

CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION NO.38/91

this the 10th day of April, 2001

Hon'ble Mr. D.C. Verma, JM

Hon'ble Mr. A.K. Misra, AM

Anil Kumar aged about 26 years, son of Sri Hira Lal Kashyap, resident of 295/66 (Ga), Asharfabad, lucknow.

....Applicant

By Advocate: Sri Vimal Kumar and Km. Vishwa Mohini.

Versus

1. Council of Scientific and Industrial Research through its Director General, Anusandhan Bhavan, Rafi Marg, New Delhi-110001.

2. Industrial Toxicology Research Centre, through its Director, Mahatma Gandhi Marg, Lucknow.

...Respondents

By Advocate: Sri A.K. Chaturvedi.

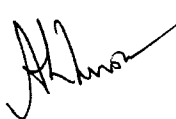
ORDER

A.K. MISRA, MEMBER (A)

Applicant to this OA has prayed for quashing the order dated 7th March, 1989 terminating the services of the applicant (Annexure A-2) to the O.A. A further prayer is for issue of directions to the respondents for regularisation of the services of the applicant and for payment of salary in the scale of pay as admissible to the regular employees. It has also been prayed that the applicant should be treated continuously in service with consequential benefits of arrears of salary and allowances.

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

3. By Office Memorandum dated 1.1.88, the applicant was appointed as temporary Field



Assistant in a scheme sponsored by the Department of Environment Forests and Wildlife, Govt. of India, New Delhi on a consolidated salary of Rs.500/- PM. The scheme was known as the "Heavy Metals Toxicity Scheme" run by the Industrial Toxicology Research Centre (hereinafter referred to as CSIR). The applicant's appointment under the said scheme was till the duration of the said scheme. The appointment letter dated 1.1.88 issued to the applicant clearly indicates that the appointment of the applicant was on purely temporary basis liable to be terminated at any time without any notice or without assigning any reason. The appointment letter also shows that the applicant's appointment was not a CSIR appointment temporary or otherwise and did not entitle the applicant to any claim implicit or explicit on any CSIR/ITRC post. The said scheme came to an end on 31st March 1989 and therefore, the services of the applicant also automatically came to an end w.e.f. 31st March, 1989. Thus the applicant worked as Field Assistant under the said scheme in the ITRC from 12.1.88 till 31st March, 1989. By a subsequent advertisement dated 10.5.89, applications were invited for various posts in a scheme called "Biological Monitoring of River Yamuna" sponsored by INDO-DUTCH. The applicant duly submitted his candidature by application dated 5.6.89 in the said scheme but he was not appointed.

4. The representation of the applicant for reengagement / redeployment in the ITRC was considered and after consideration a reply was sent to the applicant advising him to apply against a regular post suited to his qualification as and when the said post is advertised. According to the applicant he should be absorbed in the ITRC and his services should be regularised as he has put in more



than 240 days continuous service, specially in the light of the decision of the Hon'ble Supreme Court in the case of Kamlesh Kapoor.

5. There is no dispute that the applicant had worked as temporary Field Assistant from 12.1.88 to 31.3.89 in the scheme called Heavy Metals Toxicity Scheme as casual employee, which was an externally funded scheme having been sponsored by the Department of Environment and Forests, Govt. of India, New Delhi. It is also not in dispute that the engagement of the applicant in the said scheme was for the period of the duration of the scheme and further that the applicant was engaged on a consolidated fixed salary of Rs. 500 P.M. The applicant claims absorption in the ITRC and regularisation on the basis of a circular letter dated 13th January, 1981 and on the basis of the decision of the Hon'ble Supreme Court in Writ Petition (C) No. 631/88 in the case of Kamlesh Kapoor and the decision of the apex court in the case of CSIR Vs Suresh Prasad Thakur and others in Civil Appeal No. 5299/98 dated 10.8.94. It may be stated here that in pursuance of the decision of the apex court in the case of Kamlesh Kapoor, a scheme for absorption of casual workers was framed on 4th October, 1990 which was further modified by scheme dated 6.12.95. Thus the question of absorption/regularisation of the applicant has to be considered in the light of the circular letter of 13.1.81 and in the light of the scheme for absorption of casual workers in CSIR and its laboratories dated 4th October, 1990 and the modified scheme of 6.12.95.

6. The claim of the applicant for regularisation in terms of the OM dated 13th January,

msr

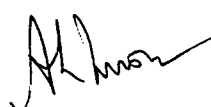
1981 cannot be allowed as per paras 5,6 and 8 of this OM. Para 5 of the OM dated 13.1.81 provides that in sponsored projects, the recruitments will be made on behalf of the sponsorer for the fixed duration of the scheme only and further that the appointment under such projects will not be a CSIR appointment temporary or otherwise. The stipulation in para 6 of the OM dated 13.1.81 is applicable only to the staff recruited for ~~the~~ bilateral projects under the CSIR. Para 8 of this OM provides for absorption of existing employees who have rendered 3 years of continuous service in schemes either against regular vacancies in identical posts or by creating additional posts.

