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[illegible]

[illegible] application under section 19 of the Administrative Tribunals Act, 1985 the applicant has prayed that the memo of charges dated [illegible] 3.5.90 issued by the Director Central Drug Research Institute (Annexure No. 1) be quashed and the respondents be directed not to conduct any disciplinary proceedings ~~him~~ on the basis of the said charges and has also prayed that the respondents be directed not to enforce the provisions of Byelaw 76 of Council of Scientific and Industrial Research (for short C.S.I.R.) after declaring the same ultra-vires of Article 14 and 16 of the Constitution of India and the respondents be directed not to enforce the provisions of rule 5 of [illegible] Civil Services (Conduct) Rules against the [illegible] of the C.S.I.R. after declaring the same to be ultra-vires of Article 19(1) (a)&(c) of the Constitution of India. Thus, the applicant has approached [illegible] against the charge sheet itself and ^instead of^ allowing [illegible] proceedings to go [illegible]. Normally ~~such~~ [illegible]

such applications are not to be entertained, the purpose of which can also be for delaying the proceedings for years together in approaching superior courts off and on. The learned counsel contended that as he has challenged the vires of the Bye-law and rules, of this application is to be entertained as it is the beginning of a legal action and the proceedings are without jurisdiction and as such he can challenge the same on this ground and can challenge before the superior court also notwithstanding that it may delay the enquiry against the applicant for years together. Even if delay in the enquiry which ultimately may not take place in case the matter is decided in his favour by the Tribunal or by the highest court.

The applicant has pleaded that C.S.I.R. is an 'Industry' within the meaning of Industrial Disputes Act and consequently the Industrial Employment Standing Order Act will apply and in view of the fact that bye-laws have not been modified under section 13(b) of the said Act, bye-laws are to be excluded from the consideration and no proceedings on the basis of the said bye-laws which adopts the Central Government service conduct rules can take place.

In this connection, if the contention of the applicant is accepted that C.S.I.R. is an 'Industry' and is governed by the Industrial Disputes Act and Industrial Employment Standing Order Act, obviously his application is not to be entertained. Then the jurisdiction of the Tribunal in which Industrial Disputes Act are not excluded and the applicant are not excluded and as such this application will not be entertainable by the Administrative Tribunals Act, in view of section 28 of the Administrative Tribunals Act which excludes the

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jurisdiction of the courts except the Supreme Court under Article 136 of the Constitution of India. The learned counsel in this connection cannot contend as he is challenging the constitutional validity of the bye-laws framed by a society which is not a 'State' within the meaning of section 12 of the Constitution of India. The Tribunal alone will have the jurisdiction to decide the same.

The applicant entered the service of Central Drug Research Institute (for short C.D.R.I.), Lucknow as Junior Laboratory Assistant on temporary basis in the year 1961 and was promoted as Senior Laboratory Assistant on 28.1.1975. C.D.R.I. is said to be a unit of C.S.I.R. The applicant filed his nomination papers for election to the U.P. Legislative Council from Graduates Constituency of Lucknow. An objection was raised regarding acceptance of his nomination paper on the ground that that he is an employe of the C.S.I.R. which was under the Ministry of Science and Technology and he was paid salary as an employee of Government of India and was holding the office of benefit and as such disqualified from contesting the election to the U.P. Legislative Council under Article 19(1) (a) of the Constitution. The applicant filed his objection and the returning officer holding that C.S.I.R. was a Society registered under Societies Act and was an autonomous body and not under the control of Govt. of India and as such the applicant was not holding the office of profit over-ruled the objection. The applicant did not obviously succeed in the election and he was served with a chargesheet on 3.5.90. The charge against him was that the said Shri S.K.Mishra while functioning as SLA in CDRI during the period from 28.1.75

