

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 18/95.....

R.A/C.P No.....

E.P/M.A No.....

- CD MP 96/95 under page 1 to 4 to 5
(2) MP 62/95 under page 1 to 2
(3) MP 65/96 under page 1 to 2
1. Orders Sheet.....Pg. 1.....to 7. 7.5.....
 2. Judgment/Order dtd. 1.24.5.97.....Pg. 1.....to 6. Affidavit common under 16, 17, 18/95 24/1/97
 3. Judgment & Order dtd.....Received from H.C/Supreme Court
 4. O.A.....petition company not heard.....Pg. 1.....to 25
MP 96/95Pg. 1.....to 25
 5. E.P/M.P. 62/95.....Pg. 1.....to 5
MD 65/96Pg. 1.....to 5
 6. R.A/C.P.....Pg.to
 7. W.S.....Pg.to
 8. Rejoinder.....Pg.to
 9. Reply.....Pg. 1.....to 9
 10. Any other Papers.....Pg. 1.....to 7
 11. Memo of Appearance.....
 12. Additional Affidavit.....
 13. Written Arguments.....
 14. Amendment Reply by Respondents.....
 15. Amendment Reply filed by the Applicant.....
 16. Counter Reply.....

SECTION OFFICER (Judl.)

balis
1.2.18

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : : GUWAHATI -5.

ORIGINAL APPLICATION NO. 18/95

MISC PETITION NO. _____ (O.A.NO. _____)

REVIEW APPLICATION NO _____ (O.A.NO. _____)

CONT. PETITION NO. _____ (O.A. NO. _____)

Smt. Pabitra Panan Sarma APPLICANT(S)

VERSUS

Union of India RESPONDENT(S)

Mr. B.K. Sharma, Mr. B. Mukherjee, Mr. S. Sarma Advocate for the Applicant.

Mr. S. Das, Sr. Case. Advocate for the Respondents

Office Note

Court Orders

1-2-95

This application is in
form and within time.

C. F. of Rs. 50/-

deposited vide

IPO/B No. 803.58 2545

Dated 27.1.95

34/1/95
Registar (A)
Pam.

Mr. B.K. Sharma for the applicant. Mr. G. Sharma Addl. C.G.S.C. for the respondents. It is identical with O.A. 241/94 which has been admitted. Hence Admit. Four weeks for written statement. Issue notice to the respondents to show cause why interim order should not be passed. Returnable on 2-3-95.

The respondents shall not be terminated the service of the applicant until further orders.

Vice-Chairman

Member

Requisites are met
on 9.2.95 & issued vide
no. 845-69 dt. 14.2.95

lm

②
O.A. 18/95


OFFICE NOTE

COURT ORDERS

2.3.95

The Respondent No. 5 who is present instructs Mr. Ali, Sr. C.G.S.C. to inform the court that the engagement of the applicant has been extended for a period of six months from December 1994 and he is working. In view of the statement as above no interim order is required to be passed save and except to record that statement. Liberty to the applicant to apply for interim order if the application is not heard before the expiry of the period of his current engagement. This order shall be without prejudice to the rights and contentions of both the parties in the application. Eight weeks for the written statement. To be listed for hearing on 8.5.95.


Member


Vice-Chairman

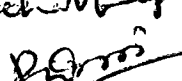
trd

7-3-95

Service reports on
the reports are given (C)

Dr.

20-3-95

Vakalatnama
filed by Mr. S. Ali
Sr. C.G.S.C. on behalf of
Respondents. 

DA 18/95 (2)

Notice duly send on
A. no. 1 to 5.

dg
30/3



8.5.95

Mr. B.K. Sharma for the respondent
applicant. Adjourned to 3-7-95.

huc
Vice-Chairman

dg
Member

lm

n/state mnd - has not been
filed.

dg
30/6

7/95

3-7-95

Mr. S. Ali for the respondents
Counter not filed. Adjourned to
4-9-96.

huc
Vice-Chairman

dg
Member

lm

4.9.95

To be listed for hearing on
13.11.1995.

dg
Member

huc
Vice-Chairman

10.11.95

A show case
submitted by the pg
respondents and the
same is placed in N.P. 96/95.

B

12.4.96

13.11.95

Fls. dms on 9.1.96

By order

pg

Mr. B.K. Sharma for the applicant.
Mr. S. Ali, Sr. CGSC. for the respondent.
Case is ready for hearing.

List for hearing on 30-5-96.

dg
Member

30.5.96

Leave note of Mr B.K. Sharma, learned counsel for the applicant. Mr S. Sarma prays for adjournment on his behalf. Mr S. Ali, learned Sr. C.G.S.C., is present for the respondents.

