

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 218/04

FRIDAY, THIS THE 29TH DAY OF JULY, 2005

C O R A M

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

K.Mohanan S/o Kunjan
Seasonal Anti Malaria Lascar
Air Force Station
Trivandrum
residing at TC 48/572,
Vayalnikathiya Mudumbil Veedu
Ambalathara, Manacaud PO
Trivandrum.

Applicant

By Advocate Mr. Shafik M.A.

Vs.

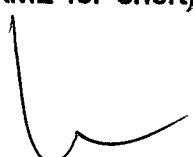
1. Union of India represented by the Secretary to the Government of India, Ministry of Defence New Delhi.
2. The Air Chief Marshal
Air Force Headquarters,
West Block-VI
R.K. Puram, New Delhi.
3. The Commanding Officer
FSBU Indian Air Force
Air Force Station, Beach Post Office
Thiruvananthapuram
4. The Senior Administrative Officer
17 FSBU. Indian Air Force
Air Force Station, Beach Post Office
Thiruvananthapuram. Respondents

By advocate Mr. P.J. Philip, ACGSC

ORDER

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant was appointed as Seasonal Anti Malaria Lascar (SAML for short) in 1994 after being sponsored by the employment exchange



on temporary basis as a Casual worker as per Memo dated 7.9.1984 (A2) and was paid consolidated monthly salary of Rs. 1605/-. This was supported by certificate dated 31.10.1994 (Annexure A3) issued by the Senior Medical Officer. Again he was reappointed as SAML from 1.5.1997 till 31.10.1997 and according to him he worked for a total 150 days in 1997 itself. Again he was engaged in the year 1998 he has worked for 157 days in that particular year, in 1999 he has worked for another 150 days and in 2000 he has worked for 153 days. The contention of the applicant is that he is eligible to be regularised as per Annexure A-4 scheme dated 21.8.1997 which is not done in his case. This will be borne out from Annexure A5 letter and aggrieved by the inaction of the respondents in not conferring with temporary status or appointment to Group-D post he has filed this Original Application seeking the following reliefs:

(i) To call for the records relating to Annexures A1 to A7 and to quash A1 being illegal and arbitrary

(ii) To declare that the applicant is entitled to temporary status and consequential regularisation as per Annexure A5 scheme and to direct the respondent to confer temporary status and regularisation with effect from the date on which he completed 150 days of service immediately and to pay the applicant accordingly and to disburse the arrears of wages if any with 18% penal interest.

(iii) To pass any other orders which this Hon'ble Court may deem fit and proper in the circumstances of the case

and

(iv) To award costs of this proceedings.

2. Respondents have filed a detailed reply statement contending that in 1994 he worked for 124 days, his age at the time of initial engagement was 33 years, he was engaged at a time when there was no upper age limit for engagement on casual basis, but for conferring temporary status to a casual employee he should have been within the prescribed age limit at the time of initial engagement i.e. 18 to 25 years, relaxation only for SC/ST candidates by 5 years. The applicant was over-aged at the time of initial engagement and his



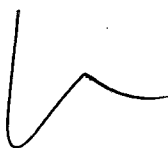
case was not considered for granting temporary status which was communicated to him by Annexure R1 dated 4.3.2003. The age relaxation in the upper age limit as per Annexure R2 can only be granted if at the time of initial engagement he has not crossed the upper age limit for the relevant post. For conferring temporary status and absorption in Group-D post there exists the upper age restriction. As regards the comparison with S/Shri S. Valsalan and P.G. Vidhu, it is stated that both of them belong to SC community and granted temporary status since they were within the prescribed age limit.

3. The applicant has filed a rejoinder reiterating his contentions in the O.A. and further contended that even assuming that the applicant was over-aged at the time of initial engagement, it does not stand in the way of conferring temporary status as per the scheme, if at all it is affected it is only at the time of regularisation as a Group-D post.

4. Shri Shafik appeared for the applicant and Shri P.J. Philip, ACGSC appeared for the respondents.

5. I have given due consideration to the arguments of the learned counsel appearing for both sides and perused the materials placed on record. The learned counsel for the applicant submitted that identically placed persons has already been granted the relief. The learned counsel for the respondents on the other hand submitted that the applicant cannot be considered for conferment of temporary status or appointment as Group-D since he has crossed the upper age limit.

6. The applicant has approached this Tribunal in O.A. 796/2002 claiming the benefit of temporary status and regularisation based on the scheme and this Court has directed the respondents to consider the case of the applicant as claimed by him in the representation and in the O.A. and in pursuance of that direction the impugned order Annexure A1 was passed. On going through



Annexure A1 impugned order the respondents has tabulated a statement wherein the applicant was engaged as casual mazdoor from 1994 and the details thereof has been appended in the impugned order itself. It is also an admitted fact that the applicant was paid wages, in 1994 the applicant had worked for 140 days, in 1997 for 184 days, in 1998 for 183 days, in 1999 for 184 days and in 2000 for 184 days. It is also an admitted fact that the applicant has not been granted temporary status or regularisation against a Group-D post as per the scheme except for the fact that he is over-aged. The date of birth of the applicant is 31.7.1961 and when he was initially engaged his age was 33 years and in 1997 he was 36 years old. Para 3 of the impugned order with reference to grant of temporary status is quoted below.

