

Central Administrative Tribunal  
Principal Bench: New Delhi

**OA No. 2612/2008**

Reserved on: 09.05.2016  
Pronounced on: 31.05.2016

**Hon'ble Dr. B. K. Sinha, Member (A)**  
**Hon'ble Dr. B.A. Agrawal, Member (J)**

Vimal Chandra Pandey  
s/o Sh. Raj Narain Pandey,  
R/o 50/4, MCD Flats,  
Bungalow Road,  
Delhi.

...Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

1. Union of India through  
Secretary,  
Ministry of Home Affairs,  
Govt. of India, North Block,  
New Delhi.
2. The Secretary,  
DOP&T, Govt. of India,  
North Block,  
New Delhi.
3. Union Public Service Commission  
Through its Secretary,  
Dholpur House, Shahjahan Road,  
New Delhi.
4. G.C. Joshi, IAS Retired,  
Flat No. B-504, CGHS,  
Meghdoot Society/Apartment,  
Plot No.19, Sector 7, Dwarka,  
Delhi – 110 075.
5. T.M. Balakrishnan, IAS Retired  
Thayyil House, Calicut (Kerala).
6. C.P. Tripathi, IAS Retired,  
Flat No.31, Delhi Govt. Flats,  
33, Rajpur Road,  
Delhi.

...Respondents

(By Advocate: Shri R.N. Singh)

## O R D E R

**By Dr. B.K. Sinha, Member (A):**

The instant Original Application has been remanded by the Hon'ble High Court of Delhi vide order dated 28.08.2015 passed in WP(C) No.8199/2015 with the following directives:-

*“After some hearing in the matter, we remand the matter back to the Tribunal. The learned Tribunal shall take into account three OMs referred to hereinabove. The writ petition is disposed on the above terms. Parties to appear before the Tribunal on 14<sup>th</sup> September, 2015. Rights of all the parties kept open. We make it clear that we have not expressed any opinion on the merits of the matter.”*

2. Just to recapitulate, the applicant had filed the instant Original Application seeking quashing of the eligibility list of 24 DANICS officers for consideration for promotion to IAS against the vacancies for the year 2005 onwards wherein his name figured at 18 while it sought to have been at serial no.6 just above his junior one G.C. Joshi – respondent no.4.

3. Learned counsel for the applicant has principally adopted three arguments in support of his case which have been listed below:-

- (i) This OA had been rejected at the first instance on the ground of non-joinder of necessary parties.  
This since stands cured upon remand of the case

and does not stand in the way of the relief being sought to be granted and accordingly this Tribunal has also allowed the MA for impleadment vide order dated 18.09.2015.

- (ii) The applicant contends that he had been appointed in Group-II of DANICS w.e.f. 25.06.1979 on the basis of CSE 1977. In the seniority list prepared by the UPSC, the applicant figured at serial no. 18 whereas he ought to have been figured above the respondent no.4 – G.C. Joshi, who figured at serial no.8 and one V.P. Rao, who figured at serial no.15. However, the applicant had suffered a temporary setback in service from which he had been removed on 13.09.1982 and was subsequently reinstated with all back wages vide order dated 05.05.1989. However, the applicant has not ceased to suffer lingering prejudice on account of this episode. He was denied SAG in the year 1989 while his immediate junior G.C. Joshi was promoted over his head. Likewise, the said V.P. Rao, who figures at serial no.15 in the impugned eligibility list, also stole a march over him in allocation of JAG-II and stood already promoted to IAS. However, the applicant was restored to his original place in JAG-

I & JAG-II and, as such, he seeks antedating of his promotion from the date his juniors have been promoted. The applicant has, therefore, prayed that he be restored to his original place in the seniority list dated 19.12.2007 above the said G.C. Joshi and V.P. Rao and his name should be placed in the select list with consequential benefits.