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till date has committed misconduct in as much as he took part in an election to Vidhan Parishad of U.P. from the Lucknow Region Graduate's constitutency in April, 1990. Thus, by his taking part in an election to a Legislature he has contravened sub Rule 4 of the Rule 5 of the C.C.S. (Conduct)Rules, 1964 as made applicable to the employees of CSIR. CSIR has framed bye-laws for the conduct of its affairs regulating service conditions and conduct of its employees. Bye-law No. 74 of the said bye-laws which comes under the Conditions of Service of Officers and Staff of the Society reads as under:

"74. The Central Civil Services (Classification, Control and Appeal)Rules, and the Central Civil Services (Conduct)Rules, for the time being in force shall apply, so far as may be, to the officers and establishments in the service of the Society, subject to the modification that:

(i) reference to the "President" and "Government Servant" in the Central Civil Services (Classification Control, and Appeal) Rules, shall be construed as references to the "President of the Society" and "Officers and establishments in the service of the Society" respectifely ; and

(ii) reference to "Government" and Government servant" in the Central Civil Services (Conduct)Rules, shall be construed as reference to the "Society" and "Officers and establishments in the service of the Society" respectively.

74-A.....

75(a).....

"75(b) In regard to all matters concerning service

conditions of employees of the Society, the Fundamental and Supplementary Rules framed by the Government of India and as such other rules and orders issued by the Government of India from time to time shall apply to the extent applicable to the employees of the society."

There is no doubt or dispute that the CSIR is a Society registered under the Societies Registration Act and it is an autonomous body though the Central Govt. exercises various controls and also has got supervisory powers over it and in the financial matters also. On behalf of the petitioner not only in his application but arguments also reliance was placed in the case of Sabhajit Tewari vs. Union of India (1975 SCC (L&S) 999) In the said case the Supreme Court after taking into consideration the constitution of the Society and the extent of the Officers and the constitution governing body and the control and supervision of the Central Govt. etc and the applicability of the Govt. of India (business Rules) held that CSIR is not ~~every~~ such authority within the meaning of Article 12 of the Constitution which is sponsored and controlled by the Central Govt and registred under the Societies Registration Act . The Supreme Court also held that employees of such institution to impeach the circulars of the institution relating to service matters on ground of infraction of their rights under article 14 and 16. The argument of the learned counsel for the applicant that the bye-laws are violative of Article 14 and 16 of the Constitution of India, this ground of challenge is not open to the applicant to challenge the same ~~on this ground~~.

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As the question has been urged and the learned counsel contended that this question as to whether it is an 'Industry' has got to be decided in this case and to that too in the light of the fact that the CSIR has already accepted that it is an 'Industry', reference to the provisions in this behalf are made. Before entering into the question as to whether it is an Industry or not reference may be made to the admissions which have been pleaded by the applicant. The applicant has pleaded that in the Writ Petition No. 742/83 filed before the Lucknow Bench of Allahabad High Court which is CSIR and another vs. Shri Prem Raj Singh and another it has admitted that CDRI is an Industry and Central Civil Services(C.C.A.) Rules do not apply to it and the said admission has been recorded by the High Court in its order dated 24.2.84 that is an interim order. In the said order it was mentioned that Rule 10 of the Central Civil Services (C.C.A.) Rules admittedly were applicable to the employees of the CSIR. Thus, two observations although made by one of us. Earlier part was admission of the employee and the later part is said to be admission of the employer. It appears that later observation was made without taking into consideration the pleadings of the parties which at that stage were not available. The respondents in this connection have pointed out that it is because of one typographical error that this confusion was created and from the other paragraph it is clear that the C.S.I.R. never admitted that it was an Industry at page 2 of Annexure 11 and the CSIR there was a typing error and preceding the word CDIR appears to have been typed in the word of the word 'Employer' in place of employee and in this connection reference to other parts of said written Statement have been made.

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"5. That the provisions of the Industrial Disputes Act 1947 or the U.P.Industrial Disputes Act, 1947 are not applicable either to the council of Scientific and Industrial Research or to any of the Institute or Centre established by the council of Scientific and Industrial Research.

