

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman.

**Case No. – MA-56 of 2021 (OA-170 of 2021)**

**Newton Biswas and Others. - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order	For the Applicants	: Mr. K. Bhattacharjee, Mr. G. Halder, Advocates.
<u>7</u> 07.09.2021	For the applicants in Original Application	: Mr. S. Sanyal, Mr. D. Chatterjee, Advocates.
	For the State Respondents	: Mrs. S. Agarwal, Advocate.
	For the Public Service Commission, West Bengal.	: Mr. G. P. Banerjee, Mr. S. Bhattacharjee, Advocates.

The matter is taken up by the single Bench pursuant to the Notification Nos. 949-WBAT/2J-15/2016 dated 24<sup>th</sup> December, 2020, 456-WBAT/2J-15/2016 dated 16<sup>th</sup> July, 2021 and 586-WBAT/2J15/2016 dated 31<sup>st</sup> August, 2021 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In the application for addition of party, being MA-56 of 2021, (the 'application' for short) arising out of OA-170 of 2021, filed on 29<sup>th</sup> June, 2021, the prayers are as under :

“Under the circumstances as aforesaid, your proposed respondents most respectfully pray that your Lordship may be graciously be pleased to add the aforesaid proposed respondents as party respondents to the Original Application being O.A.

No. 170 of 2021, and to amend the cause title accordingly.

-And-

To pass such Order/Orders, Direction/ Directions as your Lordship may deem fit and proper in the end of justice.”

In the application for addition of parties, the applicants, being 581 in number, that is the proposed respondents, stated to be empanelled / selected candidates for the post of Fire Operator pray for being added as parties in OA-170 of 2021 : Newton Biswas and Others-Vs.-The State of West Bengal and Others.

On 13<sup>th</sup> August, 2021 directions were issued to file reply and rejoinder. Objection / Reply has been filed on behalf of the Original Applicants to the application for addition of parties which is on record.

It has been stated in the application that the original application is not maintainable and liable to be dismissed as the applicants have not prayed for moving the application jointly under Rule 4(5)(a) of the Administrative Tribunal Rules, 1994 for having common cause of action. According to the applicants, the Public Service Commission, West Bengal published an advertisement in its website on 13<sup>th</sup> June, 2018 inviting online applications for recruitment to the post of Fire Operator in the Department of Fire and Emergency Services, Government of West Bengal. Thereafter the applicants filled up the application forms. Subsequently the authorities issued admit cards. The applicants participated in the selection process - written examination,

physical measurement test, physical endurance test and personality test conducted by Commission. They were selected and empanelled by the respondent authorities after being recommended by the Commission and are awaiting for issuance of appointment letters.

It has been stated in the application that they came to know from reliable source that the applicants in OA-170 of 2021 have filed the said Original Application without impleading the applicants knowing fully well that they are successful candidates in the selection process for the post of Fire Operator. It has been further stated that the applicants in OA-170 of 2021 have obtained an interim order of stay from the Tribunal on 19<sup>th</sup> March, 2021 and owing to the said interim order, which has been subsequently extended, the applicants are suffering immensely as their appointment letters could not be issued by the respondent authorities. It has further been stated that the original applicants in OA-170 of 2021 have not demonstrated any allegation against the selected / empanelled candidates, that is the applicants and the mere allegation against the selection process conducted by the Commission is uncalled for. Further, the applicants in OA-170 of 2021 having participated in the selection process and after completion of the same have turned back and challenged the recruitment process on the ground of lack of transparency which is contrary to the settled principles of law. Since the applicants have been recommended for selection and as owing to the interim order their appointments have been stayed, prayer is for adding the applicants as party respondents in OA-170 of 2021. Further submission is for issuance of ad-hoc appointment letters subject to the final outcome of the Original Application. Since the applicants are necessary parties, the application for addition of parties be allowed. Submission is in the event if the Original Application is allowed without adding the applicants as

party respondents in the Original Application, their right will be in jeopardy. Unless the applicants in MA-56 of 2021 are added as party respondents to the Original Application, the applicants would continue to suffer irreparable loss and injury.

Mr. K. Bhattacharjee, learned advocate appearing on behalf of the applicants submitted that the empanelment and recommendation of the proposed respondents is not in dispute. If the panel is quashed pursuant to the prayer in the Original Application without allowing the application for addition of parties, the recommended candidates / selectees, that is, the applicants would suffer irreparable loss and injury. According to him the names of the applicants were recommended by the Commission on 11<sup>th</sup> February, 2021. However, due to the interim order passed, no appointment could be given. Therefore, prayer is for adding the applicants, who are necessary parties, as respondents in the Original Application, being OA-170 of 2021. In support of his submission Mr. Bhattacharjee has relied on the judgments in Tridip Kumar Dingal –Vs- State of West Bengal and Others : (2009) 1 SCC 768 ; Udit Narain Singh Malpaharia –Vs-Additional Member Board of Revenue, Bihar and another : 1963 0 AIR(SC) 786 ; Prabodh Verma and others –Vs- State of U.P. and others : 1985 0 AIR(SC) 167 and Vijay Kumar Kaul and Others -Vs- Union of India and Others : (2012) 7 SCC 610.

