

Reserved
(On 20.08.2014)

CENTRAL ADMINISTRATIVE TRIBUNAL, Lucknow
BENCH, Lucknow

(This the 13th Day of October, 2014)

Hon'ble Ms. Jayati Chandra, member (A)
Hon'ble Dr. Murtaza Ali- Member (J)

Original Application No.336 of 2009
(U/S 19, Administrative Tribunal Act, 1985)

1. Brij Mani Pandey, aged about 49 years son of late Shri Ram Sumiran Pandey, resident of Mausam Bagh, Sitapur Road, Lucknow (working in Immuno-biology Department, Indian Institute of Toxicology Research, Gheru Parisar, Lucknow).
2. Chandra Shekhar Singh aged about 43 years, son of Shri Deo Nath Singh, resident of A-22, Shivpuri, Kalyanpur, Lucknow (working in Water Analysis Laboratory, Indian Institute of Toxicology Research, Gheru Parisar, Lucknow).
3. Rajiv Srivastava age about 44 years son of Shri Harish Chandra Srivastava, resident of 268/641/3, Near Sarai Mill, Tilak Nagar, Aishbagh, Lucknow (working in water Analysis Laboratory, Indian Institute of Toxicology Research, Gheru Parisar, Lucknow).

By Advocate: Shri P.K. Singh Applicant

Versus

1. Council of Scientific and Industrial Research, Anusandhan Bhavan, 2, Rafi Marg, New Delhi through its Director General.
2. Indian Institute of Toxicology Research, M.G. Marg, Lucknow, through its Director.
3. Director, Indian Institute of Toxicology Research, M.G. Marg, Lucknow.

..... Respondents

By Advocate: Shri A.K. Chaturvedi



ORDER

By Hon'ble Dr. Murtaza Ali, Member (J)

Through this OA filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant seeks the following reliefs:

(i) *Issuing/passing of an order or direction to the Respondents setting aside the impugned order dated 13.5.2009, passed by the Respondent No.3 (as contained in Annexure No. A-1 to this application), in so far it denies the consideration of the case of the applicants for grant of temporary status, after summoning the original records.*

(ii) *Issuing/passing of an order or direction to the Respondents to grant the temporary status to the applicants with effect from the due dates in pursuance of the CSIR letter No. 2(28)/91-E.II dated 27.06.1994, through which the decision of the Governing Body of the CSIR taken in its meeting held on 12.01.1994 was communicated, and pay the financial benefit, viz, arrears of difference in salary along with interest at the current market rate.*



(iii) Issuing/passing of any order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(iv) Allowing this Original Application with cost.

2. The brief and relevant facts of the case are that the applicant No.1 was initially engaged as casual worker under ENVIS scheme of CSIR for a period of 03 months on payment of consolidated salary of Rs.400/- per month vide order dated 17.12.1984. He was subsequently engaged as Technician w.e.f. 10.07.1986 under Water Analysis Scheme vide order dated 10.07.1986. The term of his appointment was extended from time to time and as such he continued in service. The applicant No.2 was engaged under Water Analysis Scheme of CSIR vide order dated 11.08.1988 on payment of consolidated salary of Rs.600/- per month for a period of 06 months. His term was extended for a period of further 06 months vide order dated 10.11.1989 on payment of Rs.900/- per month. The term of his appointment was extended from time to time and as such he continued in service. The applicant No.3 was engaged under Water Analysis Scheme on payment of consolidated salary of Rs.600/- per month, who joined his duty on 08.12.1986. His term was extended for a period of 03 months vide O.M. dated 06.12.1989 on payment of consolidated salary of Rs. 750/- per month. The term of his appointment was extended from time to time and as such he



continued in service. A screening committee was constituted which held its meeting on 11.5.1990 to consider the cases of contingency paid staff/ daily wages worker working in the ITRC which decided to pay the remuneration to such staff as per class IV staff of Government of India w.e.f. 1.4.1990. However, the question regarding absorption or dispensing the services of contingency paid staff/daily wages workers was postponed for next meeting.

