

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman.

**Case No. – MA-57 of 2021 (OA-430 of 2020)**

**Akash Bhunia and Others. - VERSUS - The State of West Bengal and Others.**

Serial No. and Date of order	For the Applicants	: Mr. K. Bhattacharjee, Mr. G. Halder, Advocates.
<u>6</u> 07.09.2021	For the applicants in Original Application	: Mr. S. Sanyal, Mr. D. Chatterjee, Advocates.
	For the State Respondents	: Mr. G. P. Banerjee, Advocate.

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

In the application for addition of party, being MA-57 of 2021, (the 'application' for short), filed on 29<sup>th</sup> June, 2021, arising out of OA-430 of 2020, 4521 applicants, have prayed for the following :

“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. 430 of 2020, 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.”

The application for addition of parties was heard on different dates. Apart from reply, rejoinder filed in the Original application, objection / reply has been filed on behalf of the Original Applicants to the application for addition of parties and is on record.

Mr. K. Bhattacharjee, learned advocate supporting the application submitted that the applicants are the selected / empanelled candidates for the post of Constable (Male). As the original applicants have not prayed for moving the application jointly and as the applicants have common cause of action or interest under Rule 4(5)(a) of the Administrative Tribunals Rules, 1994, the Original Application is not maintainable.

It is submitted that the West Bengal Police Recruitment Board on 3<sup>rd</sup> February, 2019 published an advertisement in its website inviting online applications for recruitment to the post of Constable (Male). The applicants, who fulfilled the eligibility criteria, filled up the online application forms for the said post. The applicants participated in the selection process and were successful in written examination, physical measurement test, physical endurance test and interview conducted by the Board and were empanelled and, according to him, appointment letters have been issued. It has been stated that they came to learn from reliable source that, an original application, OA-430 of 2020 : Akash Bhunia and Others –Versus- State of West Bengal and Others, has been

filed by the original applicants without impleading the applicants as party respondents in the Original Application knowing fully well that they are successful candidates. It has been stated that the applicants in OA-430 of 2020 have obtained an interim order of stay from the Hon'ble High Court at Calcutta and owing to the interim order, the applicants in MA-57 of 2021, being recommended candidates, are unable to join the posts. Further the original applicants in OA-430 of 2020 have not been able to demonstrate any allegation against the applicants, the selected empanelled candidates. Since the original applicants in OA-430 of 2020 had participated in the selection process and after completion of the same and after being unsuccessful have turned back and challenged the recruitment process, which is contrary to the settled proposition of law, and the allegations against the selection process conducted by the Board are uncalled for, the Original Application has no merit.

Since the selection process of Constable (Male) was categorised in four stages and elimination took place at every stage which was made clear in the advertisement published by the respondent authorities, the challenge to the entire selection process is without any foundation. Since the applicants had participated in the selection process and were successful in all four stages of the selection process conducted by the Board and as due to the interim order of stay, their recommendation, selection and appointment are in jeopardy, prayer is the applicants who are necessary parties, be added as parties to the Original Application by allowing the application for addition of parties.

Mr. Bhattacharjee has relied on the judgments in Tridib Kumar Dingal –Versus-State of West Bengal and Others : (2009) 1 SCC 768 ;

Udit Narayan Malpaharia –Versus-Additional Member Board of Revenue, Bihar and another : 1963 0 AIR(SC) 786 ; Prabodh Verma and others –Versus- State of U.P. and others : 1985 0 AIR(SC) 167 and Vijay Kumar Kaul and Others -Versus- Union of India and Others : 2012 7 SCC 610 ; Terai Tea Company –Versus- Kumkum Mittal : AIR 1994 CAL 191, particularly paragraph 35 thereof, and Committee of Management, Ratan Muni Jain Inter College-Vs- 3<sup>rd</sup> Addl. Civil Judge, Agra : AIR 1995 Allahabad 7, paragraph 24, thereof, in support of his submission. Submission is in the event the panel is quashed without making the applicants as party respondents in the original application, the right of the 4521 applicants who have been recommended and appointment letters issued would be in jeopardy and accordingly appropriate order be passed by adding them as respondents in OA-430 of 2020.

Mr. G. P. Banerjee, learned advocate for the State respondents supporting the stand of Mr. Bhattacharjee submitted that State has accepted the recommendation of the Commission.

