

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00507/2017

Friday, this the 24th day of November, 2017

CORAM:

**Hon'ble Mr.U.Sarathchandran, Judicial Member
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member**

Mukesh Rajora, DANICS
Director (Port, Shipping & Aviation)
Administration of Union Territory of Lakshadweep
Kavaratti - 682 555 . . . **Applicant**

(By Advocate - Mr.S.Radhakrishnan, Mr.Aditya Tejas Krishnan & Ms.Anjali.R)

V e r s u s

1. Union of India represented by its Secretary (Home)
Ministry of Home Affairs, North Block
New Delhi - 110 001
2. The Secretary, Department of Personnel & Training
Ministry of Personnel, Public Grievances & Pension
North Block, New Delhi - 110 001
3. The Administrator
Union Territory of Lakshadweep
Kavaratti - 682 555

(By Advocate - Mr.M.K.Padmanabhan Nair, ACGSC for R 1&2 and Mr.S.Manu for R3)

This Original Application having been heard on 20.11.2017, the Tribunal on 24.11.2017 delivered the following:

ORDER

BY HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Original Application No.180/00507/2017 is filed by Shri.Mukesh Rajora challenging Annexure A-10 order No.14040/26/2015-UTS-II dated

27.10.2016 and Annexure A-3 O.M No.13/1/86-Estt. (Pay.I) dated 10.7.1998 denying him the benefit of pay fixation taking into account his past service in the Oil and Natural Gas Corporation (ONGC for short) while being recruited into DANICS.

2. The relief sought in the Original Application are as follows:-

- "a. Call for the records connected with the case;
- b. Declare that Annexure A-3 Office Memorandum had already become otiose and it cannot be put into operation for denying the benefit granted by Annexure A-2;
- c. Declare that Annexure A-3 Office Memorandum and Annexure a-10 order are patently illegal, arbitrary and not sustainable in the eye of law;
- d. Quash annexure A-3 and Annexure A-10 order;
- e. Direct the respondents to allow the benefit of the protection of the last pay drawn by the applicant from the PSU in CANICS, as stated in Annexure A-2 OM dated 7.8.1989 and Annexure A-7 OM dated 30.3.2010 w.e.f 3.3.2014, by reckoning the last pay drawn from ONGC;
- f. Direct the respondents to count his past service rendered in Govt. of Delhi and in ONGC for the purpose of all service benefits including pension in the Central Government Service;
- g) Grant such other reliefs as this Tribunal may deem fit, just and proper in the facts and circumstances of the case."

3. The facts of the case in brief are as follows:

The applicant is a DANICS (Delhi, Andaman and Nicobar Islands Civil Service) Officer. He had begun his career with the Government as a PGT

(Commerce) on 1.4.2005 under the Department of Education, Government of NCT of Delhi. On 30.12.2010, he had tendered his resignation in order to join ONGC, a Central Government PSU, on having been selected and appointed as Finance and Accounts Officer in the scale of pay of Rs.24,900-50,500/-.

4. While working with ONGC, the applicant had appeared in the Civil Service Examination, 2012 conducted by the UPSC and on being successful, had been appointed in DANICS in the pay band of Rs.9,300-34,800/- with Grade Pay of Rs.4,800/-. He joined the DANICS on 3.3.2014. It is to be recalled that on his relief from ONGC, his basic pay was Rs.28,040/- and a copy of his Service Certificate dated 10.7.2014 issued by the ONGC is produced as Annexure A-1.

5. In keeping with the stated goal in Government to attract the best available talents from PSUs, Universities and similar bodies, the DoP&T had issued Annexure A-2 O.M No.12/1/88-Estt. (Pay-I) which prescribed that the candidates who have been working in PSUs, Universities, Semi-Governmental Institutions or autonomous bodies, who are appointed as direct recruits on selection through a properly constituted agency, will have the benefit of their initial pay and DA fixed, protecting the pay plus DA already been drawn by them in their parent organization.

