

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**Original Application No.108/2007**

**Date of decision: 01.08.2007**

**Hon'ble Mr. Kuldip Singh, Vice Chairman,**

**Hon'ble Mr. Tarsem Lal, Administrative Member.**

Kushal Singh Bhati, S/o late Shri OM Prakash aged 46 years r/o near Fakir Chand Haveli, Juni Bagar Chowk, Jodhpur. Presently working as ALS 'A' in Defence Laboratory, Jodhpur.

: applicant.

Rep. By Mr. K K shah : Counsel for the applicant.

**VERSUS**

1. Union of India through the Scientific Advisor to Ministry of Defence and Director General, Defence Research and Development Organisation (DRDO), south Block, New Delhi.
2. The Director, Defence Laboratory, Department of Research and Development, Ratanada, Jodhpur- 342011

: Respondents.

Rep. By Mr. L.R. Choudhary : Counsel for the respondents.

**ORDER**

**Per Mr. Kuldip Singh, Vice Chairman.**

The applicant assails the letter dated 16.05.2007 ( annex. A/1) issued to him on the subject "notice for Termination of Service". It mentions that in number of cases the Apex Court including the case in Secretary State of Karnataka vs. Uma Devi, has held that rule of law compels that the State to make appointments as envisaged in the Constitution/rules and accepting a claim for regularization on grounds of long years of service rendered would mean permitting the State to perpetuate an



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ineligibility in the matter of public employment. Therefore his services cannot be regularized. It is further stated that in view of the above his services stood terminated after 30 days from the issuance of that order.

2. The facts in brief are, that the applicant is an employee of Defence Laboratory under DRDO, Ministry of Defence. He was initially appointed for a period of one year and then continued for few more years. Vide order dated 10.08.1990, (annex. A/2) the applicant was appointed as Laboratory Attendant/Sample Collector in the pay scale of Rs. 775-12-995-EB-1025 with usual allowances with a liability to be posted any wherein India. The applicant also states that he was appointed to work in Rajiv Gandhi National Drinking Water Mission, which was a project (herein after referred to as 'the project') introduced by the Central Government under DRDO. It is further stated that Part-II order was also published on 19.09.90 (Annex. A/3). It is averred that the said project came to end on 31.03.95 and after that the applicant was appointed after due process of law by Board of Officers of DRDO on the post of Laboratory Bearer with effect from 01.04.95, vide order dated 08.01.96 in the same scale of pay. Part II order was published on 05.04.2000 (annex. A/5). It is further submitted that the applicant was on probation for a period of two years and after probation the applicant was confirmed with effect from 01.04.97, vide part II order dated 23.06.2000. This action was done on the basis of the recommendations of DPC III to fill up the available permanent



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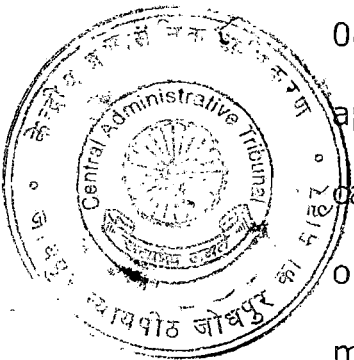
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posts in the department. The confirmation order is placed at Annex. A6. It is also stated that vide Annex. A/7 the Ministry of Rural Development has issued clarification that the staff appointed in the project is the staff of DRDO and they are to be governed by the rules of the organization. It is further submitted that during the tenure of service a controversy arose with regard to the status of the applicant since he was confirmed in the post of Lab Bearer with effect from 01.04.97 and it is stated that once an employee is confirmed on a post he is for all practical purposes treated as permanent employee of the Government. During the pendency of such controversy the payment of the applicant was stopped and therefore he approached this Tribunal by filing O.A. No. 315/2002. The above O.A was partly allowed and it was observed in para 9 of the said order as under:

" 9 . However, we find that the impugned order dated 08.10.2002 is equally amazing. The order of confirmation in respect of the applicant is on records at Annex. A/9. It is difficult to understand as to what further order for regularization of service of the applicant is required. It is also a mystery as to once the applicant is holding the post of Lab. Bearer on regular basis, how his salary has been stopped."

The board proceedings dated 04.01.96 which were approved on 08.01.96 are placed at Annex. A/11. It is stated that since the applicant is a permanent and confirmed employee the respondents cannot issue Annex. A/1 terminating his services. This impugned order has been challenged by the applicant on various grounds mentioned in para 5 and its sub paras. The applicant has prayed for setting aside the impugned order dated 16.05.2007.



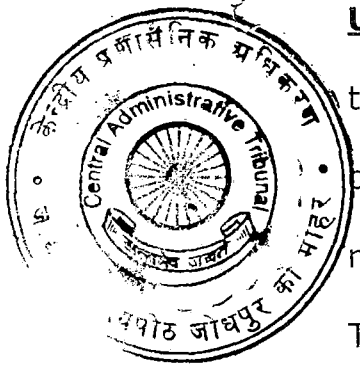
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3. The respondents are contesting the O.A by filing a detailed reply. In their reply, it is submitted that the initial appointment of the applicant itself is irregular and invalid and as such the confirmation order does not have any validity. It is also stated that the averments made by the applicant are relevant only to the post held by him upto 31.03.95 in the project and does not have any relevance in the present case. It is also submitted that in the letter dated 20.03.96, it has been clearly mentioned that PDC of the project DLJ 267 against with the applicant was appointed was upto 30.04.96. and the re-appropriation of manpower in the above project with effect from 01.04.95 was irregular and the retention of an employee in service after 30.04.96 was clearly illegal and in violation of rules. It is stated that when the appointment of the applicant in the post in question itself was illegal, there cannot be confirmation on the said post. The respondents have relied on various judgements of the Apex Court. The respondents have placed heavy reliance on the judgement of a Constitution Bench of the Apex Court in **Secretary, State of Karnataka and other vs. Uma Devi and others** [2006 SCC (L&S),753] has held that when the initial appointment itself is irregular, the long number of years of service cannot be the basis for regularisation. Therefore the respondents have stated that no interference is called for from this Tribunal and prayed for dismissal of the O.A.



