

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 1025, 1046, 1047,
1048, & 1049 OF 2002
Cuttack this the 11th day of July/03

IN O.A. No. 1025/2002

Bhabani Shankar Sarangi ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

IN O.A. No. 1046/2002

Prasanta Kumar Sarangi ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

IN O.A. NO. 1047/2002

Trilochan Jagati ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

IN O.A. No. 1048/2002

Biswajit Sahoo ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

IN O.A. No. 1049/2002

Amarjit Mohanty ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Ys*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Ys*

11/7/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

S.N. SOMA
(S.N. SOM)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 1025, 1046, 1047,
1048, AND 1049 OF 2002
Cuttack this the 11th day of July, 2003

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)

...

IN O.A. NO. 1025/2002

Shri Bhabani Shankar Senapati, aged about 37 years,
S/o. Late Maheswar Senapati, resident of Plot No. 781/
1453/1652, Bharatpur, Bhubaneswar, Dist. Khurda -
at present serving as Project Assistant Grade-I,
Regional Research Laboratory, Bhubaneswar, Dist. Khurda

...

Applicant

By the Advocates

M/s. D.K.Panda
P.R.J.Dash
J.Sengupta
G.Sinha

IN O.A. NO. 1046/2002

Sri Prasanta Kumar Sarangi, aged about 38 years,
S/o. Padmanav Sarangi, of Plot No. 350, Sameigadia,
Dist. Khurda - at present working as Junior Project
Asst. (P.A. - 1), in Regional Research Laboratory,
Bhubaneswar, Dist. Khurda

IN O.A. NO. 1047/2002

Sri Trilochan Jagati, aged about 34 years,
S/o. Ratnakara Jagati of Plot No. N-5/141, I.R.C. Village,
PO/PS-Nayapalli, Bhubaneswar-15, Dist. Khurda - at present
working as Project Assistant (P.A. 1), Regional Research
Laboratory, Bhubaneswar, Dist. Khurda

IN O.A. NO. 1048/2002

Biswajit Sahoo, aged about 37 years,
S/o. Bhagirathi Sahoo, resident of B-54,
Sahidnagar, Bhubaneswar-7, P.S. Sahidnagar,
Dist. Khurda - at present working in Purchase
Section of Regional Research Laboratory,
Bhubaneswar, Khurda

...

IN O.A.NO.1049/2002

Amarjit Mohanty, aged about 38 years,
S/o. Iswar Chandra Mohanty, of Plot No.N/6,178,
I.R.C. Village, PO/PS-Nayapalli, Bhubaneswar-751015
Dist-Khurda - at present working as Project Asst.
(P.A-1), Project Monitoring & Evaluation Department
of Regional Research Laboratory, Bhubaneswar,
Dist-Khurda

... Applicant

By the Advocates

M/s.B.B.Jena,
S.R.Patnaik
P.Patnaik
J.Bhagat

VERSUS

1. Union of India represented through its Secretary, Department of Scientific & Industrial Research, Anusandhan Bhawan, 2, Rafi Marg, New Delhi-110 001
2. Council of Scientific & Industrial Research represented through its Director General, C.S.I.R., Anusandhan Bhawan, 2, Rafi Marg, New Delhi-110001
3. Director, Regional Research Laboratory, Bhubaneswar
4. Controller of Administration, Regional Research Laboratory, Bhubaneswar, Dist-Khurda

... Respondents

By the Advocates

Mr.A.K.Bose, S.S.C.

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN : Applicants, in all the five aforementioned Original Applications, are stated to have been engaged as Project Assistants in the Regional Research Laboratory, Bhubaneswar. Since the facts, the point in issue and the reliefs sought for in all these five O.A.s are one and the same, we dispose of this matter through this a common order (although we have heard the learned counsel for the parties separately). For the sake of convenience, we may as well deal with O.A.1046/2002 filed by Shri Prasanta Kumar Sarangi which will be the governing factor

in respect of rest of the four Original Applications.

