CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 625/01, 626/01, 627/01 & 628/01.

Dated this 19th the day of March, 2003.

CORAM : Hon'ble Shri Govindan S. Tampi, Member (J).

Hon'ble Shri K. V. Sachidanandan, Member (A).

1. Shri Viswanath Ramji Lohakare,
At Village - Lohavit,
Taluka & Dist. Nasik.

2. Shri Raju Hiraman Katare,
221, Rest Camp Road,
Dalit Co-Operative Society,
Deolali, Nasik.

... Applicants in O.A.No. 625/01.

3. Shri Balu Bhudaji Supe,
At & Post : Lahavit,
Tal. & Dist. Nasik,
Maharashtra.

... Applicant in O.A.No. 626/01.

4. Shri Vilas Popat Borade,
Lamb Road,
Behind Bhairav Temple,
Deolali Camp,
Dist. Nasik, Maharashtra.

... Applicant in O.A. No. 627/01.

5. Shri Dyaneshwar Rajaram Patole,
Post : Shenit,
Village : Loh Shingre,
Tal. & Dist. Nasik,
Maharashtra.

... Applicant in O.A. No. 628/01.

(By Advocate Shri K. Babu Rajan)

VERSUS

1. Union of India (through)
The Secretary,
Ministry of Defence,
New Delhi.

2. The Chief Air Staff,
Air Headquarters,
Vayu Bhavan,
New Delhi.

3. Air Officer Commanding-in-Chief, Maintenance Command,
I.A.F., Nagpur.

4. Air Officer Commanding,
No. 25, Equipment Depot,
Air Force Station,
Deolali - 422 501.

... Respondents in all the four O.As.

(By Advocate Shri R. R. Shetty)

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O R D E R

[Per: Govindan S.Tampi, Member(A)

This combined Order disposes of four Original Applications filed by individuals similarly placed and seeking identical reliefs. They were also heard together through common counsel Shri K.V.Rajan for the applicants and Shri Ravi R. Shetty for the respondents.

2. The reliefs sought for in the OAs. are as follows:

(a) This Hon'ble Tribunal be pleased to allow to file this single/combined O.A. as the cause of action and nature of relief are common and against same respondents.(Only in OA No 625/2001).

(a) (i) The records and proceedings relating the appointments of Seasonal Anti-Malaria Lascars under the Respondent No.4 from the year 1990 till 2001 be called for.

(b) On perusal of the said records, this Hon'ble Tribunal be pleased to order and or direct the Respondents to appoint and or deemed to have appointed the Applicants from such consequent year after the very first year of their appointments and or also from the year the next immediate junior Seasonal Anti-Malaria Lascar of the applicants came to be appointed under the Respondents No.4, i.e. presumably in the year 1991, within a limited period as deemed fit and proper.

(c) The Respondents be directed and or ordered that no fresh candidate be appointed Seasonal Anti Malaria Lascar until after the Applicants are appointed next, considering their initial appointment for all eligibilities of age relaxation and other criteria, which all exercise be completed within a prescribed period not exceeding one month.

(d) This Hon'ble Tribunal be further pleased to order and or direct that the applicants be deemed to have been appointed as Seasonal Anti-Malaria Lascars from the date their next immediate junior Seasonal Anti-Malaria Lascars came to be appointed, for further purposes of seniority and absorption.

(e) This Hon'ble Tribunal be further pleased to pass an order and or direction to grant all other consequential reliefs including monetary benefits as counted from the above deemed date of their appointments as Seasonal Anti-Malaria Lascars.

(f) Any other order or direction be passed in the interest of justice under the facts and circumstances of the case as law and equity demands.

(g) The cost of this application be granted in favour of the applicants.

