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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO.68/2006
JODHPUR THIS DAY 26 APRIL, 2010**

CORAM:

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

Mani Ram S/o Shri Pat Ram, by caste Kumhar, aged about 39 years, R/o 1-KSR, Tehsil Suratgarh, District Sriganganagar, Ex-employee of MES and was working as Mazdoor on Muster Roll basis in the office of Assistant Garrison Engineer (Army), Suratgarh.

.... Applicant

For Applicant : Mr. Manoj Bhandari, Advocate.

VERSUS

1. The Union of India through the Secretary Ministry of Defense, Raksha Bhawan, New Delhi.
2. The Chief Engineer, Bhatinda Zone, Bhatinda MIL Station i.e. Bhatinda Military Station, Bhatinda.
3. The Engineering in Chief, Army Headquarter, DHQ, Post New Delhi, New Delhi.
4. The Commander Works Engineer, MES, Suratgarh.
5. The Chief Engineer, Air Force, WAC, Palam, New Delhi.

.... Respondents.

**For Respondents: Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, Advocate.**

ORDER

(Per Mr. V.K. Kapoor, Administrative Member)

Sri Mani Ram has filed the present Original Application in which he has prayed to grant benefit on the post of mazdoor from 01st Nov., 2004. He has prayed for the reliefs that are as follows:-

"(i) by an appropriate order or direction, the respondents be directed to consider the case of the applicant and grant him the benefit on the post of Mazdoor w.e.f. 01st Nov., 2004 with all consequential benefits.

(ii) by an appropriate order or direction, the respondents be directed to comply with the orders of the Hon'ble Tribunal to consider his case for employment by appointing him on the post of Mazdoor with all consequential benefits in terms of Section 25 (H) of the Industrial Disputes Act, 1947.

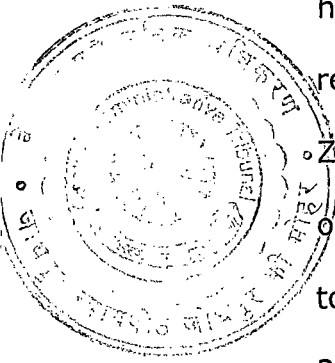


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(iii) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant."

2. The factual matrix of the case is that the applicant was initially engaged as mazdoor in the office of Garrison Engineer, Suratgarh, District Sriganganagar for about four months. He discharged his duties regularly till 07 Jan, 1986, thereafter his services were terminated, he requested for re-employment under respdt deptt. Likewise, retrenched labourers moved in O.A. no.17/1990 (Shera Ram & Ors. vs. UOI & Ors.), vide order dt 29.10.1991 the OA was allowed, directions were given to official respondents to consider applicant's case for re-employment in the light of provisions of Sec. 25H of Industrial Disputes Act, 1947. In OA no.579/1988 vide order dt 08 Oct, 1989, the applicant did not complete 240 days as worker, yet there was a violation of Section 25H of the Industrial Disputes Act, 1947. The Tribunal directed that the opportunity shall be given to them for re-employment u/s 25H of the I.D. Act as the same was violated. But no new appointments were made till 31 Oct, 2004 when the vacancies of mazdoors were advertised by MES, Sriganga nagar. In pursuance of directions of CAT, Jodhpur Bench in aforesaid OA, applicant was interviewed for the said post of mazdoor on 24.12.2004, but he was not communicated as regards his appointment. Applicant gave his representation on 28.2.2005 (Ann.A-3), to the Chief Engineer, Bhatinda Zone, communicated that his case was transferred to Headquarter vide order dt 10.3.2005 (Ann.A-4). Subsequently, he wrote his representations to SHO Palam, New Delhi on 21.6.2005 & 06.7.2005 (Ann.A-5 & A-6). On 28 July, 2005 applicant was intimated that his application for re-employment was rejected (Ann.A-7). He again wrote on 29.8.2005 to respondents (Ann.A-8) but nothing was heard from them, he made representation on 11.11.2005 (Ann.A-9). Applicant contention is that in