- (iii) The third limb of the arguments used by the learned counsel for the applicant is that the Tribunal had taken note of the OMs dated 03.12.2012 by UPSC, OM dated 10.12.2012 by MHA and 21.05.2013 also by MHA wherein it had been stated that fulfillment of the qualifying period of 8 years criterion for induction into IAS and had held that it was seniority as entry grade officers and not JAG-I/JAG-II which formed the basis of entry point to IAS. The Tribunal had taken an adverse note of the fact that the applicant had not been promoted to JAG-II and JAG-I. However, since then this promotion had come about and the applicant has been restored to his original position to CSE seniority. As such, OA deserved to be allowed.

4. On the other hand, Shri R.N. Singh, learned counsel for the respondents has used the following arguments:-

- (i) Drawing attention to paras 4, 5, 8, 10, 11 of the Tribunal's order dated 28.01.2015, the learned counsel has submitted that the prayer of the applicant does not constitute a challenge to any order or action of the respondents in 2005. The issue of seniority that he is seeking today has been put to rest and any prayer to the effect of restoration of his seniority is barred by *res judicata* and constructive *res judicata*.
- (ii) Making a reference to para 14 of the afore Tribunal's order, learned Shri Singh submitted that the seniority of CSE is not forever. It is subject to change as has been rightly pointed out in the order that some may get overtaken by more enterprising officers and the career of some other may get marred by setbacks. It is evident that vide Notification dated 19.12.2007, the applicant has been appointed from the select list. Admittedly, the applicant had completed two years of probation on 24.06.1981 but in July, 1982 his probation was extended from

25.06.1981 to 24.06.1982 and further by another year from 25.06.1982 to 24.06.1983. His services were terminated vide order dated 13.09.1982. He had received a setback. He was overlooked for promotion and when it came he was placed below said V.P. Rao. This is a settled issue which cannot be unsettled now as it would amount to opening of Pandora box.

- (iii) Learned counsel further submitted that the prayer of the applicant is for quashing the eligibility list at Annexure A-1. However, he has not indicated as to which list should be adopted. There is no pleading to this effect within the body of the OA in absence of which the existing eligibility list will continue to hold good and no relief to this effect could be granted to the applicant.

5. We have carefully gone through the pleadings of the parties, the remand order of the Hon'ble High Court as also the relevant documents adduced on either side. We have also patiently heard the oral submissions made during the course of arguments by the learned counsels for both the

parties and on the basis of which following issues are germane for our determination:-

- (1) *Whether the scope of examination is limited to the boundaries indicated by the Hon'ble High Court vide their remand order dated 28.08.2015 or would extend to larger and collateral issues?*
- (2) *Whether the examination would be conducted respecting the findings already arrived at and taking into account the basis of which the OA had been decided against the applicant?*
- (3) *What relief, if any, could be granted to the applicant?*

6. Insofar as first of the issues is concerned, we have already taken note that this case had been remanded twice by the Hon'ble High Court of Delhi vide orders dated 21.09.2011 in WP(C) No.443/2011 and 405/2011 and 28.08.2015 in WP(C) No. 8199/2015. In the first instance in order dated 21.09.2011, the Hon'ble High Court had taken note of the fact that though the applicant had placed reliance on the seniority list and the officers eligible to be appointed therein, a greater and deeper consideration had to be required. It came to be considered by the Tribunal

vide order dated 28.01.2015 and the operative portion of the said order reads thus:-

*“37. As regards the last of the issues, we have decided legal issue first. As per finding in the first issue, the JAG-I and JAG-II are the structure in the regular hierarchy of the DANICS and a person who is in JAG-I is superior to person who could not progress beyond the entry grade or to one who could not progress beyond the selection. grade.*

*38. In view o the pleadings, which have widespread contradictions among them, we are constrained to dismiss the OA No.2612/2008 on account of non-joinder of necessary parties and the legal issue relating to the persons to be inducted into IAS stands decided. However, the connection OA No.3393/2013, in view of our findings above, is allowed with a direction that the eligibility list which has not been considered and converted into a select list, may be suitably revised in the light of the conclusion arrived at by us in this order particular in relation to issue no.1, within a period of three months from the date of receipt of a copy of this order.”*

