

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. No.854/2013
M.A. No.664/2013**

**Reserved On:07.10.2015
Pronounced On:09.10.2015**

**HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)**

1. Ravinder Kumar
S/o Shri Panna Lal
R/o H.No.RZ-204A, Sadhnagar,
Palam Colony, Street No.14,
Near Palam Railway Station,
New Delhi-110045.
2. Bhagwat Singh
S/o Shri Mohan Singh Bangari
183-184-A, Indrapuram,
(Kala Pathar),
Nayay Khand-II, Ghaziabad (UP). ...Applicants

(Service of all notices on the applicants Counsel's
following address:

Satya Mitra Garg, Advocate
Chamber No.209, C.K. Daphtary Block,
Supreme Court, New Delhi-110001).

By Advocate: Shri S.M. Garg.

Versus

1. Council of Scientific and Industrial Research
through its Director General,
Rafi Marg,
New Delhi-110001.
2. National Physical Laboratory
through its Director,
Pusa Road,
New Delhi.

3. The Controller of Administration,
National Physical Laboratory,
Pusa Road,
New Delhi. ...Respondents

By Advocate: Ms. K. Iyer for Shri Manoj Chatterjee.

ORDER

Justice L.N. Mittal, Member (J)

Applicants Ravinder Kumar and Bhagwat Singh have filed this Original Application seeking direction to the respondents to re-employ them and to absorb them in regular grades of Group 'D' in the National Physical Laboratory (NPL) (respondent No.2) or any other constituents of the Council of Scientific and Industrial Research (CSIR) (respondent No.1) in accordance with absorption Scheme of 1995 (Annexure P-6) since the persons junior to the applicants have been absorbed illegally superseding the prior claim of the applicants.

2. At the outset, it may be mentioned that MA No.664/2013 was also listed for hearing, but, in fact, the correct number of MA is 668/2013 and the same has already been allowed vide order dated 15.03.2013.

3. Applicant No.1 was engaged as daily paid labourer on 05.06.1989 and applicant No.2 on 12.09.1989 in NPL -

respondent No.2. It appears that all such labourers including applicants except those mentioned in Office Memorandum dated 25.06.1990 (Annexure P-3) were disengaged after 29.06.1990. Applicant No.1 had 207 working days in the year 1989 and 86 working days in the year 1990 whereas applicant No.2 had 50 working days in the year 1989 and 60 working days in the year 1990.

4. Hon'ble Supreme Court vide order dated 05.12.1988 in Writ Petition (Civil) No.631 of 1988 – Kamlesh Kapoor and Others Vs. Union of India and Others (Annexure P-2) directed Indian National Scientific Documentation Centre (INSDOC), a unit of CSIR and the CSIR (respondent No.1) to prepare a Scheme for the absorption of all persons who were working on casual basis for more than one year in INSDOC and to absorb such of those persons who satisfy the Scheme as regular employees in the respective posts held by them. Pursuant thereto, "Causal Workers Absorption Scheme, 1990" was framed. This Tribunal vide judgment dated 12.04.1991 in OA No.2215/1988 – Suresh Prasad Thakur and Another Vs. Director General, CSIR and Another and another connected OA (Annexure P-4), inter alia, directed modification of the Scheme of 1990. Civil Appeal Nos.5299-5300 of 1993 preferred against the said judgment were

dismissed by Hon'ble Supreme Court vide judgment dated 10.08.1994 (Annexure P-5), however, granting further time to comply with the directions issued by the Tribunal. Pursuant thereto, Scheme of 1995 (Annexure P-6) was framed.

5. Pursuant to the Scheme of 1995, some labourers filed various Original Applications before the Tribunal and the same were disposed of with some directions. Some cases also went to Hon'ble High Court by way of Writ Petitions.

6. The claim of the applicants in the instant OA is that some persons junior to them have been absorbed/re-employed and, therefore, the applicants are also entitled to be absorbed in regular grade of Group 'D'.