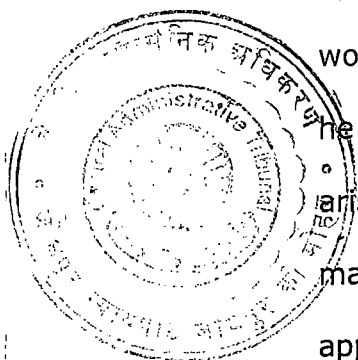
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the light of Section 25H of the Industrial Disputes Act, 1947, this case should have been considered, he has right to given preferential appointment for the re-employment as Labour. It is also averred that 02 labourers were appointed during this period. He has prayed that he should be appointed on the post of mazdoor w.e.f. 01 Nov, 2004 with all consequential benefits as per provision of Section 25H of ID Act, 1947.

3. Learned counsel for the respondents in reply has stated that applicant has worked as mazdoor on muster roll in the year 1986-87 for 23 days only and no recruitment is made by respondent office after his termination till to date. The vacancies for mazdoors' posts were released by HQ CWE, Sriganaganagar by advertisement; the applicant was intimated to appear in interview for the said post on 24.12.2004, he was not found fit in criteria laid down for appointment. The case of applicant was transferred to Chief Engineer (AF), WAC, Palam. It is further averred that CAT Jodhpur has no where directed the respondents to offer appointment to those individuals, who had not completed 240 days service in the department. The respdts have requested to dismiss the present OA.

4(a). Learned counsel for applicant in arguments has stated that the applicant was worked in the office of respondent department and where he worked for some time. As per Section 25H of Industrial Disputes Act, 1947 he was to be given preference in appointment as and when vacancy arises. Applicant made representation for being considered on the post of mazdoor but since he had not completed 240 days, he was not offered appointment; in case of future vacancies, offer was to be given to applicant. Later, he was asked to contact Chief Engineer, Bhatinda Zone office. It is vehemently argued by applicant's counsel that some other persons were given appointment as mazdoor but applicant's case was not



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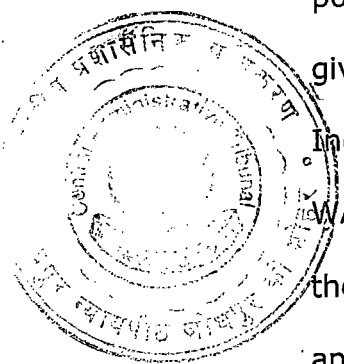
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considered nor he was given any sort of appointment. As applicant is qualified to the job, he should have given preference in execution/compliance of the order of CAT Jodhpur Bench in OA no.17/1990 dt 29.10.1991 should be carried out, hence he should be given appointment as mazdoor as prescribed in Section 25H of the Industrial Disputes Act, 1947. In support of his contentions, applicant has put forth the citation of the Hon'ble Apex Court in Civil Appeal nos.3241-48/1981 (1990) 3 SCC 682, 1990 (2) RLR 158 & in 2003 AIR SC 3961.

4(b). Learned counsel for respdts has denied the contentions of the applicant as regards preference to be given. There is no vacancy in respdt depts, so outcome of selection is not intimated to the candidate as he did not fulfil the required qualifications. He was not given appointment as no vacancy existed in the particular unit where the applicant worked; there was no communication of what transpired in the interview. Applicant has worked in present unit for a small period. He has not completed 240 days, he does not stand chance to be given appointment in the existent unit.

4(c). The applicant has submitted a rejoinder in which he has stated that he was stood at sl.no.13 in OA no.17/1990, he should be reinstated on the post held by the applicant and others before retrenchment. He should be given preferential treatment in appointment as per Section 25H of the Industrial Disputes Act. His case was transferred Chief Engineer, Air Force, WAC, Palam, New Delhi. The applicant gave representation on 28.7.2005, the respondents have committed gross irregularity by way of not giving appointment/re-employment to applicant in pursuance of directions of Tribunal. In support of his contention the applicant has submitted copy of an additional affidavit in support of his contentions.