6. However, 9 years later DoP&T issued another O.M dated 10.07.1998 and produced as Annexure A-3 herein, which is stated to be a clarification to

Annexure A-2. Paragraph 3 of Annexure A-3 reads as follows:

" The benefit of pay protection is available to the Government servants on their recruitment by selection through UPSC, subject to fulfillment of certain conditions. The benefit under the O.M dated 7.8.89 was extended to the candidates working in central PSUs/State PSUs/Universities/Semi-Government Institutions, Autonomous Bodies etc. with a view to drawing talent, which is available in those organisations. The question whether the objective underlying the above orders could be achieved through open competitive examination in which the employees from Public Sector Undertakings etc also appear, has been considered. It is clarified that the benefit of pay protection under the above orders is available only if the selection is through interview and not through an open competitive examination. Wherever the protection under the above orders is to be given, the Commission will indicate in its recommendation letter to the Ministry concerned that pay of such candidate(s) should be fixed as per the guidelines laid down in the above orders. Further, the benefit would be available to an officer coming from PSU etc. only if the officer has completed the period of probation successfully for being regularised/confirmed in the post in the parent organisation. "

7. In 2002, one **Mr. Sanjog Kapoor** who was appointed to the Indian Revenue Service from VSNL approached the Principal Bench of this Tribunal by filing O.A No.3020/2002 claiming protection of the salary he was drawing from VSNL, in his posting as an Indian Revenue Service Officer. The Principal Bench of this Tribunal dismissed the Original Application on the ground that there was no specific prayer to quash O.M dated 10.07.1998. In the subsequent judicial review before the Hon'ble High Court of Delhi in WP(C) No.5518/2004, the Division Bench of the Delhi High Court allowed the Writ Petition, "reading down" Annexure A-2 and Annexure A-3 O.M and clarifying thus:

"16. In these circumstances we hold that the distinction sought to be drawn between candidates selected from non-governmental bodies through interview and those selected through open competitive examination sans rationale justification. Protecting the pay of one and not protecting the pay of other set of candidates is completely arbitrary and illogical. "

8. Among the criteria formulated by the Hon'ble High Court in its order at Annexure A-4, candidates working in PSUs were also included. This judgment was taken up in judicial review before the Hon'ble Supreme Court of India in SLP No.4546/2008. But the Hon'ble Apex Court dismissed the SLP on 31.03.2008 on the ground of delay.

9. It is argued in the Original Application that the technical rejection by the Hon'ble Supreme Court will not affect the finality of the judgment passed by the Hon'ble High Court of Delhi, as is seen by the action of the respondents implementing the said judgment in the case of *Shri. Sanjog Kapoor* and several others.

10. Subsequently, the Guwahati Bench of this Tribunal in Original Application No.93/2013 (*Dr. Parakash Borgohain v. Union of India*) followed the law laid down in Annexure A-4 judgment and directed the respondents to examine the case of the applicant in the light of *Sanjog Kapoor's* case vide Annexure A-5. Annexure A-5 order was implemented through order dated 12.5.2015 issued by the Ministry of Finance vide Annexure A-6. Several other parties' claims were also favourably considered

in its wake.

11. In so far as the applicant is concerned, he repeatedly took his claim with the authorities of the Union Territory for protection of his last pay drawn in ONGC and counting of past service. In the Original Application he complains that the respondents were tossing his representations from one department to another and the applicant was finally constrained to file O.A 2927/2015 before the Principal Bench of this Tribunal. The Tribunal considered the matter in the light of *Sanjog Kapoor*'s case and *Dr.Prakash Borgohain*'s case and directed the Home Ministry vide Annexure A-9 to dispose of the representations in the light of the above two decisions which attained finality. The Ministry of Home Affairs, in complete disregard to the direction contained in Annexure A-9, rejected the applicant's case with the following conclusion:

"Judgment *ibid* (Sanjog Kapoor's case) is applicable for petitioners only and the question is to be adjudicated in some similar matter. "

12. The applicant who is now working in Lakshadweep has challenged Annexure A-10 which is the decision of the Ministry of Home Affairs as well as Annexure A-3 which is the Office Memorandum dated 10.7.1998.

