

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 210/00615/2015

Dated this Tuesday, the 12th day of March, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
R.N.SINGH, MEMBER (JUDICIAL)

Shri Sunil Dhondiram Salve,
 S/o Dhondiram Salve,
 Age : 51 years (D.O.B : 25.04.1964),
 Working as Air Officer, Commanding No.25,
 Equipment Depot, Air Force Station,
 South Devlali 422 501 &
 Residing at : 125, Dr. Ambedkar Chawk,
 At and post P.O. Bhogur, Taluka
 District : Nashik 422 401. **Applicant**
 (By Advocate Ms. Vaishali Agane)

VERSUS

1. Union of India, through The Secretary,
 Ministry of Defence, South Block, New Delhi 110 001.
2. The Chief of Air Staff, Air Headquarters,
 Vayu Bhavan, Re BE Marg, New Delhi – 110 106.

3. Air Officer Commanding,
 Air Officer Commanding No.25,
 Equipment Depot, Air Force Station,
 South Devlali 422 501.. **Respondents**

(By Advocate Shri R.R.Shetty)

Reserved on 15.02.2019

Delivered on 12.03.2019

O R D E R

Per: Dr. Bhagwan Sahai, Member (Administrative)

Shri Sunil Dhondiram Salve filed this OA on 05.10.2015 when he was working as Air Officer, Commanding No.25, Equipment Depot, Air Force Station, South Devlali,

district Nashik. In this OA, the applicant seeks quashing and setting aside of the impugned order dated 15.04.2015 (Annex A-1) along with all consequential benefits of seniority, promotion, increments, arrears of pay and declaration that the applicant is legally entitled to be regularized in service from the date of his initial appointment. Alternatively, he seeks declaration that he is entitled for regularization from the date of regularization of other similarly situated employees and direction to the respondents to regularize his service accordingly. He also seeks cost of this OA.

2. Brief facts :

2(a). The applicant has stated that he was called for an interview by the respondents on 22.03.1994 for the post of Anti Malaria Lascar. On that day, he was below 30 years of age (29 years 11 months) and was qualified for that appointment. However, the respondent No.2 i.e. the Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi issued the appointment order on

19.05.1994 as Anti Malaria Lascar on temporary basis and continued him up to 15.11.2002, it has been stated by the applicant.

2(b). It has been mentioned by the applicant that the order dated 25.03.2003 passed by the respondent No.2 stating that the applicant was initially engaged as Seasonal Anti Malaria Lascar (SAML) beyond maximum age limit and he was not eligible for regularization contrary to the settled law.

2(c). The applicant further claims that he filed OA No.644/2003 for declaration that he was within the upper age limit on the date of interview on 22.03.1994 for the post of Anti Malaria Lascar. The Tribunal in its order mentioned that the date of birth of the applicant was 25.04.1964 and he was appointed for the first time on 19.05.1994 after the interview on 22.03.1994 and thus, it was clear that the applicant was beyond 30 years of age on the date of his first appointment.

2(d). As per the Recruitment Rules, a

person cannot be appointed to a Group 'D' post unless he is 30 years of age or less on the date of appointment and that merely because he was granted temporary status, he cannot be regularized against the scheme and *de hors* the Recruitment Rules.

2(e). The applicant claims that his appointment was made through employment exchange, Government of Maharashtra and his name was forwarded to the respondent No.1 and services of many other employees appointed along with him has been regularized but his service has not been regularized as he had become older than 30 years of age on the date of his appointment i.e. on 19.05.1994.

2(f). Subsequently, the applicant filed Writ Petition No.8260/2004, which was decided by the High Court on 25.11.2004 mentioning in the order that in the facts and circumstances of the case, we are of the opinion that this is a fit case to direct the respondents to waive the age bar and accordingly we direct the respondents to consider the case of the petitioner for

regularization by waiving the age bar and take appropriate decision within a period of four months (Annex A-2, page no.18 and 19 of the OA).

