CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 03/96 AND 04/96.

Dated this Friday the 7th day of May, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

1. Mrs. S. Srinivasan,
(was working as Scientist 'C' in N.C.L. Pune)
Address :
36, Anant Sagar,
Ideal Colony,
Kothrud,
Pune - 411 029.

.. Applicant in O.A. No. 03/96.

2. Mrs. A. K. Deshpande
(was working as Senior Scientific Assistant in N.C.L., Pune).
Address :
Flat No. 4, Sanjog-3,
D.P. Road, Anudh,
Pune - 411 007.

.. Applicant in O.A. No. 04/96.

(By Advocate Shri H. Y. Deo)

VERSUS

1. Union Of India
(Ministry of Science & Technology)
Through :
The Director General,
Council of Scientific and Industrial Research,
Anusandhan Bhavan, Rafi Marg,
New Delhi - 110 001.

2. The Director,
National Chemical Laboratory,
Pashan Road,
Pune - 411 008.

.. Respondents in both the O.As.

(By Advocate Shri K. P. Anilkumar)

: ORDER :

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

These are two applications filed by the two applicants for identical reliefs and on identical facts.

Respondents have filed common replies to both the cases. After hearing both the counsels we are disposing of these two O.As. by this common order. In O.A. No. 03/96, the applicant - Mrs. S. Srinivasan came to be appointed as Scientist 'C' in the office of the Respondent No. 2 by order dated 17.08.1988. The initial appointment was for a particular period and later it came to be extended from time to time by different orders which are produced. In some of the orders it is shown as appointment on contract basis. The applicant was appointed on a particular time-scale of pay. The applicant continued to work from the initial date of appointment till 03.04.1995 without any break in service. She was given all service benefits like leave, etc. As per the letter dated 13.01.1981 of C.S.I.R., the temporary employees are to be absorbed who have put in three years continuous service but respondents have not regularised the services of the applicant inspite of five years of service. The applicant's service came to be retrenched or terminated by the respondents by order dated 03.04.1995 with immediate effect. The said order is illegal. It is also in violation of Section 25 of the Industrial Disputes Act. The actual one month's notice was not given nor one month's salary was given in lieu of notice but the notice mentions only four weeks period. That the earlier orders do not mention that the appointment was on contractual basis though it is mentioned in one or two last appointment letters. The applicant is entitled to be absorbed by the second respondents. No show cause notice was issued to the applicant before terminating her services. There is violation of principles of natural justice. On these allegations, the applicant has approached this Tribunal for quashing the impugned order dated 03.04.1995, for a direction to the respondents to reinstate

her in service with all back-wages and consequential reliefs.

2. In O.A. No. 04/96 Mrs. A. K. Deshpande is the applicant. Her case is also identical like the applicant in O.A. No. 03/96. The difference is that she came to be first appointed by order dated 29.12.1987 as a Junior Scientific Assistant. Subsequently, she was promoted as Sr. Scientific Assistant. Her services came to be extended from time to time. Her services came to be terminated by order dated 03.04.1995. She has also challenged here termination on the same ground as mentioned in O.A. No. 03/96. She has also prayed for identical reliefs like the applicant in O.A. No. 03/96.

3. The respondents' defence is identical in both the cases.

The defence is, that the applicants are not employees of the respondents, namely - the Government of India but they were employed for a sponsored project. It was a temporary appointment and for a limited period. The appointments were not made as per the regular recruitment rules of National Chemical Laboratory. The appointment was not made in respect of a vacancy in the Laboratory. The vacancy was advertised and appointment was made in respect of a vacancy in a sponsored project. It is subject to the terms and conditions and period as mentioned in the order of appointment. It is made clear in all the letters of appointment that it is not an appointment of either C.S.I.R. or N.C.L. The services came to be dispensed with due to closure of the project. The applicants' contention about absorption or regularisation has been denied on the ground that the 1981 policy decision

was in respect of regularisation or absorption of existing employees and that too as a one time measure and it is not applied to the applicants who came to be appointed for the project six seven years after 1981. The question of issuing show cause notice or violation of principles of natural justice does not arise since the services were dispensed with not due to any misconduct but due to closure of the project and as per the terms of the contract. It is also stated that the provisions of the Industrial Disputes Act are not attracted to these cases. That the applicants are not entitled to any of the reliefs prayed for. Hence, it is prayed that both the O.As. may be dismissed with cost.

