

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW.

ORIGINAL APPLICATION NO: 371/2003.

this. the 16th day of December 2003.

HON'BLE SHRI SARWESHWAR JHA MEMBER(A)

HON'BLE SMT. SHYAMA DOGRA MEMBER(J)

Parashuram Yadav aged about 39 years, son of late Beepat  
residing at 11/390, Indira Nagar, Lucknow.

...Applicant.

BY ADVOCATE SHRI Y.S. LOHIT.

VERSUS

1. Council of Scientific and Industrial Research, 1, Rafi Marg, New Delhi, through its Director General.
2. National Botanical Research Institute, Lucknow through its Director.
3. Director, National Botanical Research Institute, Lucknow.

....Respondents.

BY ADVOCATE SHRI A.K. CHATURVEDI.

ORDER (ORAL)

BY SMT. SHYAMA DOGRA MEMBER(J)

The applicant has preferred this Original Application  
with the prayer for directions to the respondents to absorb/

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regularise the services of the applicant to the post of Junior Technical Assistant taking into account his full length of service from the date of initial joining/appointment in the year 1987 and to place him in the order of seniority accordingly followed by consequential benefits of the same. During the pendency of the case, he is also prayed for continuity in service alongwith payment of salary regularly.

2. The applicant's case as set out in the O.A. is that the applicant was appointed to the post of Technician in the year 1987 by the respondents. The applicant was appointed after due recommendation of Selection Committee for the said post on 15th April 1987 vide Annexures A1 to A3. The applicant has joined in the project namely Betelvine sponsored by the Government of U.P. tenable at National Botanical Research Institute (NBRI) Lucknow. The duration of this aforesaid project as sanctioned <sup>was</sup> up to March, 1988. However, by subsequent orders <sup>issued</sup> from time to time, the applicant was allowed to work as Technician in various projects tenable by NBRI and funded by various <sup>external</sup> agencies. This happened till July 2003 when his services were terminated orally without assigning any reasons for his termination.

3. Every time when <sup>ever</sup> the applicant was appointed in the projects he has undergone the selection process and he has been selected after due recommendation of his name by the selection committee. The various letters of his appointment in various projects have also been placed on record vide Annexures A-4 to A-18.

4. The main contention of the applicant in the case is that since, he has worked with the respondents uninterruptedly and continuously for more than 15 years, therefore, he is entitled

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to be considered for his absorption in view of the scheme formulated by the respondents (Annexure A-20) in the year 1981.

5. More over, when the order of termination of his services was passed on 21st July 2003, he was requested to be adjusted in some equivalent position if there were available vacancies as per rules after taking a sympathetic view for the reasons that the applicant has been working in the project for about 15 years.

further contention

6. The applicant's ~~is~~ <sup>as per</sup> contention is that, he is fully entitled for absorption/ Clause 8 of the said scheme of 1981 formulated on the recommendation of Council of Scientific and Industrial Research (Respondent No. 1) as he has rendered more than three years continuous service.

7. The applicant has also preferred a representation after discontinuation of his services in July 2003. Earlier, also he has been approaching the concerned authority for his absorption.

8. The respondents have filed reply to the Original Application and contended that the applicant was appointed as Technical Assistant in various project being Externally Funded by various agencies. However, his appointment was always on tenure basis being extended from time to time annually. He has fully accepted the terms and conditions of his appointment whereby it has been specifically mentioned that the continuation in the project would not entitle him for his absorption. More over all the projectes in which the applicant was appointed since 28th April 1987 to 31st March 2003 have been discontinued and are no more in existence, therefore, he is not entitled



for absorption or continuation on the post in which he was working.

9. The further contention of the respondents as made out in the first reply is that so far the scheme of 1981 is concerned it is no more applicable or in operation in view of the subsequent schemes as formulated by the respondents for absorption of casual workers. Copies of these schemes being formulated from time to time by the respondents have been annexed as Annexure No. R.1 dated 6th June 1997, Annexure No. R-2 dated 14.1.1983, Annexure No. O.9 dated 4.10.90 and Annexure No. O.10 dated 6.12.95. In view of these schemes, the applicant was also informed through notice for submitting applications alongwith other casual workers who were identified under the casual workers absorption scheme 1990 and 1995. The applicant submitted an application alongwith 22 others. He was also called for interview scheduled to be held on 7.7.1997, but the applicant did not appear for the interview which resulted into non empanelment of his name for the post of Technician Grade -II pay scale of Rs. 950-1500( pre revised) where as the remaining 22 candidates have been appointed on the availability of vacancies. Copy of notice dated 9.6.1997 has been placed on record as Annexure No. O-5. Therefore, it is a submission of the respondents that non absorption of the applicant is on account of his conduct for his non participation in the said interview. However, taking into consideration ~~that~~ the applicant has worked with the respondents for 15 years, therefore, he was repeatedly asked to submit his application for the said purpose. The latest letter being issued to him in this regard has been placed on record alongwith supplementary counter reply filed on 15th

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December 2003, vide Annexure SCR-2 dated 24.10.2003.

