

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH:LUCKNOW

OA No.355 of 1992

Lucknow, this the 24th day of April, 2001.

Hon'ble Mr. A.K. Misra, Member (A)

Hon'ble Mr. Shanker Raju, Member (J)

1. Shri Suchash Chandra s/o Sh. K.R. Verma,
R/o N-541, Sector N, Aliganj, Houseing

Scheme, Aliganj, Lucknow.

2. Shri Keshav Ram, S/o Sh. Janki Sharan,
R/o 532/574, Banarsi Tola, Aliganj,
Lucknow.

-Applicants

(By Advocate Shri A. Moin)

-Versus-

1. Council of Scientific and Industrial Research,
Rafi Marg, New Delhi through the Director
General.

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

3. Sh. Kalika Prasad, Technician Grade II, NBRI, Lucknow.

4. Miss Satya Bhama, -do-

5. Shri Moinuddin Khan -do-

6. Miss Aquila Banoo -do-

-Respondents

(By Advocate Shri A.K. Chaturvedi)

ORDER

Mr. Shanker Raju, Member (J)-

At the outset, the learned counsel of the applicants does not press relief 8(A) and 8 (G) regarding challenge to to the regularisation Scheme 1990 as well as implementation of OM dated 22.8.91 to allow the applicant to avail weekly holidays i.e. Saturday and also pay the arrears of weekly holidays Saturday deducted from 17.11.1986 . The applicants have sought a direction from this Tribunal to regularise them on the posts of Technician Grade II as per the provisions of CSIR circulars dated 2.3.82 and also to set aside the

appointments of seven persons on the post of Technical Grade II in pursuance of selection held on 4.6.92 and also to accord them equal pay of Rs.1624.50 per month as provided to regular employees performing identical duties.

2. The applicants, two in number, have been engaged on daily wages in July, 1977 and 1.8.81 respectively and since then working in Phytochemistry Division of National Botanical Research Institute (for short, NBRI) and had performed the work of processing of Seed material. Applicant No.2 was employed in Pesticide Residue Laboratory to perform technical work of the Laboratory ~~xxxxxx~~ to perform technical work. As alleged the applicants performed the skilled job under Group 'C' for which they were fully qualified and despite the existence of vacancies instead of making their appointments regular they have been taken work on daily wages by ~~th~~ granting them sanction for three months at a time. In the year 1982 engagement of daily wagers was stopped and it was decided to absorb all those workers who had completed a minimum of two years service continuously on 1.1.81. The aforesaid selection provides no fresh selection. Accordingly a list of daily wage workers in NBRI was prepared for the workers who had worked from 4.3.65 to 1977. A few vacancies according to the applicants had been filled up by absorbing the persons amongst the list excepting the few names whose cases were under adjudication before the Tribunal. In view of the

regularisation scheme of 1990 the process of absorption was stopped. In view of the decision of the Apex Court the aforesaid Scheme was framed. According to this scheme daily wage/casual labour was to appear in the selection and if fails was to be accorded one more chance within a period of six months and in the even one who fails in both the chances his services are likely to be terminated. According to the provision 5 (f) of this scheme absorption is to be made on the basis of normal procedure of recruitment. It is the grievance of the applicant that while filling up the vacant post of Technician in the pay scale of Rs.950-1400 the respondents invited applications for holding selection vide notice dated 19.9.91. The applicants were also compelled to apply in this test as the posts of Technician Grade II falls in Group 'C' skilled. Under protest the applicants submitted a representation which was not paid any heed and rather selection was fixed for 4.6.92. Appointment orders have been issued to those who qualified the same. It is also contended by the applicants that substantive vacancies are going to occur in November, 1992 to December 1990 and the and the same are also to be filled up according to the circular. The applicants challenges the Scheme on various grounds but they do not press the said relief. As such the same shall not be adjudicated by us. The applicants contended that their past service had been given a go-bye despite their performing the identical duties and they have been denied the same wages which had been made admissible to others.

3. The respondents in their reply contended that the applicants have been engaged on daily wages and were paid all the wages and facilities in accordance with the rules. As far as the scheme of 1990 is concerned the same had been prepared after the decision of the Supreme Court in Civil Writ Petition No.631 of 1988. As the Scheme could not be framed in time another application was moved to the Apex Court and as such the same had come into existence. It is contended that the ~~files~~ of the aforesaid scheme had already been upheld by the Tribunal in CCP No.380/92 - Mam Chandra Agarwal v. CSIR and OA No.325/91 in Sohan Lal & Others v. Director General CSIR & Others decided on 16.11.92 where request for clarification in the scheme has been rejected. This scheme has further been affirmed by a judgement of the Apex Court dated 1.2.94 in Vishwa Mohini v. C.S.I.R. regarding this selection held on 4.6.92 for the post of Technical Grade II. It is contended that the same has been in accordance with the absorption scheme. The respondents in their supplementary affidavit contended that applicant No.1 was initially engaged as unskilled daily wager and also applicant No.2 was engaged w.e.f. 1.8.81 as unskilled daily wager for which no qualification is prescribed. It is further informed by the respondents that the applicants have been accorded temporary status w.e.f. 12.1.94 and are being paid wages in the pay scale of Rs.750-940 accordingly. As regards the selected candidates it is contended that all the candidates were fully eligible as per the scheme of regularisation, 1990 and had appeared in