3. It has been stated that a regular scheme entitled "Casual Workers Absorption Scheme 1990" was formulated by the CSIR and the applicants were fully eligible and qualified for absorption in terms of above Scheme but they were not considered and their names were not shown in the list of identified casual workers. It has also been submitted that the Governing body of CSIR in its meeting held on 12.1.1994 approved the conferment of temporary status on daily wage/ casual labours already identified for absorption vide DOP&T O.M. dated 10.3.1993. The applicants were eligible for grant of temporary status as they were initially engaged prior to 5.12.1988 and had worked for more than 240 days in one calendar year till 1.9.1995 but they were deprived of temporary status w.e.f. 12.1.1994. A new scheme called 'Casual Workers Absorption Scheme of CSIR 1995' was formulated for absorption of those workers who were engaged on casual basis and paid earlier on daily wage or monthly basis at CSIR



headquarters and its National Labs/ Institute including casual workers engaged in a sponsored or time bound project/scheme prior to 5.12.1988 and had worked for 240 days/ 206 days in a year. The applicants submitted various applications to the respondents and requested to grant them temporary status under the Scheme 1990, but they were not conferred temporary status.

4. The applicants have now been appointed on regular post in Group II (1) in the pay scale of Rs.3050-4590 vide order dated 10.1.2007 but due to non grant of temporary status, they have been deprived of annual increment from 1995 onwards, leave due and also the counting of 50% service with temporary status for reckoning pensionary benefits. It has wrongly been intimated by respondent No.2 vide impugned letter dated 13.5.2009 (Annexure A-1) that the Scheme for grant of temporary status was meant as one time measure and as such the matter cannot be re-considered. It has also been contended that the case of the applicants is covered under the Scheme 1990 for grant of temporary status and they are entitled to get temporary status w.e.f. 12.1.1994 and also the consequential benefits thereof.

5. In the counter reply filed on behalf of the respondents, it has been stated that the applicant No.1 was engaged as casual worker (contingency paid staff) on consolidated monthly wages under ENVIS scheme w.e.f. 12.12.1984 to 31.3.1986. Thereafter,



he was engaged as casual worker in Glass Bangle Scheme w.e.f. 1.4.1986 to 29.4.1986 and as casual worker w.e.f. 11.7.1986 to 31.3.1990 under Water and Waste Analysis Scheme. He was a casual worker of CSIR/IITR (earlier ITRC) w.e.f. 1.4.1990 and continued thereafter as casual worker up to 11.1.2007. The applicant No.2 was initially engaged as casual worker under Water and Waste Analysis Scheme from 22.08.1988 to 31.3.1990. He was not a casual worker of CSIR/IITR up to 31.3.1990. For the first time he was engaged as casual worker of CSIR/IITR w.e.f. 1.4.1990 and continued up to 11.1.2007. The applicant No.3 was initially engaged as casual worker under Water and Waste Analysis Scheme from 8.12.1986 to 31.3.1990. He was not a casual worker of CSIR/IITR and for the first time, he was engaged as casual worker of CSIR/IITR w.e.f. 01.04.1990 and continued up to 11.1.2007. It has been submitted that the applicants were not eligible for absorption under Casual Workers Absorption Scheme 1990, as they were not the casual workers of CSIR/IITR (earlier ITRC) prior to 01.04.1990. Subsequently, in pursuance of decision of Governing Body of CSIR, dated 12.1.1994, it was decided that those who are eligible and identified for absorption in accordance with the Casual Workers and Absorption Scheme 1990 are also entitled for conferment of temporary status in terms of Government of India's instructions dated 10.09.1993 and accordingly, in continuation of CSIR's letter dated 04.10.1990, a letter dated 27.06.1994 (Annexure No.13 to



O.A.) was issued by CSIR vide which it was made clear that those who are not eligible under Casual Workers Absorption Scheme 1990 are also not eligible as well as not entitled for conferment of temporary status. Only 20 casual workers were conferred temporary status vide Office Memorandum dated 24.7.1995 (Annexure No.14 to O.A.) and O.M. dated 18.1.1996 (Annexure No. C-3). Some departmental letters were exchanged with regard to eligibility of conferment of temporary status as well as eligibility under Casual Workers Absorption Scheme 1990 but the applicants were not found eligible for conferment of temporary status as well as under Casual Workers Absorption Scheme 1990. They became eligible for absorption in accordance with the Casual Works Absorption Scheme of CSIR 1995 on account of the fact that Casual Workers of Project Scheme were not covered under Scheme 1990. After 6.12.1995, the casual workers of CSIR/IIRT as well as Casual Workers of Scheme/Project became eligible in accordance with the policy. Subsequently, two clarifications dated 14.5.1996 and 18.11.1996 (Annexure No. C-13 and C-14) were issued keeping in view the Scheme 1990 and 1995. Applications were invited from identified casual workers for the post of technician group II (1) vide letter dated 31.3.2005 and they were called for interview and trade test was held on 5.1.2007 and after selection they were appointed vide letter dated 10.1.2007 and in pursuance thereof they have joined on 12.1.2007. Thus the applicants for the first time became the



employee of CSIR/IITR w.e.f. 12.1.2007. It has further been submitted that the issues settled vide CSIR letter dated 13.9.1994 (Annexure NO.C-5), 16.5.1995 (Annexure No. C-6), 21.5.1996 (Annexure C-7) and 23.10.1996 (Annexure C-9) are not open to reconsideration on the basis of applicants' representation referred in O.M. dated 13.5.2009 (Annexure A-1). Issue of grant of temporary status to the applicants and similarly situated casual labours of Scheme/Project was closed by the respondent No.1 keeping in view the letters referred above.

