

कानूनी (प्रक्रिया) नियमानुसारी दो नियम 22 के अन्तर्गत निः शुल्क प्रविधि

OA NO. 176/2007

&

OA NO. 220/2007

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 176/2007
AND
ORIGINAL APPLICATION NO. 220/2007**

Date of order: 10-11-2007

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

(1). O.A. No. 176/2007

Sanjay S/o Shri Panna Ram, aged about 33 years, by caste Jawa, resident of Goga Gate, Near Jawa Niwas, Bikaner (Rajasthan), Ex-Anti Malaria Lascars (Temporary Basis), Air Force Station, Bikaner.

:Applicant.

Mr. S.K.M. Vyas, counsel for applicant.

VERSUS

1. Union of India through Secretary, Ministry of Defence, Vayu Bhawan, New Delhi.
2. The Air Officer Commanding in General, Headquarters, Western Air Command (Headquarters), I.A.F., Subrotto Park, New Delhi – 110010.
3. The Senior Administrative Officer, Air Force Station, Well Road, Bikaner – 334001 (Rajasthan).

... Respondents.

Mr. Kuldeep Mathur, counsel for respondents.

(2). O.A. No. 220/2007

Dinesh S/o Shri Bhanwar Lal Kumawat, aged about 32 years, by caste Kumawat, resident of Old Ginnani, behind Gayatri Mandir, Bikaner (Rajasthan).

:Applicant.

Mr. S.K.M. Vyas, counsel for applicant.

VERSUS

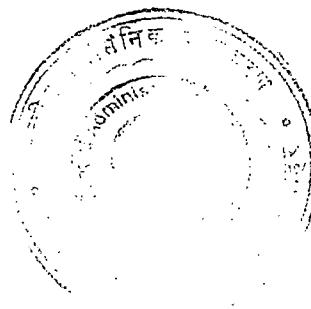
1. Union of India through Secretary, Ministry of Defence, Vayu Bhawan, New Delhi.
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... Respondents.

Mr. Kuldeep Mathur, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member



The issues involved in both these Original Applications are similar. Both these Original Applications are, therefore, disposed of through a common order.

2. The applicant in Original Application No. 176 of 2007 was engaged as Seasonal Anti-Malarial Lascars (SAML, for short) in May 1999 for a period of six months upto 31.10.1999, which corresponds to the malaria season. The applicant was also engaged in the subsequent malaria seasons of the year 2000, 2001 and 2002. However in the year 2003, he was not engaged because it was discovered that his name was not originally sponsored by the Employment Exchange, but he got selected on account of some alleged tampering in the list sponsored by the Employment Exchange. The applicant filed Original Application No. 138/2003 against his non-engagement.

The said Original Application was decided in his favour. The Tribunal by its order dated 03.02.2004 directed that the period of 01.05.2003 to 31.10.2003 should be treated as spent on duty and that he should be paid wages accordingly. The order of the Tribunal was challenged in the Hon'ble High Court, but the decision of the Tribunal was upheld. The respondents complied with the directions of the Tribunal and paid the applicant the wages for the period from 01.05.2003 to 31.10.2003. Though the applicant has been making representations for engaging him during the subsequent malaria seasons, he was not engaged in the subsequent years. The applicant has also not been regularized as a Group D employee in accordance with the policy followed by the respondents.

3. The applicant in Original Application No. 220 of 2007 was engaged as SAML in the year 1999. He was re-engaged in the years of 2000, 2001, 2002. However by order dated 25th October 2002, he was terminated on the basis of a fact-finding enquiry, which revealed that his name was not originally sponsored by the Employment Exchange and that the list sent by the Employment Exchange was tampered with. The applicant filed Original Application No. 274 of 2002 against his termination. In its order dated 11.02.2003 the Tribunal decided the case in the applicant's favour. The termination was quashed on the ground that the relevant procedure was not

followed. The respondents were given liberty to follow the relevant procedure applicable to civilians and take appropriate action. The order of the Tribunal was challenged in the Hon'ble High Court, but it was upheld by the Hon'ble High Court. The respondents engaged the applicant in the season of 2006. But he has not been regularized as a Group D employee as per the policy being followed by the respondents.

