CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.447/2003

New Delhi, this the 11th day of December, 2003

Hon'ble Shri S.K. Naik, Member(A)

Mahender Singh Negi and
24 others, as per details
given in Memo of Parties .. Applicants

(Shri J.Buther with Ms. Geeta Kalra, Advocates)

versus

Union of India, through

1. Secretary
   Ministry of Science & Technology
   1, Rafi Marg, New Delhi
2. Director General
   CSIR, 1, Rafi Marg, New Delhi
3. Director
   Indian Institute of Petroleum
   Mohkampur (PO), Dehradun .. Respondents

(Shri Manoj Chatterjee with Ms. K.Iyer, Advocates)

ORDER

Applicants, 25 in number, are before this Tribunal in a third round of litigation. Earlier they had first filed OA 1292/99 seeking grant of temporary status and regularisation in service. That OA was disposed of by an order dated 17.11.1999 with the following directions:

(i) Respondents shall prepare a Scheme on the pattern directed by the Apex Court and shall consider absorption of the applicants in terms of law against regular vacancies as and when they arise;

(ii) If the respondents have vacancies/jobs to offer of the nature the applicants are doing the latter shall be given preference to over freshers and newcomers. Depending upon the requirements, services of the applicants shall be utilised in other projects; and

(iii) Respondents shall consider offering opportunities alongwith others to those of the applicants who are eligible and have requisite qualifications for the jobs advertised.

2. The same issue was subsequently raised by another set of applicants (Anil Kumar & Others) in OA No.325/2000, which was disposed of by the Tribunal on 14.7.2000 with exactly the same directions as given above, holding further that the decision of the Tribunal in OA 1292/1999 also stood affirmed by the High Court as per information furnished before the Tribunal.

3. In pursuance of the directions issued by the Tribunal in the OAs referred to above, Respondent-Council for Scientific & Industrial Research formulated a Scheme (Annexure 5) for absorption of casual/contractual workers engaged by the Indian Institute of Petroleum, Dehra Dun after obtaining due approval of the governing body of CSIR and forwarded the same to IIP on 14.2.2001, for further necessary action. It appears that the respondents have been implementing the said Scheme ever since.

4. Not satisfied with the progress of implementation, the same applicants as herein filed another OA 546/2002, in which they had sought the same relief as in their earlier OA 1292/1999. Even though the same applicants could not have raised the same issue in the subsequent OA, it was got adjudicated upon by the Tribunal vide its order dated 9.8.2002 with the following direction:

> "14. In the result and having regard to the rival contentions of the parties, the OA is disposed of with a direction to the respondents to consider the applicants for regularisation/absorption as per their scheme within a period of three months from the date of receipt of a copy of that order, subject to their suitability as per their seniority and also in accordance with the requirements and availability of project/scheme; however, during the interregnum the applicants were to be continued to be engaged against the existing project/scheme and their services were not be dispensed with. No costs."

5. Pursuant to the order passed by the Tribunal in OA 546/2002, respondents have issued OM dated 4.2.2003 inviting applications from casual/contractual workers identified for absorption under the aforesaid Scheme. The main point of grievance of the applicants now before this Tribunal is that the OM dated 4.2.2003 prescribing eligibility norms is wholly arbitrary, irrational, unreasonable and unjustified. The other ground on which they have challenged this OM is on the point of indicating only a small number of posts as vacant even though there are large number of vacancies available with the respondents, which is again unreasonable.

6. In support of his contention that the OM lays down the criteria which is unreasonable and irrational, the counsel has cited the case for the post of Technician which at the time of initial appointment required qualification of only ITI certificate. In those days one could do directly ITI after 8th class pass. Stipulation of ITI certificate with 10th standard/SSC with 50% marks in aggregate now being prescribed as essential qualification will only deprive the right of the applicants who have been in the employment of the organisations for a number of years. Similarly, for the post of Helper, qualification required at the time of initial appointment was 10th pass, which has been now fixed as 10th/SSC with 50% marks in aggregate. This cannot but be termed as irrational and unreasonable, the counsel has contended.

7. That apart, the counsel argued that since directions have been issued by the Tribunal, respondents should purely go on the basis of the experience gained by the

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applicants and consider their case for regularisation/ absorption without insisting on any qualification. In support of this contention, the counsel has referred to the judgement of the Supreme Court in Gujarat Agricultural University V. Rathod Labhu Bechar AIR 2001 SC 706 in which it was held as under:

> "Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily-rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualification."

8. The counsel has contended that the OM dated 4.2.2003 is liable to be quashed on this ground alone. He has also assailed this OM on the ground of inaccurate number of vacancies. He has contended that while applications have been invited for 8 posts of Helper, 8 of Technicians Gr.II, 2 of Peon, 3 of Junior Stenographer, 3 of LDC and 2 of Driver, applicants understand that number of posts are many times more. His contention is that respondents have deliberately not shown the exact number of vacancies in the impugned OM with object of denying/depriving the applicants of their right for employment.

9. Counsel for the respondents has vehemently contested the application. He has raised a preliminary objection and has contended that Bharatiya Mazdoor Sangh of which the applicants are also members through its Organizing Secretary has filed Writ Petition No.93/SB of 2003 under Article 226 of the Constitution of India before the High Court of Uttaranchal at Nainital in which the Sangh has challenged the OM dated 18.2.2003 issued further to OM

dated 4.2.2003, which is under challenge in the present OA. The counsel contended that the High Court has issued notice and has also passed an interim order in that case and that two cases cannot be decided in two different courts on a similar prayer and the OA should be dismissed on this ground also.

