

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH **JABALPUR**

Original Application Number 261/2000
Date of Decision : This the 16 th day of Oct, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

.....
Raj Kishore S/o Abbe Lal aged about 29 years,
Resident of 753/1 Mandla Road, Bilhari, Jabalpur.

Raju S/o Shri Budhu Lal, aged about 35 years,
Resident of 103, Gora Bazar, Azad Chowk,
Cantt. Jabalpur.

(By Advocate Mr. Dharmendra Sharma, for applicants.)
.....Applicant.

versus

1. Union of India through its Secretary,
Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarter,
South Block, New Delhi.
3. Director General,
Armed Forces Medical Services,
Army Headquarter,
New Delhi.
4. G.O.C. MP B & O, Ridge Road,
Jabalpur.
5. Commandant, Military Hospital,
Cantt. Jabalpur.

(By Advocate Mr. S.C. Sharma with Mr. S.A. Dharmadhikari, for
the respondents)

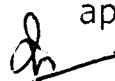
.....Respondents.

ORDER

By J.K. Kaushik Judicial Member:

Shri Raj Kishore and Shri Raju, have filed this joint

application and has sought the following reliefs :-



"(i) to direct the respondents to release the vacancy issue posting order in favour of the applicants for the post of Mali (Civilian) in pursuance of their selection Annexure A-6 holding that the respondents are responsible for not issuing posting order for the last 7 years,

(ii) to direct the respondents to pay full salary and allowances as also benefits thereof to the applicants from the date of issuance of Annexure A/6, as because of the fault of respondents the applicants could not receive the posting order in the garb of non receipt of vacancy,

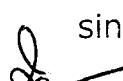
(iii) to direct the respondents to pay the damages for the delay of 7 years."

2. The brief facts of the case are that both the applicants belong to Scheduled Tribe category and have passed the fifth standard examination. They have been looking for a job and have been appearing in personal interviews in private company as well as Government departments. The fifth respondent notified the vacancies for the post of Mali, Aya Safaiwala, Mazdoor, Peon and Cook on permanent basis from the Employment Exchange, Jabalpur. The name of the applicants were sponsored through the Employment Exchange vide letter dated 7.1.1992 (Annex.A/5) and they were directed to appear for interview on 16.1.1992 in the office of respondent No. 5. Both of them were selected for the post of Mali (Civilian) and an information to this effect was communicated to one of the applicant vide letter dated 25.1.1992 with a further direction to appear before the respondents along with all testimonials and certificates. The applicants submitted the requisite certificates and testimonials in original before the respondent No. 5.

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3. The further case of the applicant is that vide communication dated 21.4.1992 applicant No. 1 was informed that the Board proceedings regarding the selection for recruitment to fill up SC/ST vacancies have been forwarded to the Headquarter, MP B&O Area and their reply is still awaited. He will be informed as and when the sanction regarding appointment is received by them. Thereafter, there has been a series of representations in the matter to the competent authority. The posts other than that of Mali were released and those who were selected along with the applicants had already been given appointment. In the year 1999, a letter was sent to the applicants regarding renewal or re-registration of their name with the Employment Exchange. The representation did not yield any result. It has also been averred that the applicants are in no way responsible for the delay which has been caused in the matter. The O.A. has been filed on diverse grounds and we shall discuss the one stressed by the learned counsel for applicants in the later part of this order.

4. The respondents have contested the case and have filed a detailed reply. Two preliminary objections have been enunciated in the reply. The first preliminary objection that the applicants have not stated the full facts of the case and second preliminary objection is that the process of selection was done against the anticipated vacancies and that too it was subject to the approval of the Ministry of Defence and since no vacancies have been released, the question of

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issuing appointment order does not arise. Further, it has been also averred that this application is hopelessly barred by limitation and in view of Section 21 of the Administrative Tribunals Act, 1985, application is required to be dismissed as barred by limitation.

5. The defence as set out in the reply of the respondents is that for certain anticipated vacancies, the MP, Bihar and Orissa Headquarters had given permission to the Military Hospital, Jabalpur, to carry out special recruitment to fill up the back log of reserved vacancies subject to permission from the Ministry of Defence. Accordingly, the process of recruitment took place and the entire record and the recommendations of the Board were forwarded to the M.P., Bihar and Orissa Headquarters. However, no permission was granted by the Ministry of Defence to fill up the vacancies against which the selection took place. It is next averred that mere inclusion of name of a person in the select list does not entitle him to be given appointment and no individual has been appointed by the Military Hospital, Jabalpur, on the post of Mali, on the basis of the said selection. In respect of other group 'D' posts, the appointing authority had released four vacancies of one each of Messenger, Ward Sahayak, LDC and Stenographer on which appointments had been made. But, against the post of Mali, no appointment has been made for want of sanction. Therefore, the O.A. is bereft of merits and deserves dismissal. No rejoinder has been filed.