2. Applicant (Shri Prasanta Kumar Sarangi) in O.A.No.1046/02 as also the others in O.A.Nos.1025, 1047, 1048 and 1049 of 2002 are stated to have been engaged on contract basis in the Finance & Accounts/Purchase Section of Regional Research Laboratory (in short R.R.L.), Bhubaneswar, from various dates of 1992 and 1993. To be more specific, the applicant in the O.A. under reference (O.A.No.1046/02) was engaged with effect from 19.07.1993 and his service was extended from time to time till 31.12.2002. The applicants in ~~the~~ these cases were on consolidated amount of payment initially (on monthly basis) although they used to be engaged on daily wage basis. However, the applicants, Shri Prasant Kumar others were Sarangi in O.A.1046/02, and served with an order of termination of contract with effect from 31.12.2002, on the ground that the project work had ended. Aggrieved by this order, the applicants have approached this Tribunal praying for the following reliefs.

" ... to admit this Original Application and to direct issue notice to the Respondents for their appearance; and

... after hearing both the sides be pleased to direct the Respondents to regularise the service of the applicant in the vacant post in Group 'C' or till regularisation, the applicant may be allowed to continue in temporary status with all financial benefits as per law and circular of C.S.I.R.;

... to quash the order of discontinuation of the applicant indicated in Annexure-3 dated 8.11.2002; and

... to allow any other relief which deem fit and proper according to law in the interest of the applicant"

3. The applicant's plea is that with his educational qualification of B.Com/LLB and proficiency in computer, he was engaged in the Accounts Department of R.R.L., Bhubaneswar for the last 10 years. His salary started with Rs.1650/- on (consolidated) monthly basis and at the end it went upto Rs.3500/-. His service has been extended from time to time from 19.7.1993 to 31.12.2002. It is the case of the applicants that whereas Respondent No.4 had recommended further extension of service by one year w.e.f. 1.1.2003, Respondent No.3, viz., Director, Regional Research Laboratory, Bhubaneswar, vide Annexure-3 dated 8.11.2002 turned down the proposal citing the order of the Director General, Council of Scientific and Industrial Research (in short C.S.I.R.) stipulating that non-technical staff should not be engaged in project work. The plea of the applicants is that Respondent No.3 ought not to have applied the ratio of the letter dated 2.3.2001 issued by Respondent No.2 (D.G., C.S.I.R.) as the same was not applicable in the case of the applicant. In this regard, the learned counsel for the applicant further argued that the letter dated 2.3.2001 issued by Res. No.2 imposed restriction on future engagement of persons on daily wages/casual/contract works, but it did not prohibit renewal of contract of the persons already working on contract basis, i.e., one like him, who has been working there for the last 10 years. He has also argued that the Respondent No.3 should have continued engagement of the applicant on the strength of the letter issued by the Office of the Res. No.2 vide Annexure-5. It has also been alleged by the applicant that

the Respondents while continuing him on job contract basis had given him an assurance to absorb him on regular basis in Group C category commensurate with his qualification. It has also been stated that the applicant had filed a representation to Res. No.3 to treat him as an I.D.Worker on "20.07.1999" and to regularise him as per the provisions contained in the letter dated 6.12.1995 (Annexure-6), but that did not yield any positive result. The applicant has also alleged that he has been representing to the Respondents for his regularisation, but without any effect. It has been submitted that more than 100 projects are running under the R.R.L., Bhubaneswar and therefore, there should be no reason for the Respondents to terminate his service on the plea of non-requirement of manpower.

4. The Respondents have contested the application by filing counter. The applicants have also submitted rejoinder to the same.