List for hearing tomorrow, 31.5.96.

Member(A)

Member(J)

nkm

OFFICE NOTE



DATE

ORDER

31.5.96


Learned counsel for the parties are present and have made their submissions in part. Hearing adjourned to 10.6.96. The respondents are directed to produce the copy of the Merit and Normal Assessment Scheme (MANAS) for Scientific, Technical and Separate Staff Revised and Effective from 1.4.1992 and also the instruction circulated in May 1991 mentioned in para 6 "Contractual Service", of Annexure-B to the rejoinder, namely record note of discussion held between the DG and SWA representatives on 28.9.1994.

Copy of the order may be furnished to Mr S. Ali, Sr. C.G.S.C.


Member(A)
Member(J)

nkm

10.6.96


11.6.96

Learned Sr. C.G.S.C., Mr S. Ali, for the respondents. Learned counsel Mr B.K. Sharma for the applicant.

Mr Ali has submitted a copy of letter No.17(197)/90-E.II dated 14.5.1991 together with the guidelines mentioned therein. Mr B.K. Sharma submits that he requires time to go into the same and also to ascertain whether those instructions and guidelines are the same as mentioned in item 6 "Contractual Service" of the resolution dated 28.9.1994.

Mr Ali also submits copy of the revised MANAS effective from 1.4.1992. In this respect

10.6.96

also Mr Sharma submits that he requires time to examine the documents. He, therefore, seeks time for examination of the aforesaid two documents and reply if considered necessary.

List for fresh hearing of the O.A. on 15.7.1996.

In our order dated 15.5.1996 in M.P.No.62/96 we have directed the respondents to allow the applicant to continue in the same post till 15.6.1996 or disposal of the O.A. whichever is earlier. Since the O.A. cannot be disposed of within the stipulated date of 15.5.96 and after considering the submission of the counsel for the parties we consider it fair and just to direct the respondents to continue the applicant in the same post under the same terms and conditions until further orders. They are accordingly directed.

Liberty to the respondents to apply.

12-6-96
Copy of order issued
to the Respondents
Vide No. 1426-1431
dt. 12.6.96.

nkm

Member(A)

Member(J)

10-7-96

Learned counsel Mr. P.K. Sharma for the applicant. Sr.C.G.S.C. Mr.S.All for the respondents.

List for hearing on 12-8-96.

lm

Member

12.8.96

Mr S.Sarma for the applicant.
Mr S.Ali, Sr.C.G.S.C for the respondents.

List for hearing on 10.9.96.

ba
Member

pg

W
12/8

10-9-96

Leave note of Mr.B.K.Sarma.
None for the respondents. List for hearing on 9-10-96.

ba
Member

lm

W
10/9

9-10-96

Learned counsel Mr.S.Sarma for the applicant. List for hearing on 27.11.96.

ba
Member

lm

W
9/1x

11.3.97

The case is ready for hearing. Let the case be listed for hearing on 2.4.97.

ba
Member

XB
Vice-Chairman

2.4.97

On the prayer of Mr B.K.Sharma, learned counsel for the applicant the case is adjourned till 9.5.1997 for hearing.

ba
Member

XB
Vice-Chairman

pg

W
12/8

8.5.97

As per records W/S
the case is ready for hearing.

W
8/5

1) The case is ready as regards service of notices.
2) w/statment - has been b'w
8/10

w/statment - has been b'w
8/10

29.4.97
Notice duly served
on Respondent No. 6

nkm

W
12/3

do
O.A. 18 of 1995

9.5.97

Mr. B.K. Sharma, learned counsel appearing on behalf of the applicant prays for adjournment till Wednesday i.e. 14.5.97. Prayer allowed.

List it on the top of the list as part heard alongwith O.A. 241 of 1994.


Member


Vice-Chairman

trd

13/5

14.5.97

Heard Mr B.K. Sharma, learned counsel for the applicant, and Mr S. Ali, learned Sr. C.G.S.C., appearing on behalf of the respondents. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.


Member


Vice-Chairman

nkm

10.7.97
Copy of the judgment -
has been sent to the
parties vide D.Nos.
2351 to 2359 d.10.7.97.
Vr

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.16 of 1995

Original Application No.17 of 1995

Original Application No.18 of 1995

Original Application No.241 of 1994

Date of decision: This the 14th day of May 1997

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

O.A.No.16/95

Shri Dulal Sahu,
Ex-Project Assistant,
Geo-Science Division,
Regional Research Laboratory,
Jorhat.