Mr. G. P. Banerjee, learned advocate for the Commission and Mrs. S. Agarwal, learned advocate for the State respondents support the stand taken by Mr. Bhattacharjee.

Mr. S. Sanyal, learned advocate appearing on behalf of the Original Applicants, relying on the objection filed to the application for

addition of parties submitted that the applicants are not necessary parties as till date the Commission has not recommended any empanelled candidate for the post of Fire Operator. A person is a necessary party in the absence of whom relief claimed in the suit cannot be granted. The applicants in the application for addition of parties are merely empanelled candidates not having acquired any indefeasible right to be appointed. Unless relevant rules so indicate, inclusion of names of the candidates do not confer any right to be selected or appointed. Unless appointed, the applicants have no grounds to be added as a respondent in the Original Application. As the process of holding the written test, physical measurement test and interview and consequently the merit list is under challenge, the applicants have no right to be added as party respondents in the Original Application as they are not necessary parties.

Mr. Sanyal has relied on the judgments in Manoj Manu and Another -Vs- Union of India and Others : (2013) 12 SCC 171 ; Dinesh Kumar Kashyap and Others -Vs- South East Central Railway and Others (2019) 12 SCC 798 and Kerala State Road Transport Corporation and Another -Vs- Akhilesh V.S. and Others : (2019) 14 SCC 96.

Admittedly, the applicants in the application for addition of parties, being MA-56 of 2021, had applied for the post of Fire Operator. They appeared in the selection process. According to them they are successful. Their names have been recommended by the Commission for appointment before the State authorities. The question is whether they are necessary parties. According to Mr. Sanyal, the applicants are not necessary parties. Mr. Bhattacharjee submits in the event pursuant to the prayer in the original application the panel is set aside and quashed, the

applicants, who are selectees would suffer irreparable loss and injury.

It is to be borne in mind that in the Original Application no allegation has been made against the applicants in MA-56 of 2021. However, the application for addition of parties, and reply on behalf of the State respondents, I find that names of 581 applicants have been recommended. At this stage whether the recommendation was proper or not, is another issue. Since their names of the applicants have been recommended in the event the Original Application is allowed without allowing the application for addition of parties and without hearing the applicants in that event applicants would be seriously prejudiced.

Whether the applicants in MA-56 of 2021 are necessary parties or proper parties is a question of law which has been dealt with in detail in Poonam –Vs.- State of U.P. : (2016) 2 SCC 779 which deals with some of the judgments relied on by the learned advocates for the parties. Therein it has been held that necessary party is one without whom no order can be made effectively. A proper party is one in whose absence effective order can be made but whose presence is necessary for a complete and final decision on the question involved in this proceeding. Poonam (Supra) has referred to Udit Narain Singh Malpaharia –Vs. - Additional Member Board of Revenue, Bihar : 1963 0 AIR(SC) 786 wherein it has been held that *“if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as has been passed in violation of the principles of natural justice. More so, proviso the Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter call “CPC”) provides that non-joinder of the necessary party be fatal.”* (paragraph 15)

In Poonam (Supra) reference was made to Prabodh Verma –Vs- State of U.P. (1984)4 SCC 251 wherein it has been held that “*if a person challenges the selection process, the successful candidates or at least some of them are necessary parties.*” (paragraph 15)

In Poonam (Supra) referring to the judgments on the said issue it was held that the “*the basic principle behind the doctrine of natural justice, that is, no order should be passed behind the back of a person who is to be adversely affected by the order. The principle behind proviso to Order I Rule 9 that the Code of Civil Procedure enjoins it and the said principle is also applicable to the writs. An unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned is bound to make the selected candidates parties.*” (paragraph 21)

In the Original Application there are no allegations against the applicants in MA-56 of 2021. Since it appears from the reply to the Original Application that the names of the proposed respondents have been recommended by the Commission on 11<sup>th</sup> February, 2021, the applicants in MA-56 of 2021 are necessary parties. Hence, the application for addition of parties, being MA-56 of 2021, is allowed. The Registry of the Tribunal is directed to amend the cause title by incorporating the names of the applicants in MA-56 of 2021 as respondents in OA-170 of 2021 within a week from the date of sending down the records. Since there is no allegation against the applicants in the Original Application who have been directed to be added as respondents in the Original Application, the question of denial of facts in the Original Application does not arise and hence no reply is required to be filed by the added respondents in the Original Application.

**ORDER SHEET**

Form No.

**Newton Biswas and Others.**

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**THE STATE OF WEST BENGAL & ORS.**

Hence, in view of the above, the learned advocate on record in the Original Application, being OA-170 of 2021 is directed to hand over copies of the Original Application, reply, rejoinder / objection and affidavits exchanged between the parties in course of this week.

(SOUMITRA PAL)  
CHAIRMAN

SKG/SM.