

Open Court

Central Administrative Tribunal, Allahabad Bench, Allahabad

Impleadment Application No.702/2021 in O.A. No. 330/00207/2021
Impleadment Application No.627/2021 in O.A.No. 330/00211/2021
Impleadment Application No.619/2021 in O.A. No.330/00212/2021

This the 15th day of July, 2021.

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Devendra Chaudhry, Member (A)

**Impalement Application No.702/2021 in
O.A. No.330/00207/2021**

Sandeep Gupta and 50 others Applicants

By Advocate: Sri Jaswant Singh and Sri P.K. Pandey

Versus

Union of India and others Respondent

By Advocate: Sri M.K. Sharma

Sri Kripa Shankar Prasad assisted by
Sri Siddharth Srivastava and Smt. Ritu Raj Kumari
(Advocate for proposed respondents/applicants in
Implementation Application No. 702/2021)

**Impalement Application No.627/2021 in
O.A. No.330/00211/2021**

Manoj Kumar Srivastava and 31 others

Applicants

By Advocate: Sri Shyamal Narain

Versus

By Advocate: Sri Chakrapani Vatsyayan

Sri Ashish Srivastava
(Advocate for proposed respondents/applicants in
Impladment Application No. 627/2021)

**Implementation Application No.619/2021 in
O.A. No.330/00212/2021**

Satish Kumar and 9 others

Applicants

By Advocate: Sri Pradeep Chandra, Senior Advocate assisted by
Sri Dharmendra Tiwari

Versus

Union of India and others

Respondent

By Advocate: Sri Chakrapani Vatsyayan

Sri Kripa Shankar Prasad assisted by
Sri Siddharth Srivastava and Smt. Ritu Raj Kumari
(Advocate for proposed respondents/applicants in
Impleadment Application No. 619/2021)

ORDER ON IMPLEADMENT APPLICATIONS

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

For the purpose of clarity, a short description and status of all the four OAs as of today, is narrated below:-

O.A. No. 207/2021:-

2. Sri Jaswant Singh and Sri P.K. Pandey learned counsel for the applicant and Sri M.K. Sharma, learned counsel for the respondents, all are present in court. Ld. Counsel for the applicants are requesting to hear on their prayer for interim relief.

3. There is an Impleadment Application No. 330/702/2021 filed in this O.A. Sri Kripa Shankar Prasad assisted by Shri Siddharth Srivastava and Smt. Ritu Raj Kumari have appeared for the proposed respondents/ applicants in the impleadment application. They have prayed that the proposed respondents are the necessary parties, therefore, before hearing on the prayer for interim relief, their impleadment application be heard.

O.A. No. 211/2021:

4. Sri Shyamal Narain, learned counsel for applicant and Sri Chakrapani Vatsyayan, learned counsel for respondents, both are present. Ld. Counsel for the applicant is pressing on their prayer for grant of interim stay.

5. An Impleadment Application No. 330/627/2021 has been filed in this O.A. also. Sri Ashish Srivastava has appeared for the proposed respondents/applicants in the impleadment application, who has requested that the applicants in the impleadment application, being necessary parties, they should first be impleaded and be heard before passing any order on interim stay of impugned order.

O.A. No. 212/2021:-

6. Sri Pradeep Chandra, Senior Advocate assisted by Sri Dharmendra Tiwari on behalf of the applicants and Sri Chakrapani Vatsyayan, on behalf of the respondents, all are present.

7. There is an Impleadment Application No. 330/619/2021 in this O.A. too. Sri Kripa Shankar Prasad, assisted by Shri Siddharth Srivastava and Smt. Ritu Raj Kumari, have appeared for the proposed respondents/applicants in the

impleadment application with prayer to implead the applicants and to give them opportunity of hearing on the issue of interim stay.

O.A. No. 272/2021:

8. Sri Shyamal Narain on behalf of the applicant and Sri M.K.Sharma on behalf of the respondents, both are present.

9. There is no impleadment application in this O.A.

10. Learned counsel for the original applicants in all the above mentioned 4 connected OAs are requesting that the matter being very urgent be heard today and their prayer to stay the operation of the impugned order, be allowed.

11. On the other hand, learned counsel for proposed respondents, who have filed impleadment applications in three OAs are requesting that first they be impleaded because if any order is passed in these OAs, without giving opportunity of hearing to them, great prejudice will be caused to them and their entire career will be ruined.

12. Before hearing on the impleadment applications, it is pertinent to mention that on previous date, a bench comprising of undersigned (Justice Vijay Lakshmi, Member (J) and Hon'ble Mr.

Tarun Shridahar, Member (A) (who was present at Allahabad on that date as a guest member) had heard on impleadment applications in part.

13. As today, Hon'ble Mr.Tarun Shridhar, Member (A) is not available at Allahabad and all the learned counsel who are present online or in court, have requested that the matter being urgent be released as part heard from the earlier bench and be heard today by the bench, which is available, the Registry was directed to take virtual consent of Hon'ble Mr.Tarun Shridhar, Member (A), who is at Kolkata today, so that the impleadment applications may be released from part heard.

14. In the meantime, the learned counsel for the parties in the O.A. No. 272/2021, in which there is no impleadment application, may proceed to argue on the prayer for interim relief.

15. Heard Mr. Shyamal Narain, Id. Counsel for the Original applicants in O.A. No. 272/2021, on the prayer for interim relief.

16. While we were hearing the matter, the Registry informed that the consent of Hon'ble Mr. Tarun Shridhar, Member (A) for release of part heard impleadment application, has been taken through virtual mode.