6. That it is submitted that no commercial activity is being carried on in any of the Institute or Centres established by the council of scientific and Industrial Research or of commercial character of productive activities resulting in goods or services is being carried on by any of the Institutes or Centres of the Council of Scientific and Industrial Research.

7. That neither the council of Scientific and Industrial Research nor the Central Drug Research Institute is the "employer" and nor is Sri Prem Raj Singh a "workman" within the meaning of the Central and the state Industrial Disputes Act".

This would also be clear from the contents of paragraph 5(ii) of the Rejoinder filed by the C.D.R.I. before the Hon'ble High Court in the Writ Petition(No. 742/83)- Council of Scientific & Industrial Versus Prem Raj Singh which is as follows:

"5.(ii) It is further stated that the decision rendered by the Hon'ble Supreme Court, referred to in the paragraph under reply does not in any manner say that the C.S.I.R. or its Institutes/Laboratories is an 'Industry' within the meaning of the Industrial Disputes Act or for the purposes of other Labour Laws. The Supreme Court decision also does not lay down that the C.C.S(C.C.A) Rules as adopted by the C.S.I.R. cease to apply to the employees of the C.S.I.R.

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In absence of the G.O. dated 4.7.1978 no reply is possible in so far as averments have been made interpreting the Government Order dated: 4.7.1978. It is denied that the Industrial Employment (Standing Orders) Act or the Industrial Disputes Act applies to the employees of the C.S.I.R." .

A perusal of the said paragraphs obviously indicates that there was no admission and CSIR did not intend to admit it and the plea that it was a typing error obviously appears to be correct.

The word 'Industry' has been defined in the Industrial Disputes Act, as it stood amended by the Act No. 46 of 1982 which came into effect on 21.4.84 the word Industry has been defined as follows:

> "(j) "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;"
>
> Industrial ~~Est~~ Establishment undertaking means the establishment or undertaking on which Industry is carried on."

Thus, for Industry it is ~~not~~ necessary that there must be some systematic activity which may be carried on between the employer and his workmen for the production supply or distribution of goods or services with a view to satisfy human wants or wishes. There is no averment whatsoever that C.S.I.R. produces, supplies or distributes goods or services with view to satisfy human wants or services and there is a denial of such thing in the written statement. Similarly there is no assertion that the applicant is a workman and the post

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which he is holding comes within the definition of 'workman' as defined in the Industrial Disputes Act, In the leading case of Bangalore Water Supply and Sewerage Board vs. A. Rajappa (1978(2)SCC 213) decided by 7 Judges Bench of the Supreme Court research Institutes were held to be 'Industry'. The Hon'ble Court observed that as regards research institutions they are Industry albeit run without a profit motive a research institute may be of a separate entity which founded the institute itself, propelled by the systematic activity and calculated through the discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. While making this observation took into consideration the case of the Ahmedabad Textile Industry Research Assoticaion. V. State of Bombay(AIR 1961 SC 484) and the case of Safdarjung Hospital v. Kuldip Singh Sethi (1971) 1 SCC 177). Thus, these cases were in respect of research wing of the Textile Industry which was rather ~~unseverable~~ inseparable wing of the Textile Industry. The Industrial Disputes Act was amended and in the amendment so far as definition of Industry is concerned, came into effect on 21st August, 1984. This definition specifically included hospital and dispensaries, educational, scientific research or training or institutions and few more things from the defintion of Industry. This amendment thus took away all such things from this definition after the same were held to be so in Banglore Water Supply's case(supra). The observations in respect of these items made in the said case were only of academic institute. C.D.R.I. is a research institute and it also does not produce or manufacture things which may bring it within the meaning of word 'Industry'. Reference was also made to the case decided by ~~Supreme~~ J.

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Ernakulam Bench of C.A.T. in K.P. Pillai vs. Chief (Administration) C.S.I.R. and Industrial Research, New Delhi and another (1989) 10 ATC 849). The Tribunal took the view that CSIR being predominantly a research institute, is not an Industry. The Tribunal held this after taking into account Bangalore Water Supply case (supra) referred to above.

