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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Date of decision: 18th February, 2004

OA No. 244/2003

1. Gouri Shankar Verma s/o Shri Kana Ram, aged about 26 years, r/o Sidharth Colony, H.No. 30, Near Hanuman Nagar, Post 5-E Chhote, District Sri Ganga Nagar (Raj)
2. Sahib Ram s/o Shri Nathu Ram, aged about 25 years, village and post-Kalian, Distt. Sri Ganga Nagar.
3. Atam Prakash s/o Shri Devi Dayal, aged about 26 years, r/o Village and post Kalian, Distt. Sri Ganga Nagar.
4. Roop Chand s/o Shri Hari Chander, aged about 27 years, r/o 1-ML, (Kaluwala) Post-6, LNP, Sri Ganga Nagar.

.. Applicants

Versus



1. Union of India through Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Director General of Ordnance Services, Army Headquarters, DHQ PO, New Delhi.
3. The Commandant, 24, Field Ammunition Depot, c/o 56 APO.
4. Officer in charge, 2 Ammunition Company (24FAD), C/o 56 APO.

.. Respondents

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None present for the applicants

CORAM:

HON'BLE MR. M.L.CHAUHAN, Member (Judl.)

HON'BLE MR. M.K.MISRA, Member (Admn.)

ORDER (ORAL)

Misc. Application No.134/03 considered and in view of the averments made in the Misc. Application the applicants are permitted to pursue this Original Application jointly.

2. The applicants have filed this application thereby praying for the following reliefs :-



"(i) That the oral order dated 20.7.2000 of respondents may be declared illegal, arbitrary and may be quashed.

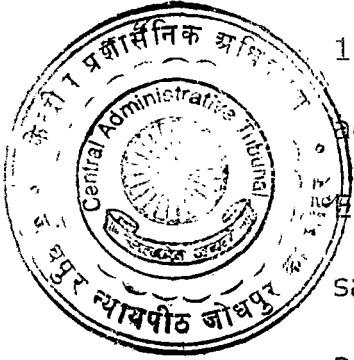
(ii) That as per direction of this Hon'ble Tribunal dated 25.02.2000 in previous O.A. of applicants No.378/99 respondents may be directed to consider/appoint the applicants to the post of regular Mazdoor with all consequential benefits and if any appointment has been done against these post of regular Mazdoor by the respondent declared illegal and the same may be quashed.

(iii) That any other direction, or orders may be passed in favour of the applicants which may deemed just and proper under the facts and circumstances of this case in the interest of justice.

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(iv) That the costs of O.A. may be awarded. "

3. Facts of the case are that the applicants have earlier filed Original Application in this Tribunal which was registered as Original Application No. 378/99. The case of the applicants in that was that they were employed as casual Mazdoor by the respondents on 19.7.99. They had also undergone medical examination and their character antecedents have also been verified through the District Magistrate, Sriganaganagar before they were appointed as Casual Mazdoor. The respondents have discontinued the engagements of the applicants with effect from 16.10.99. In the meantime, the respondent-department issued advertisement for filling up 47 posts of regular Mazdoor through Employment Exchange/local newspaper and the interview for the same was fixed on 2.11.99. It was further averred by the applicants that they have been recruited as per the prescribed procedure, though as casual Mazdoors . Thus, they have prayed for setting aside the impugned notification published on 26.10.99 (Ann.A1 in Original Application No.310/99) and further for direction to treat the applicants as duly appointed against



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regular posts of Mazdoor and not to terminate the services of the applicants.

3.1 This Tribunal vide order dated 25.2.2000 passed in Original Application No.298/99 and other connected matters, allowed the applications with the direction to the respondents to call for applications from the applicants and other similarly situated persons for the post of regular Mazdoor and consider all the applicants and other similarly situated persons for appointment to the post of regular Mazdoor alongwith the fresh applicants/sponsored candidates for filling up of 47 posts of regular mazdoors, within a period of one months from the date of issue of the order.

3.2 From the material placed on record, it appears that steps for filling up 47 posts of regular Mazdoor were taken by the department, as per version of the applicants. The applicants were called by the respondents but their cases were not considered as per order dated 25.2.2000 of this Tribunal. This fact find mention in para 4.9 of the Original Application. It is further averred in para 4.10 of the Original Application that the applicants had filed a Contempt Petition against respondent No.



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3 before the Hon'ble Tribunal which was also rejected on 30.01.2003 by the Tribunal on the ground of limitation.

