

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

78

Original Application No. _____

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. 11/05 in O.A. 160/05

Applicant(s): Smt. Kalpana Das

Respondent(s): Smt. Alaka Saha & ans.

Advocate for the Applicant(s): - G.P. Bhowmik, G. Saikia, J. Purkayastha

Advocate for the Respondent(s): - Csl.

Notes of the Registry	Date	Order of the Tribunal
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This Review Petition has been filed by the petitioner, Smt. Kalpana Das, as Respondent No. 1 in O.A. 160/05 u/s 22(3)(f) of the C.A.T. Act, 1985 read with C.A.T. (Procedure) Rule, 1987 along with a Mis. Petition u/s 5 of the Limitation Act for condonation of delay for filing the Review Petition for seeking review of an order dated 13.7.05 in O.A. 160/05 by this Hon'ble Tribunal.

The Review Petition has been placed before the Hon'ble V.C. for consideration and if approved the same will be placed before the Hon'ble Court.

Laid before the Hon'ble V.C. for order.

18/11/05
SOL

Order 24/10/05 18/11/05

Hon'ble

Post this Review Petition before the DR to be heard. It appears there is another Review Petition in this O.A. in which case post along with the case.

28/11/05
SOL

Present : Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.
Hon'ble Mr. N.D. Dayal, Administrative Member.

After hearing learned counsel for the parties the dispute regarding age of the applicant, we direct the applicant to be present personally. Post on 19.1.2006.

HOD
Member

9
SOL
Vice-Chairman

19.1.06. Post the matter before the next available Division Bench.

lm

Vice-Chairman

3.8.06 Present: The Hon'ble Mr K.V.Sachidanandan, Vice-Chairman & The Hon'ble Mr Gautam Ray, Member(A)

The R.A. emanated from the order of this Tribunal in O.A.160/05 dated 13.7.05. It is quite evident that this order has been passed by Hon'ble G.Sivarajan, Vice-Chairman and Hon'ble Shri K.V.Prahладан, Member(A). The Administrative Member has already been retired and Hon'ble Mr G. Sivarajan is working at Bangalore Bench. Therefore it is necessary to refer the matter to principal Bench for consideration of constitution of a Review Bench.

Registry is directed to refer the matter to the principal Bench for constitution of review Bench.

10/1/07

Member

Vice-Chairman

pg

15.3.07.

Post the matter on 16.3.07.

Member

Vice-Chairman

lm

16.3.07

The review application has been filed by the respondents against the order dated 13.7.05 passed by this Tribunal in O.A. No.160 of 05. The then Hon'ble Vice is now working at Bangalore and Hon'ble Member has already retired. When the matter referred to the Principal Bench, New Delhi, the Principal Bench vide letter dated 15.9.06 has directed for placing the same before the Vice-Chairman/Head of Department of this Bench for constitution of Bench to hear these RAs in terms of Sub-Para 3 & 4 of Para of Rule 49 of Appendix-IV dated 18.02.1992 as and when the Bench is available. Today Hon'ble Vice-Chairman, (K.V. Sachidanandan) and Hon'ble Mr. Tarsem Lal, Administrative Member has constituted the Bench and decided that the matter will be heard on 22.3.07.

Post the matter on 22.3.07.

Member

Vice-Chairman

22.3.2007

The R.A. is disposed of in terms of the order kept in separate sheets. No costs.

Member

/bb/

*Review application
filed by the respondents
against the order dated 13.7.05
in O.A. No. 160 of 05.
The then Hon'ble Vice is now working at Bangalore
and Hon'ble Member has already retired.
When the matter referred to the Principal Bench,
New Delhi, the Principal Bench vide letter
dated 15.9.06 has directed for placing the
same before the Vice-Chairman/Head of
Department of this Bench for constitution
of Bench to hear these RAs in terms of
Sub-Para 3 & 4 of Para of Rule 49 of
Appendix-IV dated 18.02.1992 as and
when the Bench is available. Today
Hon'ble Vice-Chairman, (K.V.
Sachidanandan) and Hon'ble Mr. Tarsem
Lal, Administrative Member has
constituted the Bench and decided that
the matter will be heard on 22.3.07.*

25.5.07
*Copy of judgment has
been sent to the parties
for filing in the concerned
Appellate court by the Respondents
by post.*

10/

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Review Applications No.10/2005 & 11/2005.(In O.A.160/2005)

Date of Order: This the 22nd day of March, 2007.

HON'BLE MR. K.V.SACHIDANANDAN, VICE-CHAIRMAN

HON'BLE MR.TARSEM LAL, ADMINISTRATIVE MEMBER

R.A. 10 of 2005

1. Union of India,
represented by the Secretary to the
Govt. of India, Ministry of Defence,
South Block, New Delhi-1.
2. The Deputy Director,
Medical Services, Ministry of Defence,
101 Area, C/o 99 APO.
3. The Brigadier Commandant
151 Base Hospital,
C/o 99 APO

...Applicants

By Advocate Shri G. Baishya, Sr.C.G.S.C

-Versus-

Smt Alaka Saha
W/o Sankar Saha
C/o Smt Geeta Saha, W/S Qtr No.
PA-7, 151 Base Hospital,
Basistha, Guwahati-29.

