

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**OA NO.290/00386/2017
WITH
MA NO.290/00286/2017
&
MA NO.290/00287/2017**

THIS, THE 10TH DAY OF JANUARY, 2018.

...

CORAM:

**HON'BLE MR. R. RAMANUJAM, MEMBER (A)
HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)**

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**MALDAN S/O SHRI BAKIDAN, AGED 37 YEARS, R/O VILLAGE GENLIYAWAS,
POST JALSU, TEHSIL DEGANA, DISTRICT NAGPUR (RAJ.).
...APPLICANT**

BY ADVOCATE : MR. JOG SINGH BHATI

VERSUS

**1. UNION OF INDIA THROUGH THE CHAIRMAN, RAILWAY RECRUITMENT
BOARD, MINISTRY OF RAILWAYS, GOVERNMENT OF INDIA, NEW DELHI.
2. THE CHAIRMAN, RAILWAY RECRUITMENT BOARD, MINISTRY OF
RAILWAYS, NORTH WESTERN RAILWAYS, AJMER (RAJ.)
RESPONDENTS**

BY ADVOCATE: MR. GIRISH SHANKHALA

ORDER (ORAL)

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**PER HON'BLE MR. R. RAMANUJAM, MEMBER (A):-
HEARD. THE FACTS OF THE CASE AS SUBMITTED BY THE
APPLICANT ARE THAT THE APPLICANT IS AN EX-SERVICEMAN HAVING
BEEN DISCHARGED FROM THE RANK OF HAWALDAR INTELLIGENCE ON**

28.02.2017. THE RESPONDENTS HAD ISSUED ANNEXURE-A/2 NOTIFICATION INVITING APPLICATION FOR THE POST OF COMMERCIAL APPRENTICE (CA) ETC. WHICH WAS PUBLISHED ON 26.12.2015. THE DATE AND TIME OF CLOSING OF THE APPLICATIONS WAS 25.01.2016 UPTO 23.59 HOURS. IT IS SUBMITTED THAT THE APPLICANT WAS SERVING AS ON THAT DATE AND HAD NOT BECOME AN EX-SERVICEMEN. HOWEVER, ACCORDING TO GENERAL INSTRUCTIONS 1.15, SERVING DEFENCE PERSONNEL LIKELY TO BE RELEASED WITHIN ONE YEAR OF THE CLOSING DATE I.E. 25.01.2017 COULD ALSO APPLY BOTH FOR VACANCIES EARMARKED FOR EX-SERVICEMEN AND POSTS NOT RESERVED FOR EX-SERVICEMEN. THE APPLICANT ACCORDINGLY APPLIED FOR THE POSTS IN BOTH CATEGORIES.

2. LEARNED COUNSEL OR THE APPLICANT WOULD DRAW ATTENTION TO ANNEXURE-A/13 CERTIFICATE ISSUED BY THE OFFICER COMMANDING DATED 16.02.2015 WHEREIN IT IS CLEARLY STATED THAT THE APPLICANT WAS DUE FOR 'RELEASE RETIREMENT' ON COMPLETION OF SPECIFIC PERIOD OF ASSIGNMENT ON 31ST MARCH 2016 (15 YEARS) ON ACCOUNT OF PHYSICAL DISABILITY ATTRIBUTABLE TO MILITARY SERVICE AND ON HIS OWN REQUEST. THE APPLICANT WAS THUS FULLY COVERED BY THE PROVISIONS OF GENERAL INSTRUCTIONS 1.15 REFERRED TO ABOVE. HOWEVER, HIS CANDIDATURE HAS BEEN REJECTED ON THE GROUND THAT HE WAS ACTUALLY RELEASED ONLY ON 28TH FEBRUARY, 2017 WHICH IS BEYOND THE PERIOD OF ONE YEAR ALLOWED IN THE SAID NOTIFICATION. LEARNED COUNSEL WOULD ARGUE THAT THE ACTUAL DATE OF DISCHARGE COULD NOT BE A GROUND FOR REJECTION OF HIS CANDIDATURE AS THE RESPONDENTS HAD NOT COMPLETED THE RECRUITMENT PROCESS WITHIN A REASONABLE TIME. IF THE RESPONDENTS WOULD HAVE COMPLETED THE PROCESS WITHIN SAY ONE YEAR OR SO FROM THE DATE OF ISSUE OF NOTIFICATION, THE APPLICANT WOULD HAVE PRESSED FOR HIS RELEASE FROM THE ARMY WITHIN TIME AND WOULD HAVE BEEN AVAILABLE TO JOIN ON THE POST FOR WHICH HE WAS SELECTED. HOWEVER, THE RESPONDENTS TOOK THEIR OWN TIME AND COMPLETED THE RECRUITMENT PROCESS ONLY ON OCTOBER, 2017. IT IS UNFAIR ON THE PART OF THE RESPONDENTS TO EXPECT THAT THE APPLICANT WOULD TAKE RETIREMENT BEFORE JANUARY, 2017 AND REMAIN UNEMPLOYED TILL THE RECRUITMENT PROCESS WAS COMPLETED ESPECIALLY WHEN THERE WAS NO GUARANTEE THAT THE APPLICANT WOULD NECESSARILY EMERGE SUCCESSFUL AND BE APPOINTED TO ONE OF THE POSTS ON MERIT. HE COULD NOT BE EXPECTED TO FORGO WHAT WAS IN HAND IN FAVOUR OF SOMETHING THAT WAS UNCERTAIN. SINCE THE DELAY IS ON THE PART OF THE RESPONDENTS IN CONCLUDING THE PROCESS IS NOT ATTRIBUTABLE TO THE APPLICANT, THE AUTHORITIES ARE LIABLE TO ACCEPT THE APPLICANT'S CANDIDATURE, IT IS CONTENTED.