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6. We have heard the learned counsel for the parties at length on 13.10.2003 as well as today and have also carefully perused the pleadings and records of this case. Both the learned counsel for the parties have reiterated their pleadings. The learned counsel for the applicants has submitted that the notification issued through the Employment Exchange in respect of the post of Mali was for filling of regular post and he has invited our attention to para 4.3 of the O.A. as well as to the corresponding para of the reply wherein, the respondents have admitted this position. He, therefore, submitted that once the appointment was to be made against the regular vacancy, there was absolutely no question of any sanction as such from the Headquarter. He has also submitted that the respondents have been totally trying to misguide this Tribunal by raising frivolous pleas inasmuch as it has been specifically averred in para 3 of the reply that the special recruitment was to be made for filling of back log of reserved vacancies. Thus, the question of sanctioning any post as such, is not there.

7. The learned counsel for the applicants has next contended that while it is true that mere empanelment for a particular post does not give any right to appointment but, the action of the authorities cannot be arbitrary and they cannot be permitted to blow hot and cold together and take a different stand just to damage the case of the applicant on one pretext or the other. He also contended that the concept of

9. On the contrary, the learned counsel for the respondents have tried to counter the submissions made on behalf of the applicants and has vehemently submitted that the selections in which applicants appeared, were made only against the anticipated vacancies and not against permanent vacancies. In fact, the vacancies were to be released with the approval of the Ministry of Defence which did not materialise. He has submitted that the respondents have strived to get the necessary approval from the highest authority but, no such approval has come and in the fairness of the things, the order dated 15.3.1999 at Annexure A/12, was issued so that the applicants should not remain under un- certain conditions. During the arguments, the learned counsel for the respondents also referred through files which was probably handed over to him by the Officer-in-Charge, who was also assisted him. From the file, he wanted to submit that there was ban regarding filling up of the posts in question. It was inquired whether, any such ground has been taken or any specific letter is available to this effect and also as to from which date, the ban was brought into effect?

10. The learned counsel for respondents submitted that all the relevant papers including that of notification which was ordered to be produced on 13.10.2003 by this Tribunal by which the vacancies were notified to the Employment Exchange, will be made available to this Tribunal at about 2.00 PM i.e. after lunch hours. He submitted that merely the applicants have been placed on the would not give any legal



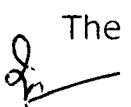
anticipated vacancies has been falsely introduced in the reply and the recruitment drive was for the back log vacancies meant for SC/ST and no question of anticipated vacancies arose. He has also submitted that it is a very strange matter that matter has been kept pending with the respondent No. 1 for such a long time and without any decision. Later, letter dated 15.3.1999 (Annex.A/12) is forthcoming without any basis. The Ministry of Defence was yet to take a decision.

8. In similar way, he has controverted the preliminary issue regarding the limitation and has submitted that one side the applicants were asked to wait and since the matter remained under consideration and other side, the plea of limitation has been taken as regards the maintainability of the very application. He has also submitted that applicants have stated full facts but, respondents have concealed the material facts inasmuch as they have not made available even the notification for vacancies which were sent to the Employment Exchange despite specific directions from this Bench of the Tribunal. It is also the contention of the learned counsel for applicants that no reasons are forthcoming as to neglecting filling up the posts of Mali and allowing filling of other posts. Therefore, the complete action of the respondents smacks arbitrariness and applicants feel that they have not been given a fair treatment due to some extraneous reasons best known to the administration.

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right for appointment to them and it is the prerogative of the competitive authority as to whether a particular post is to be filled in or not. In this connection, he has placed heavy reliance on the judgement of Hon'ble the Supreme Court in Shankarsan Dash Versus UOI reported in AI 1991 SC 1612 and in case of Vinodan T. and others Vs. Univesity of Calicut and ors. Reported in AIR 2002 SC 1885. He has submitted that the Apex Court has settled the matter and has categorically held that merely on the ground that one has been placed on the select panel, would not give him a right to appointment. The learned counsel for the applicants was also asked a query as to whether the Ministry of Defence has taken any decision in the matter or as to whether any order has been passed for not filling up the vacancies? Instead of giving a direct answer, he said that due to the ban, the posts could not be filled in.

11. A preliminary objection has been taken regarding delay in filing of the O.A. The respondents have themselves been keeping the matter regarding appointment of the applicants pending with them. As a matter of fact, the respondents are themselves responsible for the delay and raising such point does not sound well from a model employer. Otherwise also, it is a matter of appointment and no settled things are going to be unsettled besides that non appointment of the applicants gives recurring cause of action.

 The preliminary objection stands over-ruled. Other

preliminary objections are relating to fact and they are dealt with accordingly.

