

**BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI**  
**MEMORANDUM OF APPLICATION**  
**(Under Section 18(1) read with Sections 14, 15 of National Green**  
**Tribunal Act, 2010)**

**Application No. 242 of 2021**

Tejah Balantrapu & Ors

... Applicant

VERSUS

Union of India & Anr

... Respondent

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through  
**Yogeshwaran**  
**Counsel for the Applicant**

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**Application No. 242 of 2021**

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... Respondent

**Affidavit filed by the applicant**

I, Tejah Balantrapu S/o. Hemachandra Balantrapu, residing at 102, Grace des res heights, SBI colony, Baghamberpet, Hyderabad-500013, Telangana, having temporarily come down to Chennai, solemnly swear and sincerely state as follows:

1. I am the 1<sup>st</sup> applicant herein and I am aware of the facts and circumstances of the case and competent to affirm this affidavit. I have been authorised by the other applicants to file this affidavit on their behalf.
2. I submit that the present affidavit is being filed to place on record certain facts and objections of the applicant to inter alia the filing of a report by NHAI in a sealed cover.
3. I submit that Hon'ble Tribunal in its order dated 24.05.2023, constituted a committee comprising of a Senior officer from IRC, senior officer from NHAI and a nominee of the PCCF, Head of forest force not below the rank of CCF to examine alternatives to save the subject Banyan Trees. The committee was also given the option to co-opt other members.
4. I submit that members of the save Chevella Banyans group were invited for a meeting on 21.06.2023 with Mr Kushwaha, PO, Ministry of Road Transport and Highways (MoRTH) by the PA of the Hon'ble Minister. Mr Nageswara

*B.V. Tejah*

Rao, PO of the NH-163 expansion project at NHAI also attended the meeting.

5. The meeting took place at an informal setting. Mr Kushwaha promised the group that NHAI and MoRTH would explore and find the means to save the Banyans of Chevella. The group submitted a formal letter asking that the trees be saved, along with some photos.

6. That very evening, I was informed of the site inspection scheduled on 23.06.2023 and that a committee comprising of

(i) Sri. Y. Balakrishna, Convener B-8 Committee of IRC & ADG (Retd), MoRT&H

(ii) Chief Conservator of Forests, Charminar Circle, Hyderabad

(ii) Lt. Col. A.K. Janbaz (Retd), CGM (Tech) & Regional Officer, NHAI, RO-Hyderabad

was constituted by NHAI for the said inspection. We participated in the inspection reserving our right to object to the constitution of the committee since NHAI, the project proponent was re-examining its own decisions and its inclusion in the committee is a clear case of conflict.

7. During the inspection, it was evident that alternatives were not being explored to save the Banyans and the absence of an ecologist or any subject matter expert to address issues inter alia like the ecological service of these trees, its importance etc., led to a situation where these aspects were not being considered.

8. A detailed letter was also submitted to the committee on 27.06.2023.

9. Thereafter, I was informed that there were some issues with the e-filing portal of this Hon'ble Tribunal and on 11.07.2023 we filed an IA seeking to recall the order since NHAI, which is the project proponent has also been

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made a member of the committee constituted to in effect re-examine its own project design. It is submitted that NHAI being in the committee is a clear case of conflict and amounts to a person being a judge of his own cause.

10. Therefore, it is necessary that the committee be reconstituted to exclude NHAI, the project proponent and include subject matter experts so that the banyans could be saved. The Hon'ble Supreme Court in BONANI KAKKAR Vs OIL INDIA LIMITED & ORS. (order dated 02/09/2021, Civil Appeal No(s).2201/2021), observed that the NGT's inclusion the Managing Director of the project proponent in the committee was a case of conflict and reconstituted the committee.

11. I submit that the OA was originally posted to 17.07.2023 and was adjourned on the causelist itself to 24.08.2023. However, on 17.07.2023 at about 5 pm, my counsel received an SMS from the learned counsel for the NHAI (the 2<sup>nd</sup> Respondent) stating that the "matter would be taken up next Monday (24.07.2023). Expert report in sealed cover submitted to the Court."

12. I am advised to submit that the mentioning of the matter for early listing was without notice to us.

13. I am advised to submit that the report however has questionably been submitted in a concealed manner in a 'sealed cover'. I respectfully submit that we have not been served with a copy of the report and have been denied details of its contents citing that the report is being submitted in a sealed cover and privy to the knowledge of this Tribunal alone. It is in these circumstances, that I am filing this affidavit. It is necessary to note that NHAI, the contesting respondent herein, was part of the committee and has knowledge of the report.

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14.I respectfully submit that the method/procedure of submitting documents/reports in sealed covers before an Adjudicating Authority may be resorted to only in exceptional circumstances where the document/report comprises of highly sensitive and critical information affecting national security or the privacy of individuals. The practice ought to be exercised selectively. Besides, the non-disclosure must be proportional to its purpose. In the present case, the report is one concerning the ecological impact of the felling of trees and its effect on the surrounding population and the consideration for alternatives. It thus involves the welfare and interests of the public at large. By no stretch of imagination, the report qualifies to be a document falling within the ambit enumerated above and thus does not require to be submitted in a concealed manner. It is respectfully submitted that method of 'sealed cover' adopted by the committee is unwarranted and lacks any legal sanction.

15.I respectfully submit that as detailed out in the original application, the felling of the subject matter trees stands to have significant irreversible ramifications in the surrounding areas and its residents. Thus, a report analysing and commenting on the subject should in fact be a document that is made available to all stakeholders. On the contrary, the report has been submitted in a sealed cover to defeat the rights of those interested. Indeed, for this reason itself, there ought to be a direction to the committee to serve copies of the report upon me and the other applicants. It is additionally submitted that me and the other applicants indeed have reason to suspect that the 2<sup>nd</sup> Respondent having been made part of the committee has influenced it to adopt such discreet methods. It is indeed to avoid such perception of prejudice and bias that the applicants filed an application seeking the recall of the order dated 24.05.2023 which constituted the committee with the 2<sup>nd</sup> Respondent. I submit that the e-filing portal indicates that the IA has not been scrutinised or numbered yet.

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16. It is respectfully submitted that this Hon'ble Tribunal has heard and considered the contentions in the original application at significant length over the course of proceedings. We have also secured interim protection vide order dated 21.12.2021, as this Hon'ble Tribunal observed merit in our averments. It is in this stead that it directed the constitution of the committee and sought for an appropriate report on the allegations raised by us, as also for the purpose of considering alternatives that are possible/available.

17. It is respectfully submitted that the report would potentially remark, either in support or against on the various allegations/averments raised by us. It would thus indeed have a substantial influence in the decision of this Hon'ble Tribunal on this application. It is thus necessary that we be accorded an opportunity to peruse and reply to the contents of report failing which substantial prejudice would be caused to us. Indeed, doing so would also ensure compliance of the principles of natural justice.

18. The Hon'ble Supreme Court has in its latest judgement in **2022 SCC OnLine SC 1570** [Cdr Amit Kumar Sharma etc Vs. Union of India & Ors] elaborately dealt with the practice of sealed cover submissions and unequivocally upheld the contentions as stated above. Specific paragraphs enumerating the same is give below for convenient consideration of this Hon'ble Tribunal:

"...

***28. The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the adjudicating authority does not rely on the material while arriving at a finding, information that is relevant to the dispute, which would with 'reasonable probability'***

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*influence the decision of the authority must be disclosed. A one-sided submission of material which forms the subject matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence.*

*29. The non-disclosure of relevant material to the affected party and its disclosure in a sealed-cover to the adjudicating authority (in this case the AFT) sets a dangerous precedent. The disclosure of relevant material to the adjudicating authority in a sealed cover makes the process of adjudication vague and opaque. The disclosure in a sealed cover perpetuates two problems. Firstly, it denies the aggrieved party their legal right to effectively challenge an order since the adjudication of issues has proceeded on the basis of unshared material provided in a sealed cover. The adjudicating authority while relying on material furnished in the sealed cover arrives at a finding which is then effectively placed beyond reach of challenge. Secondly, it perpetuates a culture of balance of power in a litigation in favour of a dominant party which has control over information. Most often than not this is the state. A judicial order accompanied by reasons is the hallmark of the justice system. It espouses the rule of law. However, the sealed cover practice places the process by which the decision is arrived beyond scrutiny. The sealed cover procedure affects the functioning of the justice delivery system both at an individual case-to-case level and at an institutional level. However, this is not to say that all information must be disclosed in the public. Illustratively, sensitive information affecting the privacy of individuals such the identity of sexual harassment victim cannot be disclosed. The measure of nondisclosure of sensitive*

*B.V. Tejah*

***information in exceptional circumstances must be proportionate to the purpose that the non-disclosure seeks to serve. The exceptions should not, however, become the norm.***

...”

