

Central Administrative Tribunal

Principal Bench, New Delhi

New Delhi: 16th May 1995.

OA No.2173/94

Hon'ble Mr A.V.Haridasan, Vice Chairman(J)

Hon'ble Mr.K.Muthukumar, Member(A)

1. Raj Kumar aged about 24 years

S/o Shri Santu

resident of Village Narda,
Lal Kuan Basti
Badarpur, New Delhi-110044.

2. Surinder Yadav,

S/o America Yadav

aged about 28 years
resident of Village Jasola,
Post .Badarpur,
New Delhi-110044.

3. Jagdish Prasad

aged about 29 years

S/o Sri Budhan Singh
1459 Kala Mahal
Daryaganj, Delhi.

4. Lallan Shah

aged about 25 years

S/o Sh. Sri Nagina Shah
resident of A-300 Defence Colony
New Delhi.

5. Shri Paramjit

aged about 24 years

A-31 Khanpur, Ambedkar Nagar,
Sector-II, Delhi.

6. Arjun Singh, aged about 20 years ,

resident of C-1325 J.J. Colony,
Tigri ,New Delhi.

... . APPLICANTS.

(By Advocate:Sh.P.P.Khurana)

Versus

1. Union of India,
through the Secretary,
Ministry of Defence, South Block,
New Delhi.

2. Commissioner Officer,
25, Wing, Air Force Station,
Rajokari, New Delhi-38.

3. Commanding Officer,
7.BRD Air Force Station, Tughlakabad
New Delhi -110052.

.... Respondents

(By Advocate: Sh.K.C.D.Gangwani)

JUDGEMENT (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

(B)

The six applicants in this application are working as Anti Malaria Lascar under the Air Headquarters, Ministry of Defence. They commenced their service during different periods ranging between 1984 and 1992. The nature of their employment is seasonal as they work for 6 months in a year. Their grievance is that despite the fact that there are vacancies in Group-D in the department, they are being continued in seasonal employment for a long period and are not being considered for regularisation in service. They have further stated that some of the Anti Malaria Lascars (AML) were absorbed in Group-D posts in the years 1988 and 1989, and on the requests of the applicants for absorption. the respondents took a stand that on account of a ban on recruitment, their cases cannot be considered. Under these circumstances, these applicants have filed the application praying that a writ of mandamus or appropriate directions may be issued to the respondents directing them to absorb the applicants in Group-D posts, holding that the ban imposed by the Government on employment of regular employees is unconstitutional and void.

2. The respondents contended that the applicants, being daily rated casual workers, engaged only during seasons, are not entitled to claim regularisation. They further contend that the regularisation of the Anti Malaria Lascars in the year 1988-89 was one time measure taken in relaxation of the rules in cases of persons employed on monthly rate and that the applicants being only seasonal workers, working on daily wages, cannot claim equation with those who were regularised in 1988-89. Therefore, as no statutory or fundamental rights of the applicants are violated, the respondents contend that a writ or direction as prayed for cannot be issued.

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3. We have perused the pleadings and the material on record with meticulous care and heard Shri P.P.Khurana, counsel for the applicants and Shri K.C.D.Gangwani, counsel for the respondents.

4. Learneed counsel for the respondents brought to our notice that similar situations arose in two cases, one before the Madras Bench of the Tribunal and the other before the Hyderabad Bench of the Tribunal, and that in both cases the direction given was that the respondents should consider re-engagement of the seasonal Anti Malaria Lascars, without insisting on they being sponsored by the Employment Exchange. He also brought to our notice a circular letter issued from the Air Headquarters dated 16.12.94 in which in accordance with the directions contained in the judgement in OA No.1291-1294 of 1993 and OA No. 190-197 of 1994 delivered by the Madras Bench of CAT and Hyderabad Bench of CAT, Ministry of Defence have approved the implementation of the judgement in the following way:

"(a) All AF Units will prepare a notional seniority list of those who are engaged as Anti Malaria Lascars on sponsorship through the Employment Exchange.

(b) There is no need to approach Employment Exchange every time if an Anti Malaria Lascar is to be engaged for performing duties of casual/seasonal nature. Once an AML has been sponsored through Employment Exchange. he can be engaged next time without sponsorship through Employment Exchange.

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(c) All Commands HQs/AF Units, where applicable, have to offer the post of Seasonal AML to those who are in the notional seniority list for engagement by addressing letters by 2nd week of each year and those who are interested in working have to report before the concerned authority on the dates specified for considering the medical fitness and good conduct. The names of those who are not found to be of good conduct are to be deleted from the seniority list by making annotation on the confidential book as to why such a candidate is not found to be of good conduct so that it can be produced before the Tribunal/ Court if the denial of appointment is challenged. In case the casual labourers/AMLS who had been engaged earlier are not available or are not willing to take up the job, the concerned Command HQ/AF Units are free to appoint new candidates after calling for a fresh list of candidates from the Employment Exchange, in accordance with rules and regulations.