12. We have considered the rival contentions raised in this case on behalf of both the parties. The submissions have been very interesting besides full of complications and intricacies. To appreciate the controversy involved in the present case, it would be necessary to ascertain certain factual aspect of the matter. In the first instance, we would like to ascertain as to whether the posts of Mali against which selection was sought to be made, were regular posts. In this regard, we have carried out a close analysis and waded the relevant documents and the records which clearly show that the posts in question were regular posts. This position is evident from the specific pleadings and their reply as well as from the contentions of the letter which was addressed to the applicants by the Employment Exchange i.e. Annexs. A/5 and A/7 etc. Not only this, even it has come on records that special recruitment was ordered to be made in respect of the backlog of the SC/ST vacancies. To be doubly sure, we gave specific direction to the respondents to make available at least the notification of the vacancies which was sent to the Employment Exchange but, despite this and also the promise made, the same was not made available to us. We are left with no option except to draw an adverse inference against the respondents and to conclude that the selection was conducted against the regular vacancies/posts.

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13. Now, the question comes as to whether one who is selected and placed on select panel, can be refused appointment even if the vacancy is there. In this connection, it would be expedient to examine the case law position which have been relied upon by the learned counsel for respondents. In case of Shankarsan Dash (supra), their Lordships of the Hon'ble Supreme Court has held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules so indicate. The relevant portion from para 7 of the judgement is extracted as under :-

“It cannot be said that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an infeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.”

The next case is the case of Vinodan T. and ors. (supra), where their Lordships has held as under :-

“Persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the concerned authority to decide how many appointments should be made. However the selected candidate have a right to compel such authority (i) not to make appointments by

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travelling outside the list and (ii) to make the selection for appointment strictly in the order the candidates have been placed in the list."

The learned counsel for the applicants did not have any objection as regards the proposition of the law laid down by the Apex Court. But, he has submitted that by the same judgement (Shankarsan Dash) it has also been observed that it does not mean that the State has licence in acting like an arbitrary manner and a decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. He has contended that in the present case, no decision has yet been taken for not filling up the vacancies. The matter is rather otherwise. A positive decision was taken to fill up the vacancies but, in the name of taking some sanction, some approval, some artificial ban, changing the status of vacancies, calling them anticipated vacancies etc., the appointments have been denied and the action of respondents has been obviously unfair. In our considered opinion, the stand of the respondents has been nothing but a volte face exercise and they have been changing their stands and despite making positive promises they have with-hold certain vital information from this Tribunal. It is really strange to note that the selection has taken place somewhere in 1992 and now, we are in 2003 and the Ministry of Defence, who is respondent No. 1 and is also represented through its counsel, did not in fact decide the matter regarding appointment of applicants.

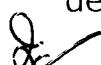


14. There is not even a whisper regarding the reason for not filling up the vacancies of Mali whereas, there was special drive for filling up certain posts to clear the backlog of SC/ST candidates. Had the respondents been fair enough, they would have revealed the clear position. As regards the ban, there is absolutely no pleading and no details are forthcoming. Even, certain letters on which learned counsel for respondents wanted to rely, were not made available to the Tribunal. It is also not known whether the applicants' case were at all covered or could be covered under such ban and if, there was ban, how other four persons have been appointed. Thus, the stand of the respondents stands falsified.

15. As far as the general proposition of the law is concerned as laid down by Hon'ble the Supreme Court, we are bound by it. In the present case, we find that it is not a simple case where applicants could be denied appointment inasmuch as the respondents have concealed certain vital facts from the Tribunal and deliberately withheld the relevant records. No firm decision has been taken for not filling up the vacancies. Even it is doubtful as to whether the matter has been seriously taken up with the Ministry of Defence since we do not find any communication on the record in this respect. The applicants belong to a downtrodden community and it is the constitutional mandate that they should be adequately represented in the services and if special drive for filling up

back log vacancies in respect of the reserved vacancies are subjected to such obstructions, the very purpose of providing reservation would get frustrated. In our considered opinion, the applicants have not been given fair treatment. By now, they have waited for about eleven long years and must have become over aged. Their complete future is at stake and the whole problem is created by the respondent department themselves. We are left with no option except to reach to an irresistible conclusion that there has been infraction of Articles 14, 16 and 21 of the Constitution of India and thus, there is ample force in this Original Application.

16. It is our sad experience that in some cases even if we reserve the case for orders directing the respondents to make available the relevant records, no one take responsibility to make available the same. We hope and trust that the respondents would take steps to see that necessary and needed assistance would be forth-coming to the Tribunal to avoid undue burden on it for appropriate adjudication of disputes. We further hope that this unsavoury situation would not be repeated hereafter. We indicate that they should make an officer responsible to assist the counsel appearing for them by placing all necessary records/details so as to enable this Tribunal to adjudicate the disputes and reach to proper decision expeditiously.



17. In the premises, the O.A. has sufficient merit and substance and the same stands allowed. The respondents are directed to appoint applicants on the post of Mali for which they have been selected within a period of two months from the date of receipt of a copy of this order. No costs.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

J.K.Kaushik
(J.K.Kaushik)
Judicial Member

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5/12/03

D. Sharma, A.O.
SC Sharma, A.O.
Sharma
5/12/03