

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION NO. 304 of 1992.

this the 31st day of January'2000.

HON'BLE MR D.C. VERMA, MEMBER(J)

HON'BLE MR A.K. MISRA, MEMBER(A)

Anand Prakash, aged about 37 years S/o Sri Krishna,
R/o Village Kalyanpur, P.O. Faridinagar, District
Lucknow.

Applicant.

By Advocate: Sri A. Moin.

Versus.

Council of Scientific & Industrial Research, Rafi
Marg, New Delhi through its Director General.

2. National Botanical Research Institute, Rana
Pratap Marg, Lucknow through its Director.

Respondents.

By Advocate: Sri A.K. Chaturvedi.

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MISRA, MEMBER(A)

The applicant in this O.A. has prayed for quashing of the selection proceedings held on 4.6.92 as per Annexure-1 to the O.A., so that the applicant, who was a scheme worker may be considered for absorption. He has further prayed that he should be absorbed retrospectively on the vacant post of Technician Grade-II w.e.f. January'83. He has also prayed for allowing him the same pay w.e.f. 1.4.87 which is being paid to similarly situated regular employees discharging similar duties.

2. Pleadings on record have been perused and the learned counsel for the parties have been heard at great length.

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3. The brief facts of the case are that the Council of Scientific & Industrial Research (hereinafter mentioned as CSIR) (respondent no.1) is externally engaged in running/sponsored programmes also apart from its own programmes. The CSIR in 1979 decided to run these schemes through qualified staff and with this objective in mind, a committee was constituted to look into the question of linking of the technical assistance programmes with overall programmes. The report of the committee was approved by the CSIR ~~which~~ with certain modifications and the report of the committee as modified and approved by the CSIR was issued under OM dated 13.1.81. On behalf of the applicant, it has been stated that the staff recruited for sponsored projects/schemes is to be treated as temporary CSIR staff in terms of the OM dated 13.1.81. It was also submitted that the staff recruited for such sponsored schemes ~~which~~ have rendered three years or more of continuous service in any scheme may be absorbed either against the existing vacancies in supernumerary identical posts or by creating ~~supernumerary~~ posts for absorption of such staff in sponsored projects/schemes. It is also submitted that the staff recruited for such schemes in accordance with the prescribed recruitment procedure should not be required to undergo the same recruitment procedure afresh for their absorption on regular basis in identical posts. A copy of the report of the committee contained in OM dated 13.1.81 has been filed as Annexure A-1 to the O.A. It was also submitted that the policy as contained in OM dated 13.1.81 has been followed by all the Institutes/Labs of the CSIR and in accordance with this policy some workers engaged in M.O.M. scheme of Central Drug Research Institute (unit of CSIR) were absorbed. Similarly, workers of the Cell for Research Advice & Development on Land Conservation Scheme (hereinafter mentioned as

Censervation Scheme) of NBRI were also absorbed in 1986 on the basis of the OM dated 13.1.81. Some of the candidates absorbed in 1986 are Mrs. Kusum Bhardwaj, Nizamuddin, Vinod Kumar Singh, N.C. Tewari, Prahlad etc.

4. The applicant was intially engaged in Flouriculture Section of the NBRI on daily wages in December'77. The applicant was called-for interview for the post of Junior Laboratory Assistant (hereinafter mentioned as JLA) (a group 'C' post) in a scheme entitled as Scheme on Floral Craft for Rural Economy sponsored by the DST. In pursuance of the interview held on 23.12.82, the applicant joined as JLA in the said scheme sponsored by the DST on 5.1.83. He worked as JLA till 31.3.1987, as the scheme of the DST came to an end on 31.3.1987. The applicant was again engaged from 1.4.1987 on daily wages in a project styled as Standarization of Agro Techniques in Ornamental Plants. It was submitted that even as daily wage worker, the applicant has been working since 1.4.1987 in the Flouriculture Section of NBRI as a employee Group 'C' performing the same duties. Thus, the applicant has worked in the NBRI since December'77 till date which includes four years and three months period of employment in the specific scheme sponsored by the DST. It was also submitted that since 1.4.1987 worker as a daily wage, the monthly emoluments of the applicant are much less than the emoluments of similarly situated regular staff of the NBRI. It was submitted that in terms of the OM dated 13.1.81, the applicant has acquired the status of temporary CSIR staff and was entitled for absorption/regularisation on a group 'C' post for which the same salary was payable to him as to the regular staff of the CSIR. His representations made to the respondent no.1 were

