

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 257 of 2009

Thursday, this the 25th March, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

V. Jayan, aged 47 years, S/o. Varghese,
Watchman, 29 P&S (U), Indian Air Force,
Suraksha Complex, Thuruvikkal PO,
Trivandrum 31, Residing at 'TC 6/290',
Chala Chakkara Puthen Veedu, Karimankulam,
Vattiyoorkavu PO, Trivandrum.

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Applicant

(By Advocate – Mr. Sreeraj for Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by 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, 29 P&S (U), Indian Air Force, Suraksha Complex, Thuruvikkal PO, Thiruvananthapuram-31.
4. The Senior Administrative Officer, 17, FSB, Indian Air Force, Air Force Station, Beach Post Office, Thiruvananthapuram.

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Respondents

(By Advocate – Mr. Subhash Syriac, ACGSC)

This application having been heard on 18.3.2010, the Tribunal on

25-03-10 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member –

This Original Application has been filed by the applicant for a

direction to the respondents to regularize his service as Group-D Watchman with effect from the date he was appointed as Watchman in the year 1998.

2. To state the facts of the case briefly, the applicant was engaged as a Seasonal Anti Malaria Lascar (in short SAML) on 16.5.1994 by the respondents on being sponsored by the employment exchange. Respondents introduced a scheme to grant temporary status and for regularization of SAMLs in the year 1997. As per the scheme the applicant was appointed as a Watchman against the available Group-D post with temporary status in the year 1998. As he had completed 600 days in four consecutive years he should have been regularized but he was not regularized. Hence, the OA.

3. Applicant submits that he has satisfied all the conditions for regularization as a Group-D employee. He was sponsored by the employment exchange. He has requisite number of days of service. He has been granted temporary status. He was well within the age of recruitment as Group-D for SC/ST candidates at the time of his initial engagement. The post against which he was posted continuously exists. It is totally unjustified not to regularize him and not to pay the allowances attached to the post.

4. The respondents opposed the OA. They submitted that although the applicant was sponsored through the employment exchange he was over aged by two years and one month over the maximum permissible limit of 30 years in SC category. On his appointment as Watchman a proposal was sent

to the headquarters of Southern Air Command for necessary approval. However, it was rejected on the ground that the applicant's case was not covered under the SAML policy and therefore he could not be regularized as he was overaged by two years and one month at the time of initial appointment as SAML.

5. Arguments were heard; documents perused.

6. The scheme for granting temporary status and regularization to SAMLs came into force on 2.5.1997. As the applicant was eligible for conferment of temporary status he was granted the same. The relevant part of the scheme for filling up Group-D posts is extracted as under:-

"PROCEDURE FOR FILLING UP GP 'D' POSTS

4. 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."

7. The only bone of contention is age relaxation to the applicant. Under

the scheme age relaxation equivalent to the period for which the SAMLs worked continuously as SAMLs can be granted for the purpose of regularization against a Group-D post. Although selection for filling up Group-D posts by SAMLs is to be done by following due procedure and in accordance with recruitment rules and subject to medical fitness and verification of antecedents etc. in the matter of age, relaxation is allowed. A plain reading of the condition governing age relaxation makes it unambiguously clear that there is no upper limit for age relaxation. The only condition governing age relaxation is that it should be equivalent to the period for which the eligible persons worked continuously as SAML. In the case of the applicant it is stated that he is overaged by two years and one month, i.e. 760 days. The applicant has been with the respondents since 16.5.1994. His initial engagement expired on 31.10.1994. In the year 1994 he had 168 days of continuous service as SAML. He had continued as SAML till 17.3.1998 when he was granted temporary status. The applicant is still a temporary status attained SAML with the respondents. If the applicant was overaged by two years and one month at the time of his initial engagement it should not come in the way of granting age relaxation as per the procedure for filling up the Group-D posts with SAMLs with temporary status. In order to be within the age limit all that he needs is age relaxation of 761 days. As per the condition governing age relaxation the day he attained 761 days of continuous working as SAML although in different spells of years on account of the seasonal nature of the work, there is no reason not to regularize him. The said scheme is a beneficial scheme to regularize SAMLs. The terms and conditions of a benevolent scheme are to be

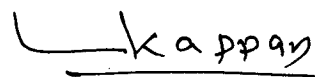


interpreted and applied in a positive manner to achieve the objective of the scheme. The scheme does not provide that at the time of initial engagement as SAML a person should be within the age limit for recruitment as a Group-D employee. In the case of a SAML, who attains temporary status with 600 days of work in the four consecutive years he can be given age relaxation equivalent to the period for which he worked continuously as SAML for the purpose of regularizing his appointment as a Group-D employee. The applicant needs 760 days of age relaxation. There is nothing in the scheme which stands in the way of granting him regularization as a Group-D employee on the 761st day of his continuous work as SAML.

8. Hence, the OA is allowed with a direction to the respondents to regularize the applicant on the Group-D post against which he is posted now as SAML with temporary status, granting him age relaxation to the extent that is required as indicated above and grant him from the date of regularization all consequential benefits including arrears of salary. This order should be implemented within two months of receipt of a copy of the same. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER