

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.90/2006

Friday, this the 11th day of January, 2008.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

1. S.Valsalan, S/o Soman,
residing at Kavuvilakom Puthen Veedu,
Thiruvallam P.O., Thiruvananthapuram-27.
2. P.G. Vidhu, S/o A.Ponnappan,
residing at Kala Bhavan,
Pongara Kizhakum Bhagham,
Kazhakuttam P.O., Thiruvananthapuram.

Applicants

(By Advocate Shri Shafik M.A.)

Vs.

1. UNION OF INDIA represented by
its Secretary , Ministry of Defence,
Air Headquarters, New Delhi.
2. COMMANDING OFFICER,
Air Force Station, Shanghumugham Beach Post,
Thiruvananthapuram-27.

Respondents

(By Advocate Mrs.Aysha Youseff, ACGSC)

The application having been heard on 17.12.2007
the Tribunal on 11.01.08 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicants in this O.A. were appointed as Seasonal Anti Malaria Lascar (SAML for short) during the years from April 1998 and were granted temporary status in January 2002. This was in accordance with the relevant scheme vide Annexure A-3. The aforesaid scheme envisages that, such SAMLs who have completed a total of 650 days in the last 4 consecutive years in office observing 6 days week, and 600 days in office observing 5 days week, would be eligible to regularization against a regular vacant group 'D' post. The applicants were issued with termination order with effect from 31.10.2002 and oral promises for

subsequent years were made for reappointment of the applicants. However, no such reappointment took place. The applicants, therefore, served a Legal Notice vide Annexure A-6. However, no fruitful results could be achieved by them. The applicants, therefore, prayed for a direction to the respondents to regularise their services and further to direct the respondents to employ them as Seasonal Anti Malaria Lascar.

2. The respondents have contested the O.A. The focal point of their case is that, Air Headquarters have circulated a Policy Letter in 2003 in which it was clarified that, Seasonal Anti Malaria Lascars can be considered for regularization, only when they were sponsored through Employment Exchange during their initial engagement. According to them, the applicants were not sponsored through Employment Exchange and hence, they are not entitled to any benefit.

3. Earlier, the respondents were directed to inform the Tribunal, whether at all there is any requisition made in 1998 and 1999 when the applicants came to be appointed as Seasonal Anti Malaria Lascars, and if not, whether the respondents have notified the vacancy through any other source and response thereof if any.

4. In the additional reply statement filed by the respondents the following are the averments made by them:

“5. With regard to question (a) to (c) it is submitted that no requisition was made in 1998 and 1999 to the Employment Exchange for sponsorship of candidate. During that period the organisation normally does not notify the post of SAML and hence the vacancies were not notified.

6. With regard to question (d) it is submitted that temporary status for eligible SAMLs to be granted after two years of engagement. Since the applicants were not sponsored through

Employment Exchange, there was some ambiguity regarding granting temporary status."

5. In the said additional reply it has also been stated that, while the unit has recommended that the case should be taken up with the Ministry of Defence, the Ministry of Defence turned down to relax any of the conditions.

6. While calling for information as aforesaid, one more clarification was sought, as to whether any action is being taken for regularisation of any of the temporary status employees against any regular vacancy, the respondents have in respect of this clarification replied as under:

"With regard to question (g) it is submitted that action is being taken by this respondent to regularise two SAMLs during this period as both fulfill all criteria as per the "SAML Scheme 1997". The details are as follows:

(i) Mr. Anilkumar : The individual was initially engaged as SAML on 16th July 2001 and rendered two years continuously during Anti Malaria Season for more than 165 days. The individual was granted Temporary Status on 15th April 2004 and appointed to the Post of Group 'D' on 8 th October 2007 as the individual has completed more than 650 days continuously for 7 years as the individual fulfills all the criteria according to the SAML Scheme.

(ii) Mr. Shibu Raj: The individual was initially engaged as SAML on 16th July 2001 and rendered two years continuously during Anti Malaria Season for more than 165 days.

The individual was granted Temporary Status on 15th April 2004 and forwarded recommendation for the post of Group 'D' on 8th

October 2007 as the individual has completed more than 650 days continuously for 7 years as the individual fulfills all the criteria according to the SAML Scheme 1997. However, the same is now pending before the higher formation since no appropriate vacancy exists."

7. It is also the case of the respondents that the applicants did not turn up for interview during the years 2004 and 2005.

8. Counsel for the Applicant submitted that, when in 1998 and 1999, admittedly, the department did not approach the Employment Exchange for sponsorship. Their mistake cannot be used against the applicants, who have valid Employment Exchange Registration, but, who could not be sponsored by the Employment Exchange. It has been argued that as per the decision in the case of Exercise Superintendent, Malkapatnam, State of Andhra Pradesh Vs. K.B.N. Visweshwara Rao and others (1996 (6) SCC 216), the strict adherence to sponsorship through Employment Exchange is not insisted upon.

9. Counsel for the respondents submitted that the case for regularisation has been taken up by the unit in the year 2003 and the same is pending before the higher authorities for final decision.

(Para 6 of the additional reply statement filed on 11.10.07 refers.)

10. Arguments were heard and documents perused. Admittedly the applicants were engaged by the respondents continuously in every season from 1998 to 1999. It is not disputed that the applicants had duly registered their names in the Employment Exchange. It was for the department to have placed the requisition before the Employment Exchange for

sponsoring the candidates. Had that been done, there was every likelihood of the applicants being sponsored by the Employment Exchange. Thus, non-sponsorship is not on account of any deficiency with the applicants, but due to a clear omission on the part of the respondents for making a requisition to the Employment Exchange. In the case of Union of India Vs. Smt. Sadhana Khamar decided on 14.12.2007 (C.A. No.8208/01) the Apex Court has held that:- "*Mistake of the department cannot recoil on employees.*" Similarly, in the case of M.V.Thimmaiah Vs. UPSC (C.A.No.5883 and 5891/07) decided on 13th December 2007) the Apex Court has held that:- "*If there is any failure on the part of the officers to discharge their duties, the incumbent should not be allowed to suffer.*" If the ratio in the above decisions of the Apex Court is telescoped upon the facts of the instant O.A. for non-sponsorship by the Employment Exchange, it is the respondents who are to be blamed and not the applicants. The applicants, admittedly, fulfill the requisite conditions for regularisation. As such, subject to availability of regular vacancies in Group'D' posts, at the earliest opportunity the applicants should be considered for regularization.

11. In view of the above discussions, the O.A. is allowed. Respondents are directed to take suitable steps for regularising the services of the applicants herein as and when vacancies in group 'D' posts arise.

12. It is also directed that, during seasons, respondents shall engage the applicants as Seasonal Anti Malaria Lascars and such engagement shall continue, subject to availability of work till the applicants are regularised in group 'D' posts. No costs.

Dated the 11th January, 2008.



Dr. K.B.S.RAJAN
JUDICIAL MEMBER