7. The order of remand of Hon’ble High Court has already been given in the opening para of this order. Therefore, what the Hon’ble High Court has desired in effect is to take into account the three OMs referred to in this order i.e. OMs dated 03.12.2012 by UPSC, OM dated 10.12.2012 by MHA and 21.05.2013 also by MHA. Two sets of action were opened to us that either we subject the OA to an examination *de novo* by taking into the afore three OMs into account or we start from the point that we had left before the concluding paragraph of the Tribunal’s order dated 28.01.2015. The matrix of facts being undisputed and the findings in respect of the issues framed not being reversed it would, to our mind, be waste



of judicial time, and to subject the matter for fresh adjudication would amount to reinventing the view. To this limited extent, we agree with the arguments of the learned counsel for the respondents. However, proceeding a little further, we note that OA has been disallowed on grounds of non-joinder of necessary parties and the legal issues relating to the qualifying period. Insofar as the three OMs, referred to above, are concerned, we find that their contents have already been taken note of in the order directly or indirectly. However, we shall be dealing with all these OMs together. Insofar as OM dated 10.12.2012 is concerned, its para (vi) is relevant for the purpose, which reads thus:-

*“(vi) Statements made by S/Shri B.L. Sharma, Ajay Kumar Singla, Sudhir Mahajan and D N Singh may not be considered by UPSC since their contention is incorrect. The criteria for placing names of officers in select list is their seniority as Selection Grade officers and not as JAG-I/JAG-II. The correct eligibility list has already been annexed with the proposal.”*

OM 03.12.2012 is a communication addressed to the Secretary, MHA pertaining to selection committee for promotion of SCS officers to the IAS of Joint AGMUT Cadre (UT segment) against the vacancies of the year 2010.

Relevant para (vi) of the said communication reads thus:-

*“(vi) Further S/Shri B.L. Sharma, Ajay Kumar Singla, Sudhir Mahajan and D N Singh vide their representations dated ‘Nil’ addressed to Government of India, Ministry of Home Affairs copy endorsed to UPSC (received in the Commission on 18.10.2012,*

*19.10.2012 and 08.11.2012 respectively) have stated that in the eligibility list of officers some officers who have not yet been appointed to JAG-I have also been included in the zone of consideration for preparation of Select List for induction of officers into AGMUT cadre of IAS and also that the officers who are still in JAG-II have been shown senior to those who have already been appointed to JAG-I in the above said list. Copies of these representations are enclosed for your comments. Ministry of Home Affairs (UT Division) may kindly furnish latest and undisputed Seniority List.”*

Relevant part of OM dated 21.05.2013 is necessary to be reproduced, which reads as under:-

*“In continuation to this Ministry’s letter of even no dated 10.12.2012, wherein furnished the point wise information in r/o State Civil Service (SCS) offices for their induction into IAS for the year 2011. The statement under point (vi) of the above mentioned letter may be read as:-*

*“(vi) Statements made by S/Shri B.L. Sharma, Ajay Kumar Singla, Sudhir Mahajan and D N Singh may not be considered by UPSC since their contention is incorrect. The criteria for placing names of officers in select list is their seniority as Entry Grade Officers and not as JAG-I/JAG-II.” Instead of*

*“Statements made by S/Shri B.L. Sharma, Ajay Kumar Singla, Sudhir Mahajan and D N Singh may not be considered by UPSC since their contention is incorrect. The criteria for placing names of officers in select list is their seniority as Selection Grade officers and not as JAG-I/JAG-II.”*

8. What was being contended by the applicant is that what is required for IAS is the qualifying service of eight years and not inclusion in JAG-I or JAG-II. This is in substance the contents of all the three OM’s, referred to above. These have already been taken note of and has constituted the lead issue (page 23 of the Tribunal’s order

dated 28.01.2015). For the sake of greater clarity, the issues formulated are being reproduced hereunder:-

