

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-509/2015
With
OA-3587/2015**

Reserved on : 19.04.2017.

Pronounced on : 05.05.2017.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

OA-509/2015

1. Dr. Sneh Lata Jain,
D/o Sh. Roshan Lal Goyal, 50 years
Y Block Phase-1, Nangloi,
Delhi-41.
2. Dr. Tarannum Ara,
D/o Sh. Md. Shamim, 43 years
2391, 1st Floor, Mandir Wali Gali,
Patel Nagar, New Delhi-110008.
3. Dr. Mohd. Danish Mehfooz,
S/o Sh. Md. Abu Nomain, 34 years
2391, 1st Floor, Mandir Wali Gali,
Patel Nagar, New Delhi-110008.
4. Dr. Arshad Yar Khan,
S/o Sh. Idris Ahmed Khanm, 40 years
B-53, 11nd Floor, Gali No.6,
Joshi Colony, IP Extension,
Patparganj, New Delhi-110092.
5. Mohd. Faizur Rahman,
S/o Sh. Jamilur Rahman, 39 years
O-21, Malik House, Batla House,
Jamia Nagar, Okhla,
New Delhi-110025.

6. Dr. Mohd. Shamshad Alam,
S/o Sh. Mohd. Shamsuddin, 37 years
R-201, Gali No.10, Ramesh Park,
Laxmi Nagar, Delhi-110092.
7. Dr. Ajaj Ahmad,
S/o Sh. Abdur Rauf, 39 years
X-13C, DDA flats,
New Ranjeet Nagar,
New Delhi-110008.
8. Dr. Abid Hussain,
S/o Sh. Abdul Faiz, 43 years
Z2B, DDA flats, New Ranjeet Nagar,
New Delhi-110008.
9. Dr. Hakimullah Khan,
S/o Sh. Abdul Shakoor, 39 years
B-53, 11nd Floor, Gali No.6,
Joshi Colony, IP Extension,
Patparganj, New Delhi-110092.
10. Dr. Ubaid-ur-Rehman Ghazi,
S/o Sh. Nasim Ahmed Ghazi, 35 years
E-42, Abul Fazal Enclave,
Jamia Nagar, New Delhi-110025.
11. Dr. Syyed Ubaidussalam,
S/o Syyed Yoosuf Ali, 37 years
C/o Rehmani Clinic,
Near Bilal Masjid Laltain Factory Road,
Kaila Bhatta Ghaziabad-201001.
12. Dr. Badar Iqbal,
S/o Sh. Mozaffar, 40 years
N-71A, Abul Fazal Enclave,
Thokar No.5, Okhla,
New Delhi-110025.

13. Dr. Abdul Majeed,
S/o Sh. Nazeen Ahmed, 44 years
C/o Dr. Shujauddin Qasmi,
House No. 78-C, Gali No.9,
Noor Colony, Wazirabad Village.
14. Mr. Vishal Srivastava,
S/o Sh. Dharmatama Singh, 36 years
RZF-2/123A, Street No. 5,
Mahaveer Enclave, Palam,
New Delhi-110045.
15. Dr. Poonam Dang,
D/o Sh. Narinder Gulati, 33 years
A-121 Prashant Vihar,
(opposite Lancer convent school)
Rohini-110085.
16. Dr. Amit Chaudhary,
S/o Sh. Satyendra Dera,
Lane No.2 Opposite Railway Station,
Modi Nagar, UP.
17. Dr. Sandeep Kr. Tiwari,
S/o Indra Deo Tiwari, 34 years
A-23 Lohiya Nagar Ghaziabad,
UP-201001.
18. Dr. Mohd. Sufyan,
S/o Sh. Mohd. Hashim, 34 years
A18/144C, DDA Flats,
Inderlok, Delhi-110035.
19. Dr. Mohd. Danish,
S/o Sh. Khursheed Ahmed, 35 years
E II, 16/928, Nehru Vihar,
Mustafabad, Dayalpur,
Delhi-110094.

