

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2358/2015

Order Reserved on: 03.10.2016
Order pronounced on 08.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

1. Sh. Khageswar Padhan
S/o Late Lingaraj Padhan
Age about 55 years
R/o: Qr. No.H/82, Sector-2
Rourkela-769006, Odisha
Presently posted at
National Institute of Malaria Research
Field Unit, Sector-5
Rourkela, Odhisha
Pin-769002.
2. Sh. Pabitra Pradhan
S/o Late Rahunath Pradhan
Age about 54 years
R/o: Qr. No.L-II-90
Kalinga Vihar, Phase-II
Chhend Colony, Rourkela-769015, Odisha
Presently posted at
National Institute of Malaria Research
Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.
3. Sh. Durga Madhab Padhi
S/o Late Bhobani Padhi
Age about 52 years
R/o: Qr. No.D/78, Sector-6
Rourkela-769002, Odisha

Presently posted at
National Institute of Malaria Research
Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.

4. Sh. Prasana Kumar Behera
S/o Late Braja Sundar Behera
Age about 50 years
R/o: Qr.H/287, Sector-6
Rourkela-769002, Odisha
Presently posted at
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Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.

5. Sh. Duryadhan Behera
S/o Late Dandapani Behera
Age about 58 years
R/o: Qr.No.ECR/194, Chhend Colony
Rourkela-769015
Dist. Sundargarh, Odisha
Presently posted at
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Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.

6. Sh. Suresh Chandra Pradhan
S/o Late Dasarath Pradhan
Age about 49 years
R/o: Qr.No.E/114, Sector-6
Rourkela-769002, Odisha
Presently posted at
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Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.

7. Sh. Ram Chandra Sethy
S/o Sri Arakhita Sethy
Age about 52 years
R/o: Qr.A/58, Sector-7
Rourkela-769003, Odisha
Presently posted at
National Institute of Malaria Research
Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.

8. Sh. Trilochan Sahu
S/o Sri Kasinath Sahu
Age about 53 years
R/o: Qr. No.D/366, Sector-16
Rourkela-769003, Odisha
Presently posted at
National Institute of Malaria Research
Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.

9. Sh. Sisira Kumar Satapathy
S/o Sri Surendra Nath Satapathy
Age about 49 years
R/o: Qr.No.L/117, Ground Floor
Phase-II, Basanty Colony
Rourkela-769012, Odisha
Presently posted at
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Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.

10. Sh. Kailash Chandra Dalai
S/o Late Rathunath Dalai
Age about 48 years
R/o: Qr.No.E/72, Sector-6
Rourkela-769002, Odisha
Presently posted at

National Institute of Malaria Research
Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.

11. Sh. Ranka Nidhi Gouda
S/o Late Choudhury Gouda
Age about 57 years
R/o Qr.No.E/46, Sector-6
Rourkela – 769002, Odisha
Presently posted at
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Field Unit, Sector-5
Rourkela, Odisha
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12. Sh. Krishna Chandra Panigrahi
S/o Late Satyabadi Panigrahi
Age about 50 years
R/o: Qr.No.L/214, Phase-I
Chhend Colony
Rourkela – 769015, Odisha
Presently posted at
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Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.
13. Sh. Subash Chandra Pattanayak
S/o Late Trinath Pattanayak
Age about 58 years
R/o: Qr. No.C/322, Sector-6
Rourkela – 769002, Odisha Odisha
Presently posted at
National Institute of Malaria Research
Field Unit, Sector-5
Rourkela, Odisha
Pin-769002.
14. Sh. Abhimanyu Sahu

S/o Late Digambar Sahu
Age about 49 years
R/o: Qr. No.C/287, Sector-15
Rourkela-769003, Odisha
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Field Unit, Sector-5
Rourkela, Odisha
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15. Sh. Kishore Kumar Nahak
S/o Late Banchanidhi Nahak
Age about 48 years
R/o: Qr. No.C/398, Sector-6
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Presently posted at
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Rourkela, Odisha
Pin-769002.
16. Sh. Ramahari Sahu
S/o Sri Bipra Charan Sahu
Age about 55 years
R/o: Plot No.L/84, Phase-I, Chhend Colony
Rourkela-769015, Odisha
Presently posted at
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17. Sh. Kapali Arjun Das
S/o Late K. Dasarathi Das
Age about 52 years
R/o: Qr.No.E/35, Basanty Colony
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Field Unit, Sector-5

Rourkela, Odisha
Pin-769002.

