Digital Library
Through Project Leader
Council of Scientific and Industrial Research,
CSIR- NISCAIR Building 14, Satsang Vihar Marg,
New Delhi-110067

... Respondents

(By Advocate: Sh. U.Srivastava)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicants were engaged on contractual basis as Unani Assistants in the Council of Scientific and Industrial Research (CSIR) from the year 2004 onwards. At one stage they approached this Tribunal by filing OA No.509/2015 with a prayer to direct the respondents to regularize their services in that post. The prayer was not acceded to but a direction was issued vide order dated 05.04.2017 to the effect that the case of the applicants be considered for being continued even in the new establishments also, if they satisfy the eligibility conditions. Not satisfied with that the applicants filed Writ Petition No.10093/2017. That was disposed of on 16.10.2020 directing that the

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respondents shall implement the directions contained in para 8.2.3 of the order in OA No.509/2015. Thereafter, the respondents came forward with a notification to conduct a written test with a view to select 5 candidates in an establishment. The applicants objected to that and made representations. The examination was proceeded with and 5 candidates were engaged in the fresh establishment. The applicants filed a review before the Hon'ble High Court in W.P. No.10093/2020. That was not entertained.

2. The present OA is filed with a prayer to direct the respondents to absorb the applicants in the services of CSIR and to restrain the respondents from declaring the applicants as ineligible on account of their non participation in the written test. Further direction is sought for engaging them in the services or projects, to perform their duties.

3. The applicants contend that once this Tribunal directed that they be continued and not replaced by fresh incumbents, there was absolutely no basis for the respondents in conducting the examination and appointing new set of persons. Reliance is placed on the judgment of the Hon'ble Supreme Court in Nehal Singh vs. State of Punjab & Ors., (2013) 14 SCC 65.

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They seek a direction for creation of vacancies on the ground that they have been working for the past about 15 years.

4. We heard Shri Javed Ahmed, learned counsel for the applicants and Shri U. Srivastava, learned counsel for the respondents at the stage of admission.

5. This is the 2nd round of litigation by the applicants in their efforts to get regularized in their services. In OA No.509/2015, this Tribunal declined the relief of regularization or absorption. In para 8.2.3, the Tribunal held as under:-

“8.2.3 In view of the aforesaid submissions, it is clear that no regular posts are available against which the applicants can be regularized. Hence, their prayer for regularization cannot be considered and also there is no question of conferring permanent status on them. However, to allay their fear that the respondents will discharge this work through some other Unit/Wing and appoint a fresh set of contractual employees, we direct that if this activity is assigned to any other Unit/Wing of the respondents then new set of contractual employees shall not be appointed to displace the applicants herein. In such an eventuality the services of the applicants herein shall be continued provided they meet the eligibility conditions of the new establishment. There will, however, be no bar in making regular appointments and if that is done the applicants may be considered as per rules after giving admissible age relaxation.

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6. Though the applicants filed a writ petition before the Hon'ble High Court not satisfied with the judgment in OA, they were virtually reconciled to the directions contained in para 8.2.3 in the order of the OA. On such a representation being made, the Hon'ble Court disposed of the writ petition by observing that the respondents shall comply with the directions contained in para 8.2.3.

7. Obviously because there was a change in the system and establishment, the respondents wanted to hold the examination to ensure that the candidates to be engaged therein possess the requisite qualifications or other techniques. For that purpose, an examination was notified on 11.04.2020. The applicants, however, objected to that and in a way, sought review of the order in the writ petition also. That did not fructify. The applicants refused to participate in the examination and thereby lost the chance of being selected.

8. At this stage, they cannot expect a better position than what they were in, when the OA was decided or the limited relief was granted therein.

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9. In **Secretary, State Of Karnataka & Ors. vs Umadevi & Ors.**, 2006 (1) SCC 1, the Hon'ble Supreme Court deprecated the practice of engaging persons on contractual basis against the regular vacancies. As a one time measure, direction was issued to the effect that the feasibility of regularization of such persons can be considered by subjecting them to selection process. Hardly, we find any adjudication wherein a direction for regularizing the contractual employees without subjecting them to any selection process is ordered.

10. In OA No.509/2015, this Tribunal made it clear that to be considered, the applicants shall be under obligation to comply with the conditions. Once they did not even choose to participate, let alone qualify, in the examination, they cannot expect any better result. When a contractual employee cannot be directed to be regularized straightway even when vacancies exist, the question of directing the respondents to create vacancies to enable the applicants to be continued or regularized does not arise.

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11. We do not find any merit in the OA. It is accordingly dismissed. Pending MA shall also stand disposed of. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

sd/pj/ns