5. The main thrust of argument advanced by the learned Senior Standing Counsel, Shri A.K.Bose/ is that the applicant was engaged on 'job contract basis' in Accounts group as per the requirement of the Respondents in different spells on behalf of the sponsors of the various projects. As per the contract, the applicant was engaged for carrying out specific work for specific duration. Shri Bose submitted that there was no monthly payment or direct engagement of any person by the Respondents. The work was carried out on job contract basis and the contractor used to receive lump sum amount as specified in the contract. The Respondents have submitted that the applicant was engaged on 19.07.1993

for carrying out a specific work relating to Accounts Section and this contract was extended from time to time. Thereafter the applicant was engaged as a Junior Project Assistant against a sponsored project, viz., "EIA at Paradip Port Area for ABD Expansion Project" funded by Paradip Port Trust. In the letter of appointment the applicant was informed that his engagement would not confer on him any right/claim implicit or explicit for ... considering him against any CSIR post and that his engagement would be co-terminus with the duration of the above mentioned sponsored project only. The Respondents have further stated that the applicant was given extension of tenure upto 31.12.2002 as per the availability of fund under that project for which the applicant was engaged. The applicant's further engagement, it is stated, was not feasible as the project under which he was engaged had been closed. The Respondents have also refuted the claim of the applicant that D.G., CSIR letter dated 21.2.2002 had any application to his case as the applicant had not been identified for absorption either under the Scheme of 1990 or under the Scheme of 1995. They have pointed out that the applicant does not come under the Casual Workers Absorption Scheme of CSIR and that scheme as one time measure was applicable to the workers engaged on casual, daily wage or monthly basis as on 1.1.1990. The Respondents have further disclosed that an Industrial Dispute had been raised by some Project Assts./job contractors before the Central Government Industrial Tribunal. The said Tribunal by its order dated 30.7.2001 had held that the Regional Research Laboratory was not an 'Industry' and hence the reference of the matter before the Tribunal was not maintainable. The Tribunal rejected the application on other issues also. The Respondents have also refuted

the claim of the applicant that he was ever appointed as L.D. Assistant and reiterated that the applicant had joined as Junior Project Assistant ~~on~~ on co-terminus basis against a sponsored project on 13.7.1995 and further engaged in some other projects thereafter and given extension for carrying out the job from time to time as per the requirement of the work with terms and conditions of his initial engagement. With regard to contention of the applicant that his service is essential to R.R.L., the Respondents have submitted that the work carried out by the applicant was generated due to execution of certain specific projects and that could not be construed as essential or perennial work of the R.R.L. At the end, the Respondents have contended that as the project under which the applicant was engaged ceased to exist there would be no work for the applicant and no fund could also be made available for engaging the applicant further.

6. We have heard the learned counsel appearing for the parties and also perused the written note of arguments submitted on behalf of the applicants. We have also taken note of the decision in the case of Pradyanna Vs. O.S.F.C. reported in Vol. 32(1990) O.J. D. 24 (S & L) O.H.C. We have given our anxious thoughts to the arguments advanced at the Bar. The main issue involved in this case is ~~as to~~ who is the employer of the applicant, and, secondly, what is the nature of job. Lastly, whether the Casual Workers Absorption Scheme of CSIR 1995 is applicable to the applicant in the instant case. The learned counsel for the applicant stoutly argued that Director, R.R.L., Bhubaneswar is the

appointing authority of the applicant. It is denied by the learned counsel that the salaries/wages to the applicant have been paid out of the sponsored project fund, but that the same has been paid from a consolidated fund of INFRA. The learned counsel for the applicant stated that there is no specific project called GAP or INFRA and the nature of work that the applicants were asked to carryout related to regular establishment work of R.R.L., Bhubaneswar. The Senior Standing Counsel for the Respondents, on the other hand, argued that the appointment of the applicant was co-terminus with the duration of the project. In their appointment letter also it was mentioned that the applicant(s) have been recruited on behalf of the sponsored project and that there has been no employer-employee relationship between the applicant and the Laboratory. In this connection, Shri Bose referred to a decision of Mumbai Bench of this Tribunal in O.A. Nos.3/96 and 4/96 (disposed of on 7.5.1999) (Mrs.S.Srinivasan and Mrs.A.K.Deshpande vs. Union of India & Ors.) wherein it was held that the project appointees were not the employees of the Regional Research Laboratory and that there was a difference between recruitment against Project posts and recruitment against regular Government posts. It was also held that the appointments of the applicants came to an end by the efflux of time and if it is not extended afresh the appointee could not be able to continue in service. The learned Sr.Standing Counsel, by submitting certain ~~accounting~~ documents sought to prove that Res. No.3 used to engage contractors for execution of project related jobs invited in office, ~~in~~ ^{and} ~~and~~ ^{and} also ~~our~~ attention to the

classification codes in their books of accounts to show as to how all the expenditure of sponsored projects are finally accounted for in their balance sheet.

