

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

ORIGINAL APPLICATION NO. 836 of 2004.

Allahabad, this the 8th day of December, 2005

QUORUM : HON. MR. D.R. TIWARI, A.M.

1. Lallan Singh Yadav aged about ... years, son of Sri Sangam Lal, Resident of Village Yadavpur, Post Dhoomanganj, Allahabad.
2. Narendra Kumar Patel A/a 34 years Son of Sri Ram Bahadur. Resident of Village Golkaiyapur. Post Sayed Serawa. District Kaushambi.

.....Applicant.

(By Advocate : Sri L.M. Singh)

Versus

1. Union of India through Secretary, Ministry of Home, Government of India, New Delhi.
2. Air Commandor, Air Officer Commanding, 24 Equipment Departments, Air Force Station, Manauri, Allahabad.
3. Wing Commandor, 24 Equipment Department, Air Force Station, Manauri, Allahabad.

.....Respondents.

(By Advocate : Sri G. Prakash)

O R D E R

BY HON. MR. D.R. TIWARI, A.M.

By this O.A., the applicants have prayed for following relief(s):

- "(a) Issue a writ, order or direction in the nature of certiorari calling for the records of interview dated 7.7.2004 pertaining to the appointment of the Seasonal Anti Malaria Lascars for Malaria

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Season 2004 and quash the same with all subsequent proceeding.

- (b) Issue a writ, order or direction commanding the respondents to make any appointment pursuance to the interview dated 7.7.2004 in question.
- (c) Issue a writ order or direction in the nature of mandamus commanding the respondents to make appointment of the applicants on the post of Seasonal Anti Malaria Lascars for Malaria Season, 2004 and pay their salaries accordingly"

2. Briefly stated, the applicants were appointed as Seasonal Anti Malaria Lascar under respondent NO.2 for the Malaria Season i.e June to November 2003 alongwith six others as per Rules (Annexures 1 and 2). It has been pleaded that the work and conduct of the applicants were very good and there was no complaint about the working of the applicants from the Superior and after completion of Malaria Season the applicants services were terminated w.e.f. 30.11.2003 (Annexures 3 and 4). It has been pleaded that all those eight persons had the preferential right for re-engagement in coming Malaria Season i.e. June 2004 to November 2004. They were issued the call letters for the next Malaria Season. (Annexures 5 and 6). All the eight persons appeared on 15.4.2004 and completed the required formalities and all of them were advised to wait for their appointment.

3. Out of the eight persons, who were interviewed only six persons were appointed and joined their services w.e.f. 1.6.2004 but the applicants were advised that their case shall be considered after

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approval of the Higher Authorities. It is shocking for the applicants that instead of making the appointment of the applicants, action was initiated by the respondents for making appointment of other persons and for this purpose the respondents were holding interview on 7.7.2004. The applicants immediately made representations to the Competent Authority but nothing has been done in this regard.

4. The applicants have assailed the action of the respondents and various grounds mentioned in para 5 of the O.A. The main grounds being that the previous Seasonal Anti Malaria Lascar have got preferential right for re-engagement for the coming Malaria season despite their interview on 15.4.2004, non selection of the applicants is arbitrary and illegal. It is violative of Article 14, 16 and 21 of the Constitution of India.

5. Respondents, on the other hand, have resisted the O.A. and filed a detailed counter affidavit and have argued that the contention of the applicants that they have preferential right is misconceived. Their re-engagement depends on the basis of the performance report of their work in their working in the previous season. It has been submitted that their performance in the earlier season was not satisfactory. A warning letter dated 26.9.2003 was issued against the applicant NO.1. At the end of the season an executive report was prepared which

Done

is dated 29.11.2003 wherein it has been stated that applicant NO.1 will not be good Anti Malaria Lascar (Annexure NO.2). It has been further submitted that the persons who were having notional seniority were advised to report on 15.4.2003 for consideration for appointment of Seasonal Anti Malaria Lascar for coming 2004 (Annexure No. 3). The past performance of the candidates and report were considered and six persons were re-engaged for the season 2004 but these two applicants could not be engaged as there was executive report about non-satisfactory work. As such, it has argued that the O.A. lacks merit and be dismissed.

6. During the course of arguments, counsel for the parties has reiterated the facts and the legal pleas from their respective pleadings. Counsel for the parties has however submitted that the alleged non-satisfactory performance report is because of the fact that the applicant No.1 was asked to perform the personal duty of the officer which he refused to do and this has been the cause for issuance of the warning letter. Counsel for the applicant has also relied on the case decided by this Tribunal in O.A. No.736/01, which was decided on 19.6.2001. He has further relied on the case of one Mukesh Kumar in O.A. 846/01 which was decided on 20th July 2001. The counsel for the respondents, on the other hand, has submitted that the contention of the applicants for reliance on the

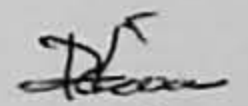
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above quoted case cannot be sustained as the facts in those cases were different from that of the present case.

7. I have heard very carefully the rival submissions made by the counsel for the parties and perused the records.

8. The only question, which falls for consideration is the validity of the action taken by the respondents. From what has been discussed above, I am of the view that the respondent's actions cannot be faulted with because the applicants have no preferential right if their work during their earlier employment has not been satisfactory. I find substance in whatever has been submitted by the counsel for the respondents.

9. In view of the facts and circumstances mentioned above, the O.A. is devoid of merit and is accordingly dismissed. No order as to costs.


Member-A

Manish/-