19. I respectfully submit that the report has been wantonly presented by way of a sealed cover to circumvent fair adjudication of the matter and to force the proceedings to an abrupt conclusion. It is humbly prayed that this Hon'ble Tribunal be pleased to forbid such attempts and ensure complete transparency in adjudication. The method in which the report has been filed frustrates the cause of the applicants that we have taken much effort to build and put forth and is one having staggering impact on the environment. It is in these circumstances, that this affidavit is filed seeking a copy the expert report be provided to us.

20. It is also submitted that the fundamental issues in the OA – that NHAI has not considered alternatives while framing the present project, not considered the environmental and ecological impact of felling these majestic Banyan tree, not considered the ecological services of the unique ecosystem presented by these trees etc., remain unaddressed. These are not illegalities that cannot be cured by a post facto examination by the project proponent. Arbitrary decisions in the absence of relevant considerations, as evident from NHAI's own PFR (which does not even mention the number or location of these trees, much less the impact), which envisages the consideration of impact in a detailed EIA report and the fact that such an EIA study was never conducted, cannot be justified by contending that NHAI has acquired the land and hence they are entitled to proceed with the felling of trees as planned.

21. It is necessary that the issue be examined without NHAI being part of the committee constituted by this Hon'ble Tribunal and the IA filed by us be

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numbered and listed at the earliest. It is also necessary that a copy of the report submitted in a sealed cover be provided to us in the interest of principles of natural justice, so that we can suitably respond.

It is prayed that this Hon'ble Court be pleased to take these submissions on record and pass such order or orders as may be fit, proper and necessary in the facts and circumstances of the case and thus render justice.

B.V. Tejah

Solemnly affirmed and signed his name this  
The 23<sup>rd</sup> day of July, 2023 at Chennai

BEFORE ME

ADVOCATE: CHENNAI

Nivedita  
(MS 13123/2019)  
Nivedita S. Menon  
368, New Addl Law Chambers,  
High Court Building, Chennai - 104

To,

**Sri Shiv Kumar Kushwaha**  
RO, MoRTH  
Hyderabad  
Telangana

21 June 2023

Respected Sir,

**Sub:** Our banyans, our legacy, our future: Plea to re-route the proposed 4-laning to save the heritage banyan trees on the Hyderabad-Chevella road (NH 163)

\*\*\*

We are a group of nature lovers who greatly value trees and nature everywhere, especially the 900+ century-old banyan trees on the Hyderabad-Chevella-Manneguda road (NH-163).

The National Highways Authority of India (NHAI) are working to expand NH-163 which has hundreds of old banyan trees by four-laning the existing road from TSPA junction to Manneguda via Chevella.

This expansion will pose a grave threat to more than 10,000 trees lining the road between Moinabad and Manneguda. This includes 914 mature banyan trees with beautiful canopies. Recently, we had geo-tagged each of these trees and shared the data via Google maps. This activity saw wide news coverage and support from citizens on social media. Even today, many adults and school children have been going to the Banyans on the Chevella road to tie rakhis and show their support. Our campaign on the website, Change.org, has over 63,000+ signatories urging NHAI, the Forest Department and the State Government to protect these invaluable trees. We have also petitioned the National Green Tribunal to look into protecting this unique set of Banyan clusters.

The group supports the need for expanding this stretch of the road--we only request that the alignment is modified where the banyan-clusters exist, thereby also conserving the many species of birds and other creatures they sustain in situ. We believe this to be possible in compliance with Indian Road Congress guidelines and have presented our ideas to NHAI.

We seek your support:

- In urging NHAI to modify alignment of the project to save the trees and retain them in the 20-odd km of the 45 km project length.
- In modifying the alignment because it is possible on most stretches of road, there is only empty farmland on both sides.
- In discussing internally that, ideally, just as the current alignment envisions ring roads outside towns like Chevella, it should have also built around the Mudimyal reserve forest—one of the last scrub-forests in this area.
- In urging NHAI to avoid translocation, given its extremely poor survival record for mature trees and will lead to the loss of bird and other species from the area.
- To include protection of fully grown, old and mature trees as part of NHAI's mandate. Along with schools, places of worship or other human landmarks, please also consider aspects of the local environment when planning project alignments.

We would like to reiterate that our efforts are not to stymie the good work NHAI is doing to build a world-class road network for the nation. This civil society initiative is about protecting our old legacy – our tree culture—alongside. For over a hundred years these trees have been places of shelter during heat and rain. They are ecosystems that support many life forms. They are our legacy that our elders passed on to us. These trees also belong to the nation and its future citizens.

This highway can be developed as an example of a pioneering alternative offered by NHAI in which environment and development can co-exist. Saving these trees by considering our request will add to NHAI's green credentials and will be a net positive for all stakeholders.

Thank you.

Yours faithfully,

**Nature Lovers of Hyderabad**

Asiya Khan (9849597569), Tejah Balantrapu (9949697771), Sadhana Ramchander (9849446214),  
Kobita Dass Kolli (9703332504), Anand Vishwanadha, Vinod Reddy, Rachita Agarwal and 63,000+ supporters

Email: [savebanyansofchevella@gmail.com](mailto:savebanyansofchevella@gmail.com)

<https://www.savechevellabanyans.in>

<https://www.change.org/p/chief-minister-of-telangana-save-the-banyans-of-chevella>

To,

**The NGT Committee**  
Hyderabad  
Telangana

27 June 2023

Respected committee members,

**Sub:** Plea to re-plan the proposed 4-laning to save the heritage banyan trees on the Hyderabad-Chevella road (NH 163)

\*\*\*

Some of the members of the citizen group, Nature Lovers of Hyderabad, including two of the three co-applicants of a petition at the National Green Tribunal (OA/2021): Tejah Balantrapu and Natasha Ramaratnam, were a part of the site visit on 23 June 2023, by the expert committee to assess alternatives to save as many Banyans as possible on the Hyderabad-Chevella-Manneguda road (NH-163). As a group, we greatly value trees and nature everywhere, especially the 900+ century-old banyans on this 45km stretch.

The National Highways Authority of India (NHAI) are working to expand NH-163 which has put at risk over 700 banyan trees by four-laning and building underpasses on the existing road from TSPA junction to Manneguda via Chevella.

This expansion will pose a grave threat to more than 10,000 trees lining the road. This includes over 700 mature banyan trees with beautiful canopies. Recently, we had geo-tagged each of these trees and shared the data via Google maps. This activity saw wide news coverage and support from citizens on social media. Even today, many adults and school children have been going to the Banyans on the Chevella road to tie rakhis and show their support. Our campaign on the website, Change.org, has over 63,000+ signatories urging NHAI, the Forest Department and the State Government to protect these invaluable trees.

The group supports the need for expanding this stretch of the road--we only request that the alignment is modified where the banyan-clusters exist, thereby also conserving the many species of birds and other creatures they sustain in situ. We believe this to be possible in compliance with Indian Road Congress guidelines. However, this may require re-thinking the alignment or replanning the highway so as to include the trees into your plan as well.

Our recommendations to the committee are as follows:

- We urge the committee to re-think the alignment and not take the underpasses for granted. Only when the alignment is changed to save the Banyan clusters, will there be a need to consider the position of underpasses as relevant. We believe that this present alignment is the only option considered. We urge the committee to explore other alignments or modifications to the present as well.
- We wish to remind the committee that all changes to the present road have only considered human settlements but have not considered the special status of the Banyan clusters on this road. Keeping in view the changing climate, it is imperative we account for the ecology while planning such large and impactful projects.
- Mudimyal RF is a typical Deccan scrub forest and NHAI has already marked this area for widening the road. This is a small RF of about 15 Sq KM and the existing road dissects it. It would be in the interest of the environment if this small RF is avoided in the alignment and a slight deviation is explored. This would save not only the Banyans on this stretch but also one of the last stretches of a pristine patch of Deccan scrub forest that is fast disappearing.
- We urge the committee to avoid largescale translocation of these trees, given its extremely poor survival record for mature trees and will lead to the loss of bird and other species from the area.
- As we have made it known to the committee, translocation means chopping away the canopy, cutting away prop-roots, and culling the root system of each tree. The tree itself may ‘survive’ but will be a pale shadow of its former self. By dislocating it from the habitat it has become a part of, we end up reducing it even more, in every sense. Needless to say, the chopped branches of the biota will add the decades of sequestered carbon back into the environment.
- We urge the committee to note that the Banyan tree sustains not only because of its trunk but its canopy and aerial roots. While individual trees may survive the severe shock of translocation, the NHAI has not submitted any evidence for mass translocation successes. By ‘evidence’ we do not mean photos of translocated tree-stumps, but detailed data on pre- and post-evaluation of the trees. We would urge the committee to imagine a world where the success of a road project is measured by the photos taken of the road. We include a template for how the data can be collected in the appendix.
- We include in the appendix, data of all the bird and mammalian life we have documented on the trees. You are welcome to spend time with our members who can identify them on the road for you. This will take patience. We urge you to take this bird and animal life into consideration along with the trees themselves. The Banyans act as a corridor, and the fact

that they fruit all year round, and are some of the tallest trees in that stretch add to their impact in the region.