6. In the Rejoinder, the averments made in of O.A. have been reiterated and further stated that the applicants have challenged the act of respondents in non granting temporary status from the due dates in terms of CSIR letter dated 27.6.1994 which was communicated to them through impugned letter dated 13.5.2009. It has been stated that if the Tribunal comes to the conclusion that the O.A. is time barred then it may condone the delay. It has further been stated that CSIR's letters dated 13.9.1994, 16.5.1995, 21.5.1996 and 23.10.1996 were never communicated to the applicants. It has also been denied that the applicants were engaged under any Scheme sponsored by other departments of Government of India or State Government but claimed that they were the casual workers of CSIR/IITR (earlier ITRC) up to 31.3.1990 and their salary was paid by them from regular Head of Account. They were engaged as casual workers in CSIR/IITR in



connection with the work of perennial nature. As the applicants were working on casual basis and paid daily wages in the IITR since 1984/1986/1988, they were eligible and qualified for absorption in terms of Absorption Scheme 1990 but despite inclusion of their names in the list of identified workers prepared by the IITR as on 1.6.1992, they were wrongly not considered for grant of temporary status/regularization. The names of applicants from the list of identified candidates for absorption under the Absorption Scheme 1990 should not be excluded once the Absorption Scheme 1990 was prepared in compliance of order dated 0512.1988 passed by Hon'ble Supreme Court in Kamal Kapoor's case. It was not open for the respondents to deprive them from their absorption despite their continuous working since 1984/1986/1988. The DO letter dated 18.04.1995 written by respondent No. 3 to respondent No. 1 and replied by respondent No. 1 vide letter dated 16.05.1995 cannot over ride Absorption Scheme 1990 and the letter dated 21.05.1996, 04.10.1996 and 23.10.1996 were never communicated to the applicants. The Absorption Scheme 1995 was a modification of Absorption Scheme 1990 and they were fully eligible and qualified for conferment of temporary status w.e.f. 12.01.1994.

7. Heard Shri P.K. Singh learned counsel for the applicant and Shri A.K. Chaturvedi, learned counsel for the respondents.



8. Learned counsel for the applicants has submitted that the applicant No. 1, 2 and 3 were engaged as casual workers by CSIR since 1984, 1988 and 1986 respectively and they had worked more than 240 days in one calendar year but they were wrongly deprived of temporary status w.e.f. 12.01.1994 under Casual Workers Absorption Scheme 1990. It has been submitted that their claim was wrongly rejected vide impugned order dated 13.05.2009 (Annexure A-1).

9. Learned counsel for the respondents has contended that the applicants were engaged under different Schemes/ Projects being under taken by CSIR and the applicants were not eligible for conferment of temporary status under "Casual Workers Absorption Scheme 1990". It has also been stated that they were entitled to the benefit under "Casual Workers Absorption Scheme 1995 of CSIR" and the benefit of said scheme has already been provided to them. It has also been argued that the OA is highly time barred as the applicants are claiming relief of Scheme, 1990.

10. The objective and applicability of the scheme as provided in Casual Workers Absorption Scheme 1990 (Annexure A-10) are given as under:-

"3. Objective of the Scheme: The scheme being a one time measure will be applicable to the workers engaged on causal basis and paid either on daily wage or monthly basis



at CSIR Headquarters and its National Labs/ Institutes as on 01.01.1990.

4. The Scheme will be applicable to:

- i) Casual workers engaged initially through employment exchange.
- ii) Casual workers engaged otherwise than through employment exchange and
- iii) Casual workers in employment on the date of issue of these instructions but not having been engaged for at least one year on 01.01.1990 or having completed 240 days in the immediately preceding calendar year."

