

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.568 OF 2010

Sri Swapan Kumar Das,
S/O Late Manmohan Das,
Resident of 97 Akhaura Road,
P.O. Ramnagar, P.S. West Agartala,
District-West Tripura.

..... *Petitioner*

- *Vs* -

1. The Oil and Natural Gas Corporation Ltd.,
(For short ONGC),
Represented by it's Chairman cum Managing Director,
Oil & Natural Gas Corporation Ltd., Tele Bhavan,
P.O. Dehra Dun, Uttarakhand.

2. The Chairman Cum Managing Director,
Oil & Natural Gas Corporation Ltd., Tele Bhavan,
P.O. Dehra Dun, Uttarakhand.

3. The Director, Finance,
Oil & Natural Gas Corporation Ltd., Tele Bhavan,
P.O. Dehra Dun, Uttarakhand.

4. The Executive Director-cum-Asset Manager,
Oil & Natural Gas Corporation Ltd.,
Tripura Asset, Badharghat Complex,
Agartala-7990014, Tripura West.

5. The State of Tripura,
(represented by the Chief Secretary to the
Government of Tripura), Agartala,
Civil Secretariat,
Capital Complex, P.O. Kunjaban, Agartala,
West Tripura.

6. The Secretary to the Govt. of Tripura,
General Administration(P&T) Department,
Civil Secretariat, Capital Complex,
P.O. Kunjaban, Agartala, West Tripura.

..... *Respondents*

**BEFORE
HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner

: Mr. B. Das, Sr. Advocate
Mr. D. Chakraborty, Advocate

For respondent Nos.1 to 4 : Mr. S. Deb, Sr. Advocate
Mr. R. Dasgupta, Advocate

For respondent Nos.5 & 6 : None

Date of hearing : **23.02.2015**

Date of delivery of
judgment & order : **26.02.2015**

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER

Heard learned senior counsel, Mr. B. Das, assisted by learned counsel, Mr. D. Chakraborty for the petitioner and learned senior counsel, Mr. S. Deb, assisted by learned counsel, Mr. R. Dasgupta for the respondent Nos.1 to 4. No representation on behalf of respondent Nos.5 and 6. No counter affidavit also filed by the respondent Nos.5 and 6.

2. The petitioner while was in service under the State of Tripura in the post of Tripura Civil Service Gr-II(for short, TCS Gr-II), the State respondents by issuing a letter dated 3rd/5th July, 2008(*Annexure-B* to the writ petition) requested the officers of TCS as to whether any such officer was willing to serve in the Oil & Natural Gas Corporation Ltd.(for short, ONGC) on deputation and the petitioner expressed his willingness in response to the said communication of the State respondents.

2.1. It is also contended by the petitioner that the communication dated 3rd/5th July, 2008 also contained a terms and

conditions for such appointment on deputation in the ONGC and the petitioner was satisfied with the terms and conditions and accordingly in due course the State respondents recommended the name of the petitioner by communication dated 03.01.2009 to the ONGC deputing the petitioner and pursuant to the said communication dated 03.01.2009(*Annexure-C* to the writ petition) the petitioner joined his duties with ONGC on 21.01.2009(*Annexure-D* to the writ petition) and on that day itself the petitioner exercised his option by writing a letter(*Annexure-E* to the writ petition) that he shall draw the pay and allowances in the scale of pay of ONGC including other usual perks. ONGC by writing a formal letter dated 22.04.2009(*Annexure-F* to the writ petition) informed the petitioner that he will be entitled to pay scale of ONGC of ₹16,000-20,800/- and that he should be designated as Deputy Manager(HR).

2.2. It is the case of the petitioner that he was given the pay and other allowances in the scale of ₹16,000-20,800/- and was drawing total ₹50,569/- per month. Suddenly, in the month of October, 2009 his pay was reduced from ₹50,569/- to ₹40,532/- without assigning him any reason. The pay was reduced unilaterally and arbitrarily and no communication or intimation was given to the petitioner before reduction of the pay.

2.3. It is the case of the petitioner that as per standard terms and conditions of deputation, a deputationist was entitled to

make a choice of the pay of his parent department or the pay of the corresponding pay scale of ONGC and the petitioner exercised his option choosing the corresponding pay scale of ONGC and accordingly he was paid in the scale of ₹16,000-20,800/- upto September, 2009, but all on a sudden, to his utter surprise, his pay was reduced to the scale of his parent department without assigning him any reason and without giving him any communication in that respect.

2.4. It is the further case of the petitioner that the pay of the officers of the ONGC was revised and the pay scale of ₹16,000-20,800/- was revised to ₹32,900-58,900/- and the petitioner therefore claimed his pay in the revised scale *w.e.f.* 21.01.2009 and to that effect he made representations on 09.09.2009 and 29.12.2009 but he received no response from the respondent-Corporation.