2(g). The applicant has further stated that since the respondents did not comply with the decision of the High Court, he filed a Contempt Petition which was withdrawn by him on 03.08.2006 after receipt of the order on 27.04.2006. By this order dated 27.04.2006 (Annex A-3), the applicant (temporary status with effect from 15.05.2000 to 15.11.2002) on seasonal basis has been absorbed on a regular vacancy of watchman in the pay scale of Rs.2,250-3,200/- subject to medical fitness, police verification. Date of appointment on regular basis will be effective from the date of joining. At the end of that letter, it was also mentioned that 50% of his service rendered under temporary status will be counted for the purpose of retirement benefits. The applicant again filed a Writ Petition No.5806/2010 in the High Court which was withdrawn on 19.10.2010 with

liberty to adopt appropriate remedy.

2(h). Thereafter, he again filed OA No.488/2011 stating that his service had been regularized but he had not been given all the benefits. It was dismissed on 26.07.2011 directing him to approach first the appropriate authority (Annex A-5, page no.28 and 29). Accordingly, the applicant wrote a letter on 28.09.2011 to the respondent No.3 and also sent a reminder on 24.11.2011. However, he claims that he did not receive any reply to the letter.

2(i). Then the applicant again filed OA No.172/2012 which was decided on 21.01.2015 (copy as Annex A-6) directing the respondents to reconsider the case of the applicant and examine his suitability as per the criteria in paragraph No.4(ii) of the scheme mentioned in Air Headquarters' letter dated 21.08.1997 and to take an appropriate decision in the matter. Thereafter, the respondents issued the order dated 15.04.2015, which is impugned in the present OA. The applicant claims that this order is absolutely arbitrary, capricious, illegal,

unconstitutional and it has been passed in violation of the direction of the High Court.

2(j). The applicant has claimed that another candidate Shri R.M.Kate initially appointed along with the applicant in 1994 has been regularized in service from the year 2000 and, therefore, the applicant is also entitled to be regularized for the service from 2000. He has further mentioned that as per the above policy of Air Headquarters, one Shri N.T.Korde was SAML during 15.05.2002 to 15.11.2002 as causal labour and in 2004, he has been appointed on the regular post of Lascar, although he was not sponsored by the Employment Exchange, Nashik.

2(k). As per the policy in Air Headquarters' letter dated 21.08.1997, the applicant is entitled to grant of temporary status from 1999 as he has worked continuously from 15.05.1998 to 15.11.1998 and from 19.05.1999 to 15.11.1999 and thus, he is entitled to be regularized in his service from 2001. Therefore, he has filed

this OA.

3. Contentions of the parties :-

The applicant has contended that -

3(a). on the date of interview held on 22.03.1994 for the post of Anti Malaria Lascar, he was below 30 years of age and was fully qualified. Although the respondent No.2 issued the appointment order on 19.05.1994 appointing him as Anti Malaria Lascar on temporary basis, he was continued in the said capacity up to 2002. In view of this, the impugned action of the respondents is *mala fide*, arbitrary, violative of Fundamental Rights and equality before law, non-regularization of his service with effect from the date of similarly situated employees is in violation of the High Court order dated 25.11.2004;

3(b). as per the Air Headquarters' Policy in letter of 21.08.1997, the applicant is entitled for regularization with effect from 15.11.2002 after completing 650 days in the previous last four consecutive years;

3(c). during the year 1995, 1996 and 1997, he was not engaged by the respondents

and in the Writ Petition No.8260/2004, the High Court in its order of 25.11.2004 had held that the petitioner had rendered service for more than eight years and he is liable to be considered for regularization along with others similarly situated employees and that's why the respondents were directed to waive the age bar and consider the applicant's case for regularization.

3(d). Therefore, regularization of his service from 27.04.2006 instead of from the date of initial appointment or from the date of regularization of other similarly situated employees is illegal and arbitrary and the impugned order of the respondents dated 15.04.2015 should be set aside. From 1999, he was having temporary status as Anti Malaria Lascar employee, he had completed 650 days from 15.05.2001 to 15.11.2001 (para 8 of his rejoinder, page no.65 to 68). In view of this, OA should be allowed and his services should be regularized from 2001.