The applicants in both the Original Applications have sought the following relief:

"(i) That direct to respondent to engage the applicant to the post of Seasonal Anti Malaria Laskar and grant the proper benefit from the date, person similarly situated and junior to him, have been granted.

(ii) That direct to respondent to consider the case of the applicant for regularization as Laskar in Group "D" services as has been granted similarly situated person.

(iii) That direct to respondent to pay all the arrears as naturally consequences of granting the aforesaid prayer with interest.

(iv) That any appropriate relief or order, which this Hon'ble Court as deems fit, just and proper in favour of the applicant to be granted. The original application may kindly be allowed with costs."

4. The respondents have opposed granting of the prayers in the Original Applications. In the reply filed by them the facts regarding the engagement of both the applicants as Seasonal Anti Malaria Lascars during the years 1999, 2000, 2001 and 2002 are not disputed. However it is contended that during scrutiny in the year 2001, it was found that the list sent by the Employment Exchange was tampered with. The names of both applicants were not originally sponsored by the Employment

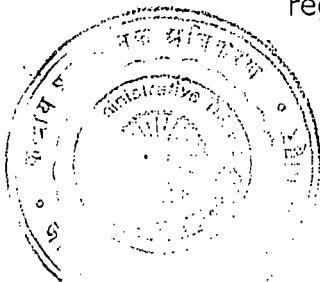
Exchange. The applicant in Original Application No. 220/2007 was found guilty of tampering with the list. On the basis of the fact finding enquiry the applicant in Original Application No. 220 of 2007 was terminated. The applicant in Original Application No. 176 of 2007 was not re-engaged in the year 2003 as his name was not originally sponsored by the Employment Exchange. He has ~~conceded~~ ^{as} conceded the fact that he had filed O.A. No. 18/2005 for his re-engagement and regularization but it was disposed of with a direction to the respondents to dispose of the representation dated 20.09.2004. The said representation was disposed of through a speaking order dated 18.03.2005 wherein it was clearly stated that his name was not sponsored by the Employment Exchange at the time of his initial engagement, he cannot be considered for regularization. That there is provision in Government Departments to terminate the services of those who gained employment through fraudulent means. The Employment Exchange has confirmed by their letter dated 23.06.2000 that the names of the applicants were not sponsored by them. The applicants are not entitled to get the benefit of regularization in Group D as their names were not sponsored originally by the Employment Exchange.

5. We have heard the learned counsel for the applicants and also the learned counsel for the respondents. We have also perused the record carefully.

6. The issues for consideration in these Original Applications are (i) whether the applicants are entitled to be considered for regularization in Group 'D' as per the policy adopted by the respondents; (ii) whether they are entitled for re-engagement as seasonal workers in the future Malaria Seasons and (iii) whether they are entitled to back wages for the years in which they were not engaged. For adjudicating the aforesaid issues it is necessary to look at the guidelines/executive instructions governing the engagement of such seasonal employees as well as their regularization. The respondents have strongly contended that as per the DOPT instructions dated 18.05.1998 vacancies whether part time or full time, have to be filled up from candidates sponsored by the Employment Exchange only (other than those recruited through the Union Public Service Commission). Going a step further the respondents further contend that the names of both the applicants were not sponsored by the Employment Exchange but they gained employment through manipulation of the list sent by the Employment Exchange and consequently they are not entitled for regularization. The issue of manipulation of the list sent by the Employment Exchange was the subject matter of Original Application No. 274 of 2002, in which The Tribunal quashed the termination of the applicant in Original Application No. 220 of 2007 but gave liberty to the respondents to follow the relevant procedure applicable to civilians before termination. The said order was challenged in the Hon'ble High Court. But it was

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upheld by the Hon'ble High Court. There is nothing on record to suggest that the decision of the Hon'ble High Court was challenged in the higher judicial forum. Therefore, that decision of the Tribunal in Original Application No. 274 of 2002 attained finality. There is also nothing on record to indicate that the respondents exercised the liberty given to them by the Tribunal to conduct a fresh enquiry in accordance with the procedure applicable to the civilians. Therefore, it is not open to the respondents to take the same ground (i.e. their names not having been sponsored by the employment exchange) for refusing to consider the applicants for regularization. The relevant extract from the Policy adopted by the respondents for regularizing such seasonal employees is reproduced below:



"(Reference para 5 of Air HQ letter Air HQ/23064/1/AML/PC-4 dated 21 Aug., 97)

SEASONAL ANTI MALARIA LASCARS (GRANT OF TEMPORARY STATUS AND REGULARISATION) SCHEME OF INDIAN AIR FORCE 1977.