20. Dr. Tufail Ahmad,
S/o Sh. Iftekhar Ahmed, 34 years
246/58, Gali No.5,
East School Block, Allah Colony,
Mandawai, Fazalpur,
New Delhi-110092.
21. Dr. Ramesh Kumar Pandey,
S/o Sh. Ram Chander Pandey, 37 years
634/7, 11nd Floor, Govind Puri,
New Delhi-110019.
22. Dr. Naflia Jilani,
D/o Sh. Ateco Jilani, 32 years
H.No. 7 Gali No.1,
Araam Park Shashtri Nagar,
Delhi-31.
23. Dr. Samar Shadab,
D/o Sh. Hameed Khan, 33 years
C-119, Ajmal Bagh, Noor Nagar,
Jamia Nagar, New Delhi-110025.
24. Dr. Mohd Yasir Khan,
S/o Naeem Ahmed Khand, 37 years
C-119, Ajmal Bagh,
Noor Nagar, Jamia Nagar,
New Delhi-110025. Applicants

OA-3587/2015

1. Dr. Manish Tare,
42 years
S/o Late Sh. V.M. Tare,
R/o Flat No. 346, Block-E, GAUR HOMES,
Govindpurum, Ghaziabad, UP.
2. Ms. Sarika Jain,
31 years
D/o Sh. Rajendra Jain,

R/o D-276, Shastri Nagar,
Ghaziabad, UP.

3. Mr. Manohar Dayal,
32 years
S/o Sh. Shankar Dayal,
R/o 3rd Floor, House No. 94/old-407,
Sarpanch Ka Bara, Gali No.8,
Mandawli, New Delhi-92.
4. Mr. Manish Mishra,
36 years,
S/o Sh. Satya Prakash Mishra,
R/o UG-1, Plot No.1/19, Sec-2,
Rajender Nagar, Sahibabad,
Ghaziabad-201005.
5. Mr. Susheel Kumar Patel,
35 years,
S/o Sh. Pyare Lal Patel,
R/o 2nd Floor, S143 B, Pandav Nagar,
Delhi-92.
6. Mr. Nitesh Kumar,
34 years
S/o B.S.K. Singh,
R/o F-30/788, Top Floor,
Ganesh Nagar-2,
Shakarpur, Delhi-92.
7. Mr. Naushad Akhtar,
32 years,
S/o Late Sh. Shamshad Akhtar,
R/o 79, Mansi Vihar, Sector-23,
Sanjay Nagar, Ghaziabad-201002. Applicants

Versus

1. Union of India through
Secretary, Ministry of AYUSH,
AYUSH Bhawan,

B Block, GPO Complex, INA,
New Delhi-110023.

2. Ministry of Science and Technology through
Director General,
Council of Scientific and Industrial Research
Anusandhan Bhawan, 2 Rafi Marg,
New Delhi-110001.
3. Traditional Knowledge Digital Library Unit
Through Project Leader,
CSIR-Human Resource Development Centre (HRDC)
Sector-19, Central Government Enclave,
Kamla Nehru Nagar, Ghaziabad, UP. Respondents
in both the cases

Present : Sh. Naresh Kaushik, counsel for applicants.

Sh. Praveen Swarup, Ms. Neha Bhatnagar and Sh. Yogesh
Mahur for Sh. Gyanendra Singh, counsel for respondents.

ORDER

Mr. Shekhar Agarwal, Member (A)

Both these OAs are similar and are being disposed of by this common order. For the sake of convenience facts of OA-509/2015 are being discussed as hereunder:-

2. In the year 2001, the respondents set up Traditional Knowledge Digital Library (TKDL) as a prestigious project to prevent grant of wrong patents and to protect India's vast traditional knowledge. In the year 2002, respondents issued an advertisement for appointment of some Ayurvedic Experts in this project. Some of the applicants

herein were appointed on contract basis in response to this advertisement. Similarly in the year 2004, certain Unani Experts were so appointed. Thereafter, during the period 2002-2007, certain Yoga Experts were appointed. The life of the project was extended from time to time and on 29.06.2009, the Standing Financial Committee of Department of AYUSH decided to extend the project till March, 2012.