- “1. *Whether the induction of DANICS officers to IAS under the Regulations, 1955 would be governed by the seniority prevailing as per the provisions of National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli (Civil Service) Rules, 2003 or only as per the requirement of 8 years continuous service as Deputy Collector as provided under provision (iii) of Rule 5(2) of Regulations, 1955?*
2. *Whether the instant Original Applications are barred by non-joinder of necessary parties?*
3. *What relief, if any, could be granted to the applicants?*

9. We find that the first issue has been discussed as a purely legal proposition in context of the DANICS Rules and the IAS Regulations, 1955. We also find specific mention of OMs dated 21.05.2013 and 10.12.2012 at pages 33-35 of the Tribunal's order dated 28.01.2015 which have been fully extracted therein. After having discussed in some detail, the Tribunal held as under:-

- “31. *Having considered all these points, as discussed above, we are of the considered opinion that the years of service and the toil involved in reaching the JAG is not to be wiped clean together. In the case that we accept the entry grade seniority or the seniority in the selection grade, both these categories of persons are placed at par, this would act as a strong disadvantage to the first category of persons while the other two categories shall be rewarded particularly the third category the most.*
32. *For reasons recorded above, we have rejected both these pleas and we find substantial merit after having examined the structure and scheme of the DANICS and the entry procedure prescribed as under Regulation, 1955 that the*

*seniority of service as it prevails from JAG-I downwards.”*

10. We find that there are no pleadings against these findings, rather the learned counsel for the applicant submitted that this issue is no longer relevant as the applicant has been restored to his original position in JAG-I. In conclusion, we can only hold on the basis of oral submissions made by the learned counsel for the applicant except the above findings and having not pressed this point to any extent, this need not to be re-opened. Issue no.1 is accordingly answered.

11. Insofar as the second of the issues is concerned, it has been partly dealt with while dealing with issue no.1 above. The basic argument advanced by the learned counsel for the respondents was that the Tribunal's order in question i.e. 28.01.2015 is a good one as it has gone into different facets of the case and have given findings on merit which do not stand challenged by the applicant. The applicant, on the other hand, has side stepped from some of the issues and instead focused on the ground on which the Original Application has been rejected. While agreeing with the arguments of Shri R.N. Singh, learned counsel for the respondents to some extent that there are no pleadings on part of the applicant qua reverting the findings arrived

at by the Tribunal in its order dated 28.01.2015 by the Hon'ble High Court, we cannot escape the fact that the order has been considered by the Hon'ble High Court and has remanded for consideration. As such, we have no option but to limit the issue to the three OMs, referred to above, as directed by the Hon'ble High Court of Delhi in their remand order dated 28.08.2015 and the point on which the learned counsel for the applicant has averred. His argument has been simple that the issue of non-joinder has been cured by issuing necessary notices and the legal issue has been cured by consideration and restoration of the applicant to his original place. Hence, enlarging the scope of consideration, which the learned counsel for the applicant has sought to do, would be a waste of judicial time. The issue is concluded accordingly.

12. Now, we are left with the concluding part of the OA. We note that we have already taken note of the three OMs i.e. OMs dated 03.12.2012, 10.12.2012 and 21.05.2013 and found that these OMs have been considered by this Tribunal in its order dated 28.01.2015. However, the applicant has not assailed these findings but rather accepted them. We also find that faithful compliance to the directives of the Hon'ble High Court focused on the disabilities on account of which the OA had been rejected

in the first instance. That is what exactly we have done. Any fresh consideration or requirement would be words wasted. We also find that the impediment of non-joinder of necessary parties had been set at rest.

13. In totality of facts and circumstances of the case, we are left with no option but to allow the instant OA in terms of prayers (ii) and (iii). No costs.

**(Dr. B. A. Agrawal)**  
Member (J)

**(Dr. B.K. Sinha)**  
Member (A)

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