13. As grounds, the applicant has elaborately explained why Annexure A-4 judgment ought to be treated as a declaratory one and the respondents ought to issue general guidelines allowing the benefit of protection of pay to all

similarly placed employees in Government service. He has called to his assistance the following judgments:

1. *(1975) 4 SCC 714, Amrit Lal Berry v. CCE*
2. *(1985) 2 SCC 648, Inder Pal Yadav v. Union of India*
3. *(1997) 2 SCC 1, Aswini Kumar & Ors. v. State of Bihar*
4. *(2000) 6 SCC 359 Kunhayammed v. State of Kerala*
5. *(2006) 2 SCC 747, State of Karnataka v. C.Lalitha*
6. *(2006) 10 SCC 346, Uttarakhand Forest Rangers' Assn. (Direct Recruit) v. State of U.P*
7. *(2015) 1 SCC 347, State of Uttar Pradesh v. Arvind Kumar Srivatava*
8. Judgment in *WP(C) No.5518/2004, Sanjog Kapoor v. Union of India*
9. Order passed by the Guwahati Bench of the CAT in *O.A No.93/2013, Dr.Prakash Borgohain v. Union of India."*
14. In a further statement filed by the applicant, a copy of the judgment dated 6.1.2016 issued by the Hon'ble High Court of Delhi in *Nagendra Kumar Jha v. Union of India* has also been presented vide Annexure A-11. Thus seeks a favourable consideration of his prayer on the basis of two judgments (Annexure A-4 and Annexure A-11), both passed by the Division Bench of the Hon'ble High Court of Delhi.
15. The respondents did not file a reply statement.
16. Heard Ms.Anjali, Advocate representing Mr.S.Radhakrishnan, learned

counsel for applicant, Mr.M.K.Padmanabhan Nair, ACGSC, learned counsel for respondent nos.1 and 2 and Mr.R.Sreeraj representing Mr.S.Manu, learned counsel for respondent no.3. We have examined the case in detail and also perused pleadings entered by the applicant.

17. Applicant has put forward a cast-iron case. The orders of the Hon'ble High Court of Delhi are clear and unambiguous. They laid down that the categories to which the applicant belongs is fully entitled to get the previous service put in PSU counted for fixation of pay and for consequential benefits. By not filing the reply statement and in the proceedings before the Tribunal, there is no effective defence mounted by the respondents in reply to the claims put forward by the applicant.

18. On consideration of all factors, we conclude that this case falls squarely under the question already considered in *Sanjog Kapoor's* case and *Dr.Prakash Borgohain's* case as well as *Nagendra Kumar Jha's* case. It is ordered accordingly upholding the claims made by the applicant and granting him all benefits prayed for in the Original Application. Respondent No.1 shall issue appropriate orders as directed above within two months of receipt of copy of this order.

19.. The Original Application is allowed as above. No costs.

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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List of Annexures by the applicant

Annexure A-1 - A true copy of the Service Certificate dated 10.7.2014 issued by the ONGC.

Annexure A-2 - A true copy of the DoPT OM No.12/1/88-Estt. (Pay.I) dated 7.8.89

Annexure A-3 - A true copy of DoPT OM No.12/1/96-Estt.(Pay I) dated 10.7.1998

Annexure A-4 - A true copy of the judgment passed by the Division Bench of the High Court of Delhi in WP(C) in 5518/2004 dated 20.4.2007

Annexure A-5 - A true copy of the order passed by the Guwahati Bench of the CAT in O.A No.93/2013 dated 4.12.2013.

Annexure A-6 - A true copy of the communication F No.A-26017/24/2012-Ad.II.A dated 12.5.2015, implementing Annexure A-5

Annexure A-7 - A true copy of the DoPT OM No.12/3/2009 - Pay I dated 30.3.2010

Annexure A-8 - A true copy of the representation submitted by the applicant dated 14.7.2014

Annexure A-9 - A true copy of the order passed by the Principal Bench of CAT in O.A 2927/2015 dated 12.7.2016.

Annexure A-10 - A true copy of the order No.14040/26/2015-UTS-II dated 27.10.2016 issued by the MHA

Annexure A-11 - A true copy of the judgment dated 6.1.2016 passed by the High Court of Delhi in Nagendra Kumar Jha v. Union of India