3. The employees of TKDL, which included the applicants herein, made repeated demands for constituting TKDL as an autonomous department in view of the success of the project and perennial nature of the work being discharged by them. The employees also pleaded for regularization of their services. However, the respondents created TKDL as a separate unit of CSIR only.

4. Again in the years 2010-2011, respondents invited applications by issuing an advertisement for contractual appointments of certain Experts in the field of Unani, Ayurveda and Yoga Experts. Some of the applicants here applied and were so appointed on contractual basis. On 27.10.2011, the applicants again represented to the respondents seeking regularization of their services and grant of regular pay scales and promotional avenues. This was followed by another representation on 20.01.2015. No action was taken by the respondents. Separately, they issued another advertisement on 16.01.2015 inviting applications for experts of Ayurveda, Unani +

Yoga. Apprehending that respondents were intending to replace them by appointing fresh contractual employees, the applicants have filed this O.A. seeking the following relief:-

- “(a) Allow the present OA; and
- (b) Set aside and quash the impugned advertisement dated 16.01.2015; and
- (c) Direct the respondents to continue the services of the Applicants and consider them for regularization and/or conferment of permanent status with all consequential benefits; and
- (d) Direct the respondents to grant pay and other allowances as are granted to other similarly placed in other Government department/organization/units; and
- (e) Award costs in favour of the Applicants;
- (f) Pass such other orders as this Hon'ble Court deem fit and proper.”

5. Respondent No.1 (Department of AYUSH) have filed an affidavit in which it has been stated that their name may be deleted from array of parties as they are not concerned with the subject matter of this O.A.

6. In the reply filed on behalf of CSIR it has been stated that TKDL was created to prevent grant of wrong patents on India's Traditional knowledge of International Patent Offices, like, European Patent Office, US Patent and Trademarks Office, Japan Patent Office, etc. and to prevent misappropriation of 'Turmeric' and 'Neem'. Initially,

this project was set up in the year 2001 as a collaborative project of CSIR and Department of Ayush. Department of AYUSH was assigned the responsibility of funding and recruitment of project staff. CSIR was made responsible for implementation of the project. Pursuant to the above, TKDL (Ayurveda) was initiated in 2002 and limited contractual project staff of Ayurveda stream was engaged by Department of AYUSH. Thereafter, in the year 2003, TKDL (Unani) was initiated and staff of Unani stream was engaged. Similarly, in the year 2005, staff of Siddha stream was engaged and in the year 2008 Yoga Experts were engaged. At various stages remuneration of the project staff was also enhanced. In the year 2004, based on the recommendations of Standing Finance Committee the life of the project was extended to March 2012 i.e. upto the end of 11th Five Year Plan and remuneration of the project staff was enhanced from Rs.12000/- to Rs.18000/- and from Rs.18000/- to Rs.25000/- and remuneration of monitoring team was enhanced to Rs.35000/- p.m. At the end of 11th Five Year Plan, the collaboration of Department of AYUSH and CSIR ended and along with it ended the term of appointment of the Project staff recruited by Department of AYUSH.

6.1 However, with the approval of Cabinet Committee on Economic Affairs (2006) during the 12th Five Year Plan period, the responsibility of implementation of this project continued with CSIR-TKDL Unit. As a onetime sympathetic gesture for the project staff

terminated due to end of collaboration with Department of AYUSH, an opportunity was given to them for applying afresh for appointment with CSIR-TKDL Unit. After a brief interview, they were appointed subject to their accepting terms and conditions, which included consolidated remuneration of Rs.25000/- p.m.+ HRA @ 30% of the remuneration, engagement for a maximum period of three years with the stipulation that initial engagement will be for one year followed by review to be conducted by a three-Member Expert Committee. This opportunity was given to the Project staff with a view to enabling them to search for regular job in the meanwhile. Due to continuous advice and encouragement by TKDL out of 82 Project staff engaged in April, 2012, about 30 of them were successful in getting regular appointments in various positions in Govt./Industries as well as Non-Govt. organizations. The applicants herein either did not make sincere efforts or were not able to secure regular alternative appointments. As on date only a total of about 52 Project staff are available in TKDL Unit.