11. It appears that this Scheme was made applicable to those workers only who were engaged on casual basis and paid either on daily wage or monthly basis at CSIR Headquarters and its National Labs/ Institutes as on 01.01.90 and having completed 240 days (206 days in case of 5 days week) in the immediately preceding calendar year. It has categorically been stated by the respondents that the applicants were engaged under different Schemes/ Projects being under taken by the CSIR and therefore, they were not entitled to be considered under the said scheme.

12. While superseding the earlier schemes the CSIR formulated a new scheme called "Casual Workers Absorption Scheme, 1995"



(Annexure NO. A-15) in which the casual workers engaged in a sponsored Project/ Scheme were made entitled for consideration for regularization. Section 3 and 4 of said Scheme are given as under:-

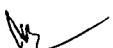
“3. The Scheme being a one-time measure will be applicable to the workers engaged on casual basis and paid either on daily wage or monthly basis at CSIR Headquarters and its National Labs/ Institutions and will also include casual workers engaged in a sponsored project/ bilateral or any time bound project scheme. Casual workers will include Contract workers directly engaged by the CSIR Labs./Instts. and being paid their wages on monthly basis.

4. Scope of the Scheme:- The Scheme will be applicable to Casual workers initially engaged through employment exchange or otherwise prior to 05.12.1988 but had not been regularised for want of regular vacancies or whose services have been dispensed with for want of regular vacancies and who had worked for 240 days/ 206 days including Sundays and Holidays (in the case of six days/ five days a week, respectively) in a year prior to 05.12.1988 will have priority over the others in regard to absorption. Those who have worked for lesser period, may be considered for absorption in accordance with the length of service put in by them.”



13. The essential difference between the two schemes is with regard to its applicability. The initial Scheme of 1990 was limited to those who were engaged by CSIR and its Labs and not in any scheme or project. The applicants themselves have disclosed that applicant no.1 was engaged in 1984 in the ENVIS Scheme, applicant No.2 and 3 were engaged in Water Analysis Scheme. Moreover, this scheme does not have any continued applicability, but was introduced as one time exercise. Hence, we are of the view that the provisions of earlier scheme namely Casual Worker Absorption Scheme 1990 was not applicable to the applicants.

14. Besides non applicability of Scheme 1990, the OA is highly time barred as the present OA has been filed on 24.07.2009 for claiming the benefits of Scheme 1990 which was implemented as one time measure and it has already been finalized and cannot be reopened after two decades. Section 21 of the Administrative Tribunal Act does not permit any adjudication unless the applicant is made within a period of one year from the date on which a final order has been made on the representation in regard to the grievance of the applicant and if no final order is made on his representation within a period of one year from the date of six months from the date of expiry of making such representation. There is no force in the contentions of applicants that several representations were given by them and some letters were



exchanged between the respondents during the year 1994 to 1996 and therefore the OA should not be deemed as time barred whereas the respondents have denied the benefit of said Scheme 1990 finally vide impugned order dated 13.05.2009 (Annexure No. 1) and therefore, the period of limitation should be reckoned from that date.


15. In the case of Navratna Singh (Supra), Allahabad Bench of CAT, relying on a law laid down by Hon'ble Supreme Court in S.S. Rathor Vs. State of M.P. – AIR 1990 SC 10, has held that repeated unsuccessful representations cannot extend the period of limitation and on the basis of said principle, it has been argued by the learned counsel for respondents that the applicants cannot take the benefit of date of rejection of representation for the purpose of limitation.

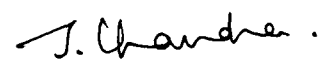
16. In the case of Tahir Ali (Supra), Allahabad Bench of CAT, relying upon the decision of R.C. Sharma Vs. Udham Singh Kamal reported in 2000 SCC (L&S) 53 and Karnataka Power Corporation Ltd. Vs. K. Thangappa & Ors reported in 2006 SCC (L&S) 71 delivered by Hon'ble Supreme Court, held that on the ground of no reasonable and explanation for 07 years delay in the matter, the OA is liable to be dismissed on the ground of delay and laches. It has further been held that a series of representations will not confer the benefit of period of limitation.



This view was upheld by Hon'ble Allahabad High Court in Civil Misc. W.P. No. 43269/09 Tahir Ali Vs. Union of India and others (Judgement delivered on 20.08.2009) and Hon'ble Apex Court has also confirmed the said view in SLP (Civil) No. 31085/09 Tahir Ali Vs. Union of India and others by its order dated 07.07.2010.

17. In view of the above decision of law and facts, the O.A. is devoid of any merit. Accordingly, OA is dismissed. There is no order as to costs.


(Dr. Murtaza Ali)
Member - J


(Ms. Jayati Chandra)
Member - A

Maurya