

T-8

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH: JODHPUR.

Date of order: 18th July 2006.

CA NO. 118/2006, Suresh Kumar and 7 ors.

Vs.

UOI and ors.

P P Choudhary Proxy counsel

for Mr. Amit. Dave

: Counsel for the applicants.

Mr. Kuldip Mathur: Counsel for the respondents.

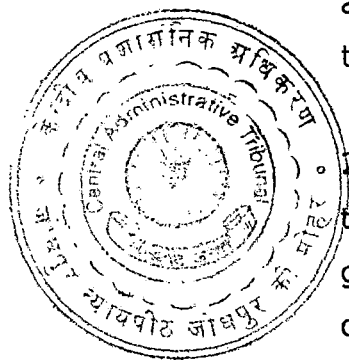
Heard the learned counsel for both the contesting parties at a considerable length, on the question of continuance or otherwise of the following interim relief granted on dated 9.6.2006.

"In this view of the matter and dispensing with the requirement of Sec. 24 of the Administrative Tribunals Act, 1985, I direct that the respondents shall reengage the applicants as Anti Malarial Lascar for ensuing season if they are otherwise fit, till the next date of hearing on provisional basis, as per the policy in vogue (Annex. A/3) i.e. without enforcing sponsorship through the employment exchange."



The learned counsel for the applicants has submitted that the applicants were engaged on various dates during the year from 2001 to 2004 as Seasonal Anti Malaria Lascar (SAML for short). Their names are registered with the employment exchange but they were not sponsored by the employment exchange in response to the notification of vacancies for SAML sent by the authorities at the time of their initial engagements. They approached the Assistant Director of the concerned employment exchange, who gave a remark on their applications that as per the Government rules the applicants can directly apply for the interview. Taking the said remarks into consideration, the candidatures of the applicants were duly considered and they were engaged as SAML. They have also been engaged in the subsequent seasons also. Their names find a place in the notional seniority list maintained by the respondents department for the purpose of reengagement in the subsequent seasons. Some of the applicants became eligible for the grant of "temporary status and regularisation scheme" of Indian Air Force 1997 (for brevity "the Scheme") and their cases seem to have been taken up with the competent authority as indicated in Annex. R.1. However, the same gave rise to an ancillary question whether the remarks of the concerned Assistant Director of the employment exchange on the

applications would tantamount to sponsorship of their candidature by the employment exchange or not since "the Scheme" stipulates the sponsorship by the Employment Exchange. When the query was made to the Director of Employment Rajasthan, the answer given was in negative. This has further resulted in taking a decision not to reengage them in the ensuing season. If the applicants are disengaged at this juncture and the interim relief is not granted, they would suffer an irreparable injury which cannot be compensated in terms of money. He has also submitted that the applicants have been discharging their duties to the entire satisfaction of the authorities and therefore the balance of convenience is also in their favour. He lastly contended that persons from outside could also compete in the selection along with the candidates sponsored by the employment exchange as per the verdict of Apex Court and therefore the very argument of the respondents that candidates should be sponsored through employment exchange is misconceived.



2. Per contra, the learned counsel for the respondents submitted that the applicants were engaged as SAML on the basis of the remarks given by the employment exchange officer by considering them as candidates sponsored by the employment exchange. Subsequently, when the cases for regularisation in respect of some of them were taken up, a query was raised by the higher ups as to whether their cases are covered by the Supreme Court judgement rendered in the case of **Excise Superintendent, Malkapatnam, Krishna District A.P. vs. K B N Visweswara Rao and others** [1996 (6) Scale 670] or not. Therefore a clarification was sought from the Director of employment, Rajasthan as to whether the applicants case could be treated as sponsored by the employment exchange or not. But the reply from the Director of employment was in negative. He has also submitted that notional seniority is to be maintained only in respect of candidates sponsored by the employment exchange and since none of the applicants was so sponsored, their initial engagements itself were not in order. Their continuance or reengagements as SAML during all these years have been due to a bona fide mistake and they can have no vested right for the same since the very first engagement itself was made de hors the rules. He has also cited a recent decision of the Supreme Court in the case of **Nagar Mahapalika (now Municipal**