- Members of the group came away from the site inspection with the impression that NHAI was reluctant to conduct land acquisition. We urge the committee to re-think this; after all, all NHAI projects include land acquisition.
- Members of the group also came away with the impression that the technical experts were lacking the will to explore alternatives to the present alignment. We urge the committee to reconsider this. We support the technical experts' efforts to build a new and safer road. We believe it should be done without harming the Banyans.
- We urge the committee to include protection of fully grown old and mature trees as part of NHAI's mandate. Along with schools, places of worship or other human landmarks, please also consider aspects of the local environment when planning project alignments in the future.
- The applicants reserve the right to object to NHAI being a member of this committee.

We would like to reiterate that our efforts are not to stymie the good work NHAI is doing to build a world-class road network for the nation. This civil society initiative is about protecting our old legacy – our tree culture—alongside. For over a hundred years these trees have been places of shelter during heat and rain. They are ecosystems that support many life forms. They are our legacy that our elders passed on to us. These trees also belong to the nation and its future citizens.

This highway can be developed as an example of a pioneering alternative offered by NHAI in which environment and development can co-exist. Saving these trees by considering our request will add to NHAI's green credentials and will be a net positive for all stakeholders.

Thank you.

Yours faithfully,

**Nature Lovers of Hyderabad**

Tejah Balantrapu (9949697771), Natasha Ramaratnam, Pranay Juvvadi, Asiya Khan (9849597569), Sadhana Ramchander (9849446214), Kobita Dass Kolli (9703332504), Anand Vishwanadha, Priyam Chatterjee, Anjali Pandey, Sita Reddy, Vinod Reddy, Rachita Agarwal and 63,000+ supporters

Email: [savebanyansofchevella@gmail.com](mailto:savebanyansofchevella@gmail.com)

<https://www.savechevellabanyans.in>

<https://www.change.org/p/chief-minister-of-telangana-save-the-banyans-of-chevella>

## Appendix 1

### List of Species

#### **Birds – Frugivores**

Coppersmith Barbet, Indian Grey Hornbill, Rose-ringed Parakeet, Asian Koel, Yellow-footed Green Pigeon, House Crow, Rufous Treepie, Golden Oriole, Pale-billed Flowerpecker, Thick-billed Flowerpecker, Red-vented Bulbul, White-browed Bulbul, Common Myna, Brahminy Starling, Rosy Starling, Large Grey Babbler, Common Hawk Cuckoo, Indian White-eye.

#### **Birds – Insectivores**

Small Minivet, Plain Prinia, Ashy Prinia, Black Drongo, Red-rumped Swallow, Common Iora, Blyth's Reed Warbler, Green Bee-eater. Several frugivorous birds also eat insects.

#### **Mammals – Frugivores**

Short-nosed Fruit Bat, Indian Flying Fox, Rhesus Macaque, Bonnet Macaque, Hanuman Langur, Small Indian Civet, Chital, Wild Boar and Indian Pipistrelle (an insectivore).

#### **Moths – Banyan is the larval host**

*Perina nuda*, *Lymantria serva*, *Somena scintillans*, *Attatha regalis*, *Asota caricae*, *Psimada quadripennis*, *Asota sericea*, *Glyphodes bicolour*, *G.stolalis*.

#### **Butterflies – Banyan is the larval host**

Silverstreak Blue, Map Butterfly, Common Crow Butterfly.

Appendix 2 :  
Drone Photos





## Appendix 3

### Translocation protocol

The Tree Translocation Protocol provides a framework to guide policy decisions in highway projects, aimed at a rational, sustainable, and cost-effective tree translocation process. Building on the 2015 Green Highways Policy, it brings together national and international best practices on translocation that outline road designs in harmony with the general landscape, factoring unique features of each project as well as of the trees along the proposed route. Among other things, this Protocol also details parameters to identify Old & Valuable Trees (OVT), in line with their heritage and amenity values.

Access it here: <https://drive.google.com/file/d/1crMMri3FTs-9M3YoQqUZpRmqraOEdmZT/view?usp=sharing>

ITEM NO.1 Court 4 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).2201/2021

BONANI KAKKAR

Appellant(s)

VERSUS

OIL INDIA LIMITED & ORS.

Respondent(s)

(WITH IA No. 92866/2021 - APPLICATION FOR PERMISSION, IA No. 67426/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 67425/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 72570/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 67424/2021 - STAY APPLICATION)

Date : 02-09-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE VIKRAM NATH  
HON'BLE MS. JUSTICE HIMA KOHLI

For Appellant(s) Mr. Siddharth Mitra, Sr. Adv.  
Ms. Vasudha Zutshi, Adv.  
Ms. Shruti Agarwal, AOR

For Respondent(s) Mr. Aman Lekhi, ASG  
Mr. Harsha Peechara, Adv.  
Mr. Ashish Kumar Tiwari, AOR

Mr. K.M. Nataraj, ASG  
Mr. Gurmeet Singh Makker, AOR  
Mr. Shailesh Madiyal, Adv.  
Mr. Sharath Nambiar, Adv.  
Vatsal Joshi, Adv.

Ms. Aishwarya Bhati, ASG  
Mr. Ravindra Lokhande, Adv.  
Mr. Sandeep Mahapatra, Adv.  
Mr. T. Gopal, Adv.  
Dr. Abhishek Atrey, AOR  
Ms. Ambika Atrey, Adv.

**UPON hearing the counsel the Court made the following  
O R D E R**

- 1 This appeal arises from a decision of the National Green Tribunal<sup>1</sup> dated 19 February 2021.
- 2 An oil ‘blow-out’ took place from Baghjan 5 Oil well of the first respondent, Oil India Limited<sup>2</sup> on 27 May 2020. As a consequence of the accident, extensive damage and destruction was caused to the biodiversity of Dibru Saikhowa National Park and Biosphere Reserve.
- 3 The NGT constituted a Committee of Experts chaired by Justice B P Katakey by an order dated 24 June 2020 to enquire into all aspects of the incident. In its preliminary report dated 24 July 2020, the Committee, *inter alia*, noticed that extensive damage was caused to (i) publicly owned resources, including Maguri-Motapung Wetland, DSNP, the eco-sensitive zone, including water bodies, air and wildlife; and (ii) private property of survivors in the affected villages.
- 4 The Expert Committee found that (i) OIL did not possess mandatory consent to establish and operate under Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act 1974, and Section 21 of the Air (Prevention and Control of Pollution) Act 1981 when it started operations in Baghjan 5 Oil well in 2006. (ii) OIL does not have the requisite consent under the law to carry out drilling and testing of hydrocarbons in the specified well except for the years 2008-09, 2012-13 and 2018-19; and (iii) OIL does not possess authorization under Rule 6 of the Hazardous Waste (Management, Handling and Transboundary Movement) Rules 2016, which constitutes a violation of the conditions stipulated in the Environmental Clearance dated 11 May 2020.

1 “NCT”

2 “OIL”

5 By a subsequent progress report dated 31 October 2020, the Committee detailed widespread damage to the flora and fauna of the region, including:

- (i) Thirty five varieties of fish species belonging to thirteen families, many of which had been completely wiped out; and
- (ii) A drastic decline in water oxygen content which has resulted in a high rate of destruction of marine life.

6 The report recommended a comprehensive impact assessment along with an integrated ecological restoration plan for bioremediation of hydrocarbons polluting the soil and the wetland.

7 When the matter was taken up by the NGT, it noted that about 9,000 persons who had been displaced were placed in camps at an outlay of Rs 11.20 crores. About 3,000 affected families were paid an amount of Rs 30,000 each, apart from Rs 12 lakhs which was paid to eleven families, whose houses were burnt. OIL had accepted its liability to pay Rs 68 crores as compensation under a tripartite agreement between OIL, the victims and the Deputy Commissioner in terms of letters dated 25 September 2020 and 2 December 2020. In this backdrop, the NGT did not proceed further on the issue of compensation. In view of the gravity of the accident, which resulted in a massive fire which continued for almost six months, the NGT constituted the following three Committees:

- (a) A six-member Committee headed by the Secretary, Ministry of Petroleum and Natural Gas to affix responsibility for the failures of those involved and present at the incident and to lay down a road map for ensuring compliance of safety protocols;

- (b) A seven-member Committee to enquire into non-compliance of statutory provisions, including the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, the Hazardous Waste (Management, Handling and Transboundary Movement) Rules 2016 as well as the requirements of the Environmental Clearance in terms of the EIA notification dated 14 September 2006; and
- (c) A ten-member Committee headed by the Chief Secretary, Assam (with the Managing Director of OIL as one of its members) to assess the damage to and compensation for the restoration of Dibru Saikhowa National Park and Maguri-Motapung Wetland by taking over all surviving issues from the Committee chaired by Justice BP Katakey. The ten-member Committee was directed to submit its report within six months.