3.3 The applicants have also placed on record copy of the order of the Hon'ble High Court of Judicature for Rajasthan at Jodhpur dated 5.3.2003 passed in D.B.Civil Writ Petition No.923/2003 by way of Misc. Application No.132/2003. This order is in the following terms:-



"We have heard Mr. G.K.Gupta, learned counsel for the petitioner. The Central Administrative Tribunal has rejected the contempt petition on the ground that it is barred by limitation.

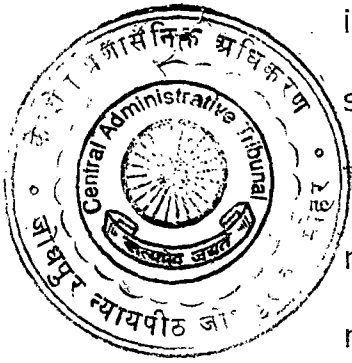
We do not find any infirmity in the order of the Central Administrative Tribunal. The writ petition is rejected. "

Now the applicants have filed this Original Application thereby praying for the aforesaid reliefs.

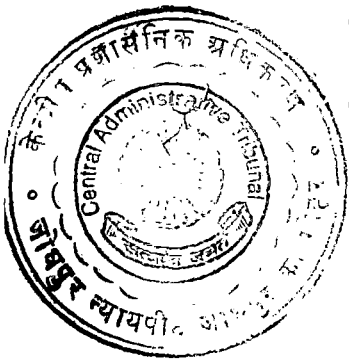
4. The matter was listed for admission on 16.2.2004 and the same was adjourned to 18.2.2004. None has appeared on behalf of the applicant today. We have perused the material placed before us. We are of the view that the applicants are not entitled for any relief as claimed for. From the relief clause as

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reproduced above, it is evident that the applicants are seeking the same relief which was prayed by the applicants in Original Application No. 378/99 with further prayer that if the appointment has been done against the posts of regular Mazdoor by the respondents, the same may be declared illegal and quashed. We are afraid that such a relief cannot be granted to the applicants for more than one reason. Firstly, the present Original Application is in the nature of execution petition as the applicants want execution of the order dated 25.2.2000 passed in Original Application No. 378/99. For that purpose, there is a specific remedy provided under Section 27 of the Administrative Tribunals Act, 1985 and the applicants have not resorted to such remedy. As such, the fresh Original Application is not maintainable. Even otherwise also, from the material placed on record, it appears that the applicants have also filed a Contempt Petition for non-compliance of the order dated 25.2.2000 passed in Original Application No. 378/99. That Contempt Petition was also dismissed by this Tribunal as time barred. The matter was further carried before the Hon'ble High Court and the Hon'ble High court also dismissed the Writ Petition, relevant portion of



which has been reproduced above. On the face of these facts, it is not permissible for us to re-examine the matter again. As regards the second prayer of the applicants that the appointment made by the respondents pursuant to the directions issued by this Tribunal on 25.2.2000 against the posts of regular Mazdoor be declared illegal and the same may be quashed, it may be stated that such relief can also not be granted to the applicants because of the fact that they have not challenged as on what basis the selection so made is illegal. Further, they have also not impleaded necessary parties as respondents in this proceeding and, therefore, no relief can be granted to the applicants on this count also. In the earlier Original Application, no such direction was issued by this Tribunal that the applicants who have entered in service as casual Mazdoor within the prescribed age and have now become over age should be given age relaxation. Further the applicants have also not pleaded in this Original Application that the applicants when they were engaged as casual Mazdoor were not over age and they should be given benefit age relaxation to the extent the services rendered by them with the respondents for the purpose of



computing the age for regular Mazdoor. Further, in para 5, ground (D) the applicants have made the following averments:-

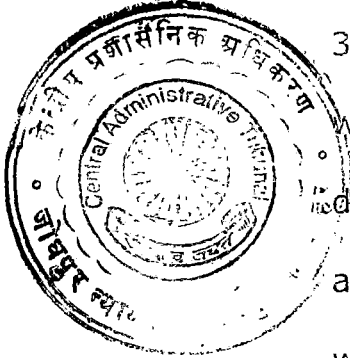


"(D) Because as per the direction of the Hon'ble Tribunal respondents called to the applicants on 20.7.2000 taken their attendance and verified the school certificates and after seeing the certificates respondents asked the applicants to go back and did not allow in the interview and selection illegally and arbitrarily."