2.5. The petitioner further contended that on 25.03.2010 he was promoted to Gr-I of Tripura State Civil Service by his parent department and such promotion was communicated to the ONGC and due to such promotion the petitioner prayed for granting him the scale available to the post of E-5 level officers of ONGC but that was also not granted.

2.6. The petitioner thereafter issued advocate notice claiming the benefits and in response to that advocate notice the

petitioner was informed that after issuance of office order dated 22.06.2009 the petitioner was not entitled to the scale of ONGC and that there was no illegality in the action taken by ONGC in respect of the pay of the petitioner.

3. Respondent Nos.1 to 4 by filing counter affidavit contended that the petitioner on deputation joined ONGC on 21.01.2009. His pay was fixed at E-3 level and he was allowed to draw the salary including allowances of ONGC. Subsequently, after revision of pay scale of the officers of ONGC which came into force *w.e.f.* 01.01.2007, the situation has been changed and the petitioner's prayer for allowing him in the rate of revised scale could not be allowed since the revised scale was allowed to the officers of ONGC *w.e.f.* 01.01.2007. It is also contended by the respondents that pursuant to office Memo. dated 08.06.2009(*Annexure-V* to the counter affidavit) and the office Memo. dated 26.11.2008, the pay of the petitioner was fixed and paid and there was nothing illegal in the fixation since as per office Memo. dated 08.06.2009 the petitioner was entitled to draw the salary as per his entitlement in the parent department. It is also contended by the respondents that the claim of the petitioner of his pay after his promotion in Gr-I at E-5 level was a misconceived claim and that claim cannot be entertained. The respondents, therefore, prayed for dismissal of the writ petition.

4. While arguing the matter, learned senior counsel, Mr. Das appearing for the petitioner has submitted that as per the standard terms and conditions of deputation the petitioner exercised his option on the date of his joining ONGC and opted for the relevant ONGC pay scale of the post in which he joined and he was paid in the pay scale of ₹16,000-20,800/-. Such payment was regularly made upto September, 2009. All on a sudden from October, 2009 the salary of the petitioner was reduced from ₹50,569/- to ₹40,532/- without making any communication to the petitioner and without assigning any reason as well as without hearing him. Such reduction has been made in total violation of the standard terms and conditions of deputation of the ONGC and hence the petitioner has been deprived of his due.

4.1. In course of the submission learned senior counsel abandoned the claim of the petitioner in respect of the revisional pay scale as well as E-5 level scale after his promotion in Gr-I of TCS.

4.2. Learned senior counsel only contended that the petitioner joined ONGC on deputation and as per the standard terms and conditions of deputation he exercised his option to the pay scale of ONGC and on his deputation the petitioner was posted as Deputy Manager(HR) and the pay scale of ₹16,000-20,800/- was available to that post and that pay scale was allowed to the petitioner and he was paid at the rate of ₹50,569/- per month but

all on a sudden the respondents reduced the amount to ₹40,532/- and learned counsel only concentrated the claim of the petitioner to that extent and the rest of the claim as made in the writ petition has been abandoned.

5. Learned senior counsel, Mr. Deb appearing for the respondent-ONGC has submitted that the Government of India, Ministry of Heavy Industries & Public Enterprise issued an office Memorandum dated 08.06.2009 and as per that memorandum the petitioner who was on deputation from the State Government was only entitled to draw the pay available in his parent department and as per that office memorandum payment was made to the petitioner for his deputation period and so there is no illegality in the action taken by the respondents.

6. It is an admitted position that the petitioner joined ONGC on 21.01.2009 on deputation for a period of three years. He was an officer of State Government of the rank of TCS Gr-II at the time of his deputation. It is an admitted position that on his deputation he was designated as Deputy Manager(HR) in the pay scale of ₹16,000-20,800/-. *Annexure-F* to the writ petition and *Annexure-Corporation-II* of the respondents makes it clear that the petitioner joined the ONGC on 21.01.2009 and designated as Deputy Manager(HR) and his pay was fixed in E-3 level of the officers of ONGC. It is also an admitted position that the pay scale

available to Deputy Manager(HR) for E-3 level officers of ONGC was ₹16,000-20,800/-.