....Respondent

By Advocate Mr K. Paul, Miss B.Das

R.A. 11 of 2005

Smt Kalpana Das,
Natun Bazar,
P.O. Basistha Chariali
Guwahati-29.

Review petitioner

By Advocate Mr G.P.Bhowmick

1. Smt Alaka Saha
W/o Sankar Saha
C/o Smt Geeta Saha, W/S Qtr No.
PA-7, 151 Base Hospital,
Basistha, Guwahati-29.

....Respondent

2. Union of India,
represented by the Secretary to the
Govt. of India, Ministry of Defence,
South Block, New Delhi-1.

3. The Deputy Director,
Medical Services, Ministry of Defence,
101 Area, C/o 99 APO.

4. The Brigadier Commandant
151 Base Hospital,
C/o 99 APOProforma Respondents

By Advocate Miss B.Das for respondent No.1 and Mr.G.Baishya,
Sr.C.G.S.C for respondents 2, 3 and 4.

O R D E R (ORAL)

SACHIDANANDAN K.V.(V.C)

Review Application 10/2005 has been filed by the official respondents in O.A.160/2005 and R.A.11/2005 has been filed by Smt Kalpana Das, who was respondent No.4 in the O.A.

2. Since common questions of law and facts are involved, these two Review Applications being disposed of by this common order with the consent of the parties.

3. When the matter came up for hearing on another occasion and finally on 15.3.2007 in terms of Sub-para 3 and 4 of Para 1 of Rule 49 of Appendix-IV dated 18.2.1992 as directed by the Principal Bench, this Tribunal constitute the present two Member Bench to hear the matter and the matter was posted for final hearing on the consent of the parties.

4. The review applications emanated from the order of this Tribunal in O.A.160/2005 dated 13.7.2005. The operative portion of the said order is quoted below :

"In the circumstances we direct the Respondent Nos. 1 to 3 to appoint the applicant to the post of Ward Sahayika as notified if the Respondents want to fill up the vacancy of Ward Sahayika. The Original Application is disposed of as above. There will be no order as to costs."

In both the Review Applications the said order is sought to be reviewed on the ground that has been taken in the R.As respectively. The contentions of the review applicants is that Smt Kalpana Das has submitted an application before this Tribunal in O.A.160/2005 stating that the present Alaka Saha is a person who is appeared before the Interview Board and all the educational certificate shows that her name is Alaka Saha. Smt Alaka Saha has a relation to her father late Jagabandhu Saha which is a dubious status i.e. one is adopted daughter and one is daughter in law thereby rejecting the selection of the applicant/respondent. Thereafter O.A.16/2005 was filed and as per an compliance report of the respondents this Court has passed the elaborate order in O.A.160/2005.

5. The contesting respondents Smt Alaka Saha has filed an affidavit before this Tribunal and stated that Smt Kalpana Das did not secure 2nd position as she was scored third highest mark. Two other candidate namely, Appointment letters were issued to Mrs Marami Hira (Gen) and Miss Mary Gogoi(OBC). She has also stated that she studied in the Holy Heart Senior Secondary School.

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 The Principal of the said school had issued a letter addressed to the Inspector of Schools as per Annexure-3 produced alongwith the written statement and due to some problem the school was shifted and was it cannot be said that it is not in existence. As per the certificate she has declared the date of birth as 20.3.1982 and she strongly objected that the certificate furnished by respondents are forged. Therefore, question of rejecting the candidature of the deponent does not arise. The case of the official respondents is emanated when the respondents has received a letter Annexure-7 from the Inspector of Schools, Kamrup, Guwahati, which is reproduced as under :

"I have the honour to inform you that so far my knowledge the countersignature of asstt. Inspector of Schools, K.D.C, Guwahati as in the Transfer certificate of Smt Alaka Saha of Holy Heart Senior Secondary School, Ghy-3 is doubtful and not similar to any Asstt. Inspector of Schools as per office records.

On the other hand Holy Heart Senior Secondary School at Hedayetpur, A.p.C.C.Road Ghy-3 is untraced.

This is for your information & necessary action."

The respondents has also produced the original transfer certificate in their possession alongwith the R.A. The review applicant's counsel wanted to have the original back to him. He is accordingly permitted to give a photo copy duly attested by him and which may be kept on record. In the report of the Inspector of Schools two things has come out, the certificate is doubtful and the school is untraced.

6. The counsel for the review applicants further submitted that they have not been given opportunity to adduce these evidence

because it was decided well before their affidavit is being filed. Undoubtedly these documents are the documents which was not within the knowledge of the respondents but that will materially affected the issue involved in this case and therefore it has to be evaluated whether in such a situation the R.A is maintainable or not.

7. **In Ajit Kumar Rath vs. State of Orissa & Ors. 1999**

(9) SCC 596 Hon'ble Supreme Court has made the following observations:-

"Power of review available to an Administrative Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person, on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be procured by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of record or for any other sufficient reason. A review cannot be sought merely for a fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. the expression "any other sufficient reason" used in Order 47, Rule 1 means a reason sufficiently analogous to those specified in the rule." page 144 A-4

In Lily Thomas vs. Union of India, 2000 (6) SCC 224 similar observation has been made by the Apex Court. Learned counsel for the applicant has also taken us to a decision reported in 2003 SCC

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581 in the case of United India Insurance Company Ltd. vs. Rajendra Singh & Ors., reported in (2000) 3 SCC 581 and contended that a review is possible in a case where the court is misled by a party or the court itself commits a mistake, which prejudices a party, the court has the inherent power to recall its order. Case of the review applicants is that those new documents have been subsequently collected and produced before them. The learned counsel for the respondents in the R.A strongly denied the allegation and submitted that these documents are genuine to substantiate the same in any form.