For proper understanding of the issues we catalogue below the history of engagement of these applicants.

Applicant in O.A.1025/02 was awarded a contract 'on work contract basis' for execution of certain items of work at a cost of Rs.950/- from 2.12.1992. The same contract was again awarded to him from 2.3.1993 to 31.3.1993, then in eight spells from April, 1993 to March, 1995 and the cost of work varied from Rs.1000/- to Rs.3900/- (lump sum). Then in July, 1995, the applicant was offered a job of a Project Assistant on consolidated amount of Rs.1600/- (on behalf of the sponsor of the Project, viz., Marine Pollution (GAP 004). The offer also stipulated that it was not an offer of appointment in C.S.I.R, temporary or otherwise, that it was a contractual engagement for the project/scheme funded by the aforesaid sponsor. The appointment was for a period of six months. In July, 1996, he was offered contractual appointment under another project, viz., Bio-conversion of Agro Wastes and its net product applications (GAP 0036) sponsored by the Ministry of Science & Technology, Govt. of India under ^{the} some terms and conditions as stated earlier. In February, 1997, he was given extension of tenure as Junior Project Assistant under the project GAP-INFRA (GAP 0004) where he continued till 31.12.2002. The consolidated amount of remuneration during this period was increased from Rs.1600/- to Rs.1800/- and then to Rs.3000/-.

Applicant in O.A.1046/02 was awarded, by Director, R.R.L., Bhubaneswar, a contract at a cost of Rs.3000 on work contract basis from 19th July, 1993 in the Accounts Section. The contract was renewed in

eight short spells from 1st October, 1993 to 7th July, 1995. The cost of the contract varied from Rs.1600/- to Rs.3900/-. Then in August, 1995 he was offered a contractual job as Project Asst. on a consolidated stipend of Rs.1600/- per month "as per rules under the project", viz., E.I.A. at Paradeep Area A.D.B. Expansion Projects (C & P 0032) sponsored by Paradeep Port Trust, Paradeep. Then from January, 1996 to July, 1996, his tenure was extended under the project No.CMP 0036 on a consolidated amount of Rs.1600/- per month. After that, he was appointed as Junior Project Asst. under another project, viz., Installation of High Bio-gas Plant of R.R.L., Bhubaneswar(GAP - 0032) sponsored by Non-Conventional Energy Sources, Govt. of India. From January, 1997, he was appointed as Junior Project Asst. for another Project, called.GAP-INFRA (GAP-0032) and his engagement in this Project was extended from time to time till 31.12.2002. The consolidated amount was increased from Rs.1600/- to Rs.1800/- and then to Rs.3000/- during this period.

Applicant in O.A.No.1047/02 was engaged initially for a period of 25 days w.e.f. 23.7.1991 on daily wage basis at the rate of Rs.30/- per day for carrying out some jobs in the Accounts Branch. He was engaged with the same terms and conditions for 25 days ~~in~~ a month on daily rate basis till September, 1991. In October, 1991 he was offered engagement for a term of 75 days on daily rate basis, at an expenditure of Rs.1500/- which was raised to Rs.1700/- in July, 1992. From 5.4.1993, the value of job contract was raised to Rs.3000/-. He was, thereafter given contract of 89 days at a spell till July, 1994. Then from 13.1.1996 he was appointed as Junior Project Asst. for a period of six months with a consolidated amount of Rs.1600/- per month under the project No.GAP 0004. His

engagement in this project since then continued till 31.12.2002. During this period the consolidated amount paid to him was enhanced from Rs.1600/- to Rs.1800/- and then from Rs.3000/- to Rs.3500/-.