Mr. S. Sanyal, learned advocate appearing on behalf of the Original Applicants relying on the objection / reply filed against the application for addition of parties, submitted that the applicants in MA-57 of 2021 are merely empanelled candidates and till date their names have not been recommended by the Board. Hence, the applicants have not acquired indefeasible right to be appointed. Mere inclusion of names in the panel does not confer any right to be selected or appointed unless the relevant rules so indicate and in the instant case the rule does not indicate to that extent. It is submitted unless appointed, there is no ground for the applicants to be added as respondents in the Original

Application. Since it is apparent from the Original Application that there was lack of transparency in the selection process and as the merit list reflects the discrepancies, in the event if the merit list is set aside and selection process is carried out afresh, the applicants will not be in jeopardy. According to him the Original Applicants have challenged the selection process on the ground of lack of transparency at every stage of selection process. As there are glaring illegalities and irregularities in the selection process and right of the Original Applicants have been infringed by the action of the Board in conducting the selection process in an illegal manner, the applicants are not necessary parties and hence no right to be added as party respondents in the Original Application. Submission is that it is a well known proposition of law that a person is a necessary party when in the absence of whom relief claimed in the suit cannot be granted. A necessary party is against whom the relief is sought and without whom no effective order cannot be passed. However, in the instant application for addition of party, the applicants have failed to meet the test.

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

Admittedly, the applicants in the application for addition of parties, being MA-57 of 2021, had applied for the post of Constable (Male). According to them, they participated in the selection process and were successful. Their names have been recommended by the Board for

appointment and according to them appointment letters have been issued. The question is whether they are necessary parties or not. According to Mr. Sanyal, the applicants are not necessary parties whereas Mr. Bhattacharjee submits that in the event the applicants whose names have been recommended and even appointment letters have been issued, if not added as parties would suffer irreparable loss, in the event the panel is set aside. It is to be borne in mind that in the Original Application, being OA-430 of 2020, no allegation has been made against the applicants in MA-57 of 2021. However, on perusal of the application for addition of parties I find prima facie that the names of the applicants have been recommended and according to the learned advocate for the applicants appointment letters have been issued. Whether the recommendations were proper or not is another issue. Since it has been submitted that the names of the applicants have been recommended, in the event the panel is set aside and quashed, the applicants would be prejudiced. Whether the applicants in MA-57 of 2021 are necessary parties or proper parties is a question of law. The said proposition of law has been dealt with in detail in Poonam –Versus- State of U.P. and Others : 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 the proceeding. In 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)

I find in the Original Application there are no allegations against the applicants of MA-57 of 2021. Since it appears from the reply of the Original Application that the names of the proposed respondents have been recommended by the West Bengal Police Recruitment Board in February, 2021, the applicants in MA-57 of 2021 are necessary parties. Hence, the applications for addition of parties in MA-57 of 2021 is allowed. The Registry of the Tribunal is directed to amend the cause title of the original application by incorporating the names of the applicants in MA-57 of 2021 as respondents in OA-430 of 2020 within a week from the date of sending down the records. Since there is no

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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 no reply is required to be filed by the added respondents in the Original Application.

Therefore, in view of the above, the learned advocates on record in the Original Application, being OA-430 of 2020 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.



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Admittedly, the applicants in the application for addition of party,

being MA-57 of 2021, had applied for the post of “Constable (Male)”. They appeared in the selection process. According to them they were successful. Their names have been recommended by the Board for appointment before the State respondents. The question is whether they were necessary parties or not. According to Mr. Sanyal, the applicants are not necessary parties whereas Mr. Bhattacharjee submits that in the event “Proposed Respondents”, whose names have been recommended, if not added as parties, would suffer irreparably even if the Original Applicants are not added the parties by setting aside the panel. It is to be borne in mind that in the Original Application no allegation has been made against the applicants in MA-57 of 2021. However, on perusal of the Original Application and particularly the reliefs and the application for addition of parties, it cannot be denied that the names of the 4521 applicants have recommended, whether the recommendation was proper or not, that is another issue since their names have been recommended assuming that they are necessary parties, there is no denial of the fact that the names of the proposed respondents have been recommended for appointment and in the event of panel is set aside or quashed, in that event the applicants would be prejudiced. Whether the applicants in MA-57 of 2021 are necessary parties or proper parties is a question of law. The said proposition of law has been succinctly dealt with in Poonam –Versus- State of U.P. and Others : 2016 2 SCC 779 which deals with many of the judgments relied on by the learned advocates for the parties which has been held 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. In the said judgment relying on Udit Narayan Malpaharia –Versus- Additional Member Board of Revenue, Bihar and another : 1963 0

AIR(SC) 786 wherein it has been held that if a person likely to suffer from the order of the Court has not been impleaded as a party, the said party has right to ignore the order as has been passed in violation of the principles of natural justice. Referring to Prabodh Verma and others (Supra). In Poonam (Supra) judgment reliance has been placed on the well settled proposition of law that if a person challenged the selection process, the successful candidates or at least some of them are necessary parties. In fact, it has been held in Poonam (Supra) referring to the judgment on the said issue it has been 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 Supreme Court further held that an unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned is bound to make the selected candidates parties.”