Therefore, the respondents cannot be held responsible for non absorption of the applicant and the respondents are ready to consider the case of the applicant for his absorption as he is <sup>an</sup> identified worker under the casual worker absorption scheme 1990 read with 1995 and in future; also as and when there shall be the vacancies, the applicant would be called to appear for the selection for the absorption in accordance with said scheme. The applicant cannot claim automatic absorption <sup>without</sup> facing selection in accordance with the said schemes in view of the fact that all the circulars issued prior to the scheme of 1990 -1995 have become meaningless after enforcement of said scheme.

10. So far as, the absorption of the applicant on the post of Junior Technical Assistant Group III(1) is concerned. It is not permissible under the said scheme as a said post of Junior Technical Assistant belong to Technical staff whereas, under the said scheme only <sup>casual workers of</sup> Group (I, Group II and (Group 'C' and 'D') posts are to be considered for/ absorption. Moreover, as per decision of the Hon'ble Apex Court, absorption is always to be done in the feeder cadre post in the lowest grade on which, initially, the applicant has been appointed. Since, the applicant has been appointed in Group 'C' post, therefore, his claim for his absorption in Group III (1) with grade of Rs. 4500-7000 (pre revise) is not tenable.

11. In support of their contentions, learned counsel for the respondents have placed on record various decisions of the Tribunal particularly Annexure O-2 Passed in O.A. NO: 824/93 decided on 22.8.2000 titled

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Vinok Kumar Singh versus Union of India and others, In that case <sup>respondents</sup> plea was raised by the re/that only names of those <sup>could</sup> persons <sup>/</sup> be considered for selection or absorption who applied for a vacancy. Since, the applicant has not applied for the vacancies being arisen at various places and offices under the control of the respondents particularly in Chandigarh and Bhavnagar, therefore, his case <sup>is</sup> for absorption is hanging fire.

12. The applicant has filed rejoinder and submitted that the scheme of 1981 is still in existence in view of the fact that by formulation of subsequent schemes the earlier scheme of 1981 has not been superseded or cancelled. Moreover, applicant is not a casual labourer and he had been selected after following the due process of selection therefore, he cannot be asked to again appear for selection for the purpose of his absorption. Apart from this, since, the respondents have already identified the applicant for absorption, therefore, there is no need to apply a fresh for said absorption. However, he has complied with the directions of the respondents while submitting his application vide Annexure No. 0-7 alongwith photocopy of the /proforma duly filled by the applicant alongwith the certificate duly certified by the Administrative Officer of NBRI Lucknow (Annexure No. 2 and 3) to the effect that the applicant has been working in the Lab w.e.f. 28th April 1987 as casual labourer in scheme and he has been identified for absorption under casual worker labourer/ <sup>Scheme of</sup> CSIR 1995, therefore, the contention of the respondents fall to ground that he has not applied for his absorption.

13. The learned counsel for the respondents has also placed



reliance on the various decisions of the Tribunal. Photocopies of the decisions has also been placed on record. In view of this, the applicant has reiterated his claim for absorption in his rejoinder and counter reply to the objections/reply filed by the respondents on various occasions.

14. We have heard the learned counsel <sup>for the parties</sup> at length and gone through <sup>an</sup> the entire record carefully. ~~and~~ It is ~~an~~ admitted fact that applicant was appointed initially as Technician on the recommendation of the selection committee in the year 1987 and his term has been extended from time to time after under going the same process of selection every year. The applicant was not a daily wage worker/casual worker in view of the fact that he has been paid salary in the pay scale of Rs. 1400-2300 per month. This fact has also not been denied by the respondents that he was not casual labourer. Therefore, the question arises that whether, the scheme of 1981 is applicable in applicant's case or subsequent schemes of 1990 and 1995 are applicable in his case. In reply to this query being put by the learned counsel for the respondents he has drawn our attention to scheme of 1995 which has been made applicable to Group 'C' and 'D' employees who are working on casual basis as well as working on the projects.

15. After perusal of these schemes of 1990 and 1995 it is nowhere found that these schemes have been formulated in supersession <sup>s</sup> of earlier scheme being formulated in the year 1981. Clause 6 and 8 of said scheme of 1981 envisages as under:-

"6. The staff recruited for schemes by following the prescribed recruitment procedure, should not be required to undergo this procedure afresh for their appointment/absorption on regular side in identical posts. On such absorption their scheme



service will be taken into account for purposes of entitlement to various service benefits in CSIR such as Leave, Study leave etc."

"8. The existing persons who have rendered three years continuous service in a scheme should be absorbed either against existing regular vacancies in identical posts or by creating additional posts (by following prescribed procedure) if the work load in the Lab/Instt. so demands. The supernumerary posts could be created to absorb the staff employed in such projects/schemes, initially being a one time effort only. The laboratories/Institutes should not recruit further staff until all such staff is absorbed."