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stated to have been arbitrarily rejected by the Director, NBRI (respondent no.2). In pursuance of the decision of the apex court / for absorption of workers of the Institute, the respondents decided to screen-out the existing staff and accordingly a notice dated 19.9.91 was issued by the NBRI asking all the daily wage workers of the scheme to apply for vacant posts of Technician Grade-II (a Group 'C' post). It was submitted that earlier as per seniority list of the NBRI daily paid workers including the scheme workers, who had joined upto 1976 were absorbed and later on as per the seniority list prepared on 29.6.89 showing the names of workers who joined between 1976 to 1982, absorption had been made upto Sl.no. 19 (Sri Lodhar). The applicant in this list figures at sl. no. 42. It was submitted that now the NBRI instead of absorbing the scheme workers, has by notice dated 19.9.91 asked the daily paid workers of the schemes to apply for the posts of Technician Grade-II. The applicant applied in pursuance of the notice dated 19.9.91 under protest, but the respondent no.2 fixed 4.6.92 as the date for selection of the candidates as Technician Grade-II. It was submitted that the applicant having been appointed after undergoing a regular selection procedure/ cannot be asked to appear again in the selection which is contrary to OM issued by the CSIR dated 13.1.81. The selection test was held as per schedule on 4.6.92 despite the representation and protest of the applicant. The selection held on 4.6.92 has been challenged by the applicant on the ground that the applicant cannot be asked to undergo the same procedure for selection for the second time and he is entitled for absorption without undergoing through the process of selection for the second time.

5. On behalf of the respondents, it was submitted that the applicant has no claim for regular

absorption under the respondent no.2. The guidelines issued by the CSIR under OM dated 13.1.81 for recruitment of staff are ~~not applicable~~ Bilateral projects like UNDP, PL-480 etc. and the staff recruited for these projects, according to the respondents, would be treated as temporary staff of the CSIR. It was stated on behalf of the respondents that for the sponsored projects, the recruitment of staff is made on behalf of sponsorer for a fixed period ~~for~~ duration of the scheme only. Such recruitments are co-terminus with the duration of the project and ~~came~~ to an end on expiry of the scheme. It was stated that such appointments are not made under the CSIR and the incumbents to such appointments are not entitled for absorption/regularisation. It was also brought to our notice that the applicant had applied for the post of Technician Grade-II in pursuance of the notice dated 19.9.91, and was interviewed on 4.6.92 alongwith the other candidates, but the selection committee did not find him suitable for the post and accordingly he could not be appointed in pursuance of the interview held on 4.6.92. It was further submitted that it was also made clear in the applicant's engagement letter dated 4.1.83 by which the applicant was appointed as JLA that the scheme under which the applicant has been ~~is~~ appointed is sponsored by the DST and, therefore, he would not be treated as a regular employee of the CSIR and would not have any claim for regular absorption under the respondent no.1. It was also clarified in this letter of appointment that the applicant's tenure would not be treated towards his services, if he is subsequently employed in the NBRI/CSIR as a Scientist or on any other regular Scientific/Technical post. Since the applicant was appointed in January '83 under the scheme sponsored by the DST, he can have no claim for regularisation/absorption as a CSIR staff. As

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regards absorption of the employees of the Conservation Scheme, it was submitted that the said scheme was sponsored by the CSIR and accordingly the staff employed in this scheme was absorbed in the regular cadre of CSIR/NBRI. Since the scheme of the was DST /for a fixed duration, the engagement of the applicant ended on 31.3.87 alongwith the termination of the scheme. Thereafter, the applicant w.e.f. 1.4.87 was engaged as a daily wage worker in the Flouriculture Section of NBRI, on humanitarian considerations.

The appointment letter dated 4.1.83 (Anexure-3 to the O.A.) shows that the scheme of Floral Craft for Rural Economy was sponsored by the DST. A notice dated 19.9.91 for appointment as Technician Grade-II was issued fixing the interview on 4.6.92 in pursuance of the decision of the apex court in the case of Kamlesh Kapoor Vs. Union of India in Writ petition (Civil) no. 631/88 which still holds good. Since the applicant could not be selected in the interview held on 4.6.92, he could not be appointed as Technician Grade-II in pursuance of the said interview. As already stated above, the initial appointment of the applicant as JLA was not under the CSIR, but under a fixed duration scheme of the DST.