4. We have heard the learned counsel for both sides. We have also carefully perused the pleadings and records. The judgment of

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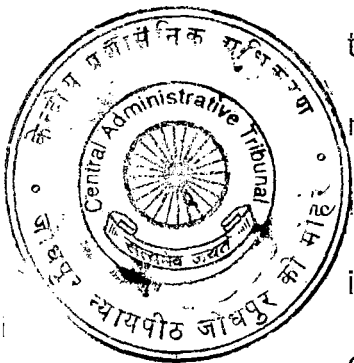
the Constitution Bench of the Apex Court in the case of Uma Devi ( supra ) has no relevance in the facts and circumstances of the present case. In this case both the parties were litigants over the issue of payment of salary before this Tribunal. The order of this Tribunal dated 26.03.2004 in O.A. No. 315/2002 filed by the applicant has been annexed in the typed set of papers. The relevant operative portion of the order reads as under:

"9. However, we find that the impugned order dated 01.10.2002 is equally amazing. The order of confirmation in respect of the applicant is on records at Annexure A/9. It is difficult to understand as to what further order for regularization of service of the applicant is required. It is also a mystery as to once the applicant is holding the post of Lab Bearer on regular basis, how his salary has been stopped.

10. xxx	xxx	xxx
xxx	xxx	xxx

11. In the premises, the Original application merits acceptance in part. The impugned order dated 01.10.2002 stands quashed. The respondents are directed to make payment of monthly salary in respect of applicant on the last day of every month ( except for the month of March for which the salary is to be paid on first April) as far as possible. In case any salary is due for the previous month (s) for the period of three years prior to date of filing of Original application, the same shall be released within a period of one month from the date of receipt of a copy of this order. No costs."

When the learned counsel for the respondents was confronted by the Court with this portion of the order that the issue regarding the regularization has already been settled in the earlier litigation itself, the learned counsel for the respondents tried to canvass that it is an obiter dicta and not a ratio decidendi, because in the above case the issue was not at all regarding regularization and confirmation but it was relating to withholding of salary by the department.



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5. In order to clarify this issue, we called for the records in the earlier case, wherein the prayer sought for by the applicant is as follows:

**OA. No. 315/2002**

**Para 8A**

That by an appropriate order or direction the impugned order dated 01.10.2002 ( Annex. A/1) may kindly be quashed and set aside and consequently the respondents may kindly be directed to pay to the applicant salary regularly by **treating the applicant to have been regularized**

**Para 8B**

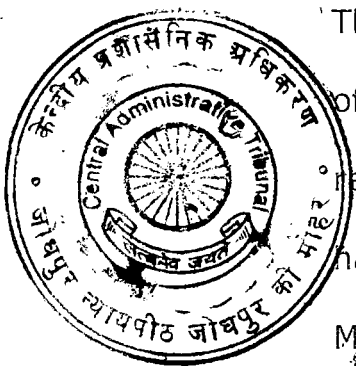
That if for any reason the Hon'ble Tribunal comes to a conclusion that Applicant has not been regularized so far then directions may kindly be issued to regularize the applicant's services and reckon his services for the purpose of seniority from the date of initial appointment.

Thus we find the issue regarding the regularization had been raised in the earlier O.A. In the additional submission filed in O.A. No. 315/2002, on behalf of the respondents it was specifically mentioned as under:

" page 53 of the paper book in O.A. nO. 315/2002.

3. that it is further submitted that on the recommendation of Departmental Promotion Committee [III] the applicant has made confirmed with effect from 1.4.1997 i.e. after expiry of two years namely on completion of probation period from the date of fresh appointment. This confirmation was made vide order dated 23<sup>rd</sup> June 2000. A copy of the order dated 23<sup>rd</sup> June 2000 is enclosed herewith and marked as Annex. R/C."

Thus the respondents themselves had admitted fact of confirmation of the applicant in the earlier O.A itself. So in our view, now, the respondents are estopped to change their stand that the applicant had not been confirmed or his appointment is illegal and irregular. More so, the order rendered by this Tribunal in O.A.No. 315/2002 had not been challenged by the respondents before any court of law and the observations made by this court had attained finality and the same is binding on both the parties. Therefore the issue regarding appointment/regularization/confirmation of the applicant cannot be re-agitated in this O.A. Since the applicant had already

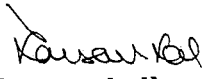


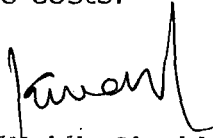
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been regularly appointed, and confirmed also, the impugned order dated 16.05.2007, (Annex. A/1) cannot be sustained and the same is hereby quashed. The O.A is allowed. No costs.

  
(Tarsem Lal)  
Administrative Member

  
(Kuldip Singh)  
Vice Chairman.

Jsv.

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Part II and III destroyed  
in my presence on 24-6-14  
under the supervision of  
section officer ( ) as per  
order dated 26-7-14

[Signature]  
Section officer (Records)