7. The casual workers absorption scheme of 1990 circulated by order dated 4.10.90 was framed in pursuance of the decision of the apex court in the case of Kamlesh Kapoor Vs. union of India in Writ Petition (C) No. 631/88 decided on 5.12.88. In the case of Kamlesh Kapoor, the apex court issued directions to CSIR and INDC which is a unit of CSIR to prepare a scheme within one year for absorption/regularisation of casual workers who have been working with the INDC for more than one year. The apex court further directed that the services of the casual workers shall not be terminated and they shall be deemed to have continued in service w.e.f. 1.12.88 till the scheme is framed and the question of their absorption is settled. Accordingly the scheme of 1990 was framed for absorption of casual workers and was circulated by letter dated 4.10.90. However, this scheme, provided that it would not apply to persons engaged on contract through any outside agencies, and would also not apply to casual workers and contract workers engaged in sponsored projects,

AK

bilateral projects or time bound projects/schemes. In the case of Kamlesh Kapoor (Supra), the apex court did not issue specific directions for absorption/regularisation of casual workers engaged in sponsored projects/bilateral projects or time bound projects. The directions of the Supreme Court were confined only to casual workers working in INDC for more than one year which was a constituent unit of CSIR. Since the applicant was working in a sponsored project/time bound project, his case was neither covered by the decision of the apex court in the case of Kamlesh Kapoor (Supra) nor under the terms of the scheme of 1990 framed in pursuance of the decision of the apex court. The benefit of absorption/regularisation therefore was in our opinion legitimately not given to the applicant under the scheme of 1990.

The scheme of 1990 was also challenged before the Principal Bench of this Tribunal on the ground that it was not made operative to include casual workers engaged in sponsored projects and time bound projects for the duration of the project. The Principal Bench considered the issue and held that the decision of the apex court dated 5.12.88 in the case of Kamlesh Kapoor did not contemplate exclusion of casual workers in sponsored projects or time bound projects and schemes. The Principal Bench therefore directed that the scheme for 1990 should be modified to cover casual workers and contract labour engaged in sponsored projects/time bound projects and bilateral projects also. In the SLP filed against the judgement of the Principal Bench, the Supreme Court in Civil Appeal No. 5299/90 in the case of CSIR Vs Suresh Prasad Thakur declined to interfere in the order of the Principal Bench. In the case of Suresh Prasad Thakur, no directions were given by the apex court not to terminate the applicants or to continue the services of the applicants from the date of their initial appointment. ~~This~~ decision of the apex court was therefore prospective in nature. Thus the scheme for 1990 was modified and the modified scheme for absorption of casual workers/contract

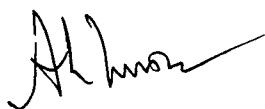


workers was circulated under letter dated 6.12.95. The modified scheme of 1995 was enlarged in scope and provided that in addition to casual workers engaged at CSIR headquarters and its laboratories, the modified scheme was applicable also to workers engaged in sponsored projects, bilateral projects and other time bound schemes. The other conditions for absorption of casual workers with regard to eligibility criteria including passing of trade test etc. remained the same.

8. The applicant to this OA has two grievances. The first grievance is that he was abruptly terminated on 31.3.89 by order dated 7th March, 1989. The second grievance is that the applicant has not been regularised /absorbed in spite of the fact that vacancies existed and his juniors were appointed.

9. The first grievance of the applicant has no merit because the applicant was admittedly appointed in a time bound scheme funded by an external agency. Since the appointment of the applicant in the Heavy metals Toxicity Scheme was for the duration of the scheme, the appointment of the applicant in the said time bound scheme automatically came to an end on 31.3.89 on the termination of the scheme. Therefore in so far as the order of termination dated 7th March, 1989 is concerned the same does not call for any interference.

10. As regards the second grievance of the applicant relating to his absorption/regularisation in terms of the casual workers absorption scheme of 1995, the applicant is eligible for absorption and regularisation under the said scheme. According to the respondents, the name of the applicant figures at S.No. 66 in the list of eligible casual workers.



The respondents also have not disputed that the applicant who was a scheme worker and who had earlier worked in a time bound scheme funded by an external agency, was covered under the modified scheme of 1995 for absorption of casual workers circulated under letter dated 6.12.95. The issue involved in this O.A. is identical to the issue involved in OA No. 824/93 in the case of Vinod Kumar Singh decided by this Bench of the Tribunal on 22.8.2000. In O.A. No. 824/93 also the applicant was working in a time bound sponsored scheme and was covered under the modified scheme of 1995 framed in pursuance of the decision of the Supreme Court in the case of Suresh Prasad Thakur (supra). In O.A. No. 824/93 by order dated 22.8.2000, this bench of the Tribunal observed as under:-

"We are of the view that in the present case, the procedure adopted by the respondents in notifying the vacancy on the notice board of the ITRC only is not commendable and has resulted in injustice to the applicant.


Though we have come to the conclusion that injustice has been caused to the applicant, we do not want to disturb those who have been appointed in earlier vacancies as it will inter-alia, caused injustice to such persons who some how got the information of the vacancies, applied against such posts, and were finally selected. XXX
x x x x x x x x x x x

The respondents are directed to inform the applicant and similarly situated other persons whose names are in the list by registered post or notify in the newspaper all future vacancies to which selection and appointment is to be made from amongst the retrenched employees of the list contained in Annexure SA-3 and thereafter, to make selection and appointment under casual workers absorption scheme of 1995".

"The issue involved in the present OA being identical to the issue involved in O.A. No. 824/93, the present O.A. ~~has~~^{is} also disposed of in terms of the directions given in O.A. No. 824/93 reproduced above. Since the applicant figures at Sl.No. 66 in the list of eligible casual workers (Annexure CR-3 to the supplementary statement of 30.9.97), the respondents are directed to inform the applicant of the vacancies likely to arise in future by registered post or by notifying in newspapers so that the applicant may apply for such vacancies/ and may participate in the selection process As regards the grievance of the applicant against the termination order dated 7th March 1989, as already held in para 8 above, the same does not call for any interference.

AK

12. The O.A. is decided in terms of the directions
given above. Costs easy.


MEMBER (A)


MEMBER (J)

LUCKNOW: DATED: 10th April 2001

HLS/-