3. Shri V.R.Lohakare and Shri R.H.Katare, applicants in OA.625/01 were initially employed by respondent No.4 i.e. Air Officer Commanding, Air Force Station, Devlali as Seasonal Anti Malaria Lascar (SAML) on being sponsored by the Employment Exchange during May to June 1990. After their initial appointments were over, they were called for such appointments for all subsequent years till the year 2000. But for one or other unsustainable reasons, they came not to be employed but fresh faces were inducted in place, which was clearly against the law as laid down by the Tribunal in O.A.No.656/1988 in respect of similarly placed SAMLs. They had been told during the previous interviews that they were not being considered as their seniors were available, which they took to be bonafide reason in the beginning as they could not have it cross verified. During the interview for the year 2000, they were promised that by any chance, they will be appointed as SAMLs during 2001 as some of the seniors had already been absorbed as regular employees or in the process of being so regularised. But to their shock and surprise they have found that even they were not being called for the interview in spite of acute shortage of Anti-Malaria Lascars for performing the duties. They came to know subsequently that some of the juniors had even been regularised on extraneous consideration whereas those posts could have been filled by the applicants in terms of the respondents own accepted policies.

The above amounted to misreasons and malfeasance and flagrant violations of Administrative Instructions which has lead them to come before the Tribunal.

The grounds raised in these OAs are that:

(i) The appointment of fresh faces by the respondents excluding the applicants was illegal and erroneous.

(ii) Once having been appointed initially in 1990, on being sponsored through the employment exchange, they could not have been subjected to further inteviews thereafter.

(iii) Rejections of the applicants on alleged grounds of over-age for such similar matter was clearly illegal, as they were well within such limit at the time of their initial engagement.

(iv) Respondents were wrong in holding on promises in each of the interviews that their case would be considered during the next season so as to placate and deceive the applicants moving in any legal action.

(v) Respondents have violated the policy in respect of employment of SAMLs laid down by the respondents themselves in the letter No.MC/5901/SAML/PC dated 6th September, 1997 and the decision of the Tribunal in O.A.No.656/98. The action of the respondents in not providing appointment to the applicant was in clear violation of the administrative instructions and against national and public interest. In the circumstances, the applicants plead that the Tribunal should intervene in the matter and do them justice.

Identical pleas have been raised by the applicants in OAs. 626/2001, 627/2001 and 628/2001 as well.

4. During the oral submissions before us, the learned counsel for the applicants referred to letters No.Air HQ/23064/28/1/AML/PC-4 dated 6th Sept. 2000 whereunder, it has been indicated that the total deficiency of permanent Anti Malaria Lascars (AMLs) in various Air Force Units which had to be rectified and directed for even regularisation of AMLs against Group D vacancies. He also brought our attention to letter

issued by Air Headquarters dated 21.8.1997 which laid down the procedure to be followed in respect of the same subject. The same reads as follows:

"2. Subsequently, in pursuance of the judgements of the Hon'ble Courts and with the approval of the Ministry of Defence, the following directions were given with regard to the employment of Seasonal Anti-Malaria Lascars vide this HQ letter of even number dated 16 Dec. 1994.

(a) All AF units to prepare a notional seniority list of those who are engaged as Anti-Malaria Lascars on sponsorship through the Employment Exchange.

(b) There is no need to approach Employment Exchange every time if an Anti-Malaria Lascar is to be engaged for performing duties of casual/Seasonal nature. Once an AML has been sponsored through Employment Exchange, he can be engaged next time without sponsorship through the Employment Exchange.

(c) All Command HQs/AF Units, where applicable, have to offer the post of Seasonal Anti-Malaria Lascar to those who are on the notional seniority list for engagement by addressing letters by the 2nd week of April each year and those who are interested in working have to report before the concerned authority on the dates specified for considering the medical fitness and good conduct. The names of those who are not found to be of good conduct can

be deleted from the seniority list by making a note in the confidential book as to why such a candidate is not found to be of good conduct so that it can be produced before the Tribunal/Court if the denial of appointment is challenged. In case the casual labourers/AMLs who had been engaged earlier are not available or are not willing to take up the job, the concerned Command HQ/AF Units are to appoint new candidates after calling for a fresh candidates from the Employment Exchange, in accordance with the Rules and Regulations.