18. Sh. Bidyadhar Bisoyi
S/o Late Pitambar Bisoyi
Age about 56 years
R/o: Qr.No.C/133, Sector-15
Rourkela-769003, Odisha
Presently posted at
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Field Unit, Sector-5
Rourkela, Odisha
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19. Sh. Gopal Krushna Padhy
S/o Late Lingaraj Padhy
Age about 52 years
R/o: Qr. No.C/274, Sector-6
Rourkela-769002, Odisha
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20. Sh. Gangadhar Palai
S/o Late Krushna Chandra Palai
Age about 48 years
R/o: Qr.No.C/301, Sector-6
Rourkela-769002, Odisha
Presently posted at
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21. Sh. Lochan Mohanty
S/o Late Rama Mohanty
Age about 49 years
R/o: Qr.No.C2M/114, Phase-II, Chhend Colony

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 Presently posted at
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 Field Unit, Sector-5
 Rourkela, Odisha
 Pin-769002.

22. Sh. Trilochan Behera
 S/o Late Sibaji Behera
 Age about 55 years
 R/o: Qr.No.E/58, Sector-6
 Rourkela-769002, Odisha
 Presently posted at
 National Institute of Malaria Research
 Field Unit, Sector-5
 Rourkela, Odisha
 Pin-769002.

23. Sh. Narasingha Palai
 S/o Late Krushna Chandra Palai
 Age about 50 years
 R/o: Qr.No.C/296, Sector-6
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24. Mrs. Surya Nayak
 W/o Late Debraj Nayak
 Age about 53 years
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 Rourkela, Odisha
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Applicants

Field Laboratory Attendant, Chowkidar, Safai Karmachari, etc., in the National Institute of Malaria Research, Rourkela, Orissa, filed the OA, seeking extension of the benefit of the Judgements of various Coordinate Benches of this Tribunal, which were upheld upto the Hon'ble Supreme Court, in pursuance of which similarly placed persons were regularized in their services.

2. The brief facts, as narrated in the OA, are that as per the letter dated 19.10.2012 (Annexure A1), IDVC Project is one of the Science & Technology Mission's Project which were identified in 1985-86 under the advice of the then Scientific Advisor to the Hon'ble Prime Minister. This project was initially sanctioned for the Seventh Plan period with 342 posts carrying different running pay scales under the administrative control of National Institute of Malaria Research (in short, NIMR), vide Planning Commission letter dated 02.06.1986. Since then, considering the importance and need of the research input to the National Vector Borne Disease Control Program (in short, NVBDCP) of Government of India, the Project has been extended from time to time and it is still continuing in NIMR as long term extra-mural project of ICMR.

3. Further, it is stated that, the employees of IDVC project are posted in NIMR Headquarter, New Delhi and 10 Field Units are also located in different parts of the country. All the applicants have been recruited by following the relevant Recruitment Rules and after proper advertisement published in Employment News/Newspapers (Annexure

A2) and, their names were sponsored by Employment Exchange followed by Interview conducted by the duly constituted Selection Committee. Accordingly, they were appointed against the posts sanctioned by the Director General, ICMR, vide letter dated 19.10.2012 (Annexure A1) read with letter dated 12.11.2014 (Annexure A14). Further, it is stated that the Recruitment Rules for both NIMR and IDVC Project employees are same as per the file notings dated 13.05.2010 of NIMR, including the terms and conditions of service as well as mode of recruitment of the employees posted in different units.

4. It is stated that all the applicants, who were appointed during 1986 and 1990, have already completed 25 to 29 years of service in the IDVC Project, which is evident from Annexure A4.