6. In the Rejoinder, the facts stated in the O.A. have been reiterated. However, in the Supplementary Rejoinder, the applicant has tried to draw a parallel between his own case and the case of Sri N.C. Tewari, who was appointed as Junior Technical Assistant in the Conservation Scheme. It was submitted that the terms and conditions of the appointment in this scheme of Sri N.C. Tewari were identical to the terms and conditions of the appointment of the applicant in the scheme styled as Floral Craft for Rural Economy (Annexure-3 to the O.A. and Annexure S-1).

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to the Supplementary Rejoinder).

7. According to the respondents, Annexure S-1 dated 10.9.82 which is a letter of appointment of Sri N.C. Tewari shows that he was appointed as Junior Technical Assistant (hereinafter mentioned as JTA) in the NBRI, Lucknow in the scheme styled as Conservation Scheme whereas Annexure-3 to the O.A., which is a letter of appointment of the applicant shows that the applicant was appointed as JLA in the scheme styled as Floral Craft for Rural Economy sponsored by the DST, New Delhi. Therefore, the appointment of Sri N.C. Tewari as JLA was under the NBRI, Lucknow which is a unit of the CSIR; whereas the appointment of the applicant was under a scheme of fixed duration sponsored by the DST. The Conservation Scheme was subsequently absorbed into the regular programme of the NBRI resulting in absorption of all the staff working in the Conservation Scheme into the regular cadre. As against this, the DST under which the applicant was appointed was an outside sponsorer.

8. The respondents have filed a Statement on 30.7.97 in compliance of the order of this Tribunal dated 17.12.96 in which it has been stated that the applicant has been conferred with temporary status w.e.f. 12.1.94 in the light of the decision of the Governing body of the CSIR taken in its meeting held on 12.1.94. The said decision was also communicated to the applicant by letter dated 27.6.94. The letter dated 27.6.94 issued by the CSIR to the Director, NBRI states that the governing body of the CSIR in its meeting held on 12.1.94 had approved conferment of temporary status on daily wage/casual workers in terms of the instructions of the Government dated 10.9.93 on daily wage/casual workers identified for absorption in various CSIR Labs/Institutes. This letter states that temporary status would not entitle the daily wage workers to be brought on the

permanent establishment unless they are selected through the regular selection process as per the procedure prescribed in the CSIR Scheme on Absorption of Casual Workers. This letter further provides that despite conferment of temporary status, the services of daily wage/casual workers can be dispensed with by giving one month's notice by either party. In pursuance of the decision of the apex court in the case of Kamlesh Kapoor (supra), a scheme styled as Casual Workers Absorption Scheme, 1990 was framed and circulated by letter dated 4.10.90. According to the scheme of 1990 so framed, the casual workers were to be absorbed after selection as per the normal procedure of recruitment prescribed for the post subject to other eligibility requirements including passing the trade test, if any. The absorption was to be considered at the entry level post of Group 'C' and Group 'D' (Technical or non-technical) cadre. It is also provided in this scheme that the open recruitment for filling-up entry level vacancies in Group 'C' & 'D' will be banned till the casual workers already engaged and fulfilling the terms & conditions ~~for~~ absorption are fully absorbed. In pursuance of this scheme, a large number of daily wage/casual workers were absorbed in Group 'C' & 'D' between 1991 and 1994. The respondents have further submitted that in pursuance of the notice dated 19.9.91, the applicant alongwith other daily wage/casual workers was interviewed ^{on 4.6.92} for selection to the post of Technician Grade-II in the pay scale of Rs.950-1400/- . The applicant was not found suitable by the selection committee for appointment as Technician Grade-II; whereas some other candidates such as S/Sri Ram Kishore, Ram Karan etc. were selected and appointed. Another notice ~~xxx~~ was stated to have been issued in 1993 inviting applications for the post of Technicians.