Ch

520

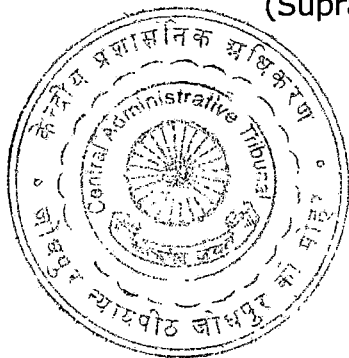
Corporn. Vs. State of U.P. and ors. [2006 AIR SCW 2497], in support of his contentions.

3. I have considered the rival submission put forth on behalf of both sides. As far as the facts of this case are concerned there is hardly any quarrel. The reasons leading to the decision for not reengaging them is based on the averments made in Annex. R.1 filed along with the reply on behalf of respondents. Para 2 & 3 of Annex. R.1 read as under:

"2. In this connection, Director of Employment Rajasthan be intimated that the Supreme Court Order is for direct recruitment and not for the SAML Scheme of IAF where sponsorship of employment exchange is a must.

3. Accordingly, Director of Employment, Rajasthan should clarify whether forwarding of application by this exchange tantamount to sponsorship or not."

The learned counsel for the respondents intended that the Supreme Court order referred to in aforesaid communication is the judgement passed in case of **Excise Superintendent, Malkapatnam** (Supra) wherein their Lordships have been pleased to hold as under:



"It should be mandatory for the requisitioning authority/ establishment to intimate the Employment Exchange and Employment Exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or Undertaking or Establishment, should call for a the names by publication in the news papers having wider circulation and also display on their office notice boards or announce on radio, television and employment News bulletins and then consider the cases of all the candidates who have applied."

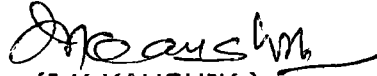
A perusal of the aforesaid para does not make any distinction between direct recruitment and recruitment for the post of SAML and the very reason adduced by the respondents is not based on the correct facts in as much as the said judgement nowhere says so and there is no mention of the word SAML even. The proposition of law propounded by the Apex Court reproduced above, applies to all recruitments to Government service. Therefore, the very defence of the respondents is misconceived.

In this view of the matter, the sponsorship or otherwise of any candidate through the employment exchange may not make any difference. Further the admitted position of the case is that the names of the applicants have been entered in the notional seniority list prepared by the respondents and as per rules persons whose names

are entered in the notional seniority list are to be reengaged invariably and in case of any one unwilling or found unfit or no one is available in the notional seniority list then only new faces may be engaged. The applicants are very much willing for reengagement and they had worked as SAML to the utmost satisfaction of their superiors. Therefore their disengagement at this juncture would be unwarranted.

As regards the judgement in **Nagar Mahapalika** case (supra), relied on by the respondents, the same was rendered by the Apex Court in a different context since the appointments of the respondents therein were made contrary to the rules. The applicants herein were subjected to the selection after they obtained the remark on their applications from the concerned employment exchange. Hence, they applied as open market candidates and their case is squarely covered by the decision of the Apex Court in **Excise Superintendent, Malkapatnam** (Supra). In view of the above the judgement relied on by the respondents is of no help to them. However, the detailed merits of this case shall be examined by the appropriate DB and I am only considering the prayer for interim relief.

Keeping in view the entire facts and circumstances of this case, the ibid interim order passed on 09.06.2006 is made absolute.


(J K KAUSHIK)
JUDICIAL MEMBER.

jsv



At/can
25/7/06

Received copy
Bhju
(B.L. Swami)
Ashvate

At/can

25/7/06

Bhju