4. In the light of the pleadings and arguments addressed before us, the points for consideration in both these cases is whether the order of retrenchment of the applicants is bad and whether the applicants have made out a case for reinstatement and regularisation/absorption.

5. The learned counsel for the applicants contended that the order of retrenchment is bad since it does not give one month's notice or one month's salary in lieu of notice as provided in CCS (Temporary Service) Rules, 1965. The learned counsel for the respondents contended that applicants are not government employees and their services were dispensed with due to the appointment coming to an end by efflux of time. Now, let us see what is the nature and scope of the appointment of the two applicants.

The advertisement is at page 27 of the paper book which clearly says that applications are called for temporary posts in a Project and for a particular period and they are not C.S.I.R. appointments.

In O.A. 3/96, the first order of appointment is dt. 17.6.1988, which is at page 14 of the paper book which clearly says that the applicant was appointed as Scientist 'C' in a particular Project. It is for a period up to 31.3.1991. It further shows that it is purely an ad-hoc appointment and on purely temporary basis and it could be terminated at any time even without notice. Further, it makes it clear that it is not an appointment of C.S.I.R. It further provides that the appointee has no claim on any post of either C.S.I.R. or NCL. Then, further it mentions at the bottom that the appointment has been approved by the Competent Authority on the recommendation of ad-hoc selection committee. What is more, it further provides that the expense regarding the appointees will be made out of the Project Funds.

The terms in the appointment letter are very clear and eloquent and makes it clear that it is purely a contractual appointment for a particular period and on particular condition. Therefore, it is not a case of appointment of a temporary government servant. It is purely a case of an appointment in respect of a Project and being temporary and ad-hoc for a particular period.

The same terms are repeated in subsequent orders which extended the appointment from time to time. What is more, in some of the subsequent letters there is a clear condition which is as follows :

> "The contract will automatically stand terminated after expiry of the contract period". (vide Annexure A-6, 7 and 8).

6. When the contract comes to an end by efflux of time, the question of applying the temporary service rules does not arise. Therefore, in our view, the temporary service rules are decisions rendered under the said rules have no bearing on the facts of the present case.

Here,we are concerned with employees who were appointed on a contract basis in respect of a particular Project and for a particular period with certain conditions. The applicants with open eyes accepted the offer and joined the appointment and it is too late in the day for them to say that they should be treated as temporary government employees. They are not at all government employees, but they are appointed for a particular period and for a particular Project,till the duration of the Project or till the period of appointment whichever is earlier. By no stretch of imagination it can be said that applicants are appointed as government servants either permanent or temporary.

7. There is also an allegation in the O.A. that the retrenchment is contrary to Industrial Disputes Act. But the learned counsel for the applicant fairly submitted at the time of arguments that he is not pressing this ground. Even otherwise, we have already held in a previous case in the case of R.B.Chavan and Another in O.A. 690/91 and 691/91 in the Judgment dt. 10.7.1998 that this Tribunal has no jurisdiction to consider the claim of employees under the Industrial Law. It is open to the party to approach the Labour Court or Industrial Court and agitate whatever right he has under the Industrial Law. We have also relied on the Judgment of the Supreme Court in K.P.Gupta's case (JT 1995 (7)(SC) 522) in support of our finding in that case.

8. At the time of arguments, the learned counsel for the applicants made a submission that the applicants are entitled to be regularised or absorbed in C.S.I.R. Though there is some vague allegation in the O.A., no prayer is asked for regularisation or absorption. Therefore, strictly speaking the applicants cannot be permitted to urge this plea at the time of arguments.

Even otherwise, in our view, such a plea is not

tenable in law. We have considered the said question in the previous Judgment in R.B.Chavan's case mentioned above which is an unreported Judgment of ours, and held that the temporary employees of a Project in the same institution viz. National Chemical Laboratory, Pune cannot claim regularisation or absorption. We have rejected the claim of those two applicants in that order by giving detailed reasoning and the same reasoning holds good in the present case also. The only distinction sought to be made out by the applicant's counsel is that in Chavan's case the two employees were getting consolidated pay, whereas the present two applicants were getting time scale pay. In our view, that distinction makes no difference. Our reasoning in that case is mainly on the ground that those two employees were Project employees and they cannot claim regularisation in the department. In view of that decision, the applicants cannot claim the benefit of regularisation in the NCL.