"SAMLs (Grant of temporary status and regularisation) Scheme of IAF came into force with effect from 21c Aug. 1997. As per the scheme temporary status can be given by Command Headquarters, if the applicant is eligible. The case for grant of temporary status in your case was not taken up with Command Headquarters as you were not eligible. You were initially engaged in 1994 when you were 32 years and 7 months. You were 35 years and 8 months during your second engagement with effect from 01 May 1997. The age limit for recruitment of SAML is 18-25 years.; However the age could be relaxed upto 5 years i.e. upto 30 years for SC/ST candidates. Even after granting age relaxation of 5 years, you were not; in the specified age limit. Hence, your case was not taken up for grant of temporary status or for regularisation against a regular Group-D post."

7. Therefore the dispute of the respondents in not granting the benefit is confined to the over age at the time of initial engagement alone. Annexure A4 scheme dated 26.8.1997- Implementation of Seasonal Anti-Malaria Lascars (Grant of Temporary Status and Regularisation) Scheme of IAF 1997, it is clearly stated in para 4 which is also reproduced as under:

"As a sequel to the Court judgment and in consultation with MOD/DOP&T, a separate service norms have been designed to resolve this vexatious issue. These are as under:

- (i) Temporary Status be granted to Anti Malaria Lascars after 165 days of work in offices observing 06 days a week and after 150 days in offices observing 05 days a week for two consecutive years.



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

8. The procedure for filling up Group-D post is also indicated in the scheme which is produced as under:

"The broad outlines of the procedure for filling up Group-D posts by SAMLs with Temporary Status will be as under:

- (i) The selection will be made by following due procedure in accordance with the Recruitment Rules and subject to medical fitness by a panel of Air Force Doctors and verification of antecedents, etc.
- ii) A combined station wise seniority list of SAMLs granted Temporary Status would be maintained on the basis of number of persons of temporary service.
- iii) SAMLs would be allowed age relaxation equivalent to the period for which they worked continuously as SAMLs.
- iv) The rules on reservation for SC/ST/OBC shall be strictly adhered to filling up the regular vacancies.
- v) The final orders for grant of Temporary Status and regularisation against Gr. D vacancies will be issued after obtaining approval from Air Headquarters.

9. From the above said rule position it is quite clear that in the scheme for granting regularisation and conferment of temporary status to casual labourers for the service that has been rendered in the past certain conditions have been put forth. The case of the respondents is that the upper age limit for recruitment of SAML is 18 to 25 years and the upper age limit could be relaxed by 5 years for SC/ST candidates and not for others. At the time of initial engagement in the year 1994 the applicant was 33 years and at the time of second engagement in the year 1997 he was 36 years old. This fact cannot be disputed relying on R2(1) OM dated 7.6.1988 on the subject of recruitment of casual workers and persons on daily wages - review of policy clause (x) which states that "The regularisation of the services of the casual workers will continue



to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post."

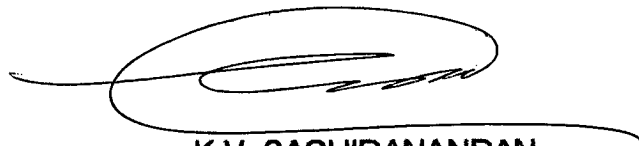
10, It appears that the respondents are canvassing for a position of the conferment of temporary status with regularisation in Group-D. The scheme itself is for conferment of the temporary status and regularisation in group-D. The scheme for SAML is modified version of the original scheme issued by the Ministry and on going through the scheme I am of the view that nowhere in scheme any embargo has been fixed for conferment of the temporary status with respect to the age. When it comes to the question of regularisation as a Group-D employee definitely the age restriction has to be looked into. Even though conferment of temporary status is a prelude for ultimately granting regularisation in a Group-D post, these two status are different in its level and are different concept. When a person is absorbed in Group-D post he becomes a permanent employee of the organisation with all attendant benefits whereas in the case of a temporary status attained by an employee he is altogether in a different footing i.e., slightly on a higher pedestal than that of a Casual Labourer. Therefore these two status of an employee cannot be equated as one. The scheme envisages that for absorption in a Group-D post, the age restriction is a condition precedent but not in the case of granting temporary status. The learned counsel for the applicant also brought to my notice the decision reported in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation (1990) SCC (L&S) 174 and canvased that once appointments were made as daily rated worker and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them confirmation in the respective post on the ground that they lack the prescribed educational qualification. On going through the entire scheme Annexure A4 read with Annexure R2(1) I am of the considered view



that there cannot be an embargo for conferring temporary status to the applicant on the basis of age restriction which is not governed by the scheme. Since the applicant is qualified to be considered for the temporary status by engagement of the requisite number of days, he is entitled to conferment of temporary status but at the same time it would be clear that as per the scheme the applicant is not entitled for ~~temporary status and~~ appointment as a Group-D. What the applicant aspires is for conferment of temporary status which he is eligible.

11. In the conspectus of the facts and circumstances of the case, I am of the view that the applicant is entitled to conferment of temporary status but not regularisation to Group-D post, from the appropriate date in which he has completed the required number of days notionally with no arrears of wages. I make it clear that he will not be entitled for the benefit of appointment in a Group-D post. The respondents are directed to pass appropriate orders within a time frame of three months from today. The O.A. is allowed to the extent indicated above, in the circumstances with no order as to costs.

Dated the 29th July, 2005.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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