7. Respondents in their counter reply, *inter alia*, pleaded that the Scheme of 1995 is applicable to those labourers who were employed prior to 05.12.1988 and, therefore, the said Scheme is not applicable to the applicants who were engaged in June and September, 1989. It was also pleaded that the OA is barred by limitation because the applicants have approached the Tribunal after an inordinate delay of more than 20 years. Various other pleas were also raised.

8. Applicants filed rejoinder affidavit reiterating their version and repudiating the version of the respondents.

9. We have heard Mr. S.M. Garg, counsel for the applicants and Ms. K. Iyer for Mr. Manoj Chatterjee, counsel for the respondents at considerable length and perused the file with their assistance.

10. Counsel for the applicants referred to order dated 12.04.1991 (Annexure P-4) passed by this Tribunal as upheld by the Hon'ble Supreme Court vide judgment (Annexure P-5) and contended that the Scheme of 1995 (Annexure P-6) also applies to labourers engaged after 05.12.1988 and also to labourers engaged after 01.04.1990.

Counsel for the applicants then referred to list (Annexure P-7) showing the number of working days of different labourers including applicants along with dates of their engagement, dates of birth, qualification etc. and contended that applicant No.1 appears in the list at Sl.No.53 and the applicant No.2 appears in the list at Sl.No.2. Referring to the said list as seniority list, counsel for the applicants contended that the applicants are entitled to the relief claimed by them. Reference was made to various judgments (Annexures P-8, P-10, P-12, P-13 and P-15) of

the Tribunal and the High Court. Specific reference was made to letter dated 06.12.1995 whereby the Scheme of 1995 was forwarded by Joint Secretary (Admn.) of CSIR to Heads of all National Laboratories/Institutes and it was submitted that according to this forwarding letter, causal workers engaged after 01.04.1990 were also to be considered for absorption on the basis of qualification prevalent under the relevant recruitment rules at the time of consideration of their cases for absorption subject to fulfillment of other conditions of the Scheme.

11. On the other hand, counsel for the respondents vehemently contended that the instant OA is hopelessly barred by limitation. It was submitted that the applicants were disengaged after 29.06.1990 and the instant OA was filed on 08.03.2013, i.e. after about 23 years although limitation period for filing the OA was one year only. It was also contended that the Scheme of 1995 is not applicable to the applicants because they were engaged much after 05.12.1988. Counsel for the respondents also submitted that now the respondents are not engaging any casual labourer and the work has been outsourced to agency since around the year 2007-2008.

12. We have carefully considered the rival contentions. The instant OA is hopelessly barred by limitation. The applicants were disengaged after 29.06.1990. However, they have filed the instant OA on 08.03.2013. Limitation period for filing the OA was one year only. Thus, there is delay of more than 20 years in filing the OA. Even formal application for condoning the said delay has not been filed by the applicants. Even otherwise, there is no ground, much less sufficient ground to condone the long and inordinate delay of more than 20 years in filing the OA. Counsel for the applicants referred to the judgments passed in some other cases. But in those cases, OAs had been filed much earlier than the instant OA. Thus, the instant OA is liable to be dismissed as time barred.

13. Even on merits, the applicants are not entitled to succeed. Paragraph 4 of the Scheme of 1995 is reproduced hereunder:-

"4) Scope of Scheme: The Scheme will be applicable to Casual Workers initially engaged through Employment Exchange or otherwise prior to 05.12.1988 but had not been regularized for want of regular vacancies or whose services have been dispensed with for want of regular vacancies and who had worked for 240 days/206 days including Sundays and Holidays (in case of six days/five days a week respectively) in a year prior to 05.12.1988 will have priority over the others in regard to absorption. Those

who have worked for lesser period, may be considered for absorption in accordance with the length of service put in by them".

A perusal of aforesaid provision makes it manifestly clear that the said Scheme is applicable to casual workers initially engaged prior to 05.12.1988. The later part of this paragraph also refers to the casual workers initially engaged prior to 05.12.1988, but who had worked for lesser period, i.e., for less than 240/206 days (in the case of six days/five days a week respectively). The later part of paragraph 4 aforesaid cannot be stretched to mean that the Scheme is applicable to casual workers engaged after 05.12.1988. The applicants were admittedly engaged in June and September, 1989, i.e., much after 05.12.1988. Therefore, the aforesaid Scheme is not applicable to them.