We have given our additional reasons for holding that CSIR is not an Industry including that of amendment made in the definition of word 'Industry' in Industrial Disputes Act. In view of the fact that C.S.I.R. is not an 'INDUSTRY', the provisions of Industrial Employment(Standing orders) Act, 1946 do not apply. The provisions of the said 'Act' apply only to Industrial Establishment as the preamble of the Act also indicates the phrase 'Industrial Establishment' has been defined in section 2 c of the Act. It includes Industrial Establishment as defined under Factories Act, Payment of Wages Act. Indian Railways Act or Industrial Establishment or Contract Act. In this case attempt has been made to bring in definition given in 'Payment of Wages Act' Section 2(ii) of the said Act defines 'Industrial Establishment' It reads as under:

"(a) a tramway service,.....for hire or reward.

(aa) air transport service.....Civil Aviation Department of the Government of India;

(b) dock, wharf or jetty;

(c) inland vessel, mechanically propelled;

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured with a view to their use, transport or sale;

(g) establishment in which work relating to

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construction.....form of power is being carried on:

(h) any other establishment .....notification in official Gazette."

The definition in no way brings in research institute None of the works specified in the same, as such it not being Industrial Establishment the provisions of the Standing orders Act do not apply and it is not necessary to refer the same, including section 13(b) and its reading with the bye-laws framed by the Institute.

Relation between the employer and employee in this case is contractual in nature. The moment the employee enters the service he is bound to terms of contract. It is true that the service rules of C.S.I.R. are not statutory, but the rules if have been framed, are binding on the employer and employee both. Instead of what has been stated in the Central Government service Classification and Conduct Rules bye-law it would mean that what is given therein with certain modifications is bye-law No. 74 which is binding on them i.e. on the employer and employee both.

In the case of Jacob M.Puthuparambil and others vs. Kerala Water Authority and others (1991) SCC (L&S 25) it was held that adoption of rules governing Government servants framed under Article 309 by an autonomous statutory body without previous approval of Government, by such adoption the rules will lose their statutory flavour or force. They become like any other administrative rule. Obviously, these are administrative rules. After entering service employees of the Institute are also bound by the same and can be subjected to departmental action in case they violate it.

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The contention that these rules are in violation of the provisions of Article 191 of the Constitution of India is also without any substance. Article 191 of the Constitution of India only provides disqualification of a membership for Legislative Assembly or Legislative Council for a State in case a person holds office of profit under the Government of India or the Government of any State, is of unsound mind or is not a citizen of India or is not disqualified under any law made by the Parliament. Representation of Peoples Act was presented more for disqualification for seeking election to these bodies. This disqualify person from seeking election and in case he is so disqualified he will not be allowed to seek election by authorities if election will be set aside by competent court. But the same has nothing to do with the relation between employer and employees. If a person with open eyes joins the service with such a prohibition he can make a complaint against the same. One may not be disqualified and seek election but the same has nothing prohibition and consequence of same in service rules of society may be governmental society an autonomous body. There is no fundamental right to seek election and Article 19 of the Constitution does not guarantee any such right, no protection under the umbrella of Constitution is available against the same. Learned counsel made reference to Acharya Jageshwaranand Avadhut vs. Commissioner of Police (1983 4 SCC 552) and State of Madhya Pradesh vs. Ram Shanker Rathi and (1983)(2) SCC 145 in which validity of Government servant Rules regarding prohibition in political matters has been referred to larger Bench. That may be so but any reference made in a case of

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Government servant could not be taken to mean that the same necessarily would govern employees of society who do not get any constitutional protection and the matter may remain stayed for unspecified period.

Accordingly, we do not find any force in this application and it is dismissed. Interim order if any, is discharged. No order as to costs.

A.M. V.C.

Shakeel/ Lucknow Dt. 2-7-91.