3. LEARNED COUNSEL FOR THE RESPONDENTS WOULD, HOWEVER, DRAW OUR ATTENTION TO ANNEXURE-R/2 APPLICATION FORM FILLED BY THE APPLICANT WHEREIN AT SERIAL NO.20, THE APPLICANT HAD

ANSWERED THE QUESTION "ARE YOU AN EX-SERVICEMEN" IN THE AFFIRMATIVE. HE HAD FURTHER INDICATED HIS DATE OF DISCHARGE AS 31.12.2016 WHEN THERE WAS NO BASIS ON WHICH HE COULD HAVE INDICATED THE SAID DATE. THE APPLICANT HAD THUS SUBMITTED A FALSE INFORMATION IN THE APPLICATION FORM AND HIS CANDIDATURE WAS, THEREFORE, LIABLE TO BE REJECTED ON THIS GROUND. HE WOULD FURTHER SUBMIT THAT THE OA WAS PREMATURE INASMUCH AS THERE IS NO FORMAL ORDER REJECTING THE CANDIDATURE OF THE APPLICANT. NO EVIDENCE HAS BEEN PRODUCED TO THE EFFECT THAT THE APPLICANT WAS SUCCESSFUL IN THE COMPETITION AND IS, THEREFORE, GENUINELY AGGRIEVED. THE ISSUE RAISED BY HIM COULD WELL BE HYPOTHETICAL IF HIS NAME DOES NOT FIND PLACE IN THE MERIT LIST, IT IS ARGUED.

4. WE HAVE CAREFULLY CONSIDERED THE SUBMISSIONS. IT IS NOT IN DISPUTE THAT THE ADVERTISEMENT CALLING FOR APPLICATIONS ISSUED ON 26.12.2015 WITH CLOSING DATE IS 25.01.2016 PROVIDED FOR SERVING DEFENCE PERSONNEL EXPECTED TO BE DISCHARGED WITHIN A PERIOD OF ONE YEAR FROM THE DATE OF CLOSING I.E. 25.01.2017 BEING ELIGIBLE TO COMPETE FOR SELECTION. NOR IS IT DISPUTED THAT THE APPLICANT WAS DUE FOR DISCHARGE ON 31ST MARCH, 2016 WELL WITHIN THE TIME LIMIT ALLOWED IN THE ADVERTISEMENT. HOWEVER, IT APPEARS THAT THE COMPETENT AUTHORITY HAD ALLOWED THE APPLICANT TO CONTINUE AS HAWALDAR FOR SOME MORE TIME FOR ADMINISTRATIVE REASONS BEYOND THE DUE DATE OF RELEASE. NEEDLESS TO SAY THAT IF THE RESPONDENTS WOULD HAVE CONCLUDED THE RECRUITMENT PROCESS WITHIN A REASONABLE TIME AND THE APPLICANT WAS SELECTED FOR ONE OF THE POSTS APPLIED FOR, HE WOULD HAVE BEEN REQUIRED TO PRESS FOR HIS RELEASE FROM THE MILITARY SERVICE SO AS TO JOIN THE POST. HOWEVER, SINCE THE RECRUITMENT PROCESS WAS NOT CONCLUDED BY 25.01.2017 AND THE APPLICANT'S SUCCESS IN THE COMPETITION COULD NOT PRESUMED, THE APPLICANT COULD NOT BE FAULTED FOR AGREEING TO CONTINUE IN THE ARMY IN THE MEANTIME.

