

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

OA No. 1655/92

Date of decision: November 20, 1992

Sh. Suresh Chand & 2 ors. ... Applicants

versus

Union of India through
Secretary,
Ministry of Defence & ors. ... Respondents.

CORAM: THE HON'BLE SH.P.C.JAIN, MEMBER(A)
THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicants ... Sh.K.L.Bhatia,
Counsel.

For the Respondents ... Ms.Jasvinder Kaur,
proxy counsel for
Sh.Jog Singh, counsel.

Judgement

(Delivered by Hon'ble Sh.P.C.Jain, Member(A)

All the three applicants in this OA under Section 19 of the Administrative Tribunals Act, 1985, were appointed as Anti Malaria Lascar in Air Force Station(25 Wing Unit) Rajokri, New Delhi, in June 1990 on a daily wage basis at the rate of 1/30 of Rs.750/- (minimum of the pay scale for a Group 'D' post) + D.A., as applicable, for anti-malaria duties till 31.10.90.

It is stated by the applicants that their names have been registered in the Employment Exchanges and were sponsored for appointment to the above posts pursuant to which they were called for test and interview on 16.10.1989 in which they were selected and before actual appointment they were medically examined and their character

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and antecedents were also verified through police. They were also appointed to the above posts in 1991 from 2.7.91 to 31.10.91. Their grievance is that they were not similarly appointed during anti-malaria season in 1992. They have prayed for a direction to the respondents to appoint them on regular basis on the posts of Anti Malaria Lascar or any Group 'D' posts at Rajokri station or any other station of the Air Force with all the consequential benefits; to pay them salary and allowances in the regular pay scale of the post as given to regular employees of their status; and to employ and engage them on daily wage rates, as before till they are transferred to the regular establishment and that they may be continued to be engaged in preference to their juniors and outsiders. It is also prayed for that if need be, new posts may be created for their appointment on regular basis. By way of an interim direction, the respondents were directed by an order passed on 1.7.92, to consider engaging the applicants in preference to their juniors and outsiders, in case the vacancies exist. This interim order has continued.

2. The respondents have contested the OA by filing a return to which rejoinder has also been filed by the respondents. As the pleadings

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in this case were complete, it was decided with the consent of the parties, to finally dispose of this OA at the admission stage itself. Accordingly we have perused the material on record and also heard the learned counsel for the parties.

3. The letters of appointment issued to all the three applicants and copies of which have been placed by the respondents as Annexures R-1, R-2 & R-3 of the counter-affidavit, for the year 1990-91 clearly state that their engagement was purely on casual(seasonal) basis for the malaria season only from the date of engagement till 31.10.91 and on the expiry of the aforesaid malaria season, their services will automatically stand terminated with effect from 1.11.91 without any further notice/intimation.

It is also clearly stated that they shall have no claim whatsoever for any future engagement or continuation of the present engagement on the basis of this engagement. The case of the respondents is that 8 purely temporary posts of casual Anti Malaria Lascar for a period of six months are sanctioned in the establishment in addition to the posts of Lascar on regular pay rolls for maintaining the hygenic health of the station. The seasonal Anti Malaria Lascars

are engaged to augment the regular work force to fight the mosquito menace during the summer seaon. There is nothing/record to show that the appointment of the applicants both in 1990 as well as in 1991 was not against these 8 purely temporary seasonal posts. The applicants have also not been able to show any Government order or instructions under which they might be entitled for service conditions as are applicable to regular Government employees. Their request for absorption against regular Group 'D' posts also cannot be allowed as they have not put in 240 days of service in each of the two calendar years as is prescribed by the Government orders on this subject. The contention of the applicants that they have worked for two years, as prescribed, cannot be upheld for the simple reason that in each of the two years referred to above, ^{or even} they have not put in 180 days of service. It is not a case where it can be said that this happened because of the action of the respondents in giving technical breaks in their services, as the post itself was for a seasonal requirement for a fixed period.

4. The only contention which, therefore, remains to be considered is whether on the basis of the engagement of the applicants in 1990 and 1991, they have acquired any right to be

continued to be engaged for seasonal employment in future. The respondents have taken the stand that under the Government orders, only those candidates whose names are sponsored each time a vacancy occurs by the Employment Exchange, are required to be considered for appointments and the applicants could not be engaged in 1992 as their names were not sponsored by the Employment Exchange. The contention of the applicants that they were engaged in 1991 even though their names have not been sponsored by the Employment Exchange, is sought to be rebutted by stating that the respondents had sought certain clarifications from higher authorities and there was some delay in getting these doubts cleared as a result of which, the process of medical examination and verification of character and antecedents of the candidates sponsored by the local Employment Exchange could not be initiated well in time, but the malaria season has already set in and with a view to protecting the health of the personnel, all the candidates engaged in 1990 malaria season, who were still within age-limit, were offered engagement for the residual malaria season, as an administrative expediency. Only four candidates turned up