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5. The applicant was employed in the respdt deptt. as 'mazdoor' in the office of garrison engineer, Suratgarh for almost 120 days i.e. from 10 June, 1985 to 07 July, 1986. The respdts then terminated his services alongwith some other mazdoors who including applicant filed an OA no.17/1990. The Tribunal vide order dt 29 Oct, 1991 allowed the OA filed by the applicants, the operative last para of the order is as follows:-

"Accordingly, we allow the applications filed by the applicants and it is directed that those applicants, who have served for more than 240 days with the respondents, shall be re-employed within three months from the date of the receipt of this order but they will not get any back wages. However, in cases where the applicants have not completed 240 days' service with the respondents, they shall be given an opportunity of re-employment in preference to others, as and when vacancies arise, no order as to costs."

One OA no.579/1988 was filed in Tribunal, before the apex court had passed the said order, other application was filed after the apex court had passed order in the similar matters on 08 Oct, 1989. The apex court held that the incumbents be reinstated on the post held by them before retrenchment without any back wages within one month. Applicant had not completed 240 days' job in the respondent department, thus directions of Tribunal would be attracted for giving an opportunity of re-employment in preference to others. Vide order dt 29 Oct, 1991 in this OA, applicant has taken recourse to Sec 25H of ID Act, 1947 which reads as follows:-



"Re-employment of retrenched workmen- Where any workmen are retrenched, and the employer proposes to take into his employ any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

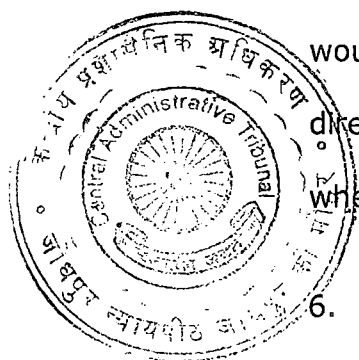
Here Section 25G of ID Act speaks about procedure of retrenchment, the applicant was retrenched from the job/post alongwith some other fellow workmen. The applicant was retrenched in 1986, he moved representation on various dates. An advertisement was made by the respondents, to have called the applicant for interview on 24 Dec, 2004. The respondents took his interview but nothing was communicated

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to him in this regard. The applicant was told to approach HQ Chief Engineer, Bhatinda Zone vide letter dated 28 July, 2005, later asked to move to the HQ Air force, Palam office, New Delhi. All this happened because the vacancy for the post of mazdoor was not available at that time. Here this is pertinent to mention that applicant worked for 23 days in the 1986-1987 whereas the applicant claims to have worked in the respondent department for a span of 120 days; but this was clear that no recruitment was made for quite sometime on the said post. The applicant has produced copies of appointment letters issued on the name of Sri Jai Bahadur Yadav vide order dt 28 Feb, 2005 & Sri Gurbhej Singh on 18 July, 2008. The official respdts have tried to clarify that these two persons were appointed in some other units. The applicant was interviewed by Board of officers on 24.12.2004, but he was not selected for mazdoor's posts. This view is not available in the previous OA. There is admission of the respondents that after passing of order in the previous OA, some appointments were made. As the two appointments are agreed upon, directions of the Tribunal in the previous OA are found to be violated. The applicant in rejoinder has spoken much about the case of re-appointment in pursuance of directions of the Tribunal. It is clearly laid down by the Tribunal in order dt 29 Oct, 1991 in OA13/1990 that applicant and similarly situated persons who have not completed 240 days in deptt would be given opportunity of re-employment in preference to others. This direction is not followed as applicant is not considered for a suitable job, whereas two persons are given appointments on mazdoors' posts.

