

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI-5.

D.A. NO. 7 of 1996 (In O.A.No.83 of 1994)  
T.A. NO.

DATE OF DECISION 11-9-1997

Shri A.B. Khandakar and 6 others

(PETITIONER(S))

Mr N. Dutta and Mr U. Bhuyan

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Dr Hiranya Lal Deb

RESPONDENT (S)

Mr G.N. Sahewala

ADVOCATE FOR THE  
RESPONDENT (S)

Dr Y.K. Phukan, Sr. Govt. Advocate, Assam

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? yes. DB
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Review Application No.7 of 1996  
(O.A.No.83 of 1994)

Date of decision: This the 11th day of September 1997

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman  
The Hon'ble Mr G.L. Sangliyine, Administrative Member

1. Shri A.B. Khandakar,  
Deputy Inspector General of Police,  
Administration, Guwahati.
2. Shri B. Bhuyan,  
Deputy Inspector General of Police,  
Security, Guwahati.
3. Shri Khagen Sharma,  
Deputy Inspector General of Police,  
Northern Range, Tezpur.
4. Shri Watisangisa Ao,  
Deputy Inspector General of Police,  
Western Range, Kokrajhar.
5. Shri Jatin Nipun,  
SRP, Pandu, Guwahati.
6. Shri K.K. Nath,  
Superintendent of Police, Border,  
Khanapara, Guwahati.
7. Shri P.D. Goswami,  
Superintendent of Police,  
ACB, Assam, Guwahati.

.....Applicants

By Advocates Mr N. Dutta and Mr U. Bhuyan.

- versus -

Dr Hiranya Lai Deb,  
Superintendent of Police,  
Vigilance & Anti-Corruption,  
Assam, Guwahati. ....Opposite Party

By Advocate Mr G.N. Sahewala,  
Dr Y.K. Phukan, Sr. Government Advocate, Assam.

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O R D E R

BARUAH.J. (V.C.)

This Review Application is directed against the order dated 21.9.1995 passed in Original Application No.83 of 1994. Dr H.L. Deb (hereinafter referred to as opposite party) was a member of Assam Police Service (APS for short). He was appointed in the year 1966 and subsequently promoted to the senior grade in the APS. Thereafter, he was promoted to the Indian Police Service (IPS) on 16.3.1992. His grievance was that although he became eligible for being considered for promotion to the IPS in the year 1983 under the IPS (Appointment by Promotion) Regulation, 1955, he was not considered for promotion. According to him such denial was illegal and arbitrary. A Selection Committee was constituted for preparing a select list for appointment by promotion to the joint IPS Cadre of Assam-Meghalaya. The selection was held on 27.12.1983. The applicant's name was not included in the said select list. However, two junior officers had been selected. One Sardar Pradip Kar was also in the same cadre and his case was considered. The ground for non-inclusion of the opposite party (applicant in that case) was that there were some adverse remarks against him. Situated thus, the opposite party approached the Hon'ble Gauhati High Court by filing a writ petition (Civil Rule No.534/84). The said Civil Rule was later on transferred to this Tribunal and here it was registered and renumbered as G.C.225/86(T). Meanwhile, a representation was also filed against the adverse remarks and the authority expunged the said adverse remarks. This Tribunal allowed the application, directing the

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respondents to appoint the applicant. The respondents preferred an appeal before the Apex Court. The Apex Court disposed of the matter by modifying the judgment of this Tribunal. The relevant portion of the judgment of the Apex Court is quoted below:

"The Selection Committee shall reconsider the impugned select list prepared in 1983 as if it was deciding the matter on the date of the selection on the footing that the adverse remarks made against respondent No.1 which were subsequently set aside did not exist in the records and consider the question as to whether he would have been appointed or Respondent No.1 Shri Sardar Pradeep Kar would have been appointed on the basis of the categorization to which each of them was entitled having regard to the C.C. Rolls (ignoring the adverse remarks against Respondent No.1 which were subsequently quashed) and pass appropriate orders in the light of the decision taken on this point. If the Respondent No.1's claim is accepted upon reconsideration in the light of the aforesaid exercise, the order of appointment should provide for his appointment with effect from the date on which he would have been appointed if he was selected when the original selection was made in 1983 and he should be given all the benefits. The Selection Committee shall complete its exercise within two months from the date of this order."

Thereafter, a review Selection Committee was constituted and it held its meeting on 21.7.1988. However, in violation of the directions of the Apex Court, the said Selection Committee did not change the position. The opposite party alleges that it was not done in accordance with the direction of the Apex Court. Being aggrieved, the opposite party has filed yet another application (OA.No.83/94) before this Tribunal. This application was disposed of by this Tribunal by an order dated 21.9.1995 allowing the application with the following direction:

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"The respondents shall reconvene the Selection Committee. The Committee shall reconsider/review the decision taken by the earlier Review Selection Committee on 21.7.85 and consider afresh the 1983 select list as if it was deciding the matter on the date of the selection in accordance with the directions contained in the decision of the Hon'ble Supreme Court dated 22.3.1988 as explained above in the order and pass appropriate orders in the light of the decision taken afresh on the point consistently with the directions of the Supreme Court in that behalf. The Selection Committee shall complete the exercise within two months from the date of communication of this order."

