

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.404/2005

Reserved on 25.7.2012

Date of Pronouncement 27.7.2012

Hon'ble Dr. K.B.S. Rajan, Member (J).

Hon'ble Mr. S.P. Singh, Member (A)

Satish Chandra Tiwari, aged about 41 years, son of Sri J. P. Tiwari, resident of House No. 538/965-K, Triveni Nagar III Sitapur Road, Lucknow.

...Applicant.

By Advocate: Sri N. K. Pandey.

Versus.

1. Council of Scientific & Industrial Research, Rafi Marg, New Delhi through its Vice- President.
2. Director General of Council of Scientific & Industrial Research, Rafi Marg, New Delhi.
3. Director Central Drug Research Institute, Lucknow.

.... Respondents.

By Advocate: Sri Pankaj Kumar Awasthi for Sri A. K. Chaturvedi.

Alongwith

Original Application No.405/2005

Anup Kishore Pandey, aged about 42 years, son of Sri C. K. Pandey, resident of House No. 67/44 Lal Kuwan, Lucknow.

...Applicant.

By Advocate: Sri N. K. Pandey

Versus.

1. Council of Scientific & Industrial Research, Rafi Marg, New Delhi through its Vice- President.
2. Director General of Council of Scientific & Industrial Research, Rafi Marg, New Delhi.
3. Director Central Drug Research Institute, Lucknow.

.... Respondents.

By Advocate: Sri Pankaj Awasthi for Sri A. K. Chaturvedi.

ORDER

By Dr. K.B.S. Rajan, Member (J).

As the legal issue involved in the two cases is one and the same, this common order will bind both the applications.

2. The applicants in these O.As have sought for parity with similarly situated individuals in respect of appointment to the post of Technician ^{15.8m} grade II and the consequential benefits flowing there-from.

“To direct the opposite party to regularize the petitioner to the post of Technician Grade-II with effect from Sri Akhilesh Kumar Srivastava and Sri S.A. Singh have been regularized and to grant the next higher time scale and other consequential benefits”.

3. Brief facts: An employment notice dated 4 July 1986 was issued in the sponsored project of Unichem Laboratories, Bombay, tenable at Central Drug Research Institute (CDRI) Lucknow for three positions. The applicants were aspirants to join the services and accordingly, they responded to the employment notice dated 04-07-1986 and were recommended for engagement as Graduate Apprentice in the sponsored project of Unichem Laboratories, Limited, Bombay tenable at CDRI through letter dated 01-01-1987. Initially the engagement was for a period of one year from January 1987. This was extended for the subsequent years also up to 1990. From first of January 1990, the applicants were engaged on contractual basis under the All India Coordinated Research projects on Ethnobiology and the contract was extended from time to time.

4. Through a memorandum dated 12th February 1991, applications were invited for the post of Technician grade II, in response to which the applicants submitted their application and appeared in the trade tests/interview and the committee recommended 16 candidates for the said posts against regular posts in the CDRI. According to the respondents, in addition to the aforesaid 16 candidates, the selection committee also

recommended 19 candidates for the post of technetium grade II in the scheme called the Ministry of Health. Regional Sophisticated Instrument Centre and National Information centre for Drugs and Pharmaceuticals. The names of the applicants figured in this later list of selected candidates. The applicants were offered appointment in the Regional Sophisticated Instrument Centre Scheme sponsored by the Department of Science and Technology, Government of India tenable at CDRI and they had joined the said posts. They are not (according to the respondents) employees of the CSIR/CDRI.

5. A scheme titled as Casual Workers Absorption Scheme 1990 was framed by the governing body of the respondents in compliance with the judgment of the Apex Court dated 5th of December 1988 in the case of **Kamlesh Kapoor & others vs Union of India & others** and the said scheme was circulated through letter dated 4th October, 1990. As the applicants were not casual workers under CSIR/CDRI, they were not eligible for consideration under the scheme.

6. Another scheme of 1995 was formulated with respect to those casual workers who were engaged in certain schemes tenable at CDRI/CSIR as on 1st January 1990 with specific preference to those who were engaged earlier prior to the December 1988. This was circulated to all concerned by letter dated 6 December 1995. Certain clarifications were also issued in respect of the scheme of 1990 as also that of 1995.

7. The applicants submitted representations in April 2001 and thereafter for the regularization and the respondents considered the same and found that they were eligible under the 1995 scheme. Accordingly they were informed by letter issued in January 2006. According to the respondents they would be absorbed on availability of vacancies.

8. The claim of the petitioners is that whereas, all those who are engaged along with the applicants had all been absorbed against regular posts, the applicants alone had been singled out. As such the respondents should consider their cases also on absorption

under the 1990 scheme. The applicants have specifically referred to the cases of two individuals Shri Akhilesh Kumar Shrivastava and Shri S.A. Singh.