62. An advertisement dated 16.01.2015 was, therefore, issued to fill up the vacant posts available in the Project.

6.3 Separately, the competent authority also conducted performance review of the existing contractual employees, which included the applicants herein. 07 of the applicants out of 24

applicants were disqualified. This review had been conducted by an independent Committee and included some external persons of high repute and expertise in their field.

6.4 The respondents have further stated that it is not correct to say that the advertisement dated 16.01.2015 was issued with the intention of replacing the existing contractual staff with another set of contractual staff. In fact, this advertisement was meant to fill up the additional vacant posts. Hence, prayer made by the applicant for quashing of the impugned advertisement was baseless. In any case, the applicants had been appointment on contractual basis and did not have any legal right to seek extension beyond a period of three years. They also cannot be regularized or given permanent status as they are working against posts created under the project, which were to last only till the life of the Project.

7. In compliance of our directions, the respondents have filed an additional affidavit on 29.03.2017 in which they have stated that the project in which the applicants herein were engaged has come to an end on 31.03.2017. Since the services of the applicants were co terminus with the life of the Project, the applicants cannot be engaged any further. It has further been stated that the life of the Project was only during the 12th Five Year Plan period, which commenced from 01.04.2012 and ended on 31.03.2017. All the

project staff including the applicants herein were hired to work in Project Nos. ISC0205 and HCP006 of CSIR-TKDL Unit during this specific period only. Funding for these Projects was also available only for this period. After 31.03.2017, no budgetary provision is available for payment of the salary of the Project staff engaged under these Projects. The applicants themselves were well aware of this fact and were abusing the process of law seeking extension of their contractual engagement. In view of the above, the respondents have requested that this O.A. be dismissed as it is devoid of merit.

8. We have heard both sides and have perused the material placed on record. The written arguments of the applicants submitted on 25.04.2017 has also been taken on record and perused by us. We have looked at the prayer clauses of the applicants. Clause-(b) reads as follows:-

“(b) Set aside and quash the impugned advertisement dated 16.01.2015.”

8.1 With regard to these prayer clauses, it was stated by learned counsel for the respondents that in their affidavit they have clarified that this advertisement was issued for engagement of additional contractual staff rather than for replacement of the applicants by another set of contractual staff. In any case, the appointment

offered in this advertisement was only upto 31.03.2017, which has now ended. On instructions Sh. Praveen Swaroop also submitted that pursuant to this advertisement no engagement of any contractual staff was actually done. This has also been conceded by the applicants in their written arguments submitted on 25.04.2017. In view of the aforesaid submissions it was agreed upon by both parties that this prayer has become infructuous.

8.2 Prayer clause-8(c) reads as follows:-

“(c) Direct the Respondents to continue the services of the Applicants and consider them for regularization and/or conferment of permanent status with all consequential benefits.”

8.2.1 In this regard the respondents submitted that the applicants were never appointed against regularly created posts. They were working under a project, which itself was temporary in nature. The life of the project was extended from time to time. The project has finally come to an end on 31.03.2017 after which funding for the same is not available. Hence, even the question of continuing the services of the applicants does not arise, leave aside their regularisation or conferment of permanent status.

