

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 188 of 1986
T.A. No. 199

(21)

DATE OF DECISION 29.10.86

<u>Radhey Shyam</u>	Petitioner
<u>Shri Ashish Kalia</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors</u>	Respondent
<u>Shri M.L. Verma</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Mr. Shri I.K. Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgment of the Bench delivered by Hon'ble
Shri Justice Ram Pal Singh, Vice-Chairman.)

J U D G M E N T

This Original Application was filed by 21 applicants before the Tribunal while the application was signed by applicant, Shri Radhey Shyam. On behalf of the other 20 applicants, one Shri S.N. Saxena, in the capacity of an agent of the applicants appeared and filed his authority. The general powers of attorney were executed individually by several other applicants. The Tribunal by its order dated 4.9.86 held that except Radhey Shyam, none of the applicants are before ^{it} and Shri S.N. Saxena, in the absence of proper power of attorney, cannot be recognised as an agent. Hence, we can take that the applicant in this case is Shri Radhey Shyam only.

2. By this O.A., filed under Section 19 of the Administrative Tribunals Act of 185 (hereinafter referred as 'Act'), the applicant prays for a direction to the respondents to recall the impugned order dated 16.10.85 (Annexure 2) whereby Skid Porters and a few



seniors (Carriage and Wagon Khalasis) were promoted. This is the main relief prayed for. Annexure A-2 is the order passed by the Central Railway Office of the Divisional Railway Manager, Jhansi, on 16.10.85 by which Senior Helper Khalasis Gr. Rs 210-290 (RS) were promoted to the Grade of Rs. 260-400 (RS). The names of the promoted employees are given in Annexure A-2 and they are 33 in number.

3. The respondents without filing their return have raised the preliminary objection that the Original Application suffers from the defect of non-joinder of necessary parties. Shri M.L. Verma appearing for the respondents, has contended that all those employees who were promoted by Annexure A-2 are the necessary parties because they shall be directly affected if this O.A. is allowed. Shri Ashish Kalia, for the applicant, controverted this contention and maintained that the applicant had worked for several years and cannot be ignored in getting any promotion from the respondents. It is true that if this O.A. is allowed ultimately, then all the persons mentioned in Annexure A-2 shall be directly affected. Any order in favour of the applicant is definitely likely to result in prejudice to the persons mentioned in Annexure A-2. The principles of natural justice, i.e., AUDI ALTERAM PARTEM principles are universal and no order prejudicial to any person can be passed without hearing them. Looking to facts and circumstances of the case, we are of the view that all the persons mentioned in Annexure A-2 are necessary parties and no motion has been made to implead them as respondents. As the persons mentioned in Annexure A-2 are not impleaded as respondents, no order detrimental to them could be passed in their absence. This principle is also enshrined in Order 1, Rule 9, of the Code of Civil Procedure where the proviso states that nothing in this Rule shall apply to the non-joinder of necessary parties. As regards non-joinder of parties, it is settled that a distinction has to be drawn between the non-joinder of a person who ought to have been joined as a party and the non-joinder of a person whose joinder is only a matter of convenience or expediency. This is so, because the provision contained in Order 1

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1 of Rule 9 is a rule of procedure which does not affect the substantive law. In the facts and circumstances of the case, it is evident that these 33 persons mentioned in Annexure A-2 are the necessary parties and without their impleadment, no order can be passed in favour of the applicant. We are fortified in our view by the following pronouncements of this Tribunal:

1. V. Vijayam and others vs. Director General of Quality Assurance & Ors (SLJ 1991(2) CAT 179).
2. Jyotirmoy Dev vs. Union of India (1990 (13) A.T.C. 410).
3. Ram Autar Prasad vs. Union of India & Ors. (1988 (6) A.T.C. 220).

The upshot of the above discussion is that this O.A. is not maintainable for the inherent jurisdictional defect of non-joinder of the necessary parties. Consequently, this O.A. is dismissed with the direction to the parties to bear their own costs.

Shaykh
(I.K. Rasgotra) 29/10/91

Member (A)

Ram Pal Singh
(Ram Pal Singh) 29/10/91

Vice-Chairman (J)