

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A.842/94

New Delhi, this the 28th October, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

1. Shri Suresh Chand
s/o Shri Ramchander
R/o 1609/10, Basti Peepal Wali,
Sader Bazar,
Delhi.

2. Shri Bani Singh,
s/o Shri Mohan
R/o F-2007, Netaji Nagar,
New Delhi.

3. Shri Sikander
s/o Shri Jansi
R/o Village & P.O. Hiranki,
Delhi.

.... Applicants

By Advocate: Shri George Parcken

Vs.

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

2. Air Force Commanding-in-Chief
Air Force, Western Air Command
Subroto Park, New Delhi.

3. Commanding Officer
Air Force Station (25 Wing Unit),
Rajokri, New Delhi.

... Respondents

By Advocate: Shri V.S.R. Krishna

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

All the applicants were selected for the post of Anti Malaria Lascar in June, 1990 for the Malaria season. They were again appointed in 1991 season from May to October 1991. They were

6

again engaged in the similar manner in the year 1992 and 1993. These posts of Anti Malaria Lascar under the Ministry of Defence was sanctioned for a period of six months. Since the applicant did not complete required number of 240 days of service in each of the calendar years, they could not be absorbed on regular basis in Group 'D' post. On application filed earlier J.A.1655/92 decided by the Principal Bench on 20.11.92 the application was disposed of with the following directions:-

"In the light of the foregoing discussion, this OA is partly allowed in terms of the directions that:

- (i) if the names of the applicants are sponsored for the seasonal posts of Anti Malaria Lascar under Respondent No.3 i.e. The Commanding Officer, Air Force Station (25 Wing Unit), Rajokri, New Delhi for the next year or thereafter and if they are otherwise eligible, they shall be given preference over those sponsored candidates who have put in lesser number of days as Anti Malaria Lascar or fresh candidates; and
- (ii) if their names are not sponsored by the Employment Exchange on the ground that the names have been removed from the live employment register with the Employment Exchange, they shall be considered for engagement in preference to those who have put in lesser number of days as Anti Malaria Lascar or candidates without any experience, if they are otherwise eligible."

2. The applicants filed together another application J.A.2319/93 before the Principal Bench. The applicants sought direction that the scheme be also extended to applicants of regularisation if they

have worked for only 180 days. The Tribunal held that as the scheme stands at present it is not applicable to the case of the applicants as admittedly they have rendered only 180 days of service in a calendar year. The Tribunal also held that since this is a policy matter this can only be considered by Ministry of Personnel and no interference can be made by the Tribunal. While disposing of the application that till the applicants are in a position to be regularised they may be allowed to work as Anti Malaria Lascar or casual labourer in a unit under the Ministry of Defence and the requirement of maximum limit of age may not be applied in their case. For this, the Bench observed that it is open to the applicant to make a representation to the concerned authorities on this behalf.

3. Since the applicants were not engaged having become overage on casual basis, they ^{filed} ~~filed~~ filed the present application in April, 1994 for grant of the relief that the applicants be continued to be engaged on the seasonal post Anti Malaria Lascar without fresh sponsorship from the Employment Exchange and they should be engaged even after the expiry of the malaria season, if the casual work of other nature is available. It is further prayed that O.M. dated 10.9.93 be quashed being discriminatory inasmuch as the casual labourers who are engaged throughout the year and those who are employed on seasonal basis, the latter are not regularised under the aforesaid scheme.

(3)

4. The respondents opposed the grant of the relief that the present application is barred by principles of res-judicata as the issue of giving regularisation to the applicants has also been considered in the judgement in O.A.2319/93 decided on 1.11.93 on the ground that they do not fulfil eligibility condition. It is further stated that Applicant No.1 Shri Suresh Chand has worked in the year 1990, 1991 and 1993 for 140 days, 122 days and 182 days respectively. Similar is the case of Applicant No.2 Shri Bani Singh. The case of Applicant No.3 Shri Sikander is also the same regarding the number of working days in the year 1991 and 1993 but in the year 1990 he has worked only for 134 days. Thus the applicants could not be regularised in Group 'D' post as they have not put in 240 days of work in a year. The respondents have also taken the stand that in earlier decisions taken on the applications filed by the applicants it was directed that if the applicants are eligible, they may be engaged on casual basis as Anti Malaria Lascar. The respondents have also annexed a copy of the judgement in MP No.1731/93 dated 12.7.93. The stand of the respondents is that since the applicants have crossed age limit of 25 years/30 years (for SC/ST candidates) the applicants being beyond the prescribed age limit could not be engaged.

5. We heard the learned counsel for the applicant and perused the records and the rejoinder filed by the applicants. As rightly pointed out

by the respondents that there is no question of regularisation of the applicants and the matter has already been considered in the judgement dated 1.11.93 passed in O.A.2319/93. Thus the applicants cannot re-agitate the same issued again. No relief can be granted in that respect and that is barred by principles of res-judicata.

5. Regarding the sponsorship by the Employment Exchange, there is no necessity in the case of the applicants as they have already been struck off from the rolls of the Employment Exchange having been given engagement by the respondents in the year 1990, 1991 and 1993. The applicants are on the casual list of the respondents and they have to be preferred than those who are inducted fresh by the sponsorship from the Employment Exchange. In their case the fresh sponsorship is not required. As regards the fact that they have crossed the age limit, that factor too cannot stand in their way for engagement as a casual labourer as Anti Malaria Lascar. The prescribed age limit is at the time of initial engagement which has been soon by the respondents while engaging them for the first time in the year 1990. They have also been subsequently engaged in the year 1991 and 1993. Merely because they could not be regularised and that their tenure posting cannot be extended for the whole of the year would not deprive them of re-engagement having already put in their service thrice with the respondents for at least six months. The interpretation drawn by the respondents of the order passed in M.P.1731/93 of the words

"if otherwise eligible", would not cover the age limit which was only for the fresh recruits.

The applicants are engaged on the basis of their earlier services and they have right to be preferred against the fresh incumbent sponsored by the Employment Exchange.

7. In view of the above facts and circumstances we find that the applicants could not be granted relief for regularisation as they have not completed the mandatory period of 240 days in a year and the matter has already been considered in an earlier decision in O.A.2319/93 decided on 1.11.93. However, regarding re-engagement of the applicants on seasonal basis whenever there is a job requirement and the casual engagement is required, the applicants have to be preferred inspite of limitation of age by relaxing the age as Anti Malaria Lascar. The application is disposed of with the direction to the respondents to comply with the same for engagement of the applicants if necessity arises on account of job requirement in the malaria season on seasonal basis in preference to fresh incumbents or juniors to the applicants who have not been regularised. The application is disposed of accordingly with no orders as to cost.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)