5. Some of the employees of IDVC project posted at Chennai Field Unit, being aggrieved by their service conditions, have filed OA No.1115/2009, which was disposed of vide its order dated 26.08.2010 (Annexure A5) with a direction to treat the claim of the applicants on par with the project staff of Human Reproduction Research Centre (in short, HRRC) which had attained finality and pass orders within two months. Challenging the aforesaid order, a Writ Petition (C) No.22609/2011 filed before the Hon'ble High Court of Madras, which was dismissed vide its order dated 19.03.2012 (Annexure A6). Consequently, the SLP (Civil) No.24889/2012, filed against the aforesaid High Court order, also dismissed vide its order dated

10.09.2012 (Annexure A7). Thereafter, the ICMR issued an Office Order dated 23.04.2013 (Annexure A11) for the regularisation of 14 employees of IDVC Filed Unit, Chennai with effect from the dates of their initial appointment by creating 14 posts in compliance of the aforesaid orders. Hence, it is stated that the aforesaid decision of the Madras Bench of this Tribunal attained finality.

6. Further, it is stated that the Malaria Research Centre Employee's Welfare Association and another have filed WP(C) No.1554/2003, which was disposed of vide its order dated 20.03.2013 (Annexure A8) read with Order dated 26.04.2013, where by the Hon'ble High Court held that the law declared by the Madras High Court, which it actually does, shall govern all Project employees of the MRC. The SLP (Civil) No.14859/2014, filed against the said order, also dismissed vide Order dated 15.09.2014 (Annexure A9).

7. Some of the employees of IDVC project at Jabalpur Filed Unit working under NIMR filed OA No.129/2011 at Jabalpur Bench of this Tribunal seeking regularization of their services from the date of initial appointment with all consequential benefits, the same was disposed of, vide its order dated 03.10.2013 (Annexure A10), in favour of the applicants, therein.

8. It is submitted that individual representations have already been filed by the applicants herein on 22.05.2013 (Annexure A12 Colly.) addressing Secretary, DHR and DG, ICMR for the regularisation of their services w.e.f. the dates of their initial appointments at par with the

aforesaid 14 employees (i.e., the applicants in OA No.1115/2009) of IDVC Filed Unit. The said representations have already been forwarded by the Director, NIMR to the DG, ICMR vide letter dated 19.07.2013 (Annexure A13), after certifying that the applicants are similarly placed with the applicants in the said OA No.1115/2009. However, the Secretary, DHR-cum-DG, ICMR is yet to take decision on the issue. Even, reminders have also been sent by the applicants on 30.12.2014 (Annexure A16).

9. Thereafter, the Director, NIMR has also sent a proposal to the DG, ICMR vide letter dated 12.11.2014 (Annexure A14) for regularization of 309 employees, including the names of the applicants herein, of IDVC Project in compliance of the orders passed in the said WP(C) No.1554/2003. However, subsequently, the Director, NIMR has submitted another proposal to the DG, ICMR for the regularization of the services of 211 employees, excluding the names of the applicants, vide letter dated 06.02.2015 (Annexure A15). It is stated that although the Director, NIMR has forwarded the representations of the applicants to the DG, ICMR vide letter dated 28.01.2015 (Annexure A17), the decision on the matter is yet to be taken by the DG, ICMR.

10. It is further submitted that out of the total staff of IDVC Project, 14 employees working under IDVC Filed Unit, Chennai have already been regularized, as already stated hereinbefore, and the department is in the process of regularizing the services of 211 more employee of IDVC Project posted at New Delhi and Field Units located in different

parts of the country in compliance of the order of the Hon'ble High Court of Delhi in WP (C) No.1554/2003. It is pertinent to mention that some of the 225 (14+211) employees of IDVC project who have either been regularized or are in the process of being regularized by virtue of Court orders, referred to above, are juniors to the 24 applicants in this OA, although they are working in the same Project.

11. Accordingly, it is submitted on behalf of the applicants that since the applicants are also similarly placed like the persons whose services were regularized in pursuance of the orders of this Tribunal as upheld by the higher Courts, they are also entitled for extension of the said benefit.