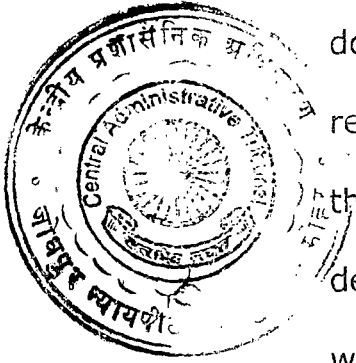
In case the applicants were not allowed to appear in the selection test and interview held on 20.7.2000 pursuant to the direction dated 25.2.2000 of this Tribunal, they should have immediately approached this Tribunal for appropriate relief. Having not done so, they have filed Original Application after a lapse of about 3 ½ years when the cause of action has arisen in their favour. Thus, the present Original Application cannot be entertained in view of bar contained in Section 21 of the Administrative Tribunals Act, 1985. Though, the applicants have moved application for condonation of delay but no satisfactory explanation as to why the application was not filed within the prescribed stipulated period under Section 21 of the Administrative Tribunals Act, has not been given. In the application for condonation of delay it has been stated that the

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applicants were informed in August, 2002 by the Govt. of India/Bharat Sarkar, Ministry of Labour/Shram Mantralaya, New Delhi that their dispute will not be considered. The applicant have also filed Contempt Petition which was dismissed on 30.1.2003 as barred by limitation against which a Writ Petition was also filed before the Hon'ble High Court, Jodhpur which was dismissed on 5.3.2003 in which the decision of the Tribunal was affirmed. As already stated above, admittedly the applicants were not permitted to appear for the selection test/ interview which was held on 20.7.2000 as per their own averments made in para 5, ground (D) of the Original Application. As such, the cause of action has arisen on 20.7.2000 when the selection was made by the respondents for 47 posts of regular Mazdoor. The applicants ought to have challenged the said action of the respondents within one year i.e. by July, 2001. The applicants have not given any explanation as to why they have not availed the remedy within the prescribed period of limitation. It has been held by the Apex Court in the case of State of Karnataka and ors. Vs. S.M.Kotrayya and Ors., 1996 SCC (L&S) 1488, that the explanation must relate to failure to avail the remedy within

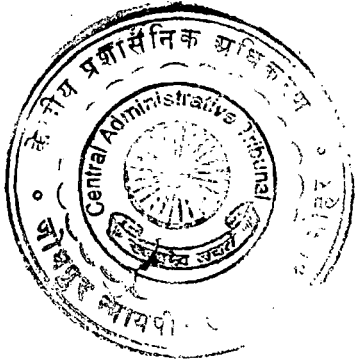


the limitation is not proper explanation at all. In the instant case, the applicants have not given any explanation as to why they failed to avail the remedy within the limitation period. The explanation given by them in the application for condonation of delay is that they were informed by the respondents in August, 2002. This explanation cannot be accepted without attaching any document. Even if they were informed in August, 2002 by the respondents, it will not extend the period of limitation. Further, this contention of the applicants in the Misc. Application is self destructive, inasmuch as, as per their own saying though they were called for interview/selection test pursuant to the order dated 25.2.2002 but they were not permitted to appear in the interview on 20.7.2000, as per the averments made in para 5, ground (D) which has been reproduced above. Thus, they were aware about the fact that their cases for appointment as regular Mazdoor will not be considered on 20.7.2000 and as such the contention of the applicants in the Misc. Application that they were informed in August, 2002 that their cases will not be considered, cannot be accepted. At this stage, it will be useful to reproduce para 9 of the judgment in the case of S.M.Kotrayya



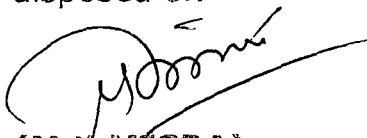
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(supra) which clinches the matter in issue and squarely applicable in the facts and circumstances of this case and thus reads:-



"9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-section (1) and (2) was as to why they could not avail of the remedy of redressal of their grievance before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

5. Thus from whatever angle the matter may be examined, the applicants have not made out any case for our interference. As such, the Original Application is dismissed at the admission stage. Misc. Application for condonation of delay also stands disposed of.


(M.L. MISRA)
Member (Admn.)


(M.L. CHAUDHARY)
Member (Judl.)

Regd. D. Copy Order and CD with Bom

MDs. person Copy sent to R1 to R4

Scholar 72 to 75 dt 20-2-04

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R1 & 3, Order Copy sent to ^{for} S. A. D.

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