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Grade-II, but the applicant did not apply in response to this notice. On 7.3.94 a notice was again issued inviting applications for the post of Technicians Grade-II in response to which the applicant had applied alongwith other eligible daily wage/casual workers. The applicant, however, did not appear in the interview and, therefore, was not considered for appointment; whereas those casual workers who appeared and were selected, were absorbed and appointed. The applicant, therefore, continued with temporary status conferred on him w.e.f. 12.1.94. It was submitted that the Casual Workers Absorption Scheme 1990 was further modified as per the directions of the apex court and the modified scheme known as Casual Workers Absorption Scheme, 1995 which superseded all other earlier schemes on the subject. The modified scheme of 1995 was enlarged ~~xxxx~~ in scope and provided that in addition to the casual workers engaged at CSIR Hqs or its Labs/Institutes the modified scheme was applicable also to the workers engaged in the sponsored projects whether bylateral or time bound. The conditions for absorption of casual workers remained the same with regard to the eligibility conditions including passing the trade test, if any. The modified scheme of 1995 for absorption of casual workers is available at Annexure S-5. It was submitted that the applicant is claiming automatic absorption in accordance with the scheme of 1990 without ~~going~~ ^{the} through the procedure prescribed for absorption in the scheme of 1990 and also without challenging the validity of the scheme of 1990 which was framed in pursuance of the judgment of the apex court referred to above. It was also submitted that the claim for seniority made by the applicant as JLA w.e.f. 5.1.83 is not admissible having regard to the fact

that his engagement came to an end on 31.3.87 on the termination of the scheme and the ^{also} fact that the applicant was not absorbed.

9. As regards the applicant's claim for absorption in terms of the OM dated 13.1.81, we find that the applicant's claim for absorption is not admissible as per the terms and conditions of this OM. Para 5 of this OM provides that the procedure as applicable for regular staff should be followed both for creating additional posts and recruiting the ~~additional~~ staff, if any, required for UNDP, PL-480 and other ~~Bilateral~~ projects. It is also provided that the staff recruited for such projects will be treated as temporary CSIR staff. This para further provides that in sponsored projects the recruitment will be made on behalf of the sponsor for a fixed duration of the scheme only and further that the appointment under ~~the~~ such projects will not be a CSIR appointment temporary or otherwise and would not entitle the incumbents to any claim for implicit or explicit on any CSIR posts. The stipuation in para 8 of the OM dated 13.1.81 of ~~absorbing~~ all existing employees who have rendered three years continuous service in a scheme either against existing regular vacancies in ~~an~~ identical posts or by creating additional/supernumerary posts is applicable only to projects and schemes under the CSIR and not ^{to} time bound projects sponsored by the external agencies. Therefore, the contention that the applicant should be absorbed in terms of the OM dated 13.1.81 cannot be accepted as sustainable.

10. The respondents have filed Supplementary Counter on 4.2.98 wherein it has been stated that in pursuance of the Casual Workers Absorption Scheme 1990 read with Scheme of 1995, a notice was issued for filling-up the posts of Technicians Grade-II for those

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who were eligible in terms of the Scheme of 1990 and Scheme of 1995. The applicant alongwith 25 others applied in response to the notice dated 9.6.97 and appeared in the interview held on 7.7.97 in which the applicant was selected alongwith eight others and an offer of appointment dated 9.7.97 was issued to all the nine selected candidates including the applicant. In pursuance of this offer of appointment, the applicant joined on 10.7.97. The offer of appointment states that ^{the applicant} is appointed in the scale of Rs.950-1400 (PRS) plus usual allowances. The letter of appointment also states that the appointment is under the Council of Industrial & Scientific Research, which is an autonomous body and the probation period will be one year which can be extended or curtailed at the discretion of the competent authority. On satisfactory completion of probation period, the applicant will be eligible for appointment as Technician Grade-II. Thus, the applicant was conferred with ~~the~~ temporary status w.e.f. 12.1.94 and he was regularised and absorbed as Technician Grade-II under the CSIR w.e.f. 10.7.97.

11. In the light of the factual position discussed in the preceding paragraphs, the prayer of the applicant for quashing of the selection proceedings held on 4.6.92 ~~held~~ for considering absorption of scheme workers is rejected. The OM dated 13.1.81 relied-upon by the applicant for this purpose does not provide that the staff appointed under the schemes of fixed duration sponsored by ~~an~~ external agencies will not be required to undergo ~~undergo~~ the recruitment procedure afresh for their absorption on regular side in identical posts. The stipulation in this regard in para 6 of the OM dated 13.1.81 is applicable only to staff recruited for schemes of ~~Bi~~lateral projects under the CSIR. This is so

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because para 6 of the OM dated 13.1.81 provides that on absorption, scheme services of the staff (rendered under the CSIR) will be taken into account for the purposes of entitlement to various service benefits in CSIR. Therefore, we hold that the applicant was required to undergo a fresh selection process for which interview was held on 4.6.92. The selection proceedings dated 4.6.92, therefore, cannot be quashed. This prayer is accordingly rejected.

