

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. No. 2278/2016  
C.P. No. 310/2017  
M.A. No. 3650/2016  
M.A. No. 4278/2017  
M.A. No. 4279/2017

New Delhi, this the 8<sup>th</sup> day of January, 2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)**  
**HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

**O.A. No. 2278/2016**

Mr. Kamidi Suresh  
Aged 35 years  
S/o Shri Kamidi Venkanna  
R/o 8-B, G/Flr, CPWD Quarters,  
CGH Complex, Vasant Vihar,  
New Delhi-110057. .. Applicant

(By Advocate: Mrs. Harvinder Oberoi with Shri G.D. Chawla)

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 Head, CSIR-TKDL Unit,  
CSIR-Human Resource Development Centre (HRDC),  
Sector-19, Central Government Enclave,  
Kamla Nehru Nagar,  
Ghaziabad, UP-201002.

4. Morarji Desai National Institute of Yoga  
68, Ashoka Road, Near Gole Dak Khana,  
New Delhi-110 001. ... Respondents

(By Advocate: Shri H.K. Bajpai for Shri Gyanendra Singh for R-1  
and Ms. Niyati Patwardhan for M/s Sikri & Co. for  
R-2 & 3)

**CP 310/2017 in OA 2278/2016**

Sh. Kamidi Suresh  
(Aged about 35 years)  
S/o Shri Kamidi Venkanna  
R/o 8-B, G/Flr, CPWD Quarters,  
CGH Complex, Vasant Vihar,  
New Delhi-110057. .. Petitioner

(By Advocate: Mrs. Harvinder Oberoi with Shri G.D. Chawla)

Versus

1. Dr. Girish Sahni,  
Director General,  
Council of Scientific and Industrial Research (CSIR)  
Anusandhan Bhawan, 2, Rafi Marg,  
New Delhi-110001.
2. Dr. Rakesh Tiwari,  
Head, CSIR-Traditional Knowledge Digital Library  
(TKDL) Unit,  
14, Satsang Vihar Marg,  
New Delhi-110067. ... Respondents

(By Advocate: Ms. Niyati Patwardhan for M/s Sikri & Co.)

**ORDER (ORAL)****By Mr. V. Ajay Kumar, Member (J)**

Heard Mrs. Harvinder Oberoi, learned counsel for the applicant and Ms. Niyati Patwardhan, learned counsel appearing for respondents No.2 and 3.

2. With the consent of counsels for both the sides, the O.A., the C.P. and pending MAs are being disposed of by this common order.

3. MA 4278/2017, filed for seeking condonation of delay in re-filing of MA 4279/2017 which was filed for setting aside of order dated 15.07.2016, is allowed.

4. In identical circumstances, this Tribunal has already disposed of O.A. No.509/2015 with O.A. No.3587/2015 by its order dated 05.05.2017 as under:

“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.”

5. Again, following the aforesaid decision, various other O.As., viz. O.A. No. 825/2017 by order dated 19.12.2017, O.A. No. 766/2017 by order dated 31.10.2017 and O.A. 877/2017 by order dated 09.11.2017, were also disposed of.

6. It is also submitted that in compliance of the aforesaid orders, the respondents have considered the cases of the applicants in the above referred OAs afresh, depending upon the availability of the vacancies in the new projects, and appointed those applicants, whoever fulfil the qualification criteria and responded to the advertisement.

7. However, the respondents' counsel differentiates the applicant herein from the applicants in the above referred OAs to the extent that as on the date of filing of those O.As. they were working, whereas the applicant in the instant O.A. was terminated by the time the O.A. was filed. However, the same was disputed by the applicant's counsel.

8. We do not see any need to go into any issues at this stage in view of the orders passed by this Tribunal in the earlier OAs and the

engagement of the said persons by the respondents in pursuance of the said orders.

9. In the circumstances, the instant O.A. is disposed of by permitting the applicant to make an appropriate application for re-engagement of his service within one week from today and on receipt of the same, the respondents shall consider the same and pass appropriate orders within two weeks from the date of receipt of the application from the applicant, however, the same shall be in terms of the orders already passed by this Tribunal. It is also made clear that the applicant is not entitled for any arrears/salary for the period in which he has not worked.

10. The CP and the pending MAs, if any, also stand disposed of. No order as to costs.

**(NITA CHOWDHURY)**  
**Member (A)**

**(V. AJAY KUMAR)**  
**Member (J)**

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