Applicant in O.A.1048/02 was awarded a contract for the execution of certain works in the Project Section of Director, RRL, Bhubaneswar at a cost of Rs.4000/- (lump sum) in November, 1992. This contract was awarded to him in spells of 89 days from October, 1994 till 2.5.1995 at a cost which varied from Rs.777/- to Rs.3900/-. In July, 1996, he was offered the post of Junior Project Asst. for a period of three months from 12.1.1996 on a consolidated amount of Rs.1600/- per month under Project No.GAP 0001. From April, 1996, he was again offered work under Project No.GAP 0026 for a month and half. Then from January, 1997 he was engaged as Junior Project Asst. for a period of six months on a consolidated amount of Rs.1600/- under Project No.GAP-INFRA (GAP - 0001).

Thereafter his engagement was extended under this Project till December, 1997. From January, 1998 he was engaged under the Project No.GAP-INFRA. His engagement under this project continued till 31.12.2002. During this period the consolidated amount of monthly payment made to him was increased from Rs.1600/- to Rs.1800/- and then from Rs.3000/- to Rs.3500/-.

Applicant in O.A.No.1049/02 was initially awarded a contract on 'job contract basis' for a period of six months on a daily rate basis under the NICKEL Project (HM - 15) for data operating job. This job contract continued till October, 1994. He was given engagement as Junior Project Asst. for a period of three months w.e.f. 25.12.1995 on a stipend of Rs.1600/- per month under the Project No. GAP - 0019 funded by Orissa Environment

Programme - INDO Norweighn Development. He continued in this Project till July, 1996. From 1st August, 1996 he was engaged as Junior Project Asst. under another Project, viz., GAP-INFRA, sponsored by the Department of Science & Technology. He continued in this Project under the same terms and conditions till 31.12.2002, except that during this period his consolidated emoluments increased from Rs.1600/- to Rs.1800/- and then from Rs.3000/- to Rs.3500/-.

From the history of employment of the applicants as stated earlier, it is clear that each one of them was given contract of job and the value of the contract job varied from Rs.700/- to Rs.3900/-. Subsequently, all of them were given appointments as Junior Project Assistants ^{on} against the sponsored project/scheme " co-terminus basis. It reveals from the letter under Annexure-12 that the offer of appointment was not made to work under the Council of Scientific & Industrial Research (in short C.S.I.R.) but the same was made on behalf of the sponsors of the projects and the jobs offered were on contract basis. The learned counsel for the applicant argued that the applicants were working under the Director, R.R.L., Bhubaneswar. He has emphatically argued that the applicants' services were utilised in the Finance & Accounts Section of R.R.L., Bhubaneswar. On the other hand, the learned Senior Standing Counsel Shri Bose submitted that the allegation that the applicants were working under Res. 3 is misconceived. The fact of the matter is that R. R. L., Bhubaneswar is acting on behalf of the sponsors and

executing their projects on turn-key basis, which includes recruitment/deployment of personnel to execute the project work. He further stated that those persons working for the project are also housed in the same office/section of the Respondent No.3, but that does not make them employees of either R.R.L. or C.S.I.R. In support of his plea, he drew our attention to the judgment of C.A.T., Mumbai Bench in the case of Mrs. S.Srinivasan and Mrs.A.K.Deshpande vs. Union of India & Others (O.A.Nos. 03/96 and 04/96) disposed of on 07.05.1999.

We have carefully considered the various issues raised in the application. Regarding the status of the applicant, from a perusal of various offers of appointments given to him by Respondent No.3, it is clear that he either worked as contractor for the execution of certain jobs in that office or from August, 1995 to December, 2002, as Junior Project Assistant against various sponsored projects on consolidated amount, the engagement of which was co-terminous with the life of the project(s). In the face of the above nature of engagement it is quite obvious that the applicant was not an employee under Respondent No.3 but was ~~an~~ of some sponsored projects undertaken by Res. No.3 for execution. We have also kept in view the decision of the C.A.T. Mumbai Bench (supra). In those cases also the petitioners were appointed as Scientist 'C' in the Office of the Director, National Chemical Laboratory on contract basis. The applicants therein were given all service benefits, like, leave etc. Their services were