7. A copy of the standard terms and conditions of deputation of the ONGC has been annexed as *Annexure-A* by the petitioner and similar copy of the same has been annexed by the respondents as *Annexure-Corporation-I* as an *Appendix-II* of office order 54/2007 and paragraph 3 of the said terms and conditions reads as follows:

"3. Pay, Deputation Pay and Dearness Allowance:

During the period of deputation, the deputationist will have the option either to draw his own pay in the same scale of pay of his parent organization and the corresponding Dearness Allowance or draw pay as may be fixed in the scale of pay of deputation post in ONGC and the corresponding Dearness Allowance. If the deputationist opts for the former, he will be entitled to deputation(duty) allowance. The deputation allowance and fixation of pay will be in accordance with the instructions contained in Office Memorandum issued by Ministry of Personnel, Public Grievances and Pensions, Govt. of India, New Delhi No.2/29/91-Estt.(Pay II) dated 5.1.1994 and No.2/8/97-Estt.(Pay II) dated 11.3.1998(Annexure I & II) as amended from time to time."

8. As per the above terms and conditions the petitioner was entitled to draw pay either in the same scale of his parent organization or in the scale of deputation post in ONGC.

9. It is not in dispute that on 21.01.2009, *i.e.* on the date of his joining ONGC the petitioner exercised his option for the pay scale of ONGC and other perks. The respondents in their counter affidavit in para 4 clearly stated that the pay of the petitioner was fixed at E-3 level and he was allowed to draw the salary including allowances of ONGC. It is therefore an admitted position that upto September 2009, he has drawn his salary at ONGC rate of E-3 level officer, *i.e.* the pay scale of ₹16,000-20,800/-. In para 11 of the writ petition the petitioner contended that his pay was reduced. The averments made in para 11 of the writ petition read as follows:

"11. That while serving as such and while he was drawing pay and allowances etc. at the rate of Rs.50,569/- in the Scale of 16,000-20,800/- all on a sudden in October, 2009 his monthly dues were reduced to Rs.40,532/- on and from the month of October, 2009 in the scale of Pay attached to the Post of T.C.S. Gr.II of the Govt. of Tripura."

The respondent-ONGC replied to the contention made in para 11 of the writ petition, in para 17 of the counter affidavit which reads as follows:

"17. The statements made in paragraph 11 of the writ petition, it is admitted that the petitioner was to draw the pay and allowances but the same would be according to law. However it is submitted that grant of pay slip unless it is in accordance with law would not confer any right upon the petitioner. The petitioner's entitlement lies by and under the statutory provisions;

no claim unless based on legal right has any enforceability.”

10. A bare reading of para 17 of the counter affidavit makes it abundantly clear that the respondents did not deny the reduction of pay of the petitioner with effect from the month of October, 2009.

11. The petitioner contended that the reduction was made unilaterally and arbitrarily without making any communication or intimation to the petitioner which is denied by the respondents but the respondents failed to submit any material to show that any show cause notice was issued to the petitioner before reduction of the pay or that he was at least heard before such reduction of pay.

12. It is therefore amply clear that the petitioner, though was initially allowed the admissible pay scale of ONGC for the post he was holding on deputation but subsequently the pay was reduced and he was paid at the rate of his parent department. The respondents justified their action referring to *Annexure-V*, i.e. an office memorandum dated 08.06.2009 issued by the Government of India. That memorandum has been quoted in para 11 of the counter affidavit. In that memorandum it has been mentioned that the Government officers who are on deputation to the CPSEs will continue to draw their salary as per their entitlement in the parent department. It appears that after that office memorandum dated 08.06.2009 the respondents reduced the pay of the petitioner from

the pay scale available to the post of Deputy Manager(HR) of ONGC to the available pay scale of a Gr-II officer of State Government.

13. Office Memorandum dated 08.06.2009(*Annexure-V* to the counter affidavit) was not in existence on the date the petitioner joined ONGC on deputation. Once he joined the ONGC as per the standard terms and conditions (*Annexure-A* to the writ petition and *Annexure-I* to the counter affidavit), his pay should not have been reduced or changed after a subsequent office memorandum issued by the Central Government. The office Memorandum dated 08.06.2009 cannot be made applicable to the petitioner with retrospective effect. Therefore, the action of the respondent-ONGC in reducing the pay of the petitioner, from the pay scale of ONGC, which was given to him, to the pay scale of his parent department while he was on deputation was altogether a wrong action taken by the ONGC and it is violative of the right of the petitioner and therefore this Court has all jurisdiction to interfere in such illegal action.

14. Accordingly, the writ petition is partly allowed.

15. The reduction of the pay of the petitioner *w.e.f.* October, 2009 from ₹50,569/- to ₹40,532/- was arbitrary, wrong and illegal and the petitioner shall be paid his pay at the rate of pay scale ₹16,000-20,800/-, *i.e.* the pay available to E-3 level officer during the period of his deputation. It is submitted that the

deputation period of the petitioner has now been over. So, the respondents are directed to make payment of the arrears to the petitioner within 90 days from today.

Parties are to bear their own costs.

JUDGE