2. Department of Personnel & Training have clarified that grant of temporary status could be granted to those casual employees including AML who have rendered 240 or 206 days of service in a year for 6 days/5 days working week respectively. Temporary status cannot be granted to those casual employees who had not rendered the requisite length of service.

3. All Wings/Stations/Units under your Command HQ may please be advisedw to follow these instructions with immediate effect. "

5.. The learnt counsel argued that these guidelines are being followed and the applicants have been engaged as seasonal AML and the applicants in this case are not entitled to any further relief. As far as re-engagement of seasonal AML is concerned, since the Ministry has issued instructions and guidelines, we have no doubt that this would be implemented and that if any person remains to be re-engaged, he would also be re-engaged in due course. But a careful consideration of the entire facts and circumstances of the case leads us to feel that re-engagement as seasonal AML for a period of 6 months without

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any scope of their eventual absorption on regular basis will not give them either a sense of belonging or a security of service. This would be a very unfortunate state of affairs. A person who has rendered service for a long time, say, 10-12 years would naturally aspire for a continuity as also for other benefits attendant thereto. To deprive them of even a chance for that will not be in conformity with the Constitutional goal of an egalitarian set up. We note that the Headquarters' letter dated 16.12.94 has referred to the circular of the Department of Personnel & Training regarding grant of temporary status to casual employees including seasonal AMLs who have rendered 240 days or 206 days of service in a year for 6 days/5 days working week respectively. Inclusion of Anti Malaria Lascars in this category for obvious reasons would not give them any benefit at all, for, by the very nature of their employment, none of the Anti Malaria Lascars can work for 206 or 240 days in a year because they are employed only for 6 months in a year. It is evident from the circular of the Dept. of Personnel & Training that the Government has in its wisdom included Anti Malaria Lascars also in the scheme for grant of temporary status and regularisation to casual workers. Therefore, it is necessary that a rational norm which would really bring them within the scope of the scheme has to be evolved in their case separately. Therefore, if the stipulation that they should perform work for 206 days in a year is to continue, then it is as bad as they are not being brought under the scheme at all. Hence we find that it is necessary that this aspect is looked into at the appropriate level.

6. It is not in dispute that some of the AMLs were absorbed on regular Group-D posts in the year 1988-89. Annexure A-5 is a list of 23 AMLs who were absorbed as Group-D employees. The contention of the respondents in this regard is that those regularised were AMLs who

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were employed on monthly wages and therefore the applicants who are daily wage AMLs cannot claim parity with them. The applicants though they were receiving daily wages were performing identical duties and for similar period as those who were getting monthly wages and were regularised. The mere fact that some of the AMLs were getting monthly wages and some others getting daily wages does not make them belonging to two separate classes. Both are seasonal workers and both the groups are not regular employees but only casual employees. To say that they belong to separate classes as were getting wages on two different basis, according to us, does not stand the best of reasonableness. We are conscious of the fact that the applicants do not have any statutory right in their favour to claim regularisation; but once the government has considered similarly situated seasonal AMLs for regularisation and regularised them, the principle of equality enshrined in Article 14 of the Constitution, makes them eligible for consideration in the same way.

7. In the conspectus of the facts and circumstances of the case as discussed above, we are of the considered view that this is a fit case where the respondents should consider regularisation of the applicants in Group-D vacancies as and when such vacancies arise in their turn subject to their suitability. We also deem it necessary that a scheme for separate norms should be evolved in regard to the requirement of a particular number of days in a year for grant of temporary status in the case of seasonal Anti Malaria Lascars taking into account of the fact that by the very nature of their engagement, it would be impossible for anyone of them to work for 240 days in a year.

8. In the result, the application is disposed of with the following directions to the respondents:

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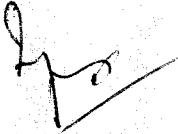
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(i) The Respondents shall consider evolving a separate norm in regard to the requirement of the number of days of work in a year for the purpose of granting temporary status to Anti Malaria Lascars, taking into account the fact that by the very nature of their engagement, they would not be able to work for 206 days or 240 days in a year.

(ii) Taking into account the fact that the applicants and similarly placed others have rendered services, though seasonal, for a fairly long period, the Respondents should consider their regular absorption in Group-D posts in the same manner as was done in the case of AMLs during the year 1988-89, though they may be working on daily wages.

(iii) Till the grant of temporary status and their eventual absorption, if possible, as aforesaid, the applicants shall be engaged in the same manner as they are being engaged now subject to availability of work and in preference of outsiders and persons with lesser length of service.

No costs.


(K. Muthukumar)
Member(A)


(A.V. Haridasan)
Vice Chairman(J)

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