14. Judgments relied upon by the counsel for the applicants are completely distinguishable. In OA No.48/1997 decided by the Tribunal vide judgment dated 13.12.2000 (Annexure P-8), the applicants were engaged in the year 1987-88, i.e., prior to 05.12.1988. Similarly in OA No.3160/2001 decided by the Tribunal vide judgment dated 12.05.2003 (Annexure P-12) and upheld by Hon'ble High Court of Delhi vide judgment dated 07.12.2007 (Annexure P-13), the original

applicants had been engaged prior to 05.12.1988. In OA Nos.2306, 2318 and 2468 of 2009 decided by the Tribunal by a common judgment dated 08.09.2011 (Annexure P-15) also, the applicants had been engaged prior to 05.12.1988. Consequently, all the aforesaid judgments are not applicable to the case in hand because in this case the applicants were engaged long after 05.12.1988. Counsel for the applicants referred to para 21 of judgment of High Court (Annexure P-13) and contended that the Scheme is applicable to workers engaged even after 05.12.1988. The contention is completely untenable because in this paragraph also the reference is to the workers, who had been engaged prior to 05.12.1988 and had completed 240 days/206 days and then there was reference to others who had worked for lesser period. Consequently, the reference to the other workers who had worked for lesser period also pertains to the workers engaged prior to 05.12.1988 but whose working days were lesser. It is rather manifest from this paragraph of the judgment that the Scheme is applicable to the workers engaged prior to 05.12.1988 [the date of judgment of Hon'ble Supreme Court in the case of Kamlesh Kapoor and Others (supra) pursuant to which the Scheme of 1990 and

revised Scheme of 1995 were framed]. Thus, the applicants are not covered by the Scheme of 1995.

15. In OA No.3071/2001 decided by the Tribunal vide judgment dated 06.10.2005 (Annexure P-10), the applicant Jai Prakash had, of course, been engaged on 05.06.1989, i.e., after 05.12.1988. However, the only direction given by the Tribunal in that case was to make every effort to engage the applicant and then to regularize him in accordance with the Scheme of 1995. Against the said judgment, Writ Petition (Civil) No.8044-45 of 2006 was preferred. However, interim stay of the judgment of the Tribunal was declined and, therefore, in view of the Contempt Petition filed in the said case by the original applicant, the respondents made statement for complying with the direction of the Tribunal and consequently the Writ Petition was dismissed as not pressed. Thus, no proposition of law was laid down in the said case.

16. As a necessary upshot of the discussion aforesaid, we conclude that the Scheme of 1995 is applicable to workers engaged prior to 05.12.1988. Therefore, the said Scheme is not applicable to the applicants who were initially engaged in June and September, 1989 respectively.

17. It may also be noticed that now the respondents are not engaging the causal labourers and the work has been outsourced to a private agency. For this added reason also, the respondents cannot be directed to reengage the applicants as casual labourers or to absorb them.

18. As a risk of repetition, it has to be highlighted that the OA is grossly barred by limitation and also the claim of the applicants having been made after about 23 years is completely stale and untenable.

19. It is also significant to note that list (Annexure P-7) is not a seniority list, as contended by the counsel for the applicants but it is simply a list of daily wagers giving their working days, besides dates of their engagement, dates of their birth and educational qualification etc. It cannot be termed to be a seniority list on the basis of any parameter, i.e., date of engagement, number of working days etc. It was so clearly pointed out to counsel for applicants also during the course of hearing and even he could not point out any parameter on the basis of which this list could be termed to be seniority list.

20. Counsel for the applicants also could not depict that any person junior to the applicants has been reengaged or absorbed. Some persons have been absorbed consequent to the orders passed by the Tribunal but the applicants cannot claim parity with them for the reasons already discussed herein above.

21. As a necessary consequence of discussion aforesaid, we find no merit in the OA, which is accordingly dismissed, leaving, however, the parties to suffer their respective costs.

(SHEKHAR AGARWAL)
MEMBER (A)

(L.N. MITTAL)
MEMBER (J)

Rakesh