.....Applicant

By Advocate Mr B.K. Sharma and Mr S. Sarma.

-versus-

1. Union of India, represented by the Secretary to the Government of India, Ministry of Science & Technology, New Delhi.
2. The Director General, Council of Scientific & Industrial Research, New Delhi.
3. The Director, Regional Research Laboratory, Jorhat.
4. The Joint Secretary, Council of Scientific & Industrial Research, New Delhi.
5. The Controller of Administration, Regional Research Laboratory, Jorhat.

.....Respondents

By Advocate Mr S. Ali, Sr. C.G.S.C.

.....

O.A.No.17/95

Shri Paresh Kalita,
Project Fellow, Grade-III,
Geo-Science Division,
Regional Research Laboratory, under CSIR,
Jorhat.

.....Applicant

By Advocate Mr B.K. Sharma and Mr S. Sarma.

-versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Science & Technology, New Delhi.

- 12
2. The Director General,
Council of Scientific & Industrial Research(CSIR),
New Delhi.
 3. The Director,
Regional Research Laboratory, Jorhat.
 4. The Joint Secretary,
Council of Scientific & Industrial Research,
New Delhi.
 5. The Controller of Administration,
Regional Research Laboratory, Jorhat.Respondents
- By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.
-

O.A.No.18/95

Shri Pabitra Pran Sarma,
Project Fellow-III,
Geo-Science Division,
Regional Research Laboratory,
Jorhat.Applicant

By Advocate Mr B.K. Sharma and Mr S. Sarma.

-versus-

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Science & Technology,
New Delhi.
 2. The Director General,
Council of Scientific & Industrial Research (CSIR),
New Delhi.
 3. The Director,
Regional Science Laboratory, Jorhat.
 4. The Joint Secretary,
Council of Scientific & Industrial Research,
New Delhi.
 5. The Controller of Administration,
Regional Research Laboratory, Jorhat.Respondents
- By Advocate Mr S. Ali, Sr. C.G.S.C.
-

O.A.No.241/94

Shri Shantanu Dutta,
Project Fellow, Grade-III,
Applied Civil Engineering Division,
Regional Research Laboratory, Jorhat.Applicant

By Advocate Mr B.K. Sharma and Mr S. Sarma.

-versus-

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Science & Technology, New Delhi
 2. The Director General,
Council of Scientific & Industrial Research(CSIR), New Delhi.
 3. The Director,
Regional Research Laboratory, Jorhat.
 4. The Joint Secretary,
Council of Scientific & Industrial Research, New Delhi.
 5. The Controller of Administration,
Regional Research Laboratory, Jorhat.Respondents
- By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.
-

ORDER

BARUAH.J. (V.C.)

The above applications involve common questions of law and similar facts. Therefore, we propose to dispose of all the applications by a common judgment.

2. Facts for the purpose of disposal of the applications are:

All the applicants were appointed in the Regional Research Laboratory by respondent No.3 on various dates and they have been continuously working as such. Initially, all the applicants had been appointed Project Assistant at a consolidated pay of Rs.500/-. The consolidated pay was enhanced from time to time and at present the pay is Rs.1800/-. They were so appointed in sponsored project. In 1981 a scheme was prepared by the respondent No.2, namely, Council of Scientific and Industrial Research (CSIR for short). The said scheme was known as Merit and Normal Assessment Scheme (for short MANAS). The period of the said Scheme expired and again reintroduced in a revised form and became effective from 1.4.1992. The contention of the applicants is that they fulfilled all the conditions laid down in the Scheme for regularisation of their services inasmuch as they had completed more than three years of service. However, the authorities refused to regularise them on the plea that the Scheme was no longer in existence. Hence the present applications.

3. We have heard Mr B.K. Sharma, learned counsel for the applicants, and Mr S. Ali, learned Sr. C.G.S.C., for the respondents in O.A.Nos.16 and 18 of 1995, and Mr A.K. Choudhury, for the respondents in O.A.Nos.17/95 and 241/94. According to Mr Sharma the applicants were discharging their duties continuously except only for short ~~artificial~~ breaks. The learned counsel further submits that those breaks were artificially created

25

just to deprive the applicants from the benefits of the Scheme. Mr Ali and Mr Choudhury, on the other hand, submit that the applicants are not entitled to get their services regularised in view of the fact that their services were not continuous inasmuch as there has been breaks in their services from time to time. However, the allegation of Mr B.K. Sharma is that the breaks were artificial and not for any bonafide necessity. The learned counsel for the respondents are not in a position to refute this submission.