8.2.2 The aforesaid contention of the respondents was not disputed by the applicants. They, however, argued that the work they were discharging for TKDL Unit was not only extremely important but was

of perennial nature. Hence, even though this project may have been wound up, this work in all probabilities shall be continued by some other Unit or Wing of the respondents. The respondents will then appoint a fresh set of contractual/regular employees and dispense with the services of the applicants herein. The aforesaid contention of the applicants was disputed by learned counsel for the respondents, who submitted that this work has not been assigned to any other Unit or Wing of the respondents.

8.2.3 In view of the aforesaid submissions, it is clear that no regular posts are available against which the applicants can be regularized. Hence, their prayer for regularization cannot be considered and also there is no question of conferring permanent status on them. However, to allay their fear that the respondents will discharge this work through some other Unit/Wing and appoint a fresh set of contractual employees, we direct that if this activity is assigned to any other Unit/Wing of the respondents then new set of contractual employees shall not be appointed to displace the applicants herein. In such an eventuality the services of the applicants herein shall be continued provided they meet the eligibility conditions of the new establishment. There will, however, be no bar in making regular appointments and if that is done the applicants may be considered as per rules after giving admissible age relaxation.

8.3 The next prayer clause of the applicants is as follows:-

“(d)Direct the respondents to grant pay and other allowances as are granted to other similarly placed in other Government department/organizations/units.”

8.3.1 In this regard, the applicants submitted that they were engaged for this project from time to time starting from the year 2002. They were paid consolidated amount of Rs.12000/- p.m. in the beginning, which was enhanced to Rs. 25000/- p.m. from time to time. However, besides the applicants, who were contractual employees, there were some other employees, who were employed on regular basis with the respondents and who were taken on deputation to the TKDL Unit. As an illustration, the applicants have mentioned the names of Dr. Gopesh Kr. Sharma, R.O.(Ay.), Dr. Vimal Tiwari, R.O. (Ay.) and Dr. Dipika Tiwari, R.O.(Ay.). The applicants submitted that these doctors were employed in the same TKDL Unit and were being paid salary in the regular pay scale even though they were doing the same work which was being done by the applicants. On the other hand, applicants, who were possessing the same qualification and discharging the same duties, were only paid a consolidated amount as their contractual salary. Relying on the judgment of Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Jagjit Singh & Ors.**, 2016(10)SCALE 447 the applicants pleaded that they may be granted the same pay and allowances

as was granted to regular employees, who were discharging the same duties by applying the principle of 'equal pay for equal work'.

8.3.2 On going through the reply filed by the respondents, we find that the aforesaid contention of the applicants has not been disputed by them.

8.3.3 We have considered the aforesaid submissions and also perused the judgment of Apex Court relied upon by the applicants. We find that Apex Court has ruled that the principle of 'equal pay for equal work' applies even to contractual employees as long as they were discharging the same work and duties as were being discharged by regular employees. It has also been held by the Apex Court that while applying this principle the manner in which contractual employees have been appointed or the duration for which they have been appointed was not material. This principle would apply as long as the nature of duties discharged by them was the same as that discharged by the regular employees. Relevant paras of the aforesaid judgment read as follows:-

"53. We shall now deal with the claim of temporary employees before this Court.

54. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the

Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

"Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.

57. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above....."

8.3.4 In view of the aforesaid law laid down by the Apex Court, we find merit in the contention of the applicants. However, we find that the applicants have not given details of the duties discharged by them and by those on regular establishment to establish that the

applicants are covered by the Apex Court judgment. We, therefore, direct the respondents to examine the case of applicants herein and in case they are found to be covered by the aforesaid judgment of the Apex Court, then they may be granted the salary at the minimum of the pay scale granted to the regular employee along with all admissible allowances. The applicants shall also be entitled to arrears arising out of the aforesaid benefit. However, considering the facts and circumstances of this case, the payment of arrears shall be for the period commencing from the date of filing of this O.A. i.e. 05.02.2015 without interest. The consolidated remuneration paid to the applicants shall be adjusted from the same.

9. The O.A. is, therefore, allowed partly to the extent mentioned in paras 8.2.3 and 8.3.4 above. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/