

CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH  
JABALPUR

O.A.No.352/2003  
with  
O.A.No.332/2003

Hon'ble Sh. Sarveshwar Jha, Member (A)  
Hon'ble Sh. G. Shanthappa, Member (J)

Jabalpur, this the 5th day of November, 2003

O.A.No.352/2003:

1. Lalit Kumar
2. Mahadeo
3. Tikam Chand
4. Jham Singh
5. Ramraj Nirpure
6. Prashant

For addresses of the above  
applicants see memo. of  
parties of the OA.

.. Applicants

(By Advocate: Sh. P.N.Dubey)

Vs. Union of

Union of India & Others  
(As per memo. of parties) ... Respondents

(By Advocate: Sh. Om Namdeo)

with

O.A.No.332/2003:

1. Ashok Patel
2. Durga Prasad
3. Uttam

(As per memo. of parties) .. Applicants

(By Advocate: Sh. P.N.Dubey)

vs.

Union of India & Others  
(As per memo. of parties) ... Respondents

(By Advocate: Sh. Om Namdeo)

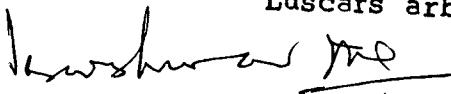
O R D E R (Oral)

By Sh. Sarveshwar Jha, Member (A)

Heard. As the cause of action and the reliefs  
sought in the aforesaid OAs are identical, we hereby  
dispose of the same by this common order.

2. While the applicants have not challenged any particular order, they have prayed for directions <sup>being</sup> issued to the respondents that they appoint seasonal Anti-Malaria Lascars (SAML) for the season commencing from 1.6.2003 purely on the basis of seniority in the register and experience subject to medical fitness of the candidates and not on the basis of the practice of pick and choose and to honour the judgements of this Hon'ble Tribunal and Hon'ble High Court delivered in OA No.443/2001 and Writ Petition No.5903/2001 respectively. They have also referred to the law laid down by the Hon'ble Supreme Court as reported in AIR 1997 SC 2698, according to which, seasonal labourers should be appointed on the basis of seniority maintained in the register.

3. The facts of the matter, briefly are that the applicants have been working since 1990 season, and have worked for some seasons. They appeared to have been ignored and fresh candidates appointed in subsequent seasons and accordingly they filed OA 611/91 which was decided on 27.7.1991. In the said decision, the Tribunal had spelt out that the seasonal labourers like the present applicants should be appointed on the basis of seniority and due weightage should be given to the experience gained by the applicants. The applicants have alleged that the respondents had been selecting/appointing Seasonal Anti Malaria Lascars arbitrarily even after the said

  
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decisions of the Hon'ble Tribunal and accordingly they approached the Hon'ble High Court vide Writ Petition No.5903/2001 which was decided on 7.3.2002 (Annexure A4). They have referred to the commitment given by the respondents while filing reply in OA No.384/2000 which was disposed of on 20.5.2003 in which the respondents categorically admitted that they would be considering the cases of AML on the basis of seniority (Annexure A5). But the respondents are still alleged to have been following extraneous considerations while selecting the junior persons as SAML. They have further alleged that some of these workers had been employed as domestic servants by the officers.

4. The respondents in their reply have submitted that a total of 13 candidates in the main merit list and another 10 candidates in the standby merit list were selected through a duly constituted Board of Officers (a statutory selection committee) for employment as Seasonal Anti Malaria Luscars (SAML) for the financial year for a period of six months from June 1, 2003 to November 30, 2003. Out of 13 candidates, 12 candidates were the candidates of the notional seniority list maintained at the Depot/Department. On Physical Ability Test conducted by the selection committee, applicants No.1 to 5 were unanimously rejected by the selection committee and Applicant No.6, though a main candidate in the main merit list, was declared medically unfit and as a result he could not be selected. They have further submitted that the candidates of notional seniority list were definitely given preference in selection

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for employment of SAML, but about half of them failed in the physical ability test. They also failed to submit their documents regarding minimum educational qualification, date of birth and caste/category. As a result, due to non-availability of suitable candidates from notional seniority list, in terms of physical fitness, medical fitness, and due to non-production of necessary documents at the time of interview, fresh candidates from the current Employment Exchange list were considered by the selection committee for employment as SAML for the relevant financial year(Annexure A-1). They have argued that the case of the applicants has become irrelevant due to the fact that the applicants have failed, as mentioned above; in their opinion, Annexure A2 to the OA has also become irrelevant to the fact at issue.

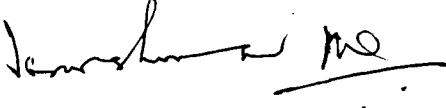
5. The respondents have given parawise replies and have given position with reference to the directions of the Hon'ble High Court and the Hon'ble Supreme Court in the cases as referred to at the very outset. Some of the replies are relevant and some are not. They appear to have maintained that the candidates who got deregistered in the Employment Exchange have should themselves ~~see~~ that they were re-registered so that they did not suffer the risk of not being sponsored subsequently. They ~~have~~ confirmed that they ~~have~~ maintained notional seniority list

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of the candidates and suitable candidates are selected from the said list by giving due weightage to and consideration for their experience.

6. On the question of why a physical ability test in the nature of rigorous physical ability test as is required in the case of personnel employed by the police organisations or forest organisations or similarly placed organisations involving such duties as would require a special kind of physical ability test, the respondents had no satisfactory reply. They did not appear to be familiar with the job requirements of the SAMIs necessitating the special kind of physical ability test and they were not in a position to reply satisfactorily.

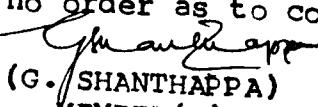
7. The allegations of the applicants being that this method of physical ability test was adopted only to reject the applicants, it was important to have a satisfactory reply on this subject from the respondents. They were also not very sure on whether such tests had always been held in the past or it was held only for the first time. They, therefore, were also quite categorical on the allegations of the applicants regarding extraneous considerations being applied to the process of selection of these workers. Reply of the respondents both in the written counter reply as well as in their oral submissions was in the affirmative on the question of whether they have <sup>com</sup> plied with the directions

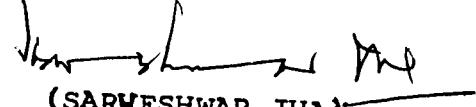
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of the Hon'ble High Court and also the Hon'ble Supreme Court as referred to hereinabove in the matter of considering SAMLS on the basis of seniority list maintained by them and considering their experience.

8. Keeping in view the facts and the circumstances of the case and also in view of the fact that already very detailed directions have been given by this Tribunal, Hon'ble High Court and the Hon'ble Supreme Court and after hearing the learned counsel of both sides, and perusing the materials available on record, we are of the considered opinion that the aforesaid OAs can be disposed of, partly allowing it, with directions to the respondents to reconsider the case of the applicants with reference to whether there is a need to subject them to the kind of physical ability test to which they have been subjected to. While considering them for employment during the season for the financial year ending 2003. They are further directed to go into this question with reference to the job requirements of SAML and proper physical ability test as distinct from medical test being carried out in respect of them. The respondents shall dispose of the matter by issuing a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.

9. With this, OA 352/2003 and OA 332/2003 stand disposed of in terms of the above directions with no order as to costs.

  
(G. SHANTHAPPA)  
MEMBER (J)

  
(SARVESHWAR JHA)  
MEMBER (A)

/rao/