4. On the submission of the learned counsel for the parties it is now to be seen whether the respondents' refusal to regularise the services of the applicants can sustain in law and whether the applicants are eligible to be regularised in their services.

5. It is an admitted fact that the applicants had been working for several years with, however, short breaks of one or two days. According to the learned counsel for the applicants, these breaks were artificially created just to deprive them from the benefit of the Scheme.

6. We have perused the application as well as the written statement and heard the learned counsel for the parties. We find that these one or two days breaks are not for any administrative necessity. At least there is nothing on the record to indicate that. The learned counsel for the respondents have also not been able to show that those breaks were necessary for administrative purpose.

7. In view of the above we hold that the applicants were working continuously for more than three years which was a condition for the purpose of regularisation of their services. From the pleadings and other records available before us, we are of the opinion that the short breaks were artificially created - there was no administrative necessity. These artificial

breaks.....

breaks cannot deprive the applicants, the benefit of the Scheme (See AIR 1990 SC 2228, 1992 (2) SCC 29, and 1987(3) SLJ (CAT) 569). An attempt has been made by the learned counsel for the respondents to show that at times the applicants were not in service for a long time, and therefore, they would not be regarded as being in continuous service. But, if Annexure-A to the rejoinder, the revised Scheme of MANAS effective from 1.4.1992, is taken into consideration this will show that the applicants had been working for more than three years, with, however, short breaks as indicated above. Therefore, they are entitled to the benefit of the Scheme. It may be mentioned here that the respondents have clearly stated in paragraph 32 of the written statement in O.A.No.16/95 that the name of the applicant was sponsored by the Employment Exchange and after having selected by the Selection Committee, he was appointed as Project Assistant for six months only on contractual basis. This itself indicates that the applicant fulfilled the requirements mentioned in the Scheme. Similar averments have been made in the written statements of the other applications also.

8. Considering all the aspects of the matter we hold that all the applicants are entitled to be regularised in their services as per the Scheme (MANAS) prepared, and more specifically as per the revised Scheme effective from 1.4.1992. Accordingly we direct the respondents to regularise the services of the applicants within a period of one month from today in terms of the Scheme. If at the time of regularisation the applicants are found to be overaged that should be ignored and this shall not be a bar for regularisation. Till regularisation the applicants should not be removed from their services.

9. The applications are accordingly allowed. However, considering all the facts and circumstances of the cases we make no order as to costs.

Sd/-VICE CHAIRMAN.

Sd/-MEMBER (A)

(4)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Date of Order: This the 9th Day of January 1996.

1. Original Application No.16/1995.

Sri Dulal Saha Applicant.

-Vs-

Union of India & Ors. Respondent.

2. Original Application No.17/95 with M.P.97/95.

Shri Paresh Kalita Applicant.

-Vs-

Union of India & Ors. Respondents.

3. Original Application No.18/95 with M.P.96/95

Shri Pabitra Pran Sarma, Applicant

-vs-

Union of India & Ors. Respondents.

C O R A M

JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN
SHRI G.L.SANGLYINE, MEMBER(A)

For the Applicant:- Mr.B.K.Sharma with
Mr.B.Mehta and
Mr.S.Sarma.

For the respondents:- In O.A.No.16/95 and | Mr.S.Ali,
18/95 with M.P.96/95 | Sr.C.G.S.C.

In O.A.17/95 with M.P.97/95
Mr.A.K.Choudhury, Addl.C.G.S.C.

O R D E R.

CHAUDHARI J(VC):

All these cases involve question of regularisation and continuation of engagement till then. By the Misc.Petition the applicants have prayed that a direction be issued to the respondents to continue their service as before till disposal of the O.A. Heard Mr.B.K.Sharma the learned counsel for the applicants and Mr.S.Ali, Sr.C.G.S.C. and Mr.A.K.Choudhury Addl.C.G.S.C. representing the respondents

contd/-

(5)

in the applications respectively.

1/8 2. The applicants have filed the O.As contending that although their initial appointment was described as temporary and though they have been engaged in spells after giving formal break, they are entitled to be regularised in the post of Scientific Assistant/Junior Technical Assistant, Grade III, with retrospective effect and all consequential benefits.

