

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.314/2013

Jodhpur, this the 21st day of January, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

1. Gokul Ram s/o Shri Niku Ram, by caste Kumar, aged about 40 years, r/o IKSR, Post Ramsar Jakharan, Tehsil Suratgarh, District Sriganganagar.
2. Mani Ram s/o Shri Manphool, by caste Kumar, aged about 41 years, r/o IKSR, Post Ramsara Jakharan, Tehsil Suratgarh, District Sriganganagar.

.....Applicant

By Advocate: Mr. P.K.Punia.

Versus

1. The Union of India through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Bathinda Zone, Bathinda MIL Station (Bathinda Military Station) Bathinda.
3. Engineering in Chief, Army headquarter, DHQ Post New Delhi, New Delhi.
4. Chief Engineer, Air Force, WAC Palan, New Delhi.
5. Commander, Engineer Works, M.E.S. (Air Force) Bikaner (Rajasthan).
6. Commander, Works Engineer, M.E.S. (Air Force), Suratgarh.

.....Respondents

By Advocate : Ms K. Parveen for resp. Nos. 1 to 3.

None present for respondents No. 4 to 6.

ORDER (ORAL)

By this OA, the applicants have prayed for order or direction to the respondents to consider their case and grant them the benefit of the post of Mazdoor w.e.f. October, 2012 with all consequential benefits. The

applicants have also prayed that the respondents may be directed to consider their case for employment by appointing them on the post of Mazdoor with all consequential benefits in terms of Section 25 (H) of the Industrial Disputes Act, 1947 and they may be allowed to file joint application.

2. So far as prayer regarding filing of joint application is concerned, the same is allowed and the applicants are allowed to pursue their grievance jointly.

3. Brief facts of the case, as stated by the applicants are that they were initially engaged as Mazdoor for 114 and 112 days. Applicant Mani Ram discharged his duties regularly till 4.8.1985 and Gokul Ram till 7.1.1986 thereafter their services were terminated. Therefore, they filed OA no.944/1989, which was disposed of with direction to the respondents to consider the case of the applicants in the light of provision of Section 25-H of the Industrial Disputes Act, 1987. No new appointments were made till 31.10.2004 and CEW Sri Ganganagar advertised the new vacancies in the month of October and applicants applied for appointment on the post of Mazdoor, but no action was taken. For redressal of their grievance, the applicants also moved separate applications to CWE, Sri Ganganagar on 3.1.2005, but of no avail. They have again moved representation to Chief Engineer, Bathinda Zone, Bathinda for giving benefit of judgment of Hon'ble Tribunal but nothing was done. The M.E.S. advertised new vacancies of Mate and applicants applied for the same because the respondents have already given

appointment to a Mazdoor on the post of mate. But no relief has been given to the applicants. The applicants also sent legal notice, but the respondents have not answered and not taken the applicants back in service. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the reliefs as mentioned above.

4. In reply to the OA, the respondents have submitted that applicant filed OA no. 944/1989 which was decided vide order dated 29.10.1991 with the direction that those applicants who have worked for more than 240 days shall be re-employed within three months, but they will not get any back wages and in cases where the applicant have not worked for 240 days they shall be given only an opportunity of re-employment in preference to other as and when vacancy arises. It was intimated that vacancies of Mazdoors were released to HQ CWE Sri Ganganagar and advertisement was published in the newspaper in 2004. In reply to their applications, communications were given to the applicants stating therein that they shall be interviewed by a Board of Officers on 24.12.2004 but the applicants had not applied for the same and not attended the test, as such, they were not selected for the post of Mazdoor in the year 2004. After that vacancies were also released to HQ CWE (AF) Bikaner and Advertisement to this effect was published in the Newspaper in the last year. The applicants neither applied for the said post nor attended the test. Hence they were not selected for the post of Mazdoor. The respondents have further stated that as per direction of Hon'ble Tribunal vide order dated 29.10.1991 as well as according to the provisions of

Section 25 H of Industrial Disputes Act, the applicant have not completed 240 days in a calendar year, therefore, they have no right to force the respondents for the purpose of appointment. Therefore, the OA deserves to be dismissed.

5. Heard both the parties. Counsel for the applicants contended that both the applicants were removed/terminated from the service by a verbal order on the post of Mazdoor in MES Department in the year 1985-1986 and as per Annexure-A/1 they had put in 112 and 114 days of services respectively. It has been further submitted that earlier the applicants filed an OA No.944/1989 along with many other applicants, which was decided by a common order by this Tribunal vide order dated 29th October, 1991 and in which the following directions were given:-

"8. 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 applicant have not completed 240 days' services 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."

It was contended by the counsel for the applicant that the vacancies arose in the year 2004 and the applicants applied for the same as may be seen from their application at Annexure-A/3 but no response was given by the department and again the vacancies occurred in the year 2012 and the applicants applied as may be seen from Annexure-A/4 application dated 10.10.2012 but again they were not given any employment and therefore they served a legal notice through advocate on 31.01.2013 (Annexure-A/5) which has neither been decided nor replied

to and hence this OA has been filed by the applicant for the relief(s) mentioned above in para No.1.


6. Per contra, counsel for the respondents contended that in pursuance of the order of the Tribunal dated 29th October, 1991 passed in OA No.944/1989 filed by the applicants and others, the vacancies of Mazdoors were released to HQ CWE Sri Ganganagar and advertisement was published in the newspaper in the year 2004 and further in reply to their applications, the communications were given to the applicants stating therein that they shall be interviewed by a Board of Officers on 24.12.2004 but they did not appear for the same. It was further contended that the applicants had not applied for the recruitment when the vacancies were released through HQ CWE (AF) Bikaner in September, 2012, which was advertised in leading newspapers. It was also contended that applicants can claim relief within a reasonable period but in this case the applicants have come after 22 years, and at this stage, case being of 1991, deserves to be dismissed and referred to an order dated 20.07.2012 in OA No.311/2010 in support of this contention and prayed for the dismissal of the OA.

7. Considered the rival contentions of both the parties and perused the record, and from the same it appears to be a dispute of facts that whether the applicants had actually applied in the years 2004 and 2012 in pursuance of the vacancies released and advertised by the respondents and whether the applicants attended the interviews/Tests or not. Therefore, in view of the above position and pendency of the legal notice

dated 31.01.2013 (Annexure-A/5) with the respondents, it is proposed to dispose of this OA with certain directions.

8. Accordingly, the OA is disposed of with the direction to the respondents to consider and decide the legal notice dated 31.01.2013 (Annexure-A/5) pending with them, within a period of three months from the date of receipt of a copy of this order. After the decision of the aforesaid legal notice, if any grievance remains with the applicants they may approach the appropriate forum, as per law.

9. The OA is thus disposed of in above terms, with no order as to costs.



[Meenakshi Hooja]
Administrative Member

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Team
2-2-15
Copy of Judgment
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[Signature]