the selection. As the applicants could not be screened they were not paid wages payable to skilled daily wagers of grade II and continued as unskilled daily wagers. In response to the notice dated 19.1.91 the applications were invited for daily wagers for the post of Technician Grade II for which the applicants also applied but failed to qualify. In pursuance of notification dated 28.10.93 for three posts of Technician Grade II applications were invited but the applicants did not apply. After selection process certain persons were appointed to the posts. As the applicants had not applied there is no occasion for their being considered. For other trades the applicants were not eligible and they could not be considered for the same. In this background it is contended that the applicants have no locus standi to challenge the appointments of those persons. It is further contended that the applicants are also to be considered for absorption in accordance with the scheme of 1990 and if found eligible would be selected by the committee. The applicants on application in pursuance of notice dated 7.3.94 applied for the posts of Technician Grade II but even after called for selection did not participate in the same and as such they cannot be considered.

4. Later on, an additional affidavit filed by the respondents on 18.8.98 it is transpired that in pursuance of absorption scheme of 1990 a notification was issued on 9.6.97 for filling up the posts of Technical Grade II. The applicants applied for the same and an interview was held on 7.7.97 and applicant No.1 was selected and offered

appointment on 9.7.97, to which he joined the post on 10.7.97. As regards applicant No.2 on being granted temporary status w.e.f. 1.9.97 his candidature will be duly considered against any vacancy arising in future in accordance with the aforesaid scheme, 1990.

5. We have given careful thought to the rival contentions of the parties and perused the material on record. As there is no challenge to the scheme of 1990 pressed by the applicants they cannot claim any right in this regard. Apart from it, the aforesaid scheme of 1990 had already been affirmed and its validity is tested by the Tribunal as well as by the Apex Court in several cases, referred to above. In this background, as there is no challenge to the Scheme of 1990 we hold that the scheme framed in pursuance of the directions of the Apex Court in the year 1988 the scheme has been validly framed by the respondents. There is nothing illegal^{ly} if the daily wagers/casual labours are considered in this scheme for interview which does not amount to a selection process in strict sense but the same is with a view to adjudge their potential. As such the contention of the applicants is bad in law and is not legally sustainable. It is also found that the applicants have been given several chances to apply under this scheme but one one pretext or the other they did not participate in the same or could not qualify. Once the applicants participated in the selection they cannot challenge the same subsequently which is held

to be illegal by the Apex Court in Om Prakash v. Akhilesh Kumar, AIR 1986 SC 1043. Apart from it as the relief as to challenge to the scheme of 1990 has not been pressed and no illegality has been highlighted in the scheme the contention of the applicants is not legally tenable. As regards the selection of other candidates who are later on impleaded necessary parties by way of an amendment. We have carefully perused the justification accorded by the respondents in their reply and find that all these persons who have been selected as Technician Grade II are fully eligible as per the details given in the counter reply. As such we find no fault in the selection of these candidates who have been selected after participation in the selection process as per the said scheme of 1990. As regards the contention of the applicants that they should have been regularised in Class III posts on the basis of the circular of 1982, we find that the aforesaid scheme applies to Group IV employees and would not be applicable in the case of the applicants. Apart from it the claim of the applicants w.e.f. 1977 and 1981 is not legally tenable and is hopelessly barred by limitation as per the provisions of Section 21 (a) and (B) of the Administrative Tribunals Act, 1985 which provides that the cause of action which had arisen three years prior to the coming into force of the Tribunal in November, 1985 cannot be adjudicated upon as the same would not confer any jurisdiction over the Tribunal to entertain the same. In absence of any valid

explanation and an application for condonation of delay the relief pertaining to regularisation w.e.f. 1981 is not tenable.

6. The learned counsel for the respondents has also relied upon the ratio of OA-304/92 dated 31.1.2000 of this Bench in the case of Anand Prakash v. Union of India where the said scheme was also in question and therein the claim of the applicant was also rejected for regularisation. We agree with the same and hold that the regularisation cannot be claimed as a matter of right and is dependent upon the provisions of the Scheme framed in 1990 and availability of the vacancies. As the applicants had firstly refused to participate in the selection despite affording several opportunities by the respondents and thereafter could not be selected are to be blamed themselves for the same and cannot claim any benefit out of their own breach. We also find that as the applicants later on participated in the selection process in pursuance of the notification dated 9.6.97 and the applicants were accorded temporary status and applicant No.1 was also selected in pursuance of the provisions of the Scheme of 1990 has been offered appointment to the post of Technician Grade II to which he had already joined. As regards second applicant on being accorded temporary status he is to be considered against the vacancy arising in future as per the Scheme of 1990. As the applicants had already been accorded a regular pay scale on

being conferred temporary status we find that the action of the respondents is neither arbitrary and is rather bonafide, looking after the interests of the applicants.

7. From the foregoing discussion and reasons recorded above, we find no merit in the application and the same is dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

A. K. Misra
(A. K. Misra)
Member (A)