

(RESERVED ON 3.1.2013)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 24th the day of January, 2013.

ORIGINAL APPLICATION NO. 609 OF 2008.

HON'BLE MS. JAYATI CHANDRA, MEMBER- A.

1. Om Prakash S/o Late Rati Ram, R/o Village Dayanatpur, P.O. Roheri, District Hathras.
2. Inder Jeet S/o Ram Saran, R/o Village Bhandari, P.O. Kakuya, District Agra.
3. Rakesh Kumar Katara S/o Shri Beni Ram, R/o Village Chamrauti, P.O. Pratappur, District Agra.
4. Lakshaman Singh S/o Late Dauji Ram, R/o Village Karmana, P.O. Dhandupura, District Agra.

.....APPLICANTS

VERSUS

1. Union of India through the Secretary,
Ministry of Defence, Army Head Quarter, New Delhi.
2. The Officer Commanding, 50 (1) Para Brigade, OEF, C/o
56 APO, Agra 282001.

.....RESPONDENTS

Present for the applicant : Sri L.M Singh/
Shri A.K. Jaiswal

Present for the respondents: Sri R.K. Srivastava

ORDER

The present Original Application has been filed under section 19 of Administrative Tribunals Act, 1985 seeking to give an order or direction to the respondents to consider the appointment of the applicants against Group 'D' posts in view of undertaking given Adjudication Proceedings and consequential benefit thereof.

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2. The brief facts of the case are that the applicants had served as Casual Labour up to June 1997 then the applicant had gone before the Labour Court against the termination order passed by the respondents. Finally, the Labour Court on 30.3.2004 passed the order dated 20.3.2004. The relevant portion of the order is quoted below:-

*“.....It has been agreed upon that the civil employees who has been disengaged will be given preferential chance against the new one, of course subject to work done by them and such old civil employees will be employed against the **released** vacancy from time to time. The old employees shall be recruited on the basis of their old seniority and subject to their attaining superannuation and after completion of legal formalities.....”.*

3. The applicants have stated in the O.A. that the certain vacancies have been released to the Unit in the year 2006 but no appointment is being made despite the various representations made by the applicants. Aggrieved by the inaction of the respondents, the applicant had filed Civil Misc. Writ Petition No. 28987 of 2007 before the Hon'ble High Court of Judicature at Allahabad. The same was dismissed on the ground of alternative remedy. It is understood by the applicant that vacancies were not being filled up in compliance of decision of Industrial Dispute because the respondents had not received any “NAC”.

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4. Respondents in their counter affidavit have admitted to the facts of the case but stated that all Group 'D' posts can be filled up only after availability of "NAC" by the Competent Authority. They have further clarified through their supplementary counter affidavit that full form of N.A.C is Non Availability Certificate, which was issued by Additional Directorate General of Manpower, Adjutant General Branch, Integrated Headquarters of Ministry of Defence (Army). N.A.C is mandatory for the conduct of recruitment. No enrolment can be done by any Unit in absence of N.A.C. Moreover, the learned counsel for the respondents also stated that since the decision of Industrial Dispute no recruitment of any Group 'D' post has been held.

5. Learned counsel for the applicant has argued that the requirement of NAC is not a statutory provision as the respondents have not quoted any Recruitment Rules to substantiate the same. The requirement of N.A.C is a simple internal matter, having no force of a statutory provision.

6. I have heard both the parties and perused the records. The matter is not in dispute that the respondents are bound to give consideration to the applicant at the appropriate juncture in compliance of the settlement arrived at in the Industrial Dispute. However, mere arising of vacancy is not enough as the decision to fill up the vacancies is also necessary. It is the

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settled law that the Government need not immediately decide to fill up the vacancies as soon as they arise. It was held by Hon'ble Apex Court in the case of **J&K Public Service Commission Vs. Dr. Narinder Mohan, AIR 1994 SC 1808 at 1806** that Government need not immediately notify vacancies as soon as they arise but may be deferred for any reason be they administrative, economic or policy. Moreover in the case of **State of Haryana Vs. Subash Chander Marwaha (1974) 3 SCC 220** the Hon'ble Supreme Court has held that existence of vacancies does not give a legal right to a candidate to be selected for appointment, they only have a legal right to be considered for appointment. In this case, the decision arrived at before the Industrial Tribunal is certainly to be honoured as and when decision is taken to fill up available vacancy.

7. In this case, the respondents have a policy of filling up vacancies only after the Non Availability Certificate (NAC) is available from the Competent Authority. The contention of the applicant that this is not a statutory requirement is not tenable in view of the observation made by the Hon'ble Ape Court in J &K Public Service Commission (Supra).

"The executive power is co-extensive with the legislative power of the State".

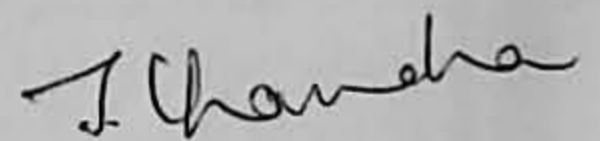
Thus in this case the words "released vacancy" in the award of the Industrial Tribunal has to be interpreted in its full

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connotation which is availability of vacancy and the decision to fill them up.

In this case once the administrative decision is taken to fill up vacant posts are taken, then the applicant have the right to be considered in accordance with the settlement arrived at in the Industrial Dispute. They are bound by their own commitment given before the Industrial Tribunal to consider the case of the applicant as and when they decide to fill up all vacancies in a manner as enumerated in para 4 of the Industrial Tribunal award.

8. O.A. is therefore, dismissed. No costs.



Member (A)

Manish/-