12. Per contra, the respondents vide their counter submitted as under:

- a) The respondents are having various field stations/projects which are established for undertaking research study in the various aspects of Malaria. The Malaria Research Centre (Known as NIMR) only conducts research and time-bound field research studies are undertaken within the objective set. Once a particular study is complete, the purpose of research is over and the project also stands complete.
- b) For the purpose of research, MRC some times undertakes extra-mural projects which are financed by ICMR and also by outside agencies who sponsor such projects. The applicants are working in the project titled Integrated

Diseases Vector Control” for short IDVC. The project was to deal with the studies and control of diseases spread through Vector such as malaria. The project was for the specified duration but were extended till studies were not complete. The matter of extension of the projects is a policy decision to be taken by the respondents. Since the decision was taken to continue the project further and it was decided that when the purpose of the project is accomplished, no further extension will be given to the project.

- c) Since the project was for a specified time bound purpose, the applicants were engaged on the said project with clear stipulations that the same is co-terminus with the project. The said project is funded by the Ministry of Health and Family Welfare and ICMR. The emoluments to such employees are paid from the funds allocated to such projects and as such the applicants cannot claim parity with the regular employees.
- d) The engagement of such employees are without adhering to the rules for regular employees and as such no benefits can be drawn with the regular employee of ICMR.
- e) It is submitted that there are no sanctioned posts also for such employees and as such they cannot be regularized.
- f) Further, the engagement of the applicants depends upon exigencies and demands of the projects for which budgetary sanction is given from time to time and there cannot be any

comparison of the duties between the employees engaged in the project or the regular employees of the establishment of ICMR.

- g) It is further submitted that in case the directions are issued to regularize the applicants, it is going to have much financial implications on the exchequer for which Department of Health Research, Government is not prepared.

Shri Vaibhav Kalra, the learned counsel appearing for the respondents No.2 and 3 would mainly opposed the OA on the following grounds:

- i) All the applicants were appointed and working at Rourkela, Orissa in Malaria Research Center, Field Station, Rourkela, Orissa, and hence, this bench of this Tribunal has no territorial jurisdiction to adjudicate the present OA. The applicants have also not filed any Petition for Transfer (PT) and not obtained permission to file the OA before this Bench. No cause of action arose within the territorial jurisdiction of this Bench.
- ii) The applicants, who admittedly belong to different category of posts, cannot maintain a common OA.
- iii) The posts in which the applicants have been working were not sanctioned posts and that there were no recruitment rules for the said posts and that no valid

selection process was undertaken at the time of their appointment.

- iv) The Constitution Bench decision in **Secretary, State of Karnataka & Others v. Uma Devi (3)**, (2006) 4 SCC 1 wherein it was declared that the Courts and Tribunals cannot issue any directions to regularise the services of any employee, was not considered in any of the decisions on which the applicants are placing reliance. In view of non-consideration of the Constitution Bench Decision, all the Judgements on which the applicants are placing reliance have to be treated as Judgements in personam and cannot be made applicable to the applicants.
- v) The learned counsel for the respondents placed reliance on **Union of India & Others v. Sheela Rani**, (SLP (C) Nos. 23404-23407 of 2005, decided on 8.12.2006) of the Hon'ble Apex Court and on the decision of the Principal Bench of this Tribunal in **O.A.No.659/2014 (Dr. Kulbushan Sehgal v. Union of India & Others)** dated 06.02.2015, and Madras Bench decision in **OA 1457/2012 (S. Padmanaban v. Union of India & Others)** dated 26.08.2014.

14. Heard Shri A.K.Behera, the learned counsel for the applicants and Shri Vaibhav Kalra and Mr. Jasbir Bidhuri, the learned counsel for the respondents No.2 & 3, and perused the pleadings on record.

15. With regard to the preliminary objection of the respondents' counsel about the territorial jurisdiction of this Bench, as rightly pointed out by the applicants' counsel that the applicants were appointed by Respondent No.3-National Institute of Malaria Research (Formerly known as Malaria Research Centre), Delhi, as evidenced by the documents filed by the respondents themselves, i.e., Annexure R1. Further, the representations of the applicants seeking regularization on par with other identical persons, are pending with the respondents, who are stationed at Delhi. The orders of regularization of other similarly placed persons were issued by the respondents situated at Delhi. Hence, the said objection of the respondents is unsustainable.