- 8 The dispute in the present appeal relates to the third of the above Committees which is chaired by the Chief Secretary, Assam.
- 9 During the course of the hearing, Mr Siddharth Mitra, Senior Counsel appearing on behalf of the appellant submitted that there is a genuine objection to the presence of the Managing Director of OIL as a member of the ten-member Committee. Moreover, it has been submitted that in laying down an extended time schedule of six months, the NGT lost sight of the urgency of the situation. Finally, it was also urged that the NGT has failed to direct any deposit towards the restoration of the environment in which event the work of restoration cannot commence in the immediate future.
- 10 This Court issued notice on 1 July 2021. On 23 August 2021, certain suggestions were placed before the Court on behalf of the appellant in regard to the re-

constitution of the Committee. Accordingly, the following order was passed:

- “1 The petitioner has placed suggestions before this Court in regard to expert members who should be associated with the work of assessing the damage and providing remedial compensation on account of the loss which has been caused to the environment, including the loss of biodiversity as a result of the blowout which took place at the oil field of OIL. A copy of the IA containing the suggestions shall be emailed to Mr K M Nataraj, Additional Solicitor General appearing on behalf of the Ministry of Environment, Forests and Climate Change for his response on the next date of listing.
- 2 The Court has been apprised of the fact that four out of six experts who have been suggested by the petitioner are conversant with the subject matter, having been associated with the work of the Committee constituted by the National Green Tribunal, headed by Justice B P Katakay.”

11 As the above order indicates, many of the experts, whose names have been suggested by the appellant, have been associated with the work which was assigned by the NGT by constituting an expert committee in the first place. We had requested Mr K M Nataraj, Additional Solicitor General to indicate after seeking instructions from the Ministry of Environment, Forests and Climate Change<sup>3</sup> on whether and, if so, which of the names which have been proposed by the appellant would be acceptable to act as members of the Committee. In requesting Mr K M Nataraj to take these instructions, we must clarify that there is no doubt about the expertise of the members suggested by the appellant. The object, however, was to ensure that the work can progress with a sense of expedition so that the task of remediation can be taken up in the near future. MOEF&CC has responded in a fair and objective manner by accepting most of the suggestions.

3 “MOEF & CC”

- 12 After hearing Mr Siddharth Mitra, learned Senior Counsel appearing on behalf of the appellant, Mr K M Nataraj, Additional Solicitor General, who appears for MOEF&CC, Ms Aishwarya Bhati, Additional Solicitor General for the Ministry of Petroleum and Mr Aman Lekhi, Additional Solicitor General for OIL, we are of the considered view that the third Committee constituted by the NGT (as noticed earlier), needs to be reconstituted. The NGT has constituted a Committee consisting of ten members. Such a large Committee would find it difficult to convene meetings at relatively short intervals, which is necessary to ensure that the work of implementing remedial measures is taken up with expedition. The NGT has directed that the Chief Secretary of Assam should be the Chairperson of the ten-member Committee. Consistent with the responsibilities of office which are entrusted to the Chief Secretary, we are of the view that it would not be appropriate to assign the task to the Chief Secretary personally. The task before the Committee combines facets of an adjudicatory nature with expert domain knowledge on issues pertaining to environmental concern. The precautionary principle can be espoused by domain experts who have both knowledge and experience in ecological conservation. The work must be taken up with priority and every possible step has to be taken for restoration of the environment. OIL must bear the cost of restoration. The principle of strict liability has to govern. There can be no tomorrow until we preserve the environment here and now.
- 13 The NGT was in error in allowing the presence of the Managing Director of OIL as a member of the Committee. The terms of reference to the Committee include assessment of the damage to and restoration of Dibru Saikhowa National Park and Maguri-Motapung Wetland. Besides, the Committee is to take over all surviving issues from the earlier Committee. The presence of a representative of OIL as a Member of the Committee would lead to a conflict of interest and would not contribute to the fairness of the outcome. An entity against whom there are allegations of a dereliction obligations under the law cannot sit in judgment over

its own conduct. OIL can be heard by the Committee, but permit the presence of one of its senior officers would make it a judge in its own cause. OIL should not be a member of the Committee.

- 14 Consequently having heard counsel, we direct that the ten-member Committee constituted by the NGT shall be substituted by a Committee to be chaired by Justice B P Katakey, former Judge of the Gauhati High Court. Since Justice B P Katakey has already conducted a substantial amount of work in assessing the damage due to the accident, pursuant to the entrustment of the task by the NGT, there is no reason why the Committee should not have the benefit of the work which has already been done and the experience of its Chairperson. We accordingly direct that the Committee shall consist of the following members:
- (i) Justice B P Katakey, former Judge of the Gauhati High Court ...Chairperson
  - (ii) Dr Ritesh Kumar, Director, Wetlands International South Asia
  - (iii) Mr G S Dang, ex-Deputy Director, Indian Institute of Petroleum, Dehradun
  - (iv) Mr Qamar Qureshi, Professor, Wildlife Institute of India
  - (v) Mr Bedanga Bordoloi
- 15 The Committee is requested to take up the work at its early convenience and to submit its final report within three months. The Committee would be at liberty to co-opt or hear any other expert as is necessary for facilitating its task. The MOEF&CC shall depute a nodal officer to facilitate all logistical arrangements for the Committee. The Committee shall make an interim determination of the damages within a period of one month so that a suitable direction can be issued to OIL to deposit the amount for facilitating remedial measures. The Committee shall also be at liberty to recommend other interim remedial measures and

suggest final remedial measures in the course of its eventual report. To facilitate the work of the Committee, we direct OIL to deposit an amount of Rs 50 lakhs with the MOEF&CC within a period of one week from today so that necessary steps can be taken to facilitate the meetings and work of the above Committee. All concerned, including the Chief Secretary of the Government of Assam, the Central and State Pollution Control Boards and OIL are directed to cooperate with the Committee and to provide all logistical assistance to the Committee and its members to facilitate work. The officials of the Government of Assam shall also render all necessary assistance when called upon to do so.

16 The interim report shall be submitted in a sealed cover to the Registrar (Judicial) of this Court, upon which the present appeal shall be listed before this Court within two weeks of the receipt of the report for further directions.

17 List the appeal on 21 October 2021.

**(SANJAY KUMAR-I)**  
**AR-CUM-PS**

**(SAROJ KUMARI GAUR)**  
**COURT MASTER**

2022 SCC OnLine SC 1570

In the Supreme Court of India  
(BEFORE D.Y. CHANDRACHUD AND HIMA KOHLI, JJ.)

Civil Appeal Nos. 841-843 of 2022

Cdr Amit Kumar Sharma etc. ... Appellants;

*Versus*

Union of India and Others ... Respondents.

With

Civil Appeal No. 846 of 2022

(@ Civil Appeal Nos. 845-846 of 2022)

With

Civil Appeal No. 2457/2022

With

Civil Appeal Nos. 2059-2060/2022

With

Civil Appeal No. 2216/2022

With

Civil Appeal Nos. 856-858/2022

With

Civil Appeal No. 855/2022

With

Civil Appeal Nos. 852-854/2022

With

Civil Appeal Nos. 844/2022

With

Civil Appeal Nos. 847-851/2022

With

Civil Appeal No. of 2022

(Diary No. 20730/2022)

And With

Civil Appeal No. of 2022

(Diary No. 23503/2022)

Civil Appeal Nos. 841-843 of 2022, Civil Appeal No. 846 of 2022 (@ Civil Appeal Nos. 845-846 of 2022), Civil Appeal No. 2457/2022, Civil Appeal Nos. 2059-2060/2022, Civil Appeal No. 2216/2022, Civil Appeal Nos. 856-858/2022, Civil Appeal No. 855/2022, Civil Appeal Nos. 852-854/2022, Civil Appeal Nos. 844/2022, Civil Appeal Nos. 847-851/2022, Civil Appeal No. of 2022 (Diary No. 20730/2022) and Civil Appeal No. of 2022 (Diary No. 23503/2022)

Decided on October 20, 2022

The Judgment of the Court was delivered by

D.Y. CHANDRACHUD, J.:— Leave to appeal under Section 31(1) of the Armed Forces Tribunal Act 2007 is granted.

2. Delay condoned.

3. This batch of appeals arises from a judgment dated 3 January 2022 of the Principal Bench of the Armed Forces Tribunal<sup>1</sup>. The AFT dismissed the applications challenging the denial of Permanent Commission<sup>2</sup> in the Indian Navy. The principle issue is whether the AFT could have adjudicated on the validity of the selection proceedings when relevant material was disclosed only to the AFT in a sealed cover.

