

र.प.म. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत चिः शुल्क प्रा०

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

Decided on : 9th February, 2007

CORAM :

**HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN (JUDICIAL)
HON'BLE MR.R R BHANDARI, ADMINISTRATIVE MEMBER.**

1. O.A.No.135 of 2006

1. Mahendra Kumar Meena, aged about 24 years, son of Shri Battu Lal, by caste Meena, resident of Village Kheda Pahadpur, Post Thikaria, Tehsil Sikrai, District Dausa, presently working as Anti Malaria Lascar (AML), under Chief Administrative officer, Air Force Station, Suratgarh.
2. Mahesh Kumar, aged about 26 years, son of Sri B.L. Khatik, by caste Khatik, resident of Village Kyarda Talla, Post Kyarda Kurd, Tehsil Hindaun City, District Karauli, presently working as Anti Malaria lascar (AML) under Chief Administrative Officer, Air force Station, Suratgarh.

Applicants

By : Mr. Manoj Bhandari, Advocate.

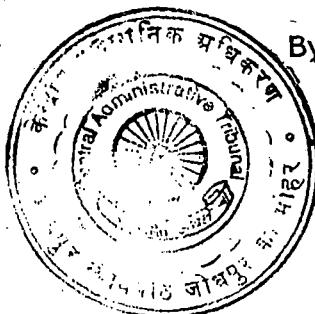
Versus

1. The Union of India through The Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Air Officer Commanding, 35 Wing, Air Force, C/o 56 APO.
3. The Flight Lieutenant C/o Flight Cdr, HR Management, Flt. II, C/o 35 Wing Airforce, C/o 56 APO.
4. The Chief Administrative Officer, Air Force Station, Suratgarh.
5. The Group Captain, Station Commander, 35 Wing, Air Force, Co 56 APO.

By : Mr. Kuldeep Mathur, Advocate for Respondents 1,2 & 4.

(2) O.A.NO.136 OF 2006

1. Garib Pandit, aged about 27 years, son of Shri Jholi Pandit, by caste Pandit, resident of Suratgarh, presently working as Anti Malaria Lascar (AML) under Chief Administrative Officer, Air Force Station, Suratgarh.
2. Mohammed Avid Hussain, aged about 24 years son of Shri Yunus Ansari, by caste Musalman, resident of Suratgarh, presently working as Anti Malaria Lascar (AML) under Chief Administrative Officer, Air Force Station, Suratgarh.
3. Bishan Pal, aged about 28 years, son of Shri Sohalu Singh, by caste SC, resident of Suratgarh, presently working as Anti Malaria Lascar (AML) under Chief Administrative Officer, Air Force Station, Suratgarh.
4. Jagdish Kumar, aged about 23 years, son of Shri Sohram, by caste SC, resident of Suratgarh, presently working as Anti Malaria



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Lascar (AML) under Chief Administrative officer, Air force Station, Suratgarh.

5. Deepak aged about 25 years, son of Shri Azad Masih, by caste Masih, resident of Suratgarh, presently working as Anti Malaria Lascar (AML) under Chief Administrative Officer, Air Force Station, Suratgarh.
6. Man Singh, aged about 23 years, son of Shri Amar Chand, resident of Suratgarh, presently working as Anti Malaria Lascar (AML) under Chief Administrative officer, Air Force Station, Suratgarh.
7. Horam, aged about 32 years, son of Shri Narotam, resident of Suratgarh, presently working as Anti Malaria Lascar (AML), under Chief Administrative Officer, Air Force Station, Suratgarh.

Applicants

By : Mr. Manoj Bhandari, Advocate.

Versus

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5. The Group Captain, Station Commander, 35 wing, Air Force, C/o 56 APO.

Respondents

By : Mr. Kuldeep Mathur, Advocate for Respondents 1, 2&4.

ORDER
(HON'BLE MR. KULDIP SINGH, VC)

The facts and point of law involved in these two O.As. being common, they have been taken up for disposal through this common order.

For the facility of reference facts have been taken from O.A.No.135 of 2006 (Mahendra Kumar & Another Vs. Union of India & Others). The applicants are aggrieved against the order dated 11.7.2006 (Annexure A-1) and 18.6.2006 (Annexure A-2), which are common in both the O.As, by which their services are sought to be terminated and they are seeking a direction to the respondents to grant them temporary status, after completion of 165 days of service in two consecutive years and regularization in service against Group D post after completion of four years of service.



The facts in brief are that applicants were appointed as Anti Malaria Lascar (AML) in pursuance of an open selection conducted through the process of open advertisement in the newspapers, on different dates during 2001-2002 and each of them has rendered about 600 to 700 days of work. The initial engagement of the applicants was for a period of six months only in the minimum pay scale of Rs.2550/- plus D.A., as is apparent from the order dated 21.5.2002 (Annexure A-3) in respect of applicant no.1. The services of the applicants were extended from time to time and last extension was done in the month of May, 2006, for a period of six months, till 31.10.2006 (Annexure A-4). They were appointed by a regular process of selection.

The engagement of seasonal AML is governed by AML (Grant of Temporary Status and Regularization) Scheme of Indian Air Force, 1997 (Scheme of 1997). Under this Scheme, the temporary status is to be granted to the AML after completion of 165 days of work in offices observing six days a week and after 150 days in office observing five days a week for two consecutive years. The AMLs are also entitled for regularization against regular vacant Group D post who have completed in last four years, 650 days of work in offices observing six days a week and 600 days in offices observing five days a week. Copy of the Scheme is Annexure A-5.