terminated in April, 1995. The applicants therein assailed the termination orders on the ground that those were in violation of Section 25 of I.D. Act; that one month's notice was not given nor one month's salary in lieu of notice; that they were entitled to be absorbed by the Respondents and that there was violation of the principles of natural justice in terminating their services. After examining all aspects of the matter, the Tribunal came to a conclusion that those appointments were purely ~~as~~ contractual appointments for a particular period and on particular condition. They were not Govt. servants either permanent or temporary and that the provisions of I.D. Act, did not apply to them. This decision was made relying on the judgment of the Apex Court in the case of K.V. Gupta (reported in JT 1995 (7) (SC) 25). The same questions were also considered in R.B. Chawhan's case by the Apex Court, which held that temporary employees of the project could not claim regularisation/absorption. In their view, those who were Project Employees could not claim regularisation in the Department. We respectfully agree with the decision of the C.A.T., Mumbai Bench that there is a difference between the recruitment made against the project posts and recruitment against regular Govt. posts. We, accordingly hold that the applicants having not been recruited against the regular establishment of R.R.L., Bhubaneswar against the sanctioned posts, by no stretch of imagination could he be said to be the employees of Res. No.3 and therefore, the said authority is not obliged to regularise ~~this~~ service.

One more relief sought by the applicant is

to regularise his service in the vacant post of Group 'C' or till regularisation, the applicant may be allowed to continue in temporary status. In the face of it, this prayer is not tenable as the applicant was not engaged as casual worker by C.S.I.R. under its establishment at R.R.L., Bhubaneswar. Therefore, the applicant who was directly engaged on work contract basis by Res. No.3 from 10/93 to 7/95 was not covered by the scheme framed by Res. No.1 for absorption of casual workers under its establishment. That being the fact of the matter, we see no reason for us to intervene in the matter nor do we see in this case any scope for judicial review of the policy decision taken by the Respondents in not extending the term of engagement of the applicants beyond 31.12.2002. In this respect, we are bound by the decision of the Apex Court in Civil Appeal Nos.233/91 and 480/91, in which the Apex Court had disapproved of the direction given by the Central Administrative Tribunal to the Respondents to create certain posts to carryon its activities. Speaking for the Court, the Hon'ble Apex Court further observed, "no Court or the Tribunal should compel the Government to change its policy involving expenditure. The Tribunal, therefore, would not have issued the directions as it did to compel the Central Government to assess the needs of the school and to create necessary posts ... " In this case also it is the policy of C.S.I.R. that the Labs/Instts. could only engage technically qualified persons as Project Assistants on fixed emoluments for the externally funded projects provided there is a specific provision for such manpower in the approved project document. Their appointment

should be kept strictly co-terminus with the duration of the single project against which they are appointed for the first time.

In the back drop of this decision of the Apex Court, this Tribunal in the case of Thankamma John vs. Union of India & Ors. (O.A.No.334/94 dated 24.2.1994), while declining to issue any direction to Respondents to create a post of Hindi Teacher in a High School in Palgarh, ^{had} observed as under :

"... In a matter of policy simplicitor, it is not for the Court/Tribunal to issue directions or substitute its view, in place of the competent authority".

We are bound by the said decision of the Tribunal. In the circumstances, we observe that Respondent No.1 in the instant case is within its right to execute the policy as enunciated by it vide its letter dated 2.3.2001 (Annexure-4). Similarly, the prayer for grant of temporary status to the applicant is also misconceived as the Respondents have not framed any scheme in respect of its contractors or its appointees in the projects funded by the sponsors.

In view of the aforesaid findings of ours, we see no merit in all these five Original Applications, which are accordingly rejected, leaving the parties to bear their own costs.

Seal
(M.B. MOHANTY)
MEMBER (JUDICIAL)

Signature
B.N. SOM
VICE-CHAIRMAN

By/