The respondents have contended that -

3(e). the applicant has been working with the Equipment Depot, Air Force Station, Devlali as a Watchman Group 'C' (erstwhile Group 'D' Civilian employee) with effect from 27.04.2006. He was initially engaged as Seasonal Anti Malaria Lascar (SAML) on casual and daily wages basis from 19.05.1994 to 15.11.1994. In the year 1995, 1996 and 1997, he could not be engaged due to low merit and he got engaged again as SAML from 1998 to 2002 for the periods of six months on causal and daily wages basis;

3(f). as per the Government policy for SAML issued on 21.08.1997, he was granted temporary status of his service by order of 14.03.2000. In view of the above policy, the applicant's name was forwarded to Air Headquarters for regularization of his temporary service, but it was rejected because he had been initially engaged beyond the maximum age limit meant for his service;

3(g). with reference to the direction of the Bombay High Court in its order dated 25.11.2004 in Writ Petition No.8260/2004, the applicant was given relaxation in the

maximum age limit and sanction of the Government of India was granted for regularizing his service. Accordingly, his service was regularized with effect from 27.04.2006;

3(h). on being aggrieved, the applicant had earlier filed OA No.172/2012 for regularization of his service from the date of his initial engagement i.e. May, 1994. The case was heard and the OA was disposed of on 21.01.2015 directing the respondents to consider his case and to examine his suitability as per the criteria laid down in para 4(ii) of the scheme stipulated in Air Headquarters' letter dated 21.08.1997 and to take appropriate decision in the matter. Accordingly, the case of the applicant was thoroughly examined as per the criteria in para 4(ii) of the scheme and it was found that his case was devoid of merit and hence, this reasoned and speaking order was issued on 15.04.2015;

3(i). aggrieved by that speaking order, the applicant has again filed this OA for regularization of his service from the

initial date of his engagement i.e. 19.05.1994 or from the date of regularization of service of similarly placed other employees;

3(j). as per the stipulation of the Air Headquarters Policy and other applicable rules / instructions, whatever maximum is permissible has already been done in respect of the applicant by regularizing his service from 27.04.2006, and his earlier temporary service from 15.05.2000 to 15.11.2002 has been counted for the purpose of increment, leave entitlement. Retiral benefits have also been agreed for half of the temporary service rendered. Therefore, the OA is devoid of merits and should be dismissed;

3(k). from 19.05.1994 to 15.11.1994, the applicant had been engaged as SAML purely on casual and daily wages basis (excluding Sunday and holidays) and even at the time of interview for casual engagement from 22.03.1994 he was just below 30 years of age i.e. 29 years 11 months but on the date of his appointment on 19.05.1994, he was 30 years and 24 days old;

3(1). the applicant was not engaged at all during the years 1995, 1996 and 1997 and then he was engaged subsequently as per the details below :-

Sl. No.	date of Engagement	date of Termination
(i)	15 May 1998	15 Nov 1998
(ii)	19 May 1999	15 Nov 1999
(iii)	15 May 2000	15 Nov 2000
(iv)	15 May 2001	15 Nov 2001
(v)	15 May 2002	15 Nov 2002

from the above details, it is been the applicant was never appointed on any post, he was only engaged as Seasonal Anti Malaria Lascar (SAML) for a period of six months at a time purely on causal and daily wages basis and after completion of each six months period, his engagement was terminated;

3(m). as per para 4(i) and (ii) of SAML Policy 1997, 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 vacant Group 'D' post. Accordingly,

the applicant was granted temporary status with effect from 15.05.2000 to 15.11.2002 as per the approval of the Head Quarters IAF Maintenance Command Nagpur vide letter dated 14.03.2000 by considering the period of engagement of the applicant for more than 165 days in two consecutive years i.e. 1998 and 1999;

3(n). although the applicant was not eligible for regularization of service and he was not eligible for appointment as SAML being over-aged and at the time of initial appointment, in view of the direction in the High Court order dated 25.11.2004 in Writ Petition No.8260/2004 and with the approval of the Competent Authority at Air Headquarters, the applicant's service has been regularized with effect from 27.04.2006;

3(o). out of the other employees mentioned by the applicant i.e. Shri R.N.Kate was granted temporary status with effect from 15.05.1998 by considering his engagement during 1994 to 1997 i.e. in more than two consecutive years and further in

view of his engagement for more than 650 days in four consecutive years i.e. 1994 and 2000, he was absorbed in the regular vacancy as Lascar from 01.06.2001. Shri Nivruti Tukaram Korde was never engaged as SAML and he was appointed as Lascar from 01.04.2004 through direct recruitment process for reserved vacancy of Scheduled Tribe category and, therefore, these two cases are not similar to that of the present applicant;

3(p). in view of the direction of the Hon'ble High Court, in Writ Petition No.8260/2004 dated 25.11.2004, since the applicant had already been granted age relaxation for regularization of his service and appointment as Watchman from 27.04.2006, the present OA is barred by principle of *res judicata* as the applicant had already availed of all the benefits of relaxation in his maximum age limit in getting regularized from 27.04.2006 when he was appointed as Watchman on regular basis. Since the applicant did not meet the eligibility requirement as per the policy in letter of 21.08.1997, his service cannot be

regularized from his date of initial appointment in 1994. Therefore, the OA should be dismissed.