3. have been, of an on, seeking legal remedies for absorption in IAF. The point has also been Conferences.

4. As a sequel to the Court-Judgment and in consultation with HQO/DOP&T a separate set of norms have been designed to 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 regularization against a regular vacant Group D post.

5. In consultation with the Ministry of Defence general instructions on the norms for adjustment of SAMLs and the detailed modalities therefore have been formulated. These are in the forms of a scheme called 'Seasonal Anti-Malaria Lascar (Grant of Temporary Status and Regulation) Scheme of IAF 1997'. A copy of the scheme is enclosed.

6. The contents of the scheme may kindly be disseminated down the line and necessary action taken to implement the same. Under this scheme, some of them will become eligible for grant of temporary status and to that extent the vacancies existing in some of the critical Group D categories such as catering staff, Lascars, Safaiwalas etc. could be filled up in the units leading to a better manning position in the critical civilian trades in IAF.

7. While implementing the scheme the following may specially be kept in view:-

(i) This scheme is applicable to Seasonal Anti-Malaria Lascars in the Employment of IAF.

(ii) The Scheme has already come into force wef 02 May 9.

(iii) While implementing the scheme the guidelines laid down in para 4 of Scheme may specially be kept in view.

(iv) While the final orders for grant of temporary status can be issued by Command HQ, the regularization against Group "D" vacancies will be issued only after obtaining final approval from Air Headquarters. For obtaining the approval of this HQs, a self contained statement of case along with the Board proceedings will have to be forwarded through staff channel.

(v) The guidelines laid down above, be followed in letter and spirit. Violation of the guidelines shall be viewed very seriously and attention of the appropriate authorities should be drawn to such cases for suitable disciplinary action against the officers violating those instructions.

(vi) The power to make amendments or relax any of the provisions above that may be considered necessary from time to time have been vested only in the Ministry of Defence."

Learned Counsel

He further pointed out that the applicants having been employed initially in 1990, having been sponsored by the Employment Exchange and placed in the notional seniority list they should have been appointed year after year, when the Seasonal Anti Malaria work started without subjecting them to any further interview. The only grounds on which the same could have been denied was on grounds of bad conduct, or ill health. The respondents have not raised these issues and there is no reason

why the applicants should not have been granted the benefit of reappointment as required. The decision of this Tribunal in OA Nos. 462/02, 463/02, 464/02, 465/02, 466/02, 484/02, 492/02 & 493/02 dated 30.12.2002 on identical issues also cover the case of the present applicants before us as well, pleads Shri Rajan.

5. Strongly reiterating the points raised on behalf of the applicant, Shri R.R.Shetty, learned counsel for respondents point out that the applications have no merit. The applicants in OA No.625/01 have been appointed only from May to Nov. 1990 and have not been appointed thereafter. That being the case, it was not at all clear as to how the applicants could make out a case for regularisation, by these belated OAs. The OAs. are, therefore, hit by limitation. He pointed out that six SAMLs have been given preference on account of the fact that they have approached the Tribunal in OA 656/1988 which is decided in their favour. The present applicants had been keeping quite all the while. Further, the scheme for regularisation of Anti Malaria Lascars formulated by the Air Headquarters and sought to be relied upon by the applicant, dealt with grant of temporary status to AMLs who have completed 165 days of work in two consecutive years. The applicants have not worked beyond 1990 and cannot seek any benefit out of the above. More so as the Scheme was on 21.8.1997 and they were not in position at the time when the Scheme was promulgated of the two applicants in OA 625/01 Shri Lohakare had worked in 1990 but did not attend the interviews conducted by the Board of Officers during 1991, 1994 and 1996 but attended the interviews in 1992, 1993, 1995, 1997, 1998, 1999