The Facts

4. On 26 September 2008, the Ministry of Defence notified that women Short Service Commission<sup>3</sup> Officers would be eligible for grant of PC prospectively. In *Union of India v. Lieutenant Commander Annie Nagaraj*<sup>4</sup>, the issue for consideration before this court was whether women who were inducted in various branches of the Indian Navy prior to 2008 were entitled to the grant of PC. By its judgment dated 17 March 2020, this Court observed, *inter alia*, that<sup>5</sup>:

- (i) As a result of the policy decision of the Union Government dated 25 February 1999, the terms and conditions of service of SSC Officers including women with regard to the grant of PC were governed by Regulation 203 of Chapter IV of Part III of the Naval Ceremonial, Conditions of Service and Miscellaneous Regulations 1963<sup>6</sup>;
- (ii) The stipulation in the policy letter dated 26 September 2008 making it prospective and applicable only to specified branches/cadres of the Indian Navy (Education, Law and Naval Construction) was not enforceable;

- (iii) All SSC Officers in the Education, Law and Logistics cadres, who were “presently in service” shall be considered for the grant of PCs;
- (iv) The officers were entitled to the grant of PC in view of the policy letter of the Union Government dated 25 February 1999 read with Regulation 203;
- (v) SSC women officers in the batch of cases before the High Court and the AFT who are “presently in service” shall be considered for the grant of PC on the basis of the vacancy position as on the date of the judgment of the Delhi High Court and the AFT or as it “presently stands”, whichever is higher;
- (vi) The applications of the serving officers for the grant of PC shall be considered on the basis of the norms contained in Regulation 203, namely,
- availability of vacancies in the stabilised cadre at the relevant time;
  - determination of suitability;
  - recommendation of the Chief of Naval Staff; and
  - empanelment shall be based on the inter-se merit evaluated on the ACRs of the officers under consideration, subject to the availability of vacancies.
5. There are three points in time, which were taken into consideration by the authorities for the determination of vacancies, namely:
- August 2015, when the judgment of the High Court in *Annie Nagaraj* (supra) was pronounced;
  - September 2016, when the decision of the AFT in *Commander Priya Khurana v. Union of India*<sup>2</sup> was pronounced; and
  - March 2020, when the decision of this Court in *Annie Nagaraj* (supra) case was pronounced.
6. Following the above directions, the process for implementing the judgment was carried out. The respondents worked out a total of 88 vacancies. 306 officers were considered for PC against the 88 vacancies after which 80 of them were granted PC. The second respondent (Integrated Headquarters of Ministry of Defence (Navy)) issued a signal order releasing many SSC officers from service on the ground that they had not obtained PC. The Signal order only notes the date of commission, date of release and the Unit of the officer without any reference to the process of selection that was undertaken or the relative merit. Many of the SSC officers, both men and women, who were not granted PC filed writ petitions before this Court challenging the rejection of their claim for PC. In the alternative, they sought directions for the grant of pension.
7. By an order dated 24 August 2021, this Court dismissed the writ petitions on the ground that the Court had already laid down the principles for granting PC in *Annie Nagaraj* (supra) and *Lt. Col. Nitisha v. Union of India*<sup>3</sup>. It was observed that the officers who were denied PC would assail the decision on the basis of individual facts and thus, it would be necessary for them to claim their reliefs before the AFT. The relevant observations are extracted below:
- “12 The petitioners who are considered for the grant of PC and were denied it would have to assail the decision not to grant them PC on the basis of the individual facts in each case. Bearing this in mind, it would be necessary for them to pursue their remedies before the AFT where the facts of each case can be scrutinized. If the petitioners were to succeed on their plea for the grant of PC, the alternative claim for invoking the jurisdiction under Article 142 would cease to have any practical significance. It is only if the denial of PC is upheld that the alternate plea can be pressed and this can be pursued after the decision of the AFT, by following the remedies available under the statute. Hence, on a considered view of the matter we are inclined not to entertain the petitions under Article 32 on merits.”
- (emphasis supplied)
8. The second respondent, in the written submissions before the AFT, filed in *Cdr AK Sharma v. Union of India*<sup>2</sup> submitted that the vacancy calculation is more than an exercise of simple mathematics and that the “minute details of vacancy calculation cannot be put in the open domain for the obvious reasons. Accordingly, this Hon’ble Tribunal will be provided with a detailed note with respect to vacancy calculation in a sealed envelope (as and when sought).” It was also submitted that the fairness of the selection process “would be amply clear from the selection Board Proceedings which would be provided to this Hon’ble Tribunal for perusal in the sealed cover, if need for the same arises.” Similarly, in the counter affidavit filed in *Commander Barsha Agrawal v. Union of India*<sup>10</sup>, it was submitted:
- “Accordingly, this Hon’ble Tribunal has been provided with a detailed note with respect to vacancy calculation in a sealed envelope”.
- (emphasis supplied)
9. The AFT by the impugned judgment dated 3 January 2022 disposed the cases transferred to the AFT pursuant to the order of this Court along with cases where the denial of PC was challenged before the AFT. The impugned judgment of the AFT in paragraph 54 indicates that the respondents submitted:
- All the files connected with the Selection Board convened in December 2020;
  - The previous Selection Boards held for the grant of PC;
  - The management of SSC Officers; and
  - The dossiers containing the confidential reports of 32 applicants before the AFT.
10. In addition to the above, the AFT noted in paragraph 81 that on a perusal of “various records and files submitted by the respondents”, the second respondent had considered the following issues:
- Selection Boards held prior to 2020;

- (b) Baseline for consideration and batches to be considered;
- (c) Categorization of officers for consideration;
- (d) Determination of vacancies;
- (e) Suitability criteria;
- (f) Inter-se merit criteria;
- (g) Conduct of Board and results; and
- (h) Analysis of the Selection Board Proceedings.

11. In paragraph 99 of the judgment, it is observed that the Board conducted its proceedings on 18 December 2020 according to the criteria approved in the Approach paper. Paragraph 37 of the impugned judgment extracts the selection procedure that was adopted by Indian Navy. Paragraph 37 of the judgment is extracted below:

"37. The Counsel then took us through the criteria for selection and said that marks were apportioned as given below to work out inter-se merit. He added that there was no 'Value Judgment' mark as was applicable in promotion boards. He also stated that no one has been rejected based on medical criteria and all had been recommended by the CNS. He further added that the merit list was computer generated based on the criteria mentioned below; and that out of a total of 381 officers, 80 had been granted PC (41 women and 39 male officers). The counsel then elaborated on the factors and their weightage.

Ser	Factor	Weightage	Unsuitability Criteria
(a)	ACR Merit	90%	
(b)	SLt Seniority	04%	
(c)	War	02%	Officer should not have been recommended G and below any time in the last five CR cycles held on record
(d)	Peer	02%	Officer should not have been recommended G and below any time in the last five CR cycles held on record
(e)	Recommendation for PC	02%	Officer should not have been graded 'No' in recommendation for PC thrice or more in the last five CRs

12. On perusing the records disclosed in a sealed cover, the AFT recorded the status of the remaining applicants as follows:

Ser	OA Case Ref	Applicants	Current Status	Relief sought	Merit Consideration	1 <sup>st</sup>	Merit Consideration	2 <sup>nd</sup>	Disposal
1	OA 433/2016 SLP (C) 834-36/2021	Lt. Cdr Ravinder Pal Singh Engineering/NC Batch-2005 Service-16	Retired Released 31.12.2020	PC/Pension	5/6 merit	Low	No vacancy		Was considered only for first look. To be given second look
2	OA 435/2016 SLP (C) 834-36/2021	Lt. Cdr Amit Khajuria Engineering/NC Batch-2005 Service-16	Retired Released 31.12.2020	PC/Pension	6/6 merit	Low	No vacancy		Was considered only for first look. To be given second look
3	OA 436/2016 SLP (C) 834-36/2021	Lt. Cdr Manish Kumar Singh Engineering/NC Batch-2005 Service-16	Retired Released 31.12.2020	PC/Pension	3/6 merit	Low	No vacancy		Was considered only for first look. To be given second look
4	OA 1203/2017 WP 1471/2020 (Tfr-Rajkumar)	Cdr Saroj Singh Exec/gs Batch-2003 Service-18	Released 31.12.2020 Rel stayed in service	PC	5/10 merit	Low	4/9 merit	Low	Not eligible for PC Already Granted Pension
5	OA 838/2018	Cdr Swati Bhatia	Released 31.12.2020	PC	12/14 merit	Low	18/20 merit	Low	Not eligible for PC