12. The second prayer in the O.A. for absorption of the applicant on a vacant post of Technician Grade-II and conferment of seniority w.e.f. January '83 i.e. the date of joining the sponsored scheme under the DST also cannot be granted in view of the fact that the applicant was selected and appointed as Technician Grade-II only on 10.7.97 under the CSIR. The applicant worked as JLA under a scheme sponsored by the DST, New Delhi w.e.f. 5.1.83 to 31.3.87. As already discussed in the preceding paragraphs, no claim for absorption is admissible in respect of time bound projects/schemes of fixed duration sponsored by the external agencies. Further, the engagement of the applicant in the said scheme of DST came to an end on 31.3.87 with the termination of the scheme. Thereafter the applicant was engaged as a daily wage/casual worker till he was conferred with temporary status on 12.1.94. Therefore, the question of absorbing him as Technician Grade-II and giving retrospective seniority from 5.1.83 does not arise. In this regard, it may be mentioned that the applicant was granted temporary status w.e.f. 12.1.94 in view of the letter dated 27.6.94 addressed by the CSIR to the Director, NBRI, Lucknow. The conferment of temporary status w.e.f. 12.1.94 has not been challenged by the applicant. Therefore, it ~~xxxxxxxxxxxxxx~~ ~~Therefore, xxxxx~~



follows that implicitly the applicant accepted the conferment of temporary status w.e.f. 12.1.94. That being so, the question of giving him seniority with retrospective effect from 5.1.83 would not arise. This prayer is also, therefore, rejected.

13. The last prayer of the applicant that w.e.f. 1.4.87 he be given equal pay which is being paid to similarly situated regular employees discharging similar duties also cannot be granted because w.e.f. 1.4.87 the applicant became a daily wage worker and, therefore, he would be entitled to pay/wages of a daily wage/casual worker only and he will not be entitled to the same pay which is being given to similarly situated regular employees for the simple reason that the applicant was not absorbed w.e.f. 1.4.87 as a regular employee. His status from 1.4.87 remained as a daily wage employee and, therefore, he can be given only the pay of a daily wage employee.
not the case of the applicant that
It is / the pay of a daily wage employee/casual worker has not been given to him after 31.3.87.

14. On behalf of the applicant reliance was placed on the following case law:-

- (i) Subhash Chand & others Vs. Union of India & others (1992) 20 ATC 877).
- (ii) Ram Snehi Lal Vs. Union of India & others (1996) 33 ATC 392).
- (iii) P.M. Augustin Vs. Union of India & others (1994) 27 ATC 500).

15. We have gone through the decisions cited on behalf of the applicant and we find that in the case of Subhash Chand & others (supra), it was held by the Principal Bench that regularisation in respect of casual labour engaged in/ a project financed by international agency can be claimed after it was decided to make the project ^a regular feature. This decision would not be applicable to the case of the applicant as the scheme of DST in which the applicant

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was working for a fixed duration was not converted into a regular scheme. In the case of Ram Sneh Lal (supra), the applicant was ^a Typist promoted as Stenographer and continued in that capacity for more than 15 years on adhoc basis without being regularised in spite of existence of 50% quota for promotion from the grade of Typists to Stenographers. On these facts, Patna Bench of the Tribunal held that the applicant was entitled to regularisation. The facts of this case as is evident are entirely different from the facts as obtaining in the case of the applicant to the present O.A. and hence this decision will have no applicability to the applicant. In the case of P.M. Augustin (supra) Ernakulam Bench of this Tribunal held that a casual labour was entitled to regularisation in view of his continuance as casual labour for more than a decade. The facts of this case are also entirely different from the facts as obtaining in the case of the applicant to the present O.A. because the applicant in the present O.A. was working under a sponsored scheme of DST for ~~the~~ fixed duration of the scheme. This decision will also, therefore, not apply to the facts of the present O.A.

16. In view of the discussion made above, the O.A. is dismissed with no order as to costs.


MEMBER (A)


MEMBER (J)

LUCKNOW: DATED: 31st January 2000
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