and 2000 but he could not be placed in the merit lists for appointment. Similarly was the position of Shri Katare the other applicant. These applicants did not satisfy the conditions of the OM dated 21.8.1997 issued by the respondents and they cannot, therefore, claim grant of regularisation. It is, true that after 1994, the claims of the applicants were placed in the notional seniority list but the applicants have not either appeared for interview or have not been selected. That being the case, they cannot claim reinstatement, grant of temporary status, regularisation etc. The recruitment process in respect of Lascars are taking place after following the strict procedure which cannot be called unsustainable. The applicants during subsequent occasions of interviews were found over aged and could not therefore, be called for the interview. The respondents also feel that the applicants cannot be reengaged as they have become overaged and therefore, they cannot have any vested rights. Shri R.R.Shetty also invited our attention to Air Headquarters letter dated 16.12.1994 The applicants in OA Nos. 625/01 have been appointed only which laid down the specific procedure which did not occur in the case of the applicant. As they were not in position on 16.12.1999. The benefit of any particular Scheme shall be available only to those who are in position in Govt. Service when the guide lines are notified and the applicants could not have asked for anything more.

6. We have carefully considered the matter. The plea of the applicants is that having been given appointment in 1990, and having thus entered in the notional seniority list, they

should have been considered for appointment year after year following the view adopted by another Bench of this Tribunal by the following words:

> "9. As now the season is over, we dispose of the OAs with direction to the Respondents that for the season commencing on 01.06.2003 and thereafter every season, till the instructions remain in force the applicants who are on notional seniority list be noticed in the second week of April, 2003, and even thereafter, every year regarding their willingness and their case should be considered only on the lines mentioned in letter dated 21.08.1997 (OA. page 17). No order as to costs."

However, we find from the perusal of the notional seniority list of all those who were engaged from 1990 onwards, many of them have not been so engaged from after 1990 for years. Applicants in OA.625/01 Shri V.R. Lohakare is at Sr. No.5 and Shri R.H.Katare is at Sr.No.3. Applicant in O.A.No.626/01 B.B.Supe is at Sr.No.12, applicant in O.A.No.627/01 V.P.Borade is at Sr. No.23 and applicant in O.A. No.268/01 Shri D.R. Patole is at Sr.No.2 . None of the has worked for more than one year, during the entire period. Shri Katare, Lohakare and Patole were engaged only in 1990, B.B.Supe in 1991, and Shri V.P.Borade in 1994. They have not thereafter been engaged because they were not found fit and or because they were over aged during the interviews in subsequent years. That being the case, the applicants cannot take the plea that they are entitled for regularisation. If They had any genuine grievance that their cases were actually were not considered in

subsequent years on account of any irregularity committed by the respondents it was for them to come up in O.A. before the Tribunal in time which they have failed to do. Their cases, therefore suffer on account of laches and limitation. The fact that in earlier O.A.656/88 certain benefits were extended to certain similarly placed individuals does not alter the situation as far as the applicants are concerned. We do find that the Airheadquarters have formulated schemes in respect of the SAMLs but the Scheme came to be formulated in 1994 and thereafter further instructions were issued in 1997. Benefits of the said Scheme would not at all come to the assistance of the applicants as they were not in position when the Scheme was formulated. In terms of Hon'ble Supreme Court's judgement in UOI & Anr vs. Mohan Pal and Others [2002 SCC (L&S) 577] they cannot claim any benefit from the scheme as they were not at all in position when the Scheme was formulated in 1997. The Orders passed in general terms by this Tribunal in a host of few other OAs relied upon by the applicant would not come to their help as they relate to the cases of individuals who were not in the same notional seniority list as the applicants earlier.

7. In view of the above, it is clear that the applicants have not made out any case for the interference of the Tribunal. The same fail and are accordingly dismissed.

8. We also direct that a copy of this Order be placed in all the concerned OA file. OA.625 to 628/01.

(K.V. Sachidanandan)
Member(J)

(Govindan S.Tampi)
Member (A)

sj*