	WP 1471/2020 (Tfr- Rajkumar)	Education/GS Batch-2004 Service-17	Rel stayed In service					Already Granted Pension
6	OA 840/2018 WP 1478/2020 (Tfr- Rajkumar)	Cdr Vijayeta Education GS Batch-2004 Service - 17	Released 31.12.2020 Rel stayed In service	PC	8/14 merit	Low	14/20 merit	Low Not eligible for PC Already Granted Pension
7	OA 1959/2018 Old matter	Cdr Kumar Dhiraj Batch- 2007 Service- 14	Released 9.01.2019 Retired	PC	Not considered since not in service on date of judgment		Not considered since not in service on date of judgment	Not eligible for PC and not granted pension being inadmissible under Para 96(x) and (xi) of the judgment
8	OA 2118/2018 WP 1478/2020 (Tfr- Rajkumar)	Cdr Mandip Kaur Exec/Lgd Batch-2005 Service-16	Released 31.12.2020 Rel stayed in service	PC	7/9 merit NR for PC in ACR	Low	10/12 merit NR for PC ON acr	Low Not eligible for PC Already Granted Pension
9	OA 816/2019 WP 1269/2020 (Tfr- Rajkumar)	Cdr YK Singh Education/GS Batch-2005 Service - 16	Released 31.12.2020 Rel stayed in service	PC/Pension	15/20 merit	Low	10/13 merit	Low Not eligible for PC and not granted pension being inadmissible under Para 96(x) and (xi) of the judgment
10	OA 1361/2021 Fresh case	Cdr Sarita Nagayach Exec/Lgs Batch -2007 Service- 14	Released 05.08.2021 Retired	PC/Pension	07/15 merit NR for PC in ACR	Low	13/20 merit NR for PC in ACR	Low Not eligible for PC and not graded pension being inadmissible under Para 96(x) and (xi) of the judgment
11	OA 1454/2021 WP 646/2021 Dismissed as withdrawn by applicant.	Cdr Sandeep Singh Exec/Lgs Batch-2007 Service - 14	Rel Order 24.03.2021 Released 06.08.2021	PC/Pension	4/15 merit	Low	8/20 merit	Low Not eligible for PC and not graded pension being inadmissible under Para 96(x) and (xi) of the judgment
12	OA 1964/2021 WP 1471/2020 (Tfr- Rajkuamr)	Cdr Pooja Rajput Exec/Lgs Batch -2002 Service- 19	Released 31.12.2020 Rel stayed in service	PC	5/7 merit	Low	7/14 merit	Low Not eligible for PC Already granted pension
13	OA 2008/2021 WP	Cdr Barsha Agarwal & 03 Ors.	Rel Order 05.08.2020 Released	PC/Pension/Permit to service till 20 yrs (Ref BP/N	9/11 merit	Low	7/9 merit	Low Not eligible for PC and not graded

	703/2021 (Tfr- Rajkumar)	Education/GS Batch-2007 Service-14	05.08.2021	case)					pension being inadmissible under Para 96(x) and (xi) of the judgment
14	Joint with Ser 13	Cdr Shweta Kapoor Education/GS Batch-2007 Service-14	Rel Order 5.8.2020 Released 05.08.2021	PC/Pension/Permit to service till 20 yrs (Ref BP/N case)	11/11 merit	Low	09/09 merit	Low	Not eligible for PC and not graded pension being inadmissible under Para 96(x) and (xi) of the judgment
15	Joint with Ser 13	Cdr Sapna C Lanjewar Education/GS Batch-2007 Service-14	Rel Order 05.08.2020 Released 05.08.2021	PC/Pension/Permit to service till 20 yrs (Ref BP/N case)	7/11 merit	Low	05/09 merit	Low	Not eligible for PC and not graded pension being inadmissible under Para 96(x) and (xi) of the judgment
16	Joint with Ser 13	Cdr SS Naik Education/GS Batch-2007 Service-14	Rel Order 05.08.2020 Released 05.08.2021	PC/Pension/Permit to service till 20 yrs (Ref BP/N case)	8/11 merit	Low	06/09 merit	Low	Not eligible for PC and not graded pension being inadmissible under Para 96(x) and (xi) of the judgment
17	OA 2064/2021 WP 1471/2020 (Tfr- Rajkumar)	Cdr Annie Nagaraja Education/GS Batch-1999 Service-22	Released 31.12.2020 Rel stayed- SC order 24.08.2020 In service	PC Reframe guidelines of 15.10.2020?	5/8 NR for PC in ACR		6/9 NR for PC in ACR		Not eligible for PC Already granted pension
18	OA 2065/2021 WP 1471/2020 (Tfr- Rajkumar)	Lt. Cdr Barkha Rathore Exec/Lgs Batch -2003 Service- 18	Released 31.12.2020 Rel stayed In service	PC Reframe guidelines of 15.10.2020?	10/10 Low merit NR for PC in ACR		9/9 Low merit NR for PC in ACR		Not eligible for PC Already granted pension
19	OA 2066/2021 WP 1471/2020 (Tfr- Rajkumar)	Cdr Urmila Bhat Education/Met Batch-1999 Service-22	Released 31.12.2020 Rel stayed In service	PC	7/8 Low merit NR for PC in ACR		8/9 Low merit NR for PC in ACR		Not eligible for PC Already granted pension
20	OA 2067/2021 WP 507/2021 (Tfr- Rajkumar)	Cdr Puneet Pal Kaur Exec/Lgs Batch-2006 Service-14	Released 12.05.2021 Rel stayed in service	PC/Pension	5/12 merit	Low	6/15 merit	Low	Not eligible for PC and not graded pension being inadmissible under Para 96(x) and (xi) of the judgment

21	OA 2068/2021 WP 1471/2020  (Tfr- Rajkumar)	Cdr Shruti Dhawan Education/GS  Batch-1999 Service-22	Released 31.12.2020  Rel stayed in service	PC	6/8 NR for PC in ACR	7/9 NR for PC in ACR	Not eligible for PC Already  granted pension
22	OA 2069/2021 Fresh case	Cdr Bhanu Pratap Singh Exec/Lgs Batch -2007 Service- 14	Released 31.12.2020 Retired	PC/Pension	10/15 Low merit NR for PC in ACR	15/20 Low merit NR for PC in ACR	Not eligible for PC and not graded pension being inadmissible under Para 96(x) and (xi) of the judgment
23	OA 2167/2021 (Tfr-RB Mumbai) WP No. 1269/2020 (Tfr- Rajkumar)	Cdr Amit Kumar Sharma Education/GS Batch-2003 Service-18	Released 31.12.2020 Rel stayed in service	PC/Pension	2/3 NR for PC in ACR	9/14 Low merit NR for PC in ACR	Not eligible for PC and not graded pension being inadmissible under Para 96(x) and (xi) of the judgment
24	OA 2168/2021 (Tfr-RB Mumbai) Old matter, transferred from AFT (RBO Mumbai)	Lt. Cdr Yogita Rani Education/GS Batch-2003 Service-18	Released 31.12.2020	PC/Pension	3/3 Low merit	14/14 Low merit	Not eligible for PC Already granted pension
25	OA 2169/2021 (OA 105/2017 RB Mumbai) WP 1269/2020 (Tfr- Rajkumar)	Cdr PS Soodan Education/GS Batch-2004 Service-17	Released 31.12.2020 Rel stayed In service	PC/Pension Permit to serve till 20 yrs (Ref BP/N case)	13/14 Low merit NR for PC in ACR	19/20 Low merit NR for PC in ACR	Not eligible for PC and not graded pension being inadmissible under Para 96(x) and (xi) of the judgment

13. On an examination of the Board proceedings, the AFT observed that there were no mala fides in the parameters which were prescribed or the procedure adopted. It was also observed that the officers were not granted PC because of their comparative merit against limited vacancies and, in certain cases, the officers were not found suitable. The relevant observations are extracted below:

"110. Having heard all parties and examined various records, it is well established that the IN has formulated a proper procedure with suitable parameters, and has applied it uniformly to all eligible SSCOs, both men and women, of all affected Branches/Cadres in their consideration for grant of PC. We find no mala fide in the parameters laid down or the procedure adopted. No gender discrimination has been observed in the Selection Board held in Dec 2020 and those held prior to the decision of the Hon'ble Supreme Court in *Annie Nagaraj* (supra).

[...]

121. The merit position and status of the rest of the applicants are given below. The inputs on recommendations for PC; Peer and War Report entries have all been verified from the CRs. It is seen from the records that the applicants have not been granted PC only because their comparative merit against limited vacancy and in certain cases, not being found suitable as per the laid down criteria."

14. The decision of the AFT has led to the institution of twelve Civil Appeals before this Court. Twenty-six officers of the Indian Navy are appellants before this Court in the Civil Appeals. Of these twenty six officers, thirteen are still in service pursuant to interim orders. The remaining thirteen officers are out of service since varying dates in 2020, 2021 and 2022. Apart from the twenty six officers who are appellants before this Court in

the twelve civil appeals, eight officers have filed IAs for intervention. Seven out of eight officers are protected by interim orders while the tenure of the eighth officer (Commander Navneet Sharma) is to end in the month of December 2022.

15. Notice was issued in this batch of Civil Appeals on 31 January 2022. The grievance of the appellants is that the sealed cover procedure, which was followed by the AFT, has resulted in substantial prejudice.