In terms of the Instructions dated 18.5.1998 (Annexure A-6), it is not mandatory that appointment should be initiated only through employment exchange but the same can also be done by giving advertisement in the newspapers. The applicants have completed four years of service w.e.f. 2001-2002 and have rendered more than 650 days of service in accordance with the scheme of regularization of services against Group D and are entitled to temporary status from 2004 itself.

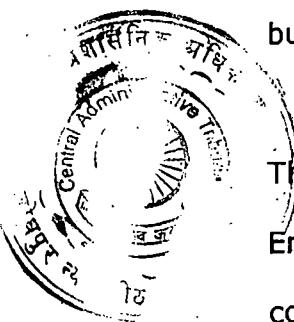


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However, the respondents have taken a decision vide note-sheet dated 18.6.2006, that the appointments be made through employment exchange only (Annexure A-2) and on this basis, an order dated 11.7.2006 (Annexure A-1) has been issued by which it has been ordered that action be taken to terminate the services of all the applicants. A decision has been taken to engage fresh hands to replace the applicants. The vacancies have been notified to the appropriate employment exchange (Annexure A-7).

The applicants submit that the respondents are practicing unfair labour practice by engaging fresh hands in place of the applicants who are working for the last more than four years. The respondents are guilty of violating their own policy and their action is not only arbitrary but illegal and void ab initio.

Respondents have filed a detailed reply contesting the O.A. They submit that in terms of Annexure A-5, after sponsorship from the Employment Exchange, the individuals are being engaged by the duly constituted Board of officers subject to their medical fitness and verification of antecedents. By letter dated 5.3.2002 the respondents asked the District Employment office, Sri Ganga Nagar for sponsoring (SAM) the names for engaging Seasonal Anti Malaria Lascars for season 2002 who forwarded a list of candidates vide letter dated 16.3.2002. Wide publicity was also given in the newspapers in terms of DOPT OM dated 18.5.1998 in response to which the applicants had applied and they were selected. However, during the process of regularization of applicants against Group D posts, as they had completed required number of days as per policy, an objection was raised on 24.4.2006 that the names of applicants were not sponsored through employment exchange which is mandatory requirement as per scheme of 1997 and as such decision was taken to take action against the errant officials, who were responsible for the irregularities. Thus, the enquiry is in



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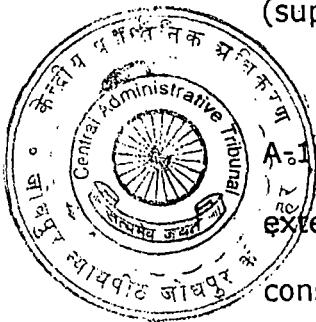
process. Thus, since the applicants were not engaged through employment exchange, they are not entitled to continue in service. The instructions of DOPT cannot over ride the mandatory requirement of sponsorship through employment exchange, as provided in the Scheme. Thus, they have prayed for dismissal of the O.A. The applicants have filed a rejoinder.

We have heard learned counsel for the parties and perused the material on the file.

The short question involved in this O.A. is as to whether it was obligatory for the Department to make initial engagement of the applicants only through the employment exchange in terms of Scheme of 1997 or not for regularization of services of the applicants. This question has already been answered by a Division Bench of this tribunal in O.A.No.118 of 2006 titled **Suresh & Others Vs. Union of India & Others**, decided on 14.9.2006. Placing reliance on the decision of Apex Court in **Excise Superintendent, Malkapatnam, Krishna District A.P. vs. K B N Visweswara Rao and others** [1996 (6) Scale 670], it has been held that the sponsorship or otherwise of any candidate through the employment exchange would not make any difference. Thus, the appointment of applicants as SAML cannot be termed as de hors the Scheme. In other words, placement of their names in the seniority list is very much in order and they are fully entitled for the benefits as envisaged under the scheme. Under the scheme of things, names of such incumbents are entered in the notional seniority list for re-engagement and in case of any one unwilling or found unfit or no one is available in the notional seniority list, only then new hands are to be engaged. The Bench held that the applicants were willing to be engaged and they were working satisfactorily and there was no complaint against their selection or working. Thus, the appearance of applicants irrespective of non-sponsorship of their names did not vitiate



the selection process. Their candidatures were properly considered by the selection committee to identify their merit. Same is the position in these cases also. So, the controversy involved in these cases is found to be covered on all fours by the decision in the case of Suresh & Others (supra).



These O.As. are, therefore, allowed. Impugned orders, Annexures A-1 and A-2 are quashed and set aside. The respondents are directed to extend all the consequential benefits to the applicants including considering their case for grant of Temporary Status/regularization against Group 'D' posts etc. as per the SAML Scheme in vogue. Costs.

Sd/-

[R.R.Bhandari]
Member(A)

Sd/-

[KULDIP SINGH]
VICE CHAIRMAN

CERTIFIED TRUE COPY

Dated... 13/2/07

अनुभाग अधिकारी (न्याय)
Section Officer (Ldly.)
केन्द्रीय अधिनियमक नियम विधायक बोर्ड
Central Administrative Tribunal
जोधपुर न्यायपाल, जोधपुर
Jodhpur Bench, Jodhpur.

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Part II and III destroyed
in my presence on 26-6-14
under the supervision of
section officer () as per
order dated 26-6-14

Section officer (Record)