8. Considering the entire facts of the case and considering the new documents which could not have produced by the applicant at the time of hearing of the case and it requires an elaborate enquiry and genuineness is to be tested, we are of the considered view that R.As are maintainable. However, we are not expressed any comments where fraud is committed or documents are genuine for that reason we are of the considered view that the order of the Tribunal dated 13.7.2005 in O.A.160/2005 will be recalled with a further direction on the 3rd respondent to conduct a fresh enquiry about the entire episode giving liberty to the parties and after giving notice to them and for personal hearing in so far compliance of the natural justice and pass an appropriate speaking order communicating the same within a period of 3 months from the date of receipt copy of this order. Till then status quo as on today shall be maintained.

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Review Applications are accordingly disposed. No order
as to costs.

sd/ VICE CHAIRMAN
sd/ MEMBER (A)

//pg//



No. Misc/Judl/Guwahati/JA-98
केन्द्रीय प्रशासनिक अधिकरण
CENTRAL ADMINISTRATIVE TRIBUNAL
प्रधान न्यायपीठ, नई दिल्ली
Principal Bench, New Delhi

Speedy
6/3/06

61/35, Copernicus Marg, New Delhi-110 001

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Date: 15.09.2006.

To

The Registrar,
Central Administrative Tribunal,
Guwahati Bench
Guwahati

Subject: Constitution of Bench for the Review Petition Nos.
3/2005 (OA 246/1995), 10/2005 and 11/2005 (OA
160/2005).

Sir,

I am directed to refer to your letter No. 1/Review/2006/Judl/665 dated 04.09.2006 on the subject cited above and to return herewith Part 'A' of Review Petition Nos. 3/2005 (OA 246/1995), 10/2005 and 11/2005 (OA 160/2005) for placing the same before Hon'ble Vice Chairman/Head of Department of your Bench for constitution of Bench to hear these RAs in terms of Sub-Para 3 & 4 of Para 1 of Rule 49 of Appendix -IV dated 18.02.1992, as and when the Bench available.

Yours faithfully,

(Saikat Das)

Deputy Registrar (JA)

Encl: - As above.

CO
25.9.06

19 OCT 2005

NS
गुवाहाटी न्यायपीठ

District: Kamrup

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
Guwahati Bench, at Guwahati.

Review Application No. 11 of 2005

Arising out of O.A. No. 160 of 2005

Smti Kalpana Das,

... Review Petitioner

- Versus -

(Respondent No. 4 in

O.A 160/05.

Smti Alaka Saha & Anr.

... Respondent,

(Applicant).

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Filed by :

Jyoti Pukayashree
Advocate.

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LIST OF DATE

19.1.05 Advertisement was made for recruitment of two posts of Ward Sahayika at 151, Base Hospital, Basistha. One post for general candidate and one post for OBC candidates.

17.2.05 The Review petitioner was called for interview on 17.2.05 at 9 A.M. vide interview letter No. 452/2/CN Est/Coy/2005(iv) dated 19.1.05. In the interview hall at 151, Base Hospital she saw Dolly Saha impersonated herself as Alaka Saha.

25.2.05 The petitioner along with Mary Gogoi reported the matter to Major R.C. Dhulia Coy Commander, 151, Base Hospital, Basistha.

1.3.05 The Learned Tribunal was pleased to direct the applicant in OA No. 59/05 to submit representation to the respondent authority and requiring them to consider her representation and submit report to the Tribunal.

4.3.05 Petitioner made her representation dated 4.3.05 and the
& 6.5.05 respondent authority after making Police Verification submitted report on 6.5.05 to the Tribunal.

13.7.05 Direction was given to the respondent no. 1,2,&3 to appoint the applicant to the post of ward sahayika in 151, Base Hospital, Basistha, in O.A. No. 160/05.

21.9.05 The petitioner filed complaint petition being Case No. 6111C/05 in the Court of the Learned Chief Judicial Magistrate, Guwahati.

22.9.05 The court of the Sub-Divisional Judicial Magistrate (S) II, Guwahati for disposal and the Learned Magistrate took cognizance of the case and was pleased to issue process against all four persons fixing 2.11.05 for appearance in the Court oto face the Trial

Filed By :-

Jayati Purnayashan

Advocate

District: Kamrup

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
Guwahati Bench, at Guwahati.

Filed by ^{1/2}
The Petitioner
Through
Tanjoti Prakayash
Advocate
10.05.

Kalpana Das

Review Application No. 11 of 2005
Arising out of O.A. No. 160 of 2005

In the Matter of:

Smti Alaka Saha ... Applicant.

-Vs-

Union of India & Ors... Respondents.

- A n d -

In the Matter of:

An application under Section 22(3) (f) of the of
the Administrative Tribunals Act, 1985 read with
the Central (Procedure) Rules, 1987 framed
under the Administrative Tribunal Act, 1985.

