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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 295/2005
Date of order: 18.12.2006

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

Pramod Kumar Sharma son of Shri Bhagwan Sahay Sharma, age 25 years, by caste Brahmin, resident of Near Kherli Darwaja, Village & Post Office Bhandarez, Tehsil & District Dausa (Rajasthan).

...Applicant.

Mr. A.K. Khatri, counsel for the applicant.

VERSUS

1. Union of India, through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Commandant, 6 F.O.D. C/o 56 APO.

...Respondents.

Mr. Ravi Bhansali, counsel for respondents.

ORDER

(By Mr. R.R. Bhandari, Administrative Member)

Shri Pramod Kumar Sharma, the applicant, has filed this Original Application and prayed for the following reliefs:

(a) By an appropriate order, writ or direction, the rejection of application form of the applicant (Annex. A/1) may kindly be declared illegal and be quashed and set aside.

(b) The applicant may kindly be declared eligible and permitted to take the examination pursuant to advertisement dated 15.08.2005.

(c) Any other order, which this Hon'ble Tribunal deems fit, just and proper in the facts and circumstances of this case may kindly be passed in favour of the applicant:

2. The brief facts of the case as brought out in the pleadings by the applicant are as under: -

(i) The Commandant, 6 F.O.D., C/o 56 APO, the respondent No. 2 issued an advertisement on 21.01.2005 inviting applications from the eligible candidates for the post of Labourer (Mazdoor) for a total of 10 posts.

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(ii) The applicant applied for the same, he was well within the age limit of 25 years on the prescribed date on 28.08.2005 i.e. the last date for submission of application form. His date of birth is 10.04.1980.

(iii) On 15.08.2005, the respondent-department issued another advertisement canceling the previous advertisement of 20.01.2005. This advertisement was for filling up of 14 posts of Labourers (Mazdoor). The applicant again applied for the same but was informed that he has now become over-age. Aggrieved by this, the applicant approached this Bench of the Tribunal and has sought for immediate relief.



3. This matter was listed on 03.10.2005 for admission as well as interim relief before Single Bench of the Tribunal. The operative portion of the order dated 03.10.2005 is reproduced below: -

" I have considered the submissions and the pleadings adduced on behalf of the applicant. Incidentally, identical issue came up for consideration before this Bench of the Tribunal in O.A. No. 289/2005, on 29.09.2005, wherein it was stated that the selection was scheduled to be held on 30.09.2005 and in that case the selection must have been over by now. Learned counsel for the applicant has submitted that the applicant has got a strong and good *prima facie* case in favour of him and no appointment has so far been made therefore one post of mazdoor may be kept vacant as to protect his legal right. I am of the considered view that one post of Mazdoor which is scheduled to be held in pursuance with annex. A/3 should be kept vacant till the next date of hearing. Ordered accordingly."

4. An additional affidavit was submitted by the respondents wherein the respondents submitted as below: -

"6. That the vacancies are being issued by the Ministry of Defence after every 6 months and, therefore, if ultimately the applicant is found suitable by the Hon'ble Tribunal, the consideration will be given in the next coming selection process. It is worthwhile to submit here that the depot is released direct recruitment vacancies every six months to fill the post of Mazdoors falling vacant due to retirement. If the Hon'ble Tribunal arrives at a decision to allow one chance to the applicant - Pramod Kumar Sharma in the recruitment irrespective of his age, then the same will be complied with and

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his application will be accepted in the ensuing recruitment for the post of Mazdoor.

5. Heard learned counsel for both the parties. Learned counsel for the applicant brought out the case of **Mahaveer Pd. Meena V/s Union of India & Ors.** reported in RLR 2005 (2) 534, wherein the Hon'ble Rajasthan High Court at Jaipur dealt a similar case and observed as under: -

"12. Assuming that there was some administrative reason which compelled the respondents to issue successive notifications with regard to a vacancy pertaining to the year 2000-2001, the question that further may arise would be as to whether those who are eligible when first notification was issued can be made ineligible and be debarred even for being considered. In considered view of this court if fault may lie exclusive and at the end of the employer which may result into delay thus necessitating successive notifications for filling up of a vacancy that might have accrued earlier, those who are eligible when first notification came into being have to be considered. To illustrate, if in a selection some candidates may have been selected and the matter may be agitated in a Court of law by challenging such selection in which, interim stay with regard to selected candidate may also be passed and in the process, selected candidates become overage and the selection may be quashed on some technical grounds, can selected candidates be held ineligible in the advertisement that may be issued for making recruitment after decision of the case. It appears to this Court that it will be too iniquitous in such a situation to hold selected candidates ineligible having crossed, by that time, maximum age for recruitment on the concerned post.

13. The Hon'ble Supreme Court in the State of Andhra Pradesh V.T. Ramkrishan Rao and others, (1972) 2 SCC 830 when there was delay in holding the examination directed that if any of the respondents or any other candidates who had applied in 1968 had by this time became age barred by reason of the delay in holding the examination, he should not be disqualified from appearing in the examination if he was of the qualified age at the time when he had filled his application."

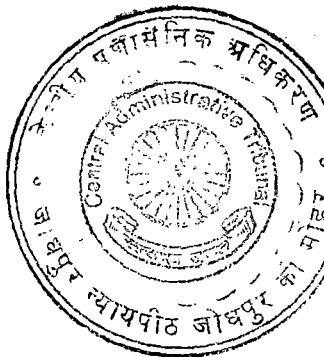
6. Learned counsel for the respondents reiterated the defence version of the respondents as set out in the reply. On the last occasion he sought for a short time for ascertaining the vacancy position and as to whether one post as was directed to be kept vacant, has been kept vacant or not. Today, he has asserted and stated at bar that one post of Mazdoor has been kept vacant in accordance with the specific direction of this Bench of the Tribunal.

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7. After going through the pleadings, records and the authorities of the parties, we felt that the applicant was eligible at the time of issue of first notification of 21.01.2005. Cancellation of this advertisement and issue of another advertisement of 15.08.2005 had changed material position as far as the applicant was concerned he became overage. This was not due to any fault of the applicant. We find that the controversy involved in the instant case is squarely covered on all fours by the decision in **Mahaveer Pd. Meena's** case (supra) and we are otherwise bound by the verdict and law laid down by the Hon'ble High Court of Rajasthan, therefore, we have no hesitation in following the same and deciding this OA on similar lines.



8. In the premises, we find that there is ample force in this Original Application and the same stands allowed accordingly. The impugned order at Annexure A/1 so far it relates to treating the applicant as 'over age' is hereby quashed. The respondents are directed to consider the candidature of the applicant for selection/recruitment to the post of Mazdoor in pursuance to the advertisement dated 15.08.2005 by taking him as within the prescribed age limit and eligible for the same. In case the applicant is found successful in the selection, he should be appointed to the post in question immediately, thereafter. The whole process should be completed within a period of three months from the date of receipt of a copy of this order. No costs.

R R Bhandari
(R R BHANDARI)
ADMINISTRATIVE MEMBER

J K Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

Kumawat

Received copy of order
D. B. H. T. 26.12.06

Copy feed today

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Part II and III destroyed
in my presence on 31/12/14
under the supervision of
section officer () as per
order dated 21/01/14.

Section officer (Record)