16. Though it has been specifically stated by the learned counsel for the respondents that this scheme is no more applicable in view of the formulation of subsequent scheme 1990-95 and since the applicant was not working or borne in the cadre in the year 1981 therefore, the benefit of the said scheme is even otherwise not applicable to the applicant, but taking into consideration that said scheme has not been superseded by formulating the subsequent scheme it can safely <sup>also</sup> be held that said scheme is applicable in the applicant's case, wherein, it has been specifically mentioned that the persons who have rendered three years continuous service in a scheme should be absorbed either against existing regular vacancies in identical post or by creating additional posts of the work load in the Lab/<sup>oratory</sup>so demands. The supernumerary posts could be created to absorb the staff employed in such projects initially being a one time <sup>measure</sup>~~effort~~ only. Even it has been emphasised that the laboratories/institutitutes should not recruit further staff untill all such staff is absorbed.

17. With regard to the various letters issued to the applicant's recently for applying for the post of Junior Technician Assistant at Chandigarh and Bhavnagar, it is contended <sup>by</sup> the applicant





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in counter reply that, since, the applicant has not got experience of this Technical post and he has been working in different projects of different nature, therefore, asking the applicant to apply for these posts at Chandigarh and Bhavnagar is not tenable as he does not possess the requisite qualification of Microbiology/Biochemistry/Molecular Biology or of the working in medical laboratories. Even the respondents are aware of this fact and the act of the respondents to force the applicant to apply for such post of which he is not having the essential qualifications is entitled to put him in lurch to oust him for his consideration for absorption in the laboratory where he has been presently working. In support of this contention, he has placed on record a supplementary affidavit on 12th September 2003 alongwith Annexure-13 a copy of advertisement No. 15/2003.

18. Though, the learned counsel for the parties have submitted and placed on record various decisions of the Tribunal, but in view of the fact that the applicant has been identified for the purpose of his absorption, therefore, we find no necessity to ~~xxx~~ elaborate or discuss those decision in the present case. Moreover, factual position of the present case has not been denied by the parties which is evident from various documents being placed on record by the parties.

19. By appointing the applicant from year to year, since 1987 till 2003 though in various projects being funded by various agencies clearly shows that there is need of engagement of applicant for said post and the working is also available though in different projects. It is also pertinent to mention that all these projects have been initiated/sponsored by respondents at all points of time, therefore, applicant can be adjusted in any subsequent project as has been done by respondents for the last 15 years.

20. After perusing the relevant contents of schemes,



particular scheme of 1981 and 1995 and various documents filed by the respondents, we have found that the applicant has been identified for absorption in accordance with CSIR absorption scheme 1995 therefore, he is entitled to be absorbed as Technician Grade II (1) on which he was initially appointed in the year 1987. By ~~not~~<sup>any</sup> stretch<sup>of</sup> imagination he can ~~be~~<sup>in</sup> not be treated as casual worker in Group 'C' post as he has been working in group 'C' post after due selection and recommendation of the selection committee. Therefore, the plea of the respondents that again he is to undergo ~~go~~ the same selection process is not tenable. Moreover, by ~~flux~~<sup>of</sup> afflux/time the applicant might have become overage disentitling him to join any other government job. Therefore, he is also entitled for age relaxation in view of ~~the~~ these schemes xxxxxxxx for his absorption against a regular post. He has served the respondents continuously <sup>further</sup> for 15 years and it is evident from Annexure A-18 that he was asked to be adjusted in some equivalent post against the available vacancies, therefore, he is also entitled for his reengagement in any of the projects of the respondents which are still in existence as even after expiry of one year of his term on 31st March 2003 he was allowed to work till 18th July 2003 which is also evident from Annexure A-18.

enumerated hereinabove

21. In view of these facts, the applicant has also got legitimate expectations or continuity of his services in any of the projects of the respondents as he has been provided work after his appointment and selection after following the due procedure of selection for various projects.

22. So far as the plea of the applicant with regard to his absorption as JTA is concerned we find force in the contentions of the respondents that he can only be



absorbed in Group 'C' post on which he was initially working. In view of this, prayer of the applicant for his absorption as Junior Technical Assistant is rejected.

23. Consequently, in view of the over all analysis and in the background of the foregoing discussions and keeping in view that applicant has already submitted his application for his absorption to the post of Technician Grade-II (1) in the year 2002 (Annexure O-7), and this O.A. is partly allowed while giving directions to the respondents to pass appropriate orders for absorption of the applicant against any available regular post in Group 'C' (Technician Grade II (1) ) category on which he was initially appointed as per his qualifications. Necessary orders to that effect be passed within a period of four months from the date of receipt & production of copy of this order.

24. In the meantime, the respondents are also directed to re engage the applicant in any of the projects which are still in existence while passing appropriate orders in this regard within a period of one month from the date of receipt of copy of this order.

25. In terms of these observations and direction as above, this O.A. stands disposed of. However ~~leaving~~ the parties to bear their own costs.

MEMBER(A)

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