- A n d -

In the Matter of:

Original Application No. 160/2005 (Smti Alaka
Saha - Vs- Union of India & Others)

Smti Kalpana Das,
Vill. Natunn Bazar,
P.O. Basistha Chariali,
Guwahati-781029,
District-Kamrup, (Assam).

... Review Petitioner

(respondent No.4 in

OA 160/05.

1/3
Kalpana Das

1. Smti Alaka Saha,
W/o. Sri Sankar Saha,
C/o. Smti Geeta Shah,
W/S Qtr. No. P.A-7, 151 Base Hospital,
C/o. 99 APO, Basistha Road,
P.O. Basistha, Guwahati-781029,
District: Kamrup (Assam)..... Respondent.
(Applicant)

2. The Union of India,
represented by the Secretary to the Govt.
of India, Ministry of Defence, South Block,
New Delhi-1.

3. The Deputy Director,
Medical Services, Ministry of Defence,
101 Area, C/o. 99 APO.

4. The Brigadier Commandant,
151, Base Hospital,
c/o 99 A.P.O. Proforma Respondents

The humble petition of the Review petitioner above
named;

Most Respectfully Sheweth:

1. That the review petitioner as respondent no. 4 in O.A. 160/2005 prefers this petition seeking review of the order dated 13.7.05 whereby direction was given to respondent no. 1,2,&3 in O.A. 160/2005 to appoint the applicant to the post of Ward Sahyika in 151, Base Hospital, C/o. 99 APO at Basistha, Guwahati-29.

A copy of the Order dated 13.7.05 under review
is filed hereto and marked as Annexure-A.

2. That the review petitioner was impleaded as the respondent no.4 in O.A. 160/05 which was disposed of at the admission stage and neither the respondent authority of 151, Base Hospital, nor the petitioner/private respondent no.4 could file their affidavit-in-opposition. It is pertinent to mention that the learned tribunal by order dated 22.6.05 issued show-cause notices fixing 7.7.05 and there after on 13.7.05; on which date prayer for time was made on behalf of the respondent nos. 1,2,&3 to file affidavit-in-opposition which was not allowed and the learned Tribunal was pleased to pass the final Order on 13.7.05 itself on the basis of the pleadings of the application in O.A. 160/05. The petitioner/respondent no.4 also could not file affidavit-in-opposition in such short time as she could not collect relevant documents and informations.

3. That the petitioner by this review application begs to bring on record some relevant facts and incriminating evidence against the respondent/applicant which are necessary to unveil the fraud and act of cheating committed by the applicant/respondent and her associates to the Respondent authority as well as the Hon'ble Tribunal in obtaining the order in O.A. no.160/05.

4. That pursuant to advertisement inviting application for the post of Ward Sahayika in 151, Base Hospital, Basistha the review petitioner applied for the said post and she was called for interview, scheduled to be held on 17.2.05 at 9 A.M. vide Interview call letter no. 452/2/CN Est/Coy/2005 (iv) dated 19.1.05. It is pertinent to mention that advertisement was made for recruitment of two posts of Ward Sahayika; one post for general candidate and one post for OBC candidates.

5. That the review petitioner appeared for interview along with other candidates at 151, Base Hospital, Basistha, where Dolly Saha sister-in-law of the applicant/respondent was present; but, when

attendance of the candidates were called by the Presiding Officer of the Interview Board, Dolly Saha impersonated herself as 'Alaka Saha' responded to the call and also appeared before the interview Board as 'Alaka Saha. As the review petitioner and real Alaka Saha hails from the nearby locality knows both Dolly Saha and Alaka Saha personally. The real Alaka Saha is daughter of Late Jagabandhu Saha; her mother Smti Geeta Saha is an employee of 151, Base Hospital at Basistha, she is married to Sri Badal Deb Nath and an employee of A.S.T.C., Paltan Bazar, Guwahati and resident of Pub-Dhiren Para, Guwahati. She is working in a venture school in that locality and she was not an applicant for the post of Ward Sahayika nor she personally appeared before the interview board on 17.2.05 in 151, Base Hospital, Smti Dolly Saha is sister-in-law of read Alaka Saha, and wife of Sankar Saha, elder brother of Alaka Saha.

6. That the petitioner begs to state that on 17.2.05 in the interview hall of 151, Base Hospital when she saw Dolly Saha impersonated herself as 'Alaka Saha', than the petitioner asked Dolly Saha as to whether 'Alaka Saha', would come and appear in the interview than she replied that she herself would appear as Alaka Saha. The petitioner being sacred of and due to tension for her own interview she did not report the matter to the authority at that time.

7. That after a few days a list of the selected candidates was published by hanging in the notice board at 151, Base Hospital at Basistha, where name of 'Alaka Saha', was shown as first nominee petitioner was second nominee and Mary Gogoi was third nominee as OBC candidates. Evidently the real 'Alaka Saha', was not an applicant and her sister-in-law namely Dolly Saha fraudulently got selected for the post of ward Sahayika and genuine candidate was deprived.

8. That on 25.2.05 the petitioner along with Mary Gogoi reported the matter to Major R.C. Dhulia, coy Commander, 151, Base Hospital, Basistha who in their presence verified the papers submitted on behalf of 'Alaka Sahaa', and it was found that photograph of Dolly Saha was affixed on the OBC certificate issued in the name of 'Alaka Saha', whereby it is clearly established that fraud and cheating was committed involving Alaka Saha, by her sister-in-law Smti Dolly Saha.