9. We are also not impressed by the argument of the applicant$' counsel that regularisation/absorption is permissible under CSIR's Circular dt. 13.1.1981 (at page 21 of the paper book). We have carefully gone through the said Circular. Para 5 consists of two parts. The first part pertains to some Project, viz. UNDP, PL 480 and other bilateral Projects. In our view, the present Project with which we are concerned is neither a bi-lateral Project nor a Project of UNDP or PL 480.

In our view, the applicants come under the second part of para 5 which pertain to sponsored Projects. That

...8.

para clearly says that the appointment is only for the duration of the Project and it will not create any right in the CSIR.

Then reliance was placed on para 8, where there is a provision for absorption of employees. The relevant portion of para 8 reads as follows :

> "The existing persons who have rendered three years continuous service ..... should be absorbed against existing regular vacancies ..... " (underlining is ours).

This circular was issued in 1981. On the basis of Manas Committee Report lot of changes were done in the organisation like re-structuring, creation of new grades, faster track promotion etc. Since lot of changes were being done including re-structuring the organisation, a provision was made that existing employees who have put in 3 years should be absorbed subject to certain conditions. That is why, we have underlined the relevant portions which says "existing employees" and it means the existing employees when the 1981 circular was issued. It cannot apply to all future employees who are taken in the Project whenever new Projects come into existence. The applicants came to be appointed against posts of Projects in 1987 or 1988. They cannot be brought within the meaning of "existing employees as on the date of that circular viz. 13.1.1981."

10. At one stage it was submitted that applicant in O.A. 4 /96 was initially appointed as Scientist 'C' and subsequently promoted as Senior Scientific Assistant. The said applicant has not produced the order of promotion. But the learned counsel for the respondents showed the concerned file and pointed out that in the first year she had been appointed as a Scientist 'C' and in subsequent

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year she applied for another post and was appointed against that advertisement as Senior Scientific Assistant and it is not a case of promotion.

The learned counsel for the applicant placed reliance on a decision of the Supreme Court reported in 1988(ii) LLM 924 (Mehta and Ors. V/s. UOI and Ors.). In that case, the question was whether staff artistes of Doordarshan were contract employees or should be deemed to be government employees. The Supreme Court pointed out that though the initial appointment was for a short period, it was extended till the age of retirement viz. 55 to 60years on a time scale. Then the Supreme Court noticed that in the previous Judgment the learned advocate for Union of India had conceded that the staff artistes are holding civil posts, hence in those circumstances the Supreme Court ruled that staff artistes of Doordarshan are regular government employees. In our view, the facts of the present case are distinguishable and the said decision has no bearing on this case. In the present case, the appointment is for a short period and it has already come to an end and not a case where appointments are made or extended till the age of retirement.

Two other decisions cited by the learned counsel for the applicant viz. 1997 AIR SCW 681 and 1999 AIR SCW 892 have absolutely no bearing on the point under consideration and they are wholly inapplicable.

In view of the above discussion we hold that the applicants have not made out a case either for reinstatement or for regularisation/absorption. The appointments of the applicants have come to an end by efflux of time. Order of retrenchment or termination is wholly unnecessary

in such a case, since appointments have come to an end by efflux of time, Unless there is a fresh extension of appointment, they cannot continue in service.

In this connection, we may also observe that applicants appointments against Project post is not the same as appointment against regular government posts. In our previous Judgment in Chavan's case mentioned above we have pointed out how there is difference between recruitment against Project posts and recruitment against regular government posts. Therefore, applicants cannot claim that they are regular government servant when their recruitment is not as per rules regarding regular government posts.

11. The applicants have put in six to seven years of service. They have gained some experience.Both are married ladies. Even now they can apply against sponsored Project Schemes. In such a case, the learned counsel for the respondents fairly submitted that the claim of the applicants will be processed and considered as per rules and if found suitable they could be appointed. Similarly, as and when the department wants to fill up Scientific posts, the applicants can also apply for those posts, if they have the necessary qualification, experience etc. in respect of a particular post. If such an application is filed by the applicants for direct recruitment, then the department may consider the same as per rules. In such a case, the applicants are entitled to relaxation of age to the extent of the period they have worked under the Projects.

12. In the result, both the OAs are dismissed, but however, subject to observations made in para 11 above. No order as to costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

OS/B.