The Submissions

16. Mr. Huzefa A Ahmadi and Mr. C U Singh, senior counsel appearing on behalf of the appellants together with the other counsel - Ms. Kamini Jaiswal, Ms. Haripriya Padmanabhan and Ms. Puja Dhar have submitted that the AFT, in the course of its decision, has extensively relied upon material which was submitted by the Naval Authorities in a sealed cover. It has been urged that this material was never disclosed to the appellants and if the material had been disclosed to them, they would have been in a position to demonstrate that much of the data which has been relied upon is seriously in dispute and is not reflective of the correct position. Mr. R. Balasubramaniam, senior counsel appearing on behalf of the respondent, submitted that it is not as if the respondents voluntarily chose to place the data in a sealed cover and the files which were produced were on the directions of the AFT.

17. During the course of hearing, three principal submissions have been urged by Mr. Huzefa A Ahmadi, senior counsel:

- (i) In its decision in *Annie Nagaraj* (supra), this Court directed that the highest number of vacancies were to be considered in determining the claims of the SSC officers for the grant of PC but this has not been done;
- (ii) Several batches have been clubbed together as a consequence of which vacancies have not been considered batch-wise and inter se merit has been skewed; and
- (iii) Consideration for the grant of PC was effected on the basis of ACRs which were written casually at a time when the officers concerned were not eligible for the grant of PC as observed in a subsequent decision of this Court (albeit in the case of the Army) in *Nitisha* (supra).

18. While formulating the objections to the findings of the AFT on merits, it has been submitted by the counsel for the appellants that:

- (i) The respondents have made no distinction between officers who were inducted prior to 2008 and those inducted after 2008;
- (ii) Data submitted by the Navy shows that vacancies at the material time were not properly calculated;
- (iii) There is sufficient data to indicate that many more vacancies exist in most cadres than what is depicted in the impugned order;
- (iv) The adoption of the 60 : 40 ratio (PC : SSC Officers) based on the AV Singh Committee report is flawed since various other aspects of the report are yet to be implemented by the Naval Authorities including the disbursal of monetary benefits;
- (v) The computation of yearly vacancies has proceeded on an arbitrary basis of 15 years' distribution;
- (vi) The methodology of dividing the total number of vacancies by 15 is arbitrary;
- (vii) The chart which has been set out in paragraph 95 of AFT's decision shows that as many as 14 batches were considered together; and
- (viii) The grievances of individual officers have not been adjudicated. For instance, in the case of Commanders Annie Nagaraj and Amit Sharma, though they were recommended for the grant of PC and would fall within the existing vacancies, they have been denied PC on the ground that they were not recommended.

19. On the other hand, Mr. R Balasubramaniam, senior counsel appearing on behalf of the respondents made the following submissions:

- (i) While computing the vacancies, the Naval Authorities have correctly borne in mind:
  - (a) The overall cadre structure of the Indian Navy;
  - (b) The policies which have been consistently followed; and
  - (c) The pattern of future inductions and retirements; and the need to maintain a youthful profile in the Indian Navy and a balanced cadre structure.
- (ii) Grant of PC is governed by Regulation 203 according to which the availability of vacancies should be in the stabilised cadre;
- (iii) While the stabilised cadre normally comprises only of government sanctioned posts in the permanent cadre, in the spirit of the judgment of this Court, temporary vacancies and Training Drafting Leave Reserve (TDLR) vacancies were also added to the stabilised cadre;
- (iv) The vacancies of the stabilised cadre were worked out with reference to August 2015, September 2016 and March 2020;
- (v) The ratio of 60 : 40 (PC : SSC) has been approved by the Government of India on 3 November 2008 based on the AV Singh Committee report;
- (vi) Based on the above, the deficiencies in each stream were divided by a 15 year cycle which is the difference between the life of a PC Officer and SSC Officer in service;
- (vii) The deficiencies in manning strength cannot be given to any particular batch or a few batches because of the policy of the Navy to have a balanced cadre structure, a youthful profile and a proper induction/retirement pattern in the long run;
- (viii) The vacancies assigned to each batch worked out in terms of the above model provided the maximum

vacancies as on March 2020, the date of the judgment of this Court;

- (ix) Pursuant to the directions given by the AFT, the Navy carried out a fresh exercise and allotted seven more vacancies to the Naval Construction Cadre and seven officers were approved for the grant of PC;
- (x) In regard to the clubbing of batches, each SSC Officer was given two 'looks' (the first and the second 'look') pursuant to consistent practice. The first look is with officers of the preceding batch, who were not granted PC in their first look and the second look is with the available next fresh batch. Hence, each batch was given consideration separately and it would not be correct to postulate that 14 batches of the Logistics Cadre were clubbed together. The distribution of vacancies per batch on the basis of a 15 year cycle is justified;
- (xi) The manner of writing ACRs is not erroneous. The judgment in *Nitisha* (supra) pertained to the Indian Army which is distinguishable since:
  - (a) Unlike the Indian Army where male officers were being granted PC, in the case of the Indian Navy neither men nor women officers were granted PC;
  - (b) The ACRs written by officers in the last five years preceding the conduct of the Board were taken into consideration which had a specific column on whether or not a recommendation was being made for PC, since 2015; and
  - (c) If an officer has not been recommended for PC in three or more ACRs, it would be a disqualification and hence an officer would not be eligible for grant of PC, even if higher in merit.

20. The second respondent in the written submissions before this Court submitted that (i) it is a norm for the Board proceedings to only be provided to the AFT in a sealed cover; (ii) the AFT on a perusal of the proceedings of the Selection Board as well as confidential dossiers of the individual applicants found that the Navy had considered the claims of the officers for PC based upon the parameters laid down by this Court in *Annie Nagaraja* (supra).

The Analysis

21. The AFT, *inter alia*, had to determine if (i) the Naval Authorities had correctly computed the vacancies against which the claims of the SSC Officers would be considered for the grant of PC; and (ii) the Selection Board considered the applications for the grant of PC fairly. The judgment of the AFT indicates that in assessing the validity of the exercise undertaken to determine vacancies and the fairness of the selection process, it placed extensive reliance on material drawn from the data emerging from the files which were submitted by the Union Government and the Naval Authorities in a sealed cover. The judgment of AFT sets out in paragraph 92, a summary of the cadre-wise strength and vacancies to be considered for granting PC to the affected SSC officers. In paragraphs 93 and 94, the AFT has set out, in a similar manner, tabulated statements in regard to the utilisation of vacancies. This data did not form the subject matter of deliberations before the AFT. In fact, the counter affidavits in *Commander Barsha Agrawal* (supra) and *Commander AK Sharma* (supra) indicate that the data was submitted in the form of a sealed note.

22. Similarly, the Board proceedings were not disclosed to the appellants. The written submissions before this court and the submissions in *Commander AK Sharma* (supra) before the AFT indicate that the Board proceedings were not disclosed to the officers and were submitted to the AFT in a sealed cover. The AFT on a perusal of the Board proceedings has observed that the second respondent had adopted proper procedure and suitable parameters that it had uniformly applied. It was also observed on a perusal of the documents that there was no gender bias and that the appellants' applications for PC were rejected only because they were lower in *inter se* merit.

23. This Court in *Annie Nagaraj* (supra) had directed that the applications of the serving officers for PC shall be considered on the basis of norms in Regulation 203 and paragraph 4 of the implementation guidelines. The parameters that were directed to be considered were : (i) availability of vacancies in stabilized cadre at the material time; (ii) determination of suitability; and (iii) recommendation of the Chief of Naval Staff. In terms of paragraph 4 of the implementation guidelines, the empanelment has to be based on inter-se merit evaluated on the ACRs of the officers. The Tribunal in paragraph 105 of the judgment observed that on a perusal of record it was evident that the Indian Navy had considered the SSC officers for PC based on the parameters laid down in *Annie Nagaraj* (supra). However, the material that has been relied on to arrive at the finding that there was no infirmity in the process has not been disclosed to the appellants. The AFT observed that the weightage to the individual parameters in the selection process for PC is the same as it existed before the judgment of this Court in *Annie Nagaraj* (supra). Even if the parameters for selection and the weightage of the individual parameters have been in the public domain, there is no material on record to determine if the selection has been made in accordance with the criteria. The AFT has recorded that there are 'no mala fides' and 'no gender bias' in the selection process. However, there is no material available to the appellants to challenge these findings since the material was disclosed to the AFT in a sealed envelope. The orders granting PC to other officers also did not contain any reasoning on the inter-se merit of the applicants. The AFT on a perusal of the files submitted in a sealed cover recorded the status of the applicants in a tabular format that has been extracted in the earlier part of the judgment. However, the appellants were not privy to such information.