9. That the petitioner could learn from a reliable source about various irregularity and manipulation in the selection process for the post of Ward Sahiyaka and moreover she was not personally satisfied about the marks given to her during interview. So, she approached this Hon'ble Tribunal by filing O.A. No. 59/05 narrating the act of fraud and cheating regarding the selection of the first nominee namely Alaka Saha. The petitioner in O.A. no.59/05 sought the relief for cancellation of the selection of Alaka Saha and to appoint her to the post of ward sahiyika. The O.A. no. 59/05 at the initial stage by order dated 1.3.05 directing the applicant to submit representation to the respondent authority and representation to the respondent authority and requiring them to consider her representation and submit report to the Tribunal. There upon the review petitioner made her representation dated 4.3.05 and the respondent authority after making police verification submitted report on 6.5.05 to the Tribunal wherein it was mentioned that as per police report received from Basistha Police Station Smti Alaka Saha (Dolly) was an adopted daughter of Late Jagabandhu Saha and later on she was married to his son and thus she became daughter-in-law of Jagabandhu Saha and since she has got a dubious status (daughter/daughter-in-law) she will not be considered to the post of ward sahayika.

10. That the petitioner in the meantime made enquiring from various sources cheating committed by Dolly Saha, Alaka Saha and

their near relations from behind the screen. The petitioner also time to time approached the authority of 151, Base Hospital to take appropriate action against the offenders who however were proceeded in snail pace due to their administrative technicalities but the petitioner decided to proceed of her own as because she was deprived of the employment scope due to the fraud and illegality committed at the instance of the applicant/respondent.

11. That the petitioner ultimately instituted a complaint case in the court of the Ld. Chief Judicial Magistrate, Guwahati, implicating (1) Smti Dolly Saha, her husband Sankar Saha, her mother-in-law Geeta Saha and her sister-in-law Alaka Deb Nath @ Alaka Saha for their act of fraud, cheating, conspiracy, forgery, abetment etc. etc. The case has been registered as Case No. 6111^C/05 and transfer in the Court of Sub-Divisional Judicial Magistrate (S)II, Guwahati for disposal; the Learned Magistrate on being satisfied upon examining the complainant and one witness on oath took cognizance of the case by order dated 22.9.05 and was pleased issue process against all four persons under Section 120-B/419/465 of the Indian Penal Code, fixing the case on 2.11.05 for appearance of the accused persons in the court and to face the trial.

A copy of the complaint petition filed in Case no. 6111^C/05 and order dated 22.9.05 is filed hereto and marked as Annexure-B&C respectively.

12. that the review petitioner begs to state that at the time of passing order dated 13.7.05 in O.A. 160/05 it was not revealed that the documents furnished by the applicant/respondent was forged and that Dolly Saha impersonating as Alaka Saha appeared in the interview. It is settled law that fraud or misrepresented cannot give any legal rights to any person and therefore selection of the applicant/respondent as the first nominee is liable to be rejected.

13. That the petitioner begs to state that the review petition filed on behalf of the respondent authority of 151, Base Hospital mention various other illegal action of Alaka Saha and her associates which are necessary for proper adjudication of the case. the petitioner crave leave of this Hon'ble Tribunal to refer the same for consideration of review application.

14. That the review petition has been made on the following amongst other grounds:-

G R O U N D S

i. For that, the order dated 13.7.05 passed by this Hon'ble Tribunal has become erroneous because at the relevant time documents and some incrimination facts could not be produced, otherwise this Hon'ble Tribunal might not have passed the order to appoint the applicant/respondent to the post of ward sahayika.

II. For that, it is a settled law that wrongful act, impersonation or forgery cannot give any person any legal right and by committing the offence the applicant/respondent approached this Hon'ble Tribunal and by suppressing the fact she has obtained the order dated 13.7.05 and on this Court the order is liable to be modified/reviewed.

III. For that, the order dated 13.7.05 passed in O.A. no. 160/05 has been relied upon representation of facts by the applicant/respondent without providing any reasonable opportunity to the review petitioner hence the order is liable to be modified reviewed.

IV. For that, the view taken and direction passed by the learned Tribunal dated 13.7.05 in O.A. no. 160/2005 is solely based on

concocted and forged documents and therefore the impugned order is bad in law and liable to be modified/reviewed.

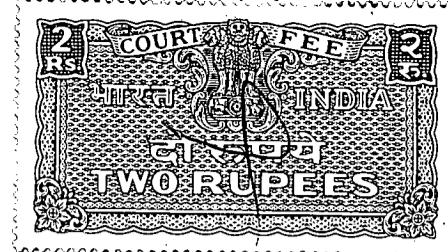
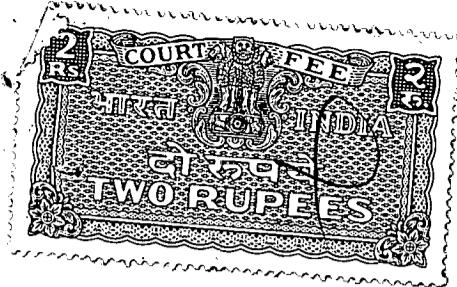
In the premises aforesaid it is therefore humbly prayed that Your Lordships may be pleased to admit this review petition, call for the records, issue rule and to the respondent to show-cause as to why the order dated 13.7.05 passed in O.A no. 160/2005 should not be reviewed as prayed for and upon hearing the parties make the rule absolute and further pass such other order or orders as Your Lordships may deem fit and proper.