3. Applicant in O.A.16/95 was initially appointed on 24-9-84. The applicant in O.A. 17/95 was initially appointed on 22-3-83 and the applicant in O.A.No.18/95 was appointed on 26-11-82. The last spell of engagement of each of them was for a period of six months vide orders issued in December 1994 and consequently they would stand disengaged in April 1995. The applicants in ^{all the O.As} ~~O.A. 17 & 18~~ however presented the instant OAs before the period of engagement was over, on 30-1-95. The applications were admitted on 1-2-95. At that stage the respondents were directed not to terminate the service of the applicants. By further interim order dated 2-3-95 the respondents were directed not to terminate the service of the applicants until further orders without prior leave of the Tribunal. Obviously those orders were passed in view of the currency of the engagement.

4. The respondents however did not issue order for further continuation or reengagement of the applicants after the then spell of engagement came to end in April 1995. That has ^{led} to the filing of the Misc.Petitions. The grievance made is that the respondents have committed

contd/-

(6)

the breach of the order dated 2-3-95 by not issuing the orders of further engagement and thus bringing about termination of service of the applicants without obtaining prior leave from the Tribunal.

5. In the show cause reply to the petitions the respondents have stated that in due deference to the order of the Tribunal the services of the applicants have not been terminated but that ~~"it is only after~~

"it is only after the completion of the contractual engagement further offer of engagement on contractual basis against project/scheme has not been renewed as the case is sub-judiced and kept in abeyance.....After expiry of the contractual period the offer of engagement stands automatically cancelled."

According to the respondents ^{they} have not thus violated the interim orders.

6. In our view ^{it} may not be held that the respondents have violated the interim orders in terms. They have however defeated the very object and purpose of the interim orders by reading them narrowly. Although therefore technically they may not be in breach of the order their action has resulted in frustrating the very purpose of the O.As particularly when the question is sub-judice. In that connection it may be stated that the applicants have voiced in the original applications that they not only apprehend that their services may be terminated but also that they may not be granted ~~an~~ appointment after expiry of the then existing period of engagement, that is after 15-4-95. The reply of the respondents in the written statement is as follows:-

20 "The respondents further beg to state that as the case is sub-judice further offer of engagement has been kept in abeyance beyond 14-4-95 but as per the advice of the Hon'ble Tribunal the service of the applicant has not been terminated. However, further consideration will be made as per the decision of the Hon'ble Tribunal."

6 The applicants have averred in the O.A. that there were 17 posts vacant. The respondents have also admitted in the written statement that there ^{are} few posts lying vacant but have added that as there is no identical post and also in view of the ban imposed by the Government of India, these posts cannot be filled. According to them some persons have been appointed by way of fresh appointments after due selection and recruitment. It is however pointed out by the applicants that the respondents have issued orders at least in respect of four persons in the month of November 1995 engaging them for a period of three months on contractual basis. That shows that the applicants could possibly be re-engaged till further orders were passed by the Tribunal without difficulty.

7. In the aforesaid background it was obligatory on the part of the respondents to have apprised the Tribunal with the reasons for which they were not inclined to re-engage the applicants and appointing some others. In the circumstances the withholding of issuance of re-engagement orders amounts to termination while the question of regularisation is the subject matter of the O.As. In the circumstances following interim order is passed:

1. The respondents are directed to issue the order of re-engagement of the applicants in the same posts on which they were posts.

engaged earlier forthwith operative for a²
period of three months. The re-engagement of
the applicants in pursuance of this order
will be without prejudice to the rights and
✓ contentions of the respondentsⁱⁿ the O.A.s and
it will not by itself confer any right on the
applicants to claim regularisation or further
continuation. The question of the period between
expiry of the last engagement and the g fresh
engagement as now directed will be open to be
✓ agitated at the hearing of the O.A.s. ^{If the OAs are not} ~~is not~~
heard finally within a period of three months
it will be necessary for the applicants to
✓ seek ^{further} directions before the term of engagement
comes to an end and it will also be open to
the respondents to seek directions to permit
them not to further continue the engagement
of the applicants. ~~of the applicants.~~ The
question of eligibility of the applicants to be
considered under MANA Scheme is left open to be
dealt with at the hearing of the O.As.

The respondents are directed to produce
at the hearing of the O.As the copy of the
instructions circulated in May 1991 by the
✓ DGSIR (mentioned in class clause VI of Annexure
B to the rejoinder in O.A.17/95)

Order in above terms in both the Misc. Petitions
and on O.A.16/95. All the O.As to be listed for hearing
on 26-2-96. ✓

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

9

Copy 2 of order (Emd)
to all concerned with
M. 182-189 A. 18-1-96

by
17/1
Copy (Emd) to card.

by

26. 2. 96

To be listed for
hearing on 12. 4. 96
with N.P. 96/95.

By order
Bon