5. AS FOR THE INFORMATION GIVEN IN THE ANNEXURE-R/2 APPLICATION FORM INDICATING THE DATE OF RELEASE AS 31.12.2016, WE ARE UNABLE TO SEE ANY MOTIVE FOR THE APPLICANT TO MISREPRESENT THE FACTS. CLEARLY, THE APPLICATION FORM WAS FILLED IN WHEN THE APPLICANT WAS STILL IN MILITARY SERVICE AND, THEREFORE, ANY FUTURE DATE COULD ONLY AN ANTICIPATED DATE OF RELEASE AND NOT THE ACTUAL DATE. IT IS POSSIBLE THAT THE APPLICANT WAS GIVEN TO UNDERSTAND THAT HE MIGHT BE CONTINUED FOR SOME TIME BEYOND HIS DUE DATE OF RELEASE FOR ADMINISTRATIVE REASONS AND, THEREFORE, HE MIGHT HAVE INDICATED A TENTATIVE DATE IN DECEMBER, 2016. EVENTUALLY, HE CAME TO BE RELEASED ONLY IN FEBRUARY, 2017. THE RECRUITMENT PROCESS HAD NOT BEEN CONCLUDED IN THE MEANTIME AND, THEREFORE, THE NON-RELEASE OF THE APPLICANT BEFORE THE CUT-OFF DATE OF 21.05.2017 COULD NOT BE

HELD AS A DISQUALIFICATION.

6. THERE IS NO RULE THAT A PERSON SHOULD HAVE BEEN AN EX-SERVICEMAN FOR A CERTAIN MINIMUM PERIOD BEFORE BEING ELIGIBLE TO APPLY FOR THE SAID POST. ON THE OTHER HAND, SERVING DEFENCE PERSONNEL WERE ALSO ELIGIBLE TO APPLY, IF THEY COULD BE RELEASED WITHIN ONE YEAR. THE RATIONALE OF SUCH TIME LIMIT COULD ONLY BE THAT THE RECRUITMENT BOARD WOULD ONLY RECOMMEND THE NAMES OF PERSONS AVAILABLE FOR APPOINTMENT AND NOT THOSE WHO COULD NOT BE RELEASED WHEN THE SELECTION IS MADE. IN OTHER WORDS, THE AUTHORITIES WOULD NOT WAIT INDEFINITELY FOR A PERSON TO BE RELEASED AND IT WAS EXPECTED THAT THE SELECTED PERSON WOULD BE ABLE TO ACCEPT THE APPOINTMENT WITHIN THE TIME LIMIT PRESCRIBED.

7. SINCE IT IS SUBMITTED THAT THE RECRUITMENT PROCESS CONCLUDED ONLY ON 24.11.2017 BY WHICH DATE THE APPLICANT HAD ATTAINED THE STATUS OF EX-SERVICEMAN AND HAD BECOME AVAILABLE FOR SELECTION AND ON THE DATE OF SUBMISSION OF THE APPLICATION FOR THE POSTS, THE APPLICANT HAD NOT SUBMITTED ANY FALSE INFORMATION, WE ARE OF THE VIEW THAT THE CANDIDATURE OF THE APPLICANT MUST BE CONSIDERED BY THE RESPONDENTS ON MERITS. WE ACCORDINGLY DIRECT THE RESPONDENTS TO EXAMINE THE MERIT POSITION OF THE APPLICANT AND IF THE APPLICANT IS FOUND QUALIFIED FOR ANY OF THE POSTS IN TERMS OF MERIT, HE SHALL BE RECOMMENDED FOR APPOINTMENT.

8. OA IS THUS DISPOSED OF IN THE ABOVE TERMS. NO COSTS.

9. AT THIS STAGE, LEARNED COUNSEL FOR THE RESPONDENTS SUBMITS THAT THE FIRST RESPONDENT IS NOT A NECESSARY PARTY AND, THEREFORE, MA NO.287/2017 FILED FOR DELETION OF HIS NAME MAY BE ALLOWED. ACCORDINGLY, IT IS PRAYED THAT THE PROPOSED CAUSE TITLE OF THE OA MAY BE TAKEN ON RECORD.

10. IT IS SEEN THAT THE MEMBER SECRETARY, RAILWAY RECRUITMENT BOARD, AJMER HAD FILED THE REPLY ON BEHALF OF BOTH RESPONDENTS NO.1 & 2 AND NO SUCH PLEA OF MIS-JOINDER OF PARTIES HAS BEEN RAISED THEREIN. IN ANY CASE, COUNSEL FOR THE RESPONDENTS SUBMITS THAT THE SECOND RESPONDENT IS COMPETENT TO IMPLEMENT THE DIRECTION OF THE TRIBUNAL. ACCORDINGLY, WE ARE OF THE VIEW THAT IT IS UNNECESSARY TO AMEND THE CAUSE TITLE NOW. MA NO.287/2017 IS DISPOSED OF WITH THIS OBSERVATION.

11. MA NO.286/2017 FOR VACATION OF IR ALSO STANDS DISPOSED OF IN THE LIGHT OF THIS ORDER.

(SURESH KUMAR MONGA)
MEMBER (J)

(R. RAMANUJAM)
MEMBER (A)

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