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to accept the offer out of which three were the applicants in this case. As regards the Government instructions on the subject, they have relied on OM No.14(22)/65-Estt.(D) dated 12.6.60 and OM No.14024/2/77-Estt(D) dated 12.4.77, 12.6.60 and OM No.14024/2/77-Estt(D) dated 12.4.77, issued by the Ministry of Home Affairs and the Department of Personnel respectively. The OM of 12.6.60 refers to the earlier OM dated 11.12.49 wherein it was laid down that all vacancies in Central Government establishments, other than those filled through the Union Public Service Commission, should be notified to the nearest Employment Exchange and that no department or office should fill any vacancy by direct recruitment unless the Employment Exchange certified that they were unable to supply candidates. In the OM dated 12.4.77, these instructions were reiterated that all vacancies arising under Central Government/establishments (including quasi Government institutions and statutory organisations), irrespective of the nature and duration (emphasis supplied) (other than those filled through the Union Public Service Commission), are not only to be notified to the Employment Exchange but also to be filled up through Employment Exchange and other permissible

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sources of recruitment can be tapped only if the Employment Exchange concerned issue a 'Non-Availability Certificate'. There can be no departure from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in the Ministry of Labour(Directorate General of Employment and Training). The respondents have placed as Annexure R-4, a copy of the Ministry of Home Affairs(DP&AR) OM No.42014/8/79-Estt(D) dated 27.12.79 on the subject of re-deployment of retrenched work charged employees. In this OM while referring to the present requirement of retrenched work charged employees having to come through the Employment Exchange for re-appointment to the same/higher posts, the decision taken in consultation with the Directorate General(Employment & Training) has been conveyed to the effect that the retrenched work charged employees with minimum experience of two years can be absorbed in the same establishment/project against equivalent/identical work charged posts without consulting the Employment Exchange. It was clarified in the Ministry of Home Affairs(Dept.of Pers.& ARs) OM No.42014/8/79 dated 15.5.80 that this shall be subject to the condition that such work charged employees claiming the concession were regularly

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appointed initially through Employment Exchange.

From a perusal of these orders, it is clear that even for seasonal vacancies, sponsorship by the Employment Exchange is required every time such vacancies are required to be filled up. However, for absorption of those work charged employees who have minimum experience of two years, consultation with the Employment Exchange is not necessary. In the case before us, it cannot be said that the applicants come within the purview of this relaxation because though they have been engaged for two seasons yet they cannot be said to have a minimum experience of two years.

5. Neither party has placed before us ~~the decision~~ ^{the position} whether in the event of the candidates sponsored by the Employment Exchange for seasonal employment, their names continue to be on the live registration list of the Employment Exchange and if so whether against subsequent requisitions for such employment, the names of those who were sponsored and appointed earlier are also considered for sponsorship again. The applicants in their rejoinder have stated that the names of the applicants still exist in the live register of the Employment Exchange with old priority



date(para 4.7 of the rejoinder). If so, there should be no difficulty for the Employment Exchange to sponsor the names of the applicants against annual requisitions for seasonal appointments. In such an event, it would be just and fair that the persons who are experienced and have put in more days of work as compared to others, should be given preference, if they are otherwise found fit. In fact, the respondents in para 5.6 of their counter-reply have stated that the applicants can be considered for engagement as daily wage Anti Malaria Lascar if their names are sponsored by the Employment Exchange. The respondents have denied that any post of seasonal Anti Malaria Lascar is lying vacant with respondent No.3 and ^{C. 114} they have jurisdiction/control over other Air Force stations at Delhi and outside. It is further stated, that as regards engagement in other stations, the casual labour(seasonal Anti Malaria Lascars) disengaged from respective Air Force Station/Units/Formations would have preferential right over the applicants, and such suggestion of the applicants for absorption in other Air Force stations is neither justified nor equitable.

6. The learned counsel for the applicants

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cited a judgement dated 26.10.90 in OA No.954/90 (Sh.A.Rai & ors.Vs.U.O.I.& ors.) delivered by the same Bench. The facts of that case are totally different from the facts of the case before us. As such that judgement has no applicability to this case.

7. 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 e.g. 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~~ 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 their 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.

In the circumstances of the case, there will be no order as to costs.

J.P.Sharma
(J.P.SHARMA)
MEMBER(J)

(P.C.JAIN)
(P.C.JAIN) 26/11/92
MEMBER(A)