In the said original application, however, the present applicants were not made a party. Hence the Review Application.

2. We have heard all. Mr N. Dutta, assisted by Mr U. Bhuyan, learned counsel appearing on behalf of the review applicants has raised only one point, before us, i.e., that the present review applicants were vitally interested in the result of the original application No.83/94, but they were not made party. According to the learned counsel they were necessary party, and therefore, the order passed in the said original application had adversely affected them. Mr G.N. Sahewala, learned counsel for the opposite party, on the other hand, resisted the claim of the applicant on the following grounds:

- (1) in the facts and circumstances of the case the Review application is not maintainable. There is no ground for review.
- (2) The claim of the petitioners that they were necessary party is not correct inasmuch as the selection

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relates to 1983 batch. Therefore, the application should be dismissed summarily.

3. Dr Y.K. Phukan, learned Sr. Government Advocate, Assam, also supports the contention of Mr Sahewala as the present applicants are not necessary party in the said original application.

4. On the rival contention of the parties it is now to be seen whether the present Review Application is maintainable or not. The ground for review is that the applicants being necessary party and the order having been passed behind their backs, it had prejudicially affected them, and therefore, the order passed in the said original application requires to be reviewed. The law in this regard is well settled. Any judgment where necessary parties are left out then, in fact, it is no judgment, and therefore, it should be reviewed. In this connection we may look to some decisions of the Apex Court regarding necessary parties. In Udit Narain Singh Malpaharia -vs- Additional Member, Board of Revenue, Bihar and another, reported in AIR (1963) SC 786, the Apex Court had occasion to consider this aspect of the matter. We quote the relevant portion of the judgment.

"The law as to who are necessary or proper parties to a proceeding is well settled. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

"In a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary.....

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necessary parties. But it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party.

"Thus where in a petition for a writ of certiorari made to the High Court, only the Tribunal whose order was sought to be quashed was made a party but the persons who were parties before the lower Tribunal and in whose favour the impugned order was passed were not joined as parties;

"Held that the petition was incompetent and had been rightly rejected by the High Court."

In Prabodh Verma and others -vs- State of Uttar Pradesh and others, reported in AIR (1985) SC 167, the Apex Court held thus:

"A High Court ought not to hear and dispose of a writ petition under Art.226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

In B. Prabhakar Rao and others -vs- State of Andhra Pradesh and others, reported in AIR (1986) SC 210, the Apex Court observed thus:

"We may now refer to two arguments which were mentioned in passing but were not pursued. The first was that a writ petition similar to Writ Petitions Nos.3420-3426/83 etc. had been filed earlier and had been dismissed in limine by a Bench of this Court. We do not see how the dismissal in limine of such a writ petition can possibly bar the present writ petitions. Such a dismissal in limine may inhibit our discretion but not our jurisdiction. So the objection such as it was, was not pursued further.

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So also the second objection which related to the non-joinder of all affected parties to the litigation. We are quite satisfied that even if some individual affected parties have not been impleaded before us, their interests are identical with those and have been sufficiently and well represented. Further, the relief claimed in Writ Petitions Nos. 3420-3426 of 1983 etc. is of a general nature and claimed against the State and no particular relief is claimed against any individual party. We do not think that the mere failure to implead all affected parties is a bar to the maintainability of the present petitions in the special circumstances of these cases where the actions are really between two 'warring groups'."

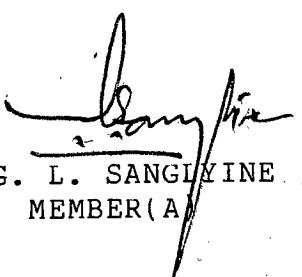
5. In the instant case the opposite party was not selected on the ground that there were certain adverse remarks against him which were later on expunged by the authority on representation. Before expunction of the adverse remarks the original applicant approached this Tribunal against his non-inclusion in the select list of 1983. At that time the present applicants were nowhere in the picture. The Tribunal, however, directed to give the appointment which was later on modified by the Apex Court by giving direction to the Selection Committee in the manner indicated above. At that time when the opposite party was not included his next junior Sardar Pradip Kar was taken in his place in the cadre. Now if that is so the question arises as to whether Sardar Pradip Kar ought to have been promoted or the present opposite party. There was no controversy between the opposite party and the present applicants. It was a fight between Sardar P. Kar and the opposite party. In view of the decision of the Apex Court, in B. Prabhakar Rao (Supra) the present opposite party and Sardar P. Kar

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were two warring parties. Therefore, in our opinion, now, if the opposite party is to be preferred to the exclusion of Sardar Pradip Kar then Sardar Pradip Kar would occupy the place of the opposite party. This will not at all affect the present applicants. Besides, in the judgment sought to be reviewed the State was also a party. The present applicants were not a necessary party in the said application. Even if the review applicants were necessary party, the State Government represented their case.

6. In view of the above we find no ground to review the order dated 21.9.1995 passed in Original Application No.83/94.

7. The Review Application is accordingly dismissed. However, considering the facts and circumstances of the case we make no order as to costs.

  
( G. L. SANGHINE )  
MEMBER(A)

  
( D. N. BARUAH )  
VICE-CHAIRMAN

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