9. In their reply, respondents have admitted the fact that Shri Akhilesh Kumar Srivastava was engaged as graduate apprentice in the sponsored project of Unichem laboratories Ltd, Bombay tenable at CDRI. (para 12 of the reply). So is the case with regard to Shri S.A., Singh. However, according to the respondents, these two were not eligible for absorption under the 1990 the scheme. They were wrongly included by the selection committee on 31st of May 1991 and 6 June 1991 and were wrongly appointed as Technician grade II against regular post in the CSIR/CDRI. Respondents have contended that the applicants cannot claim appointment on the basis of a wrong selection. Negative quality is not provided for

10. In their rejoinder, the applicants have contended that the applicants cannot be discriminated on any ground.

11. In the written arguments the applicants have stated that apart from the aforesaid to individuals Akhilesh Kumar Srivastava and S.A. Singh, seven more persons similarly situated as the applicants were regularized under the 1990 scheme. The regularization is made in pursuance of representations made by them. The applicants too had preferred representations but the same have not been considered. At the relevant point of time the Controller of Administration did put up a note that the case of the applicants was already under consideration but so far no decision has been taken. It has also been stated that one Shri R.C. Dwivedi who was also an aspirant for regularization under the 1990 scheme approached the Tribunal by filing OA No. 193 of 1991 which was allowed holding that regularization cannot be denied for the reason of appointment in sponsored scheme. The said individual already stands regularized. There is no distinction between the case of the aforesaid Dwivedi and the applicants. The Tribunal in this case has clearly held that the staff appointed for RSIC was to be treated as a regular cadre of the CDRI. According

to the applicants, though the respondents contended that there were two panels, there is no provision for the same.

12. Counsel for the parties had advanced the arguments on the basis of the pleadings.

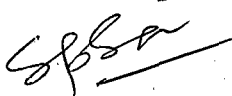
13. Arguments were heard and documents perused. Admittedly many individuals who were engaged along with the applicants have all been regularized either by way of any error or on the basis of representations made by them or in compliance of the order of this Tribunal. Though the respondents claimed that the appointments of Akhilesh Kumar Srivastava and S.A. Singh were made by mistake, no action was taken to rectify the mistake but the individuals continue to function on regular basis. The fact that the view of the Tribunal that those employed in RSIC were to be treated as a regular cadre of the CD RI vide the decision in the case of Dwivedi, has not been challenged by the respondents before higher courts and the said Dwivedi has been regularized. Viewed from the above points it is clear that that hostile discrimination has been meted to the applicants which cannot be permitted under the provisions of right to equality in matters of employment enshrined in the Constitution of India under Art. 14 read with 16. In view of the fact that it is not an isolated case whereby mistake in the case of one or two individuals was/were regularized in which event alone negative equality cannot be perpetuated, as admittedly, a number of individuals similarly situated as the applicants have already been regularized, the claim of the applicant cannot be said to be based on negative equality. Thus the applicants have made a cast iron case.

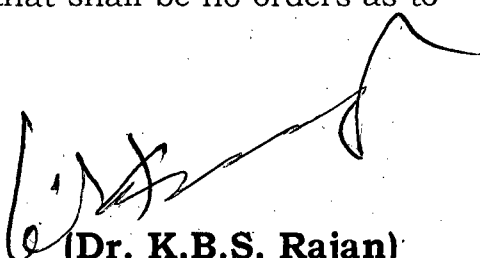
14. Now as to the question of relief. The applicants claim is for regularization at par with Akhilesh Kumar and SA Singh and others with consequential benefits flowing there-from. While the Tribunal appreciates the entitlement of the applicants for regularization from the date others have been regularized, in so far as consequential benefits are concerned, especially in monetary terms, it is difficult to allow the same. At best regularization can be ordered from the date when the last person so similarly situated as the applicants was regularized. The pay shall, however, be

fixed on **notional basis** in the same pay scale as attached to the post of Technician Gr. II. The seniority shall also be worked out accordingly from the date of regularization. It is made clear that if there be any other conditions attached to regularization, such as probation period etc., the same would equally apply to the case of the applicants on their regularization. If any tests/interview is to be held for confirmation purposes etc., the same shall also be followed and individuals must fulfill all the conditions for continuance in the said posts as in the case of others. In case any technicians grade II earlier appointed as stated above have already been promoted, the case of the applicants for such promotion shall be considered only on their fulfilling the requisite conditions attached to the promotion.

15. The **O.As are allowed** to the above extent. Respondents shall pass suitable orders within a period of four months from the date of receipt of certified copy of this order.

16. Under the above circumstances that shall be no orders as to costs


(S.P. Singh)
Member (A)


(Dr. K.B.S. Rajan)
Member (J)

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