16. This Tribunal, at the time of issuance of notice in the OA itself, considering the fact that all the applicants are agitating the common cause of action, i.e., regularization of their services, by seeking to extend the decisions of various Courts passed in respect of similarly placed persons, though they belong to different category of posts, allowed the MA of the applicants filed for permitting them to file the common OA.

17. The contention of the respondents that the posts in which the applicants have been working were not sanctioned posts and that there were no recruitment rules for the said posts and no selection process was undertaken at the time of their appointment, was raised by them in various identical matters and the same was rejected by giving valid reasons. Hence, there is no necessity to go into the said

aspect again, as it is not seriously disputed that the applicants in OA No.1115/2009 and other OAs on which the applicants are relying, are identically placed like the applicants.

18. In **Sheela Rani** (supra), the issue involved was whether the services of a Casual Worker can be regularized with retrospective effect, i.e., from the date of initial appointment, and the Hon'ble Apex Court held that care must be taken to see that retrospective regularization do not upset the seniority of regular appointees, and hence, the said decision has no application to the facts of the present case.

19. The other main objection of the respondents is that the various judgements, the benefit of which is sought to be extended to the applicants, were decided without considering the Constitution Bench Judgement of the Hon'ble Apex Court in **Uma Devi** (supra).

20. The learned counsel for the respondents strenuously persuaded that in none of the decisions, which are sought to be extended to the applicants, the Constitution Bench decision of the Hon'ble Apex Court in **Uma Devi** (supra) was not considered and in view of the law declared in **Uma Devi** (supra), the decisions in OA No.1115/2009 of the Madras Bench, though upheld upto Hon'ble Supreme Court, are to be treated as Judgements in personam.

21. The submission of the learned counsel falls to the ground by virtue of their own document (Annexure A-20 @ Para 8) itself. It is their own case that in SLP No.14859/2014 filed against the decision of the Hon'ble High Court of Delhi in WP(C) No.1554/2003, which is also one of the identical case and the benefit of which the applicants are seeking to extend, the respondents made submissions by referring the Constitution Bench decision in **Uma Devi** (supra), however, the Hon'ble Apex Court rejecting their submission dismissed the said SLP on 15.09.2014. Once admittedly, the Hon'ble Apex Court itself rejected the said contention of the respondents, there is no necessity to this Tribunal to go into that issue again.

22. In **Dr. Kulbushan Sehgal** (supra) the main issue was the termination of services of the applicant therein on the ground that the Project, on which the applicant was working, was to be completed. Hence, it has no direct application to this case.

23. In **S. Padmanaban** (supra), the applicant, who was appointed as Research Officer and completed his probation satisfactorily and also completed 25 years of service, filed the OA seeking extension of the benefit of regularization on par with the applicants in OA No.1332/2000, the orders in which attained finality and that the respondents therein complied with the same by creating 22 supernumerary posts. After considering **Uma Devi** (Supra), the Madras Bench disposed of the said OA as under:

"24. The Applicant is said to have been working continuously for 25 years in HRRC Project. There may be several others like the Applicant who did not get the benefit when 20 supernumerary posts were created to accommodate only the applicants/respondents in OA No.1332 of 2000 etc/WP Nos.25490 to 25493 and 25574 to 25577 of 2002s in the Hon'ble Madras High Court. However, absorption of the Applicant and others similarly situated in regular posts may take considerable time with only 30% of the direct recruitment vacancies in future being earmarked for the HRRC staff. The Respondents should accordingly consider earmarking 2/3rd, if not 100% of the direct recruit vacancies for the HRRC staff, till all those who have put in more than 10 years of service in that capacity get adjusted in regular posts, and take further action accordingly.

25. With the above direction and observations, the OA stands disposed of. No order as to costs."

24. In view of the above disposal of the OA in **S. Padmanaban** (supra), the same also will not support the contentions of the respondents.

25. In the circumstances and for the aforesaid reasons, the OA is allowed and the respondents are directed to extend the benefit of the Judgement in OA No.1115/2009 of the Madras Bench to the applicants. The aforesaid direction shall be complied within a period of two months from the date of receipt of a copy of this order. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/