24. Material prejudice has been caused by the process which has been followed of disclosing the information of vacancies and the board proceedings to the AFT in a sealed cover. In *Khudiram Das v. State of West Bengal*<sup>1</sup>, this Court held that the test for determining if material must be disclosed is whether in all 'reasonable probability', the material would influence the decision of the authority. Ruling in the context of preventive detention, a four-Judge Bench of this Court observed:

"15. Now, the proposition can hardly be disputed that if there is before the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. It is elementary that the human mind does not function in compartments. When it receives impressions from different sources, it is the totality of the impressions which goes into the making of the decision and it is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which did not. Nor is it an easy exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision making process. Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable probability be likely to influence the decision of any reasonable human being, the Court would be most reluctant to accept the ipse dixit of the District Magistrate that he was not so influenced and a fortiori, if such material is not disclosed to the detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an opportunity of making an effective representation against the order of detention."

(emphasis supplied)

25. In *T. Takano v. Securities and Exchange Board of India*<sup>12</sup>, a two-Judge Bench of this Court held that the all relevant information must be disclosed. In this case, the issue for consideration before this Court was whether an investigation report under Regulation 9 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2003 must be disclosed to the person to whom a notice to show cause is issued. SEBI had not disclosed the investigation report. It was the contention of SEBI that it had not relied on the investigation report to issue the show cause notice. The two Judge Bench observed that disclosure of information to the parties to the adjudication serves three purposes : (i) Reliability : The possession of information by both the parties can aid the courts in determining the truth of the contentions; (ii) Fair Trial : There is a legitimate expectation that parties are provided all the information for them to effectively participate in the proceedings; (iii) Transparency and accountability : It is necessary that the adjudication is not opaque but transparent. Transparency aids in establishing accountability. The observations on disclosure of information and its impact on transparency are extracted below:

"22. [...] Keeping a party bereft of the information that influenced the decision of an authority undertaking an adjudicatory function also undermines the transparency of the judicial process. It denies the concerned party and the public at large the ability to effectively scrutinise the decisions of the authority since it creates an information asymmetry."

23. The purpose of disclosure of information is not merely individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Since the purpose of disclosure of information targets both the *outcome* (reliability) and the *process* (fair trial and transparency), it would be insufficient if only the material relied on is disclosed. Such a rule of disclosure, only holds nexus to the outcome and not the process. Therefore, as a default rule, all relevant material must be disclosed.

26. This court observed that the right to disclosure is not absolute. Portions that involve information on third-parties or confidential information on the securities market may be withheld by SEBI. The court directed that the Board is duty bound to disclose parts of the investigative report that concern the specific allegations that have been levelled in the show cause notice. However, the court also observed that it does not entitle a person to whom the notice is issued to receive unrelated sensitive information.

27. The court held that it must first be *prima facie* established by SEBI that the disclosure of the information would affect third party rights. Once a *prima facie* case of sensitivity is established, the onus would then shift to the appellant to prove that the information is *necessary* to defend his case appropriately. The conclusions are extracted below:

51 [...]

(v) The right to disclosure is not absolute. The disclosure of information may affect other third-party interests and the stability and orderly functioning of the securities market. The respondent should *prima facie* establish that the disclosure of the report would affect third-party rights and the stability and orderly functioning of the securities market. The onus then shifts to the appellant to prove that the information is necessary to defend his case appropriately; and

(vi) Where some portions of the enquiry report involve information on third parties or confidential information on the securities market, the respondent cannot for that reason assert a privilege against disclosing any part of the report. The respondents can withhold disclosure of those sections of the report which deal with third-party personal information and strategic information bearing upon the stable and orderly functioning of the securities market.

52 The Board shall be duty-bound to provide copies of such parts of the report which concern the specific allegations which have been levelled against the appellant in the notice to show cause. However, this does not entitle the appellant to receive sensitive information regarding third parties and unrelated transactions that

may form part of the investigation report.”

28. The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the adjudicating authority does not *rely* on the material while arriving at a finding, information that is *relevant* to the dispute, which would with ‘reasonable probability’ influence the decision of the authority must be disclosed. A one-sided submission of material which forms the subject matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence.

29. The non-disclosure of relevant material to the affected party and its disclosure in a sealed-cover to the adjudicating authority (in this case the AFT) sets a dangerous precedent. The disclosure of relevant material to the adjudicating authority in a sealed cover makes the process of adjudication vague and opaque. The disclosure in a sealed cover perpetuates two problems. *Firstly*, it denies the aggrieved party their legal right to effectively challenge an order since the adjudication of issues has proceeded on the basis of unshared material provided in a sealed cover. The adjudicating authority while relying on material furnished in the sealed cover arrives at a *finding* which is then effectively placed beyond the reach of challenge. *Secondly*, it perpetuates a culture of opaqueness and secrecy. It bestows absolute power in the hands of the adjudicating authority. It also tilts the balance of power in a litigation in favour of a dominant party which has control over information. Most often than not this is the state. A judicial order accompanied by reasons is the hallmark of the justice system. It espouses the rule of law. However, the sealed cover practice places the process by which the decision is arrived beyond scrutiny. The sealed cover procedure affects the functioning of the justice delivery system both at an individual case-to case level and at an institutional level. However, this is not to say that all information must be disclosed in the public. Illustratively, sensitive information affecting the privacy of individuals such as the identity of a sexual harassment victim cannot be disclosed. The measure of nondisclosure of sensitive information in exceptional circumstances must be proportionate to the purpose that the non-disclosure seeks to serve. The exceptions should not, however, become the norm.

30. During the course of the hearing, it has clearly emerged before this Court that material which was relied upon by the AFT for determining the vacancies which were available and for assessing as to whether they were utilised correctly has not been disclosed to the appellants. Similarly, the Board proceedings that were relied upon by AFT to determine if the selection for PC was fair have not been disclosed to the appellants. We are cognizant of the wide range of sensitive information in the records of board proceedings. The respondents are not required to disclose the deliberations on the selection for PC within the closed Board setting. While the AFT on a perusal of the records concluded that there was no gender bias or mala fides in the grant of PC, it must be borne in mind that the officers do not possess the material to challenge this observation. The respondents while protecting the confidentiality of the proceedings of the Board must disclose the position in merit of the appellants vis-à-vis the parameters and their weightage devised by the respondents.

31. We permitted counsel to address the Court briefly on the nature of objections which arise on the basis of the data as disclosed. Counsel for the appellants submitted that instead of a remand to AFT, this Court may carry out the exercise. We are not inclined to do so for two reasons. *Firstly*, a primary fact-finding role is entrusted to the AFT under the Armed Forces Tribunal Act 2007. While exercising its appellate jurisdiction, it would be appropriate if this Court has the benefit of a considered view of the AFT. To decide the issues for the first time in appeal, as a matter of first impression, would not be appropriate. *Secondly*, the issues which arise before the AFT primarily turn upon the determination of vacancies, the manner of utilising them and the fairness of the selection process. This is an exercise which had to be carried out by the Naval Authorities while implementing the judgment of this Court. The correctness of that determination fell for consideration before the AFT. In arriving at its conclusion upholding the determination, the AFT has not had the benefit of considering the objections of the appellants to the manner in which the exercise was carried out by the authorities. The objections of the appellants noted above would have been set out before the AFT if the material was disclosed to the appellants. The failure to disclose relevant material has caused substantial prejudice to the appellants. This case exposes the danger of following a sealed cover procedure.

32. For the above reasons we are of the view that a remand to the AFT would be necessitated. We are conscious of the fact that the AFT carried out a painstaking exercise while disposing of the OAs but there has been a clear breach of the principles of natural justice. We are of the considered opinion that the AFT should be directed to reconsider the entire matter afresh.

33. We accordingly allow the appeals and set aside the impugned judgment of the AFT. The OAs corresponding to the appeals which are filed before this Court are restored for fresh adjudication by the AFT. During the pendency of these proceedings, as already noted, some of the officers in this batch of appeals including some interveners have continued in service as a result of the protective orders operating in their favour while the tenure of one officer is to end in December 2022. We direct that the officers who are protected by interim orders of this Court shall continue to have the benefit of those orders pending the disposal of the proceedings before the AFT and thereafter for a period of eight weeks from the date of the decision of the AFT should it become necessary for them to assail the judgment before this Court in appeal. The officer whose tenure is to end in December 2022 shall also be entitled to the benefit of the same protection.

34. We request the AFT to dispose of the OAs which have been restored to the file of the AFT expeditiously and preferably by the end of February 2023.

35. Pending applications, if any, including applications for impleadment/intervention, stand disposed of.

<sup>1</sup> "AFT"

<sup>2</sup> "PC"

<sup>3</sup> "SSC"

<sup>4</sup> (2020) 13 SCC 1

<sup>5</sup> Paragraphs 109.5, 109.6 and 109.7 of the judgment in *Annie Nagaraj*

<sup>6</sup> "Regulations"

<sup>7</sup> OA No 143 of 2016

<sup>8</sup> 2021 SCC OnLine SC 261

<sup>9</sup> O.A 2167 of 2021

<sup>10</sup> OA 2008 of 2021

<sup>11</sup> (1975) 2 SCC 81

<sup>12</sup> Civil Appeal Nos. 487-488 of 2022

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