- A n d -

During pendency of this application the Hon'ble Tribunal may be pleased to stay the impugned order dated 13.7.05 passed in O.A. no. 160/2005.

And, for this act of kindness the review petitioners as in duty bound shall ever pray.

.....Affidavit.



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AFFIDAVIT

I, Smti Kalpana Das, D/o. Late Ramesh Das, aged about 25 years, by religion Hindu, by occupation nil, resident of Basistha Natun Bazar, P.O. Beltola Chariali, P.S. Basistha, District-Kamrup, Assam, do hereby solemnly affirm and state as follows:-

1. That I am the petitioner in the above referred case and therefore well conversant with the facts & circumstances of the Case.
2. That the statements made in this affidavit and in Paragraphs _____ of the petition are true to my knowledge and those made in paragraphs _____ are true to my informations derived from the records which the rests are my humble submissions before the Hon'ble Court.

And, I sign this on 7th day of October 2005 at Guwahati.

Identified by:

Rajib Hazarika.
Advocate.

Kalpana Das
Deponent

1. i.

-10-

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.160 of 2005.

Date of order: This the 13th day of July, 2005.

HON'BLE MR JUSTICE G.SIVARAJAN, VICE-CHAIRMAN
HON'BLE MR.K,V,PRAHLADAN, ADMINISTRATIVE MEMBER

Smti. Alaka Saha,
Wife of Sri Sankar Saha
C/O.Smti.Geeta Saha-W/s Qtr.No.
P.A-7, 151 Base Hospital,
C/o 99 APO.
Basistha Road, P.O.Basistha,
Guwahati-781029, Dist.Kamrup,
Assam.

Applicant

By Advocate Mr. K.Paul, Miss B.Das, Miss S.R. Dey

-Versus-

1. The Union of India,
Represented by the Secretary
To the Government of India,
Ministry of Defence, South Block, New Delhi-1

2. The Deputy Director Medical,
Services, Ministry of Defence,
101 Area, C/o 99 APO.

3. The Brigadier Commandant, 151 Base Hospital
C/o 99 APO

4. Smti Kalpana Das
Village-Natun Bazar
P.O.Basistha Chariali,
Dist.Kamrup, Assam.

Respondents.

By Advocate Mr.M.U.Ahmed, Addl.CGSC
Mr.A.Ahmed, For Respondent No.4.

ORDER(ORAL)

SIVARAJAN,J(V.C):

Pursuant to advertisement inviting applications for the post of Ward Sahayika in the 151/Base Hospital, C/O 99 APO, issued by the Respondents the applicant applied for the said post. She was called for interview on 17.2.05. She secured highest mark in the interview and her name was listed on the top of the select list. When

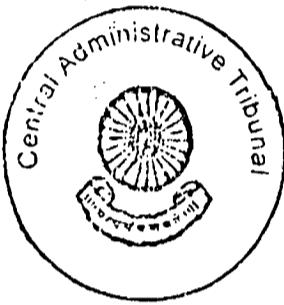
J.P.S.

Certified to be true Cop,

Jayati Purkayastha
Advocate

the applicant's name was listed on the top of the list, the Respondent No.4 who had also applied for the post of Ward Sahayika, approached this Tribunal by filing O.A.No.59 of 2005 on 1.3.2005 alleging that the applicant herein secured the position and obtained selection by impersonation. The said application was disposed of at the admission stage itself by directing the applicant therein-^{4th} respondent to make representation before the 3rd Respondent and the said Respondent was directed to pass orders thereon. The matter was also directed to be listed for compliance report. In the compliance report (Annexure 9) filed by the 3rd Respondent clearly stated that there is no impersonation at all. The 4th Respondent's application was rejected. However, the Respondents declined to appoint the applicant on a different ground viz, with Shri Jagabandhu Saha is of dubious status (one of adopted daughter and the other of Daughter-in-law), hence she will not be considered for the post of Ward Sahayika. The applicant is aggrieved by the denial of her appointment.

2. We have heard Mr.K.Paul, learned counsel for the applicant, Mr.M.U.Ahmed, learned Addl.C.G.S.C. apperaring for the respondent Nos.1 to 3 and Mr.A.Ahmed learned counsel appearing on behalf of Respondent No.4. Admittedly, the selection Board interviewed 9 candidates including applicant and the 4th respondent and selected the applicant for the post having secured highest marks(55). The 4th Respondent herein secured only 48 marks. However, the 4th Respondent, as already noted, challenged the applicant's selection on the ground of impersonation. The 3rd respondent pursuant to the decisions issued by this Tribunal conducted enquiry and found that there was no impersonation. Thus the applicant was entitled to be appointed to the post of Ward Sahayika on the basis of her selection.