17. In view of the fact that the Hon'ble Sri Tarun Shridhar has no objection if the impleadment application is released from part heard, the impleadment application is released from being part heard by the earlier Bench, comprising of me (Member- J) and Hon'ble Sri Tarun Shridhar (Member -A).

18. As Ld. Counsel for the original applicants is repeatedly pressing the prayer for interim stay, we are proceeding to hear both the prayers today.

19. Considering the facts and circumstances of the case, it appears expedient in the interest of justice to first decide the impleadment application filed in O.A. No. 207, 211 and 212 of 2021, before passing any order on interim stay.

20. We have heard learned counsel for applicants/learned counsel for respondents and learned counsel for proposed respondents, who have filed impleadment application at length. We have carefully gone through the records.

21. Out of the four aforesaid O.As of the bunch, in 3 OAs, impleadment applications numbered as M.A. No. 330/619/2021, M.A. No. 330/702/2021 and M.A. No. 330/627/2021 respectively, have been

filed, with prayer to implead the applicants as respondents, they all being the necessary parties.

22. Learned counsel for applicants of impleadment applications/proposed respondents have submitted that applicants are direct recruits, who entered in the service by regular selection in the cadre of Inspector by direct recruitment in the year 2003 and who are working at present on the same posts, since then.

23. It is contended by Id. counsel for the proposed parties that the original applicants of these O.As, who are the promote inspectors have challenged the Establishment order No. 1/A/CCSC/11/2021 dated 19.2.2021, Establishment order No. 1/A/CCSC/12/2021 dated 19.2.2021, Establishment order No. 1/A/CCSC/13/2021 dated 19.2.2021 and as an interim relief have prayed to stay the operation of these orders. It is contended that any order passed by this Tribunal on interim relief, or final relief, will definitely diversely effect the interest of applicants of impleadment application/proposed respondents, who are the direct recruits working in the same posts of Inspectors. Therefore, the applicants/proposed respondents may also be impleaded in the aforesaid

O.A. and be given opportunity of hearing before passing any order on the prayer for interim stay of impugned orders.

24. Per contra, learned counsel for original applicants have vehemently opposed the impleadment application by contending that the applicants of impleadment application i.e. proposed respondents are neither the necessary party nor the proper party, therefore, their impleadment is not required in these OAs and the impleadment application is liable to be dismissed.

25. We have considered the rival submissions of learned counsel for both the parties and perused the records.

26. It is not disputed that the applicants of impleadment application are the direct recruits, who are working on the same posts of Inspectors since the year 2003, on which posts, the original applicants of the O.A. were working.

27. Looking to the background facts of the case, it appears that pursuant to the cadre restructuring in the year 2001 and 2002, as many as 382 post of Inspectors were upgraded to the post of Superintendents. Thereafter, all the original applicants, who were working at that time on the

post of Lower Division Clerks, Upper Division Clerks or Stenographers, were promoted to the vacant posts of Inspectors by holding a departmental examination in the year 2007. However, all of them, who qualified the departmental exam were deemed to be promoted retrospectively on notional basis since the date of vacancy in inspector cadre post i.e. with effect from 6.12.2002. The proposed respondents were directly selected to the post of inspector in the year 2003 and since then they are discharging their duty as inspectors. On 24th October, 2016, the Central Board of Excise and Customs issued a letter, whereby a clarification was issued to the effect that as the post of Inspectors have been upgraded to the post of Superintendents, therefore, the post of Inspectors are no longer available in the grade of Inspector prior to restructuring. Hence, filling of non-existing vacancies of Inspectors on the basis of Recruitment Rules, 1979 is not in order and these posts should be corrected by conducting review DPC.

28. Pursuant to aforesaid order dated 24.10.2016 and considering that the original applicants in the O.As were promoted on the post of Inspectors on non-existing vacancies, over and above the

sanctioned strength of the inspectors, who were not only wrongly promoted but were even given notional seniority of many years back i.e. since the year 2002 and to remove the illegality, the respondents passed the impugned orders, which are under challenge, in all these OAs and as interim relief, the stay of these orders has been prayed.

29. The proposed respondents, who have filed these impleadment applications are the inspectors in the same department, who were regularly selected on the post of inspectors through direct recruitment in the year 2003. As per their statement, they have not been given any promotion since their initial appointment till today due to long pendency between them and as many as 382 promotees, they are struggling to get their 1st legal and of genuine promotion and in back drop of the above facts and circumstances, it appears expedient in the interest of justice that the applicants of the impleadment application/ proposed respondents should also be given an opportunity to be heard before passing any order on the prayer for interim relief.

30. Accordingly, Impleadment applications are allowed. Learned counsel for the original applicants

in O.A. No. 207/2021, 211/2021 and 212/2021 are directed to carry out the necessary amendment in the array of parties, so as to implead the proposed respondents (applicants in the impleadment application) as respondents in the OAs. All the newly impleaded respondents are directed to file counter affidavit within 4 weeks. Rejoinder Reply to the counter affidavit filed by newly impleaded respondents may be filed within 2 weeks thereafter.

31. A copy of this order be kept on all the 3 OAs in which the impleadment applications have been filed.

32. Hon'ble Mr. Devendra Chaudhry, Member (Administrative) has consented to this order during virtual hearing.

(Devendra Chaudhry) **(Justice Vijay Lakshmi)**
Member (A) **Member (J)**

HLS/-

O.A. No. 330/00207/2021
O.A.No. 330/00211/2021
O.A. No.330/00212/2021