6. Learned counsel for applicant has cited the case Law Secretary AP, Public Service Commission vs. Y.V.V.R. Srinivasulu & Ors. reported in AIR 2003 SC 3961 that speaks of 'preference' given to additional qualification would mean that other things being qualitatively & qualitatively equal



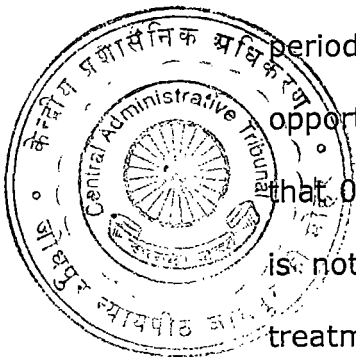
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those with additional qualifications will have to be preferred. This case law does not apply in present case as no additional qualifications were prescribed. But still some norms are to be followed, otherwise the selection process cannot be sustained. The applicant has also quoted the case of Oriental Bank of Commerce vs. Presiding Officer, Central Govt Industrial Tribunal & Anr. (23) of Rajasthan High Court, Jaipur bench, SB Civil W.P. no.4732/1991; the important excerpts are as follows:-

"Industrial Disputes Act, 1947, Ss.25G & 25H- Industrial Disputes (Central) Rules, 1957, Rr.77 & 78- Retrenchment and re-employment-Whether provisions of Ss.25G & 25H are attracted in case of retrenchment where workman has not rendered 240 days of service- Held, yes-Provisions regarding 'last come first go' and 'offer of re-employment' contained in Ss.25G & 25H are applicable even in case of retrenchment of a workman who has not completed 240 days of service- Ss.25F and 25G & 25H, though appear in same Chapter of the Act, but are independent of each other"

The applicant has nearly completed one month's job as per respondents' version and was in respondent's job for about 04 months as per his claim. In civil appeal no.1868/1982, the apex court in the case of G.M. Govt. Electric Factory (now Karnataka Vidyut Karkhana Ltd) Mysore Road, Bangalore vs. Mohammed Issaq (1990) SCC 682 in judgment dt 04 May, 1990 spoke of imposition of an additional social responsibility on the employers by way of giving employment to the terminated employees/labour, who are to abide by certain norms, wherein the applicant failed to find selection. As per previous OA, as the applicant had worked for a period less than 240 days, then he should have been given a suitable opportunity as per directions of the Tribunal. The respondent's contentions that 02 persons stated above are appointed as mazdoors in different units is not agreeable. As per direction of the previous OA, a preferential treatment was to be given to the applicant; the offer of re-employment contained in Section 25G & 25H are applicable in cases of retrenchment. Therefore, the respondents are directed to consider applicant's case and give a preferential treatment in providing appointment on the post of




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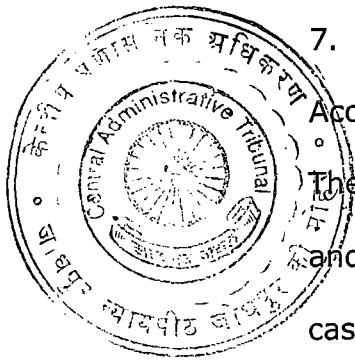
mazdoor on temporary basis on the pay scale of Rs.2550-55-2660-3200 plus usual allowances in parity of other similarly situated mazdoors. The applicant is not to be given appointment on permanent or regular basis, he should be treated/appointed as per with the fellow mazdoors appointed later. Accordingly, the respondents are directed to consider the case of the applicant on priority basis under the prescribed terms and conditions of the respondents' deptt. The directions contained in previous OA has attained finality because this has not been challenged, the respondents are supposed to follow these directions in near future vacancy of casual labour. The respondents are hereby directed to firstly adjust the applicant, then appoint any other person as casual labour/mazdoor.

7. In the light of deliberations made above, the present OA succeeds. Accordingly, his plea for giving him re-employment is hereby accepted. The respondents are directed to comply with the directions of previous OA and give preference to the applicant in giving appointment to him as a casual labour/mazdoor. The present OA is allowed, the respondents are to ensure to comply with directions given above. No order as to costs.


[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member

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