Inty

Only ground as could be seen from the compliance report (Annexure 9), as already noted, is that the Board has shown its inability to find out whether the candidate is Daughter-in-law of Late Jagabandhu Saha. The Police verification, it is stated, has confirmed that the applicant was an adopted daughter of Late Jagabandhu Saha when she was 8 years old and later on she was married to Shri Shankar Saha, son of Late Jagabandhu Saha and thereby she became daughter-in-law of Late Jagabandhu Saha. The compliance report, however, clearly states that the School Leaving Certificate and Caste Certificate has been verified. If, as a matter of fact, the respondent No.3 had verified the Caste Certificate (Annexure 1) and School Leaving Certificate (Annexure 2) there was no cause for any doubt as to who is the father of the applicant, for, both the Certificates clearly show that Shri Jagabandhu Saha is the father of the applicant. The subsequent marriage of the applicant with the son of Late Jagabandhu Saha may be a ground for nullifying the marriage but it cannot be ground for denying employment to the applicant. The name of the father shown is consistent with official records. According to us the 3rd Respondent was not justified in going further than what was available from the documents issued by the competent authority and find out a new case. It has nothing to do with the employment of the applicant. Since the applicant has already been selected, she having secured the highest mark, the Respondent 1 to 3 cannot deny the appointment to the applicant for the reasons stated in the compliance report (Annexure 9).

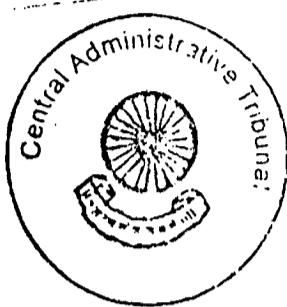
3. In the circumstances we direct the Respondent Nos. 1 to 3 to appoint the applicant to the post of Ward Sahayika as notified if the Respondents want to fill up the vacancy of Ward Sahayika.

Rpt



4. The Original Application is disposed of as above. There will be no order as to costs.

sd/ VICE CHAIRMAN
sd/ MEMBER (A)



Certified to be true Copy
अनुग्राम दर्शकारी

15/7/05
अनुग्राम दर्शकारी
Section Officer (JdI)
Central Administrative Tribunal
NATIONAL-5
GUWAHATI-5.
11/7/05

Certified to be true Copy
Jayati Purkayastha
Advocate

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ANNEXURE - B

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, KAMRUP AT GUWAHATI

Case No. 6111^C /2005

1. Name & Address of the Complainant:

Smti Kalpana Das - Age- 25 yrs.

D/o. Late Ramesh Das,

Basistha Natun Bazar, P.O:Beltola Chariali,

P.S. Basistha, Dist. Kamrup(Assam)

2. Name & Address of the accused persons:

1. Smti Dolly Saha (Personating as Alaka Saha)

W/o. Sri Shankar Saha & D/o. Late Manindra Deb.

2. Sri Shankar Saha

S/o.Late Jagabandhu Saha.

3. Smti Geeta Saha

W/o. Late Jagabandhu Saha.

all three are resident of Basistha Tinali

New quarter, 151 Base Hospital,

P.S.Basistha, District-Kamrup, Assam.

4. Mrs. Alaka Saha Alias Alaka Deb Nath,

W/o. Sri Badal Deb Nath & D/o.Late Jagabandhu Saha

R/o. Pub-Dhiren Para, P.S. Fatashil Ambari

Guwahati-18, District: Kamrup (Assam).

3. Date & Place of Occurrence:

On 17.2.2005 at about 9 A.M.

at 151, Base Hospital (Army)Basistha, Guwahati-28.

4. Offence committed:

Under Section 419/464/468/109/193/ 120-B

5. Name and Address of Witnesses :

1. Smti Milan Das, W/o. Lt. Ramesh Ch. Das

Basistha, Natun Bazar,P.S.Basistha,Guwahati-29

Certified to be true Copy

*Jayati Pukayagatha
Advocate*

2. Smti Maya Deb, W/o. Late Satyendra Deb
Basistha Bengali Basti, P.S. Basistha,
Guwahati-29.
3. Sri Puran Bahadur,
chaukidar, 151 Base Hospital, Basistha.
4. Miss Marry Gogoi D/o. Late Joy Chandra Gogoi
Beltola Bazar, P.S. Basistha, Guwahati-29.
5. L. Col Pathak, 151 Base Hospital, Basistha.
6. L. Col Pradhan (Matron),
151 Base Hospital, Basistha.
7. Head-Master, Shishu Kalyan Loknath School,
Dhirenpara, Guwahati-18.
and others.

The humble petition of the complainant
above-named;

Most Respectfully Sheweth:-

1. That the complainant is a permanent resident of Natun
Bazar, under Basistha P.S. and she is unemployed.
2. That the accused No.1, 2 & 3 are members of one family
and resident of the same locality of the complainant. The accused no.1
is housewife her husband, the accused no.2 is a scooter mechanic and
her mother-in-law, the accused no. 3 is an employee of 151, Base
Hospital, Basistha working as ward Sahayika. The accused no.4 is
married daughter of accused no.3 who resides with her husband and
children at Pub-Dhirenpara, Guwahati under Fatashil Ambari P.S. and
working as an Assistant Teacher in Sishu Kalyan Loknath School in
that locality; her husband, Sri Badal Debnath is an employee of
A.S.T.C at Paltan Bazar, Guwahati.

3. That pursuant to advertisement inviting application for the post of Ward Sahayika in 151, Base Hospital, Basistha the complainant applied for the said post and she was called for interview, Scheduled to be held on 17-2-05 at 9 A.M. vide Interview call letter No. 452/2/CN Est/Coy/2005 (iv) dated 19.1.05. It is pertinent to mention that advertisement was made for recruitment of two posts of Ward Sahayika, one post for general candidates and one post for OBC candidates.