4. Analysis and conclusions :-

We have perused the OA memo and its annexes, rejoinder of the applicant, reply filed by the respondent and considered the arguments advanced by both of them on 15.02.2019. Based on consideration of all these, we conclude as follows :-

4(a). In para 4.10 of the OA (page 8), he claims that he is entitled to regularization in service in the year 2001. In para 4.11 of the OA, he has stated that he is entitled to be regularized from the year 2000. In the relief sought in para 8(b), he seeks regularization of his service from the date of his initial engagement in 1994. In para 17 of his rejoinder (page 71), he has claimed that he is entitled for regularization in service in the year 2001. From these contents of the OA, we also find that the applicant seems to be totally confused about the time from when he is seeking regularization of his service.

4(b). From the case record of the OA, it is clear that the present applicant has filed earlier three OAs (OA Nos.644/2002, 488/2011, 172/2012) and at least two Writ Petitions (WP No.8260/2004 & 5806/2010) in the High Court for almost the same cause of action i.e. for regularization of his service from the date of his initial engagement in 1994 as Seasonal Anti Malaria Lascar purely on casual and daily wages basis for a period of six months at a time.

4(c). As per the earlier directions of this Tribunal in OA No.172/2012 and the direction of the High Court in Writ Petition No.8260/2004 dated 25.11.2004, the respondents have already taken necessary action by regularizing his service from 27.04.2006 with appointment against a regular Group 'D' post of Watchman.

4(d). As per the SAML policy of the Air Headquarters contained in letter of 21.08.1997, {para 4(i) and (ii)} of Seasonal Anti Malaria Lascars, who had completed 650 days in the last four consecutive years in offices observing 06 days a week and 600

days in offices observing 05 days a week were eligible for regularization against vacant Group 'D' posts.

4(e). As explained by the respondents, after his engagement for six months from May to November, 1994, during subsequent three years the applicant was never engaged as SAML even on casual and daily wages basis. Therefore not only his claim for regularization, even grant of temporary status from May 1994 is misleading and was not justified. His claim in this regard is not acceptable. His engagement for the required minimum period of engagement as SAML was only during the period from 15.05.1998 to 15.11.2002. Based on his engagement for more than 165 days in two consecutive years (1998 and 1999), he has already been granted temporary status by order of 14.03.2000.

4(f). Subsequently, his service has also been regularized from 27.04.2006 by appointing him against a vacant Group 'D' post of Watchman. Even his earlier service has also been counted for other benefits by

the respondents. Also as explained by the respondents, cases of the two other employees mentioned by the applicant (Shri R.N.Kate and Shri N.T.Korde) were not identical to the case of the present applicant. Therefore, the contentions of the applicant in this regard OA are devoid of merit.

4(g). The impugned order of the respondents dated 15.04.2015 is very detailed and well reasoned. This order has also explained as to how as per the policy of Air Headquarters contained the letter dated 21.08.1997 and High Court decision dated 25.11.2004, he has been granted temporary status as SAML by order of 14.03.2000 and also has been appointed on regular basis against the vacant Group 'D' post of Watchman on 27.04.2006.

In addition, he has also been made entitled for other service benefits such as increment, leave entitlement, retiral benefits for the period of his earlier temporary status from 15.05.2000 to 15.11.2002. Hence, denial by the

respondents of the relief sought by the applicant through the impugned order had full justification. We do not find any flaw or infirmity in the impugned order of the respondents. We also note that the present OA is only further continuation of wasteful litigation by the applicant. Therefore, it deserves to be dismissed with cost.

5. Decisions :-

The OA is dismissed with cost of Rs.1,000/- to be paid by the applicant to the respondents within one month from the date of receipt of certified copy of this order.

(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

kmg*

14/03
Jd./cost