1. The details of the scheme are as follows:

TEMPORARY STATUS

(i). xxxxx

(ii) Such Anti-Malaria Lascars who have completed a total of 650 days in the last consecutive 04 years in office observing 06 days a week and 600 days in offices observing 05 days a week would be eligible for regularization against a regular vacant Gp 'D' post,

(iii) to (v) xxxxx"

7. It is very clear from the aforesaid extract that seasonal workers such as the applicants are entitled to be considered for regularization in Group D provided they have completed 650

days of work in the last four years consecutively. The additional affidavit filed by the respondents on 02.04.2009 shows that both the applicants have completed more than 650 days of work during a consecutive span of four years in 1999, 2000, 2001 and 2002. We are, therefore, of the view that both the applicants are entitled to be considered for regularization in Group D in accordance with their seniority among the Seasonal Anti-malaria Lascars.

8. The next issue is the entitlement of the applicants to be re-engaged in the season every year. This issue was discussed in Original Application No. 138/03 filed by the applicant in Original Application No. 176/07. The Tribunal in that Original Application (OA No. 138/2003) had recorded a finding that as per the Scheme being implemented by the respondents, it is not necessary to get the name sponsored from the Employment Exchange every year. That requirement is applicable only at the initial engagement. This policy was also followed by the respondents while re-engaging the applicants in the subsequent years of 2000, 2001, and 2002. The respondents are refusing to re-engage the applicants only on the ground that they got their initial engagement through manipulation of the list. That issue having attained finality with the decision of the Hon'ble High Court in No. W.P. No. 6394/2003 and the respondents not having exercised the liberty to initiate fresh proceedings, the respondents are not justified in refusing to re-engage the

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applicants in the years subsequent to the judgments of the Hon'ble High Court.

9. That bring us to the last issue of payment of back wages during the years when the applicants were not engaged, even though they were entitled to be engaged. As discussed in the previous para, the applicants were entitled to be engaged once the issue of the manipulation of the list attained finality. In the case of the applicant in Original Application No. 176/07, the decision of the High Court was delivered on 19.04.2005. Therefore, the applicant should have been considered for re-engagement from the malaria season of 2005 onwards if his juniors were considered. In the case of the applicant in Original Application No. 220/07, the decision of the Hon'ble High Court is dated 18.07.2005. Therefore, in the subsequent years namely 2006 onwards, the applicant ought to have been considered for re-engagement if his juniors were considered. It is seen from the records that he was re-engaged in the year 2006 but no information about the subsequent years is available on record.

10. In view of the above discussion, we are of the considered view that this is a fit case for allowing the prayer in the OAs and directing the respondents to consider the regularization of the applicants as per the policy adopted by them. The applicants are also entitled for re-engagement in future malaria

seasons and for back wages for the different years referred to in para 9 above if they were not considered and offered re-engagement but their juniors were employed.

11. For the reasons stated above, these Original Applications are allowed. The respondents are directed to (i) consider the applicants for regularization in Group D posts as per the Scheme of 1997 in accordance with their seniority; (ii) re-engage the applicants from next season onwards if seasonal malarial work is available and in accordance with their seniority; and (iii) to pay back wages for the years referred to in para 9, if they were not considered and offered re-engagement and their juniors were engaged. There is no order as to costs.

Sd -

(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

Sd -

(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

CERTIFIED TRUE COPY
Dated 11.11.2009

dk

Nasir
Majlis
Section Officer
Central Adamya Vibhavali
जनसुख विभाग, जिल्हा
Jodhpur District, Jodhpur.

Part II and III destroyed
in my presence on 07/07/2015
under the supervision of
Section Officer () as per
order dated 07/07/2015

Me
Section Officer (Records)