In the Original Application there are no allegation against the proposed respondents / applicants of MA-57 of 2021 since the application for addition of party has been filed and the applicants have emphatically stated that their names have been recommended by the Public Service Commission, West Bengal in February, 2021, which I find has not been denied effectively on behalf of the Original Applicants in OA-430 of 2020 they are necessary parties. Hence, the application for addition of parties, being MA-57 of 2021 is allowed. The Registry of the Tribunal is directed to incorporate the names of the applicants in MA-57 of 2021 as respondents in the application, being OA-430 of 2020 within a week from the date of sending down the records. Since it is to be borne in mind, there is no allegation against the proposed respondents who have been directed to be added as respondents in the Original Application, the question of denial of the facts in the Original Application does not arise and hence no reply is required to be filed by

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the added private respondents.

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to the application for addition of party submitted that the proposed applicants are not necessary parties for adjudication of the issues involved in the Original Application as till date the Commission has not recommended any empanelled candidate for the post of “Fire Operator”.

Mr. Mr. G. P. Banerjee, learned advocate for the Commission and Mrs. S. Agarwal, learned advocate for the State respondents support the stand of the proposed respondents.

Mr. S. Sanyal, learned advocate appearing on behalf of the Original Applicants relying on the objection to the application for addition of party submitted that the proposed applicants are not necessary parties for adjudication of the issues involved in the Original Application as till date the Commission has not recommended any empanelled candidate for the post of “Fire Operator”.

Submission is the applicants in the application for addition of party are merely empanelled candidates and have not acquired indivisible right to be appointed and mere inclusion of name of the candidate does not confer any right to be selected or appointed unless the relevant recruitment rules so indicate further the applicants, unless appointed, have no ground to be added as a respondents to the Original Application. Since they have already placed in the merit list which is under challenge and the merit list is quashed, the applicants in the addition of party application cannot take any pleas for withholding an impugned panel. Moreover, the ground of marks in the Written Test, Physical Measurement Test and Interview is under challenge. The applicants in the addition of party could not be affected in the event the panel is set aside and the fresh recruitment is ordered. According to him, the applicant in the application for addition of party has no right to be added in the Original Application as they are not necessary parties. Further a person is a necessary party when in the absence of whom relief claimed in the suit cannot be granted. Moreover a necessary party against whom the relief is sought and without whom no necessary order can be passed, but in the application for addition of party the applicant failed to establish the test that there must be a right to some relief against such parties in respect of controversies involved in the proceeding and no effective decree can be passed in the absence of such party.

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

Admittedly, the applicants in the application for addition of party, being MA-56 of 2021, had applied for the post of “Fire Operator”. They appeared in the selection process. According to them they were successful. Their names have been recommended by the Commission for appointment before the State respondents. The question is whether they were necessary parties or not. According to Mr. Sanyal, the applicants are not necessary parties whereas Mr. Bhattacharjee submits that in the event “Proposed Respondents”, whose names have been recommended, if not added as parties, would suffer irreparably even if the Original Applicants are not added the parties by setting aside the panel. 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, on perusal of the Original Application and particularly the reliefs and the application for addition of parties, it cannot be denied that the names of the 581 applicants have recommended, whether the recommendation was proper or not, that is another issue since their names have been recommended assuming that they are necessary parties, there is no denial of the fact that the names of the proposed respondents have been recommended for appointment and in the event of panel is set aside or quashed, in that event the applicants would be prejudiced. Whether the applicants in MA-56 of 2021 are necessary parties or proper parties is a question of law. The said proposition of law has been succinctly dealt with in Poonam –Versus- Stat of U.P. and Others : 2016 2 SCC 779 which deals with many of the judgments relied on by the learned advocates for the parties which has been held 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.

In the said judgment relying on Udit Narayan Malpaharia –Versus- Additional Member Board of Revenue, Bihar and another : 1963 0 AIR(SC) 786 wherein it has been held that if a person likely to suffer from the order of the Court has not been impleaded as a party, the said party has right to ignore the order as has been passed in violation of the principles of natural justice. Referring to Prabodh Verma and others (Supra). In Poonam (Supra) judgment reliance has been placed on the well settled proposition of law that if a person challenged the selection process, the successful candidates or at least some of them are necessary parties. In fact, it has been held in Poonam (Supra) referring to the judgment on the said issue it has been 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 Supreme Court further held that an unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned is bound to make the selected candidates parties.”

In the Original Application there are no allegation against the proposed respondents / applicants of MA-56 of 2021 since the application for addition of party has been filed and the applicants have emphatically stated that their names have been recommended by the Public Service Commission, West Bengal in February, 2021, which I find has not been denied effectively on behalf of the Original Applicants in OA-170 of 2021 they are necessary parties. Hence, the application for addition of parties, being MA-56 of 2021 is allowed. Tthe Registry of the Tribunal is directed to incorporate the names of the applicants in MA-56 of 2021 as respondents in the application, being OA-170 of 2021 within a week from the date of sending down the records. Since it is to be borne in mind, there is no allegation against the proposed respondents



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who have been directed to be added as respondents in the Original Application, the question of denial of the facts in the Original Application does not arise and hence no reply is required to be filed by the added private respondents.

(SOUMITRA PAL)  
CHAIRMAN