4. That the complainant accordingly appeared for interview along with other candidates on 17.2.05 at 8.30 a.m. at 151, Base Hospital, Basistha, where the accused no.1 namely Dolly Saha was also present for interview, accompanied by her husband and mother-in-law, the accused no.2 and 3, but surprisingly when attendance of all the candidates were called by the Presiding Officer of the Interview Board, Dolly Saha, the accused no.1 impersonated herself as 'Alaka Saha' and responded to the call and also appeared before the board as 'Alaka Saha'. Dolly Saha was not a candidate but she appeared before the interview board as 'Alaka Saha'. The complainant knew both Dolly Saha and Alaka Saha personally since long time and she was shell shocked by such behaviour of the accused no.1 of impersonating herself as 'Alaka Saha', who is her sister-in-law. The complainant being engaged in the process of interview could not inform the authority at that time.

5. That after a few days of interview a list of selected candidates was published by hanging in the notice board at 151, Base Hospital, Basistha where out of 3 OBC candidates name of Alaka Saha was shown at the top in order of preference. But the real Alaka Saha was never a candidate nor she appeared in the interview, so the complainant along with her mother and Marry Gogoi (another candidate) on 25.2.2005 approached the Coy. Commander Major R.C. Dhulia 151, Base Hospital, Basistha and reported how the accused

no.1 exercised fraud by impersonating herself as Alaka Saha in the said interview. The said officer then verified the records of interview in presence of the complainant and her companion and it was found that photograph of Dolly Saha, the accused no.1 was affixed on the O.B.C. certificate issued to Alaka Saha. Thus the accused no.4 allowed the accused no.1 to utilize her certificates for appearing in the interview by illegal means to obtain unlawful gain. It is clear that the accused no.2,3,&4 assisted and abated the accused no.1 to take part in the interview/test as Alaka Saha by using her certificates and all are liable in committing the offence.

6. That it is pertinent to mention that under the aforesaid circumstances the authority has held up the appointment of the Ward Sahayika of OBC reserve post and till date the post is lying vacant.

7. That the complainant thereafter made an application to the Commandant, 151 Base Hospital, C/o. 99, APO on 4.3.05 praying for legal action over the aforesaid illegality committed by the accused persons and also to constitute a new interview/testing board for conducting fresh interview for the post of Ward Sahayika (OBC category).

The complainant was expecting that the authority will take some appropriate action against the accused persons by filing criminal case against them, but nothing has been done yet, hence this complain.

8. That the aforesaid illegal acts of the accused persons have deprived the genuine candidates, including the complainant from getting the said post in a lawful manner.

9. That the accused persons in collusion amongst themselves have committed offences punishable Under Sections 419/464/193/109/120(B) of the IPC.

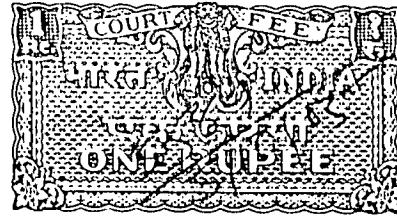
10. That the complainant will establish/prove her case by adducing the witnesses as given in the above mentioned list of witnesses.

11. That this complaint petition is made bonafide and for the ends of justice.

In the premises aforesaid it is therefore prayed that Your Honour may be pleased to (a) take cognizance of the offences against the accused person U/S 419/464/468/193/109/120(B) of IPC (b) issue warrant/summons for causing the accused persons to be brought or appear before this Hon'ble Court and to face the trial; and (c) On conclusion of the trial in due process of law be please to punish the accused persons for the aforesaid offence; and pass any other order/orders as Your Honour deems fit and proper.

And the complainant as in duty bound shall ever pray.

Certified to be true Co:
Jayati Pukayastha
Advocate



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ANNEXURE - C.

Date of institution for the copy	Date fixed for posting the copy, its return, if any, and date of delivery.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
4-10-05	5-10-05	5-10-05	5-10-05	5-10-05

In the Court of S.D.J.M. (S) No. 11 quoniamate.

case No - 611/05 u/s 120B/419/465 p.c.

Smti Kalpana Das.

VS

Smti Dally Saha (personating as Mukti Saha)
+ others.

22-9-05

One witness is present. She is examined on
behalf u/s 202 p.c. and recorded her statements.
Perused case record and materials available in
the record and found materials to proceed
again. All the accused arrayed in the complaint
petition u/s 120B/419/465 p.c. Hence cognizance
is taken under the abovesaid section of Law.

Issue summon to the accd. under the abovesaid
section of Law. Comptt to take steps of summon.
The summon shall accompany a copy of the complaint
petition.

Fixed 21/10/05 for S.I. and app.

sd) S.M. Dhar

S.D.J.M. (S) 11
quoniamate

Constituted 
Hand Acct 5/10/05

C. J. M. Office
Kannur, Gramath.

Officer of the
Court of Judicial Magistrate 11
Kannur, Gramath.
Date.....

Officer of the
Court of Judicial Magistrate
Kannur, Gramath.
Date.....

CAUSE NO. 75/05
Tajati Pukayastha
Date.....