10. Counsel for the applicants has rebutted this contention by stating that none of the present applicants is a party in the aforesaid Writ Petition and therefore the jurisdiction of the Tribunal to adjudicate the present OA cannot be questioned. In the absence of details with regard to the interim order claimed to have been passed by the High Court, I have considered the submission made by the counsel for the applicants. Since none of the applicants is a party in the writ petition pending before the Uttaranchal High Court and no order restraining the Tribunal has been passed by the High Court of Uttaranchal, I reject the preliminary objection raised by respondents counsel.

11. Counsel for the respondents thereafter referred to para 1(i) above of the directions passed by Tribunal in OA 1292/99 and contended that respondents were to prepare a Scheme and consider absorption of the applicants against regular vacancies as and when they arise; further as per 1(ii), if the respondents have vacancies/jobs to offer of the nature the applicants are doing, they shall be given preference to over freshers/newcomers. In particular he has referred to the condition which states that "depending upon the requirements, services of the applicants shall be utilised in other projects" and finally drawing my

attention to 1(iii), he has stated that opportunities were to be offered to those of the applicants who are eligible and have requisite qualifications for the jobs advertised. Contending further that this decision of the Tribunal has been affirmed by the Delhi High Court and the respondents have formulated the Scheme in pursuance thereto on 14.2.2001, he has stated that this Scheme has attained finality during the year 2001 itself. OM dated 4.2.2003 is only a circular issued in the process of implementation thereof in terms of the Scheme which stood finalised during 2001 and therefore the same cannot be challenged at this point of time.

12. The counsel further contended that in a series of applications filed by not only the applicants but also by other similarly placed casual workers, respondents have always taken the plea that they do not have sanctioned regular/permanent posts against which casual/contractual workers are engaged but respondent-department being in the nature of a scientific organisation have to undertake various research and project work which is sanctioned for a particular purpose and period and financial provisions are also made available accordingly. Once a project work is over, casual/contractual employees no doubt are considered for their engagement in any new project depending upon their educational background and suitability to the new project. It was in this background that this Tribunal had clearly stated in its order that if the respondents have vacancies/jobs to offer of the nature the applicants are doing, they shall be given preference over freshers and newcomers. It has also been stated therein that depending upon the requirements, services of the applicants shall be

utilised in other projects. Even though no stay against retrenchment was specifically granted by the Tribunal in the orders earlier passed in OA 546/2002, however, it directed that respondents shall consider the applicants for regularisation/absorption as per their scheme within a period of three months subject to their suitability as per their seniority and also in accordance with the requirements and availability of project/scheme. It was in keeping with these directions of the Tribunal that the respondents have identified some important posts for absorption from amongst the casual/contractual employees. Also in keeping with the directions of the Tribunal, they have not retrenched any one of the casual/contractual employees even though they may not have adequate avenues for their engagement.

13. With regard to the question of adequate number of vacancies, the counsel contended that Respondent No.3 is not the final authority to create/fill up a number of posts. The matter requires the approval of the Council. In fact Respondent No.3 has gone out of its way and as a result of its efforts, the Council has agreed to release 26 entry level vacancies under various groups for the purpose of filling up the same from amongst the casual workers. Recruitment against these vacancies has to be done in accordance with the prescribed Scheme and R/Rules framed for the purpose. Rebutting the claim of the learned counsel for the applicants that casual/ contractual workers should not be insisted on possessing the eligibility conditions, the counsel for respondents has contended that the Institute being a Scientific organisation cannot give any firm assurance for providing employment without considering the requirement for a particular

work/research project. Requirement of minimum educational qualification etc. was consciously included in the Scheme as unavoidable necessity in the overall interest of acheiving the objective of the oranisation and not to deprive the casual workers of their chance of being absorbed. This scheme was formulated pursuant to the directions of the Tribunal and the same cannot be challenged at this point of time, the counsel contends. He has further submitted that the judgement of apex court cited by the learned counsel for the applicants will not come to their support in this matter.

14. I have carefully gone through the material available on record and heard the learned counsel for the parties. I am inclined to agree with the averments advanced by the learned counsel for the respondents that in keeping with the directions of the Tribunal in the aforesaid OAs, respondents have drawn up a scheme for absorption/ regularisation of the casual/contractual employees during the year 2001. At the time of formulation of the Scheme, respondents had taken into consideration various aspects including educational qualification and experience etc. keeping in view the nature of work the organisation undertakes but have provided for relaxation in age so that the casual workers are not disqualfied on this count. The scheme was formulated in 2001 and has attained finality.

15. With regard to the contention raised by the learned counsel for the applicants that the respondents have not given information about correct number of positions available for absorption, I find that respondents have categorically stated that they are not competent/final

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authority to create/sanction posts. It is the Council which has to consider their proposal/projects and approve mapower requirement as creation/sanction of posts has a direct bearing on the finance. However, to be fair to the casual employees, they have clearly stated that they are not retrenching any casual workers but their absorption would take place as and when regular posts are created or vacancies arise which is in keeping with the directions of the Tribunal. I do not therefore find any merit in the arguments of the learned counsel for the applicants on this point.

16. I am also of the considered view that the impugned OM dated 4.2.2003, has been issued in terms of the provisions of the Scheme formulated in the year 2001, which has attained finality during 2001 itself and cannot be faulted at this point of time.

17. In the result, for the reasons given, I find no merit in the present OA warranting Tribunal's interference. The OA is accordingly dismissed with no order as to costs.

(S.K. Naik)
Member(A)

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