

## Judgement No. 283

*(Original: English)*

**Case No. 270:**  
**Rajan**

*Against:* **The Secretary-General  
of the United Nations**

*Request for the validation by the Joint Staff Pension Fund of a period of service as an OPAS expert.*

*Article 23 and article 1 (u) of the Pension Fund Regulations.—Article VII, paragraph 3, of the OPAS contract.—The Applicant was not a staff member of the United Nations but an employee of the recipient Government.—Arguments of the Applicant based on conduct subsequent to the conclusion of the contract.—Rejected.—Argument of the Applicant based on communications addressed to another person.—Rejected.—The claim to validation and the related claims are rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. Arnold Kean; Mr. Herbert Reis;

Whereas, on 17 August 1981, Thiruvengadatha Rajan, a former expert recruited under the OPAS (Provision of Operational, Executive and Administrative Personnel) Programme, filed an application, directed against the Secretary-General of the United Nations and the United Nations Joint Staff Pension Board, the pleas of which read as follows:

“(a) *Preliminary measures requested*

“1. *The Tribunal may kindly request the United Nations Organisation to produce adequate copies of the following documents/evidences that are relevant to consideration of the issues involved:*

“(i) *Published copy of the UN document on the Convention on the Privileges and Immunities of the United Nations.*

“(ii) *The list of officials of the United Nations, 1975 prepared for submission to the Governments of Members of the United Nations in pursuance of article V, section 17, of the Convention on the Privileges and Immunities of the United Nations, together with ‘Preface’ thereto. (On page 325 my name RAJAN THIRUVENGADATHA appears listed.)*

*Similar or any other list prepared for the year 1976 for the same purpose mentioned in the ‘Preface’ and in which my name will obviously have continued to appear until separation at end of 1976.*

“(iii) *The advice given by the Resident Representative of UN in Swaziland to the Government of Swaziland to the effect that arrears of pay etc. arising from pay award to the civil servants of the Government is not to be paid to the UN-OPAS personnel serving with them. (The advice of Resident Representative may have been around June 1976 when arrears of salary as per pay award was drawn and paid to all civil servants of the Government of Swaziland.)*

- “(iv) The UN Contracts (OPAS) between the UN Organisation and Mr. Hans Raj Laroya, an OPAS personnel who during the tenure from mid-1974 onwards served as Chief Architect, Government of Swaziland. Monthly ‘Statement of Earnings and Deductions’ drawn for him during the period showing the category, level, step, gross salary and deductions towards pension contribution duly supported by workings to clarify as to how the actual pension contributions corresponded with the pensionable remuneration as relevant to the level and step in which the salaries were so drawn, both before and after promotion to level 05 from level 04.
- “(v) Communication, if any at all, addressed to above Mr. Hans Raj Laroya advising him that his period of assignment as OPAS personnel will be treated as a UN staff service on ‘leave without pay status’ and also advising the basis for recovery of his pension contribution during the period of the OPAS assignment and his consent thereto.
- “(vi) Staff Regulations of the United Nations for the relevant period 1974 to 1976 and in particular Article III on Salaries and Related Allowances—Regulations 3.1 to 3.3.

“2. *The Secretary, United Nations Joint Staff Pension Board* may please be requested to produce before Tribunal adequate copies of the booklet ‘Regulations and Rules of the United Nations Joint Staff Pension Fund’ published by it (Reference General JSPB/G.4/Rev.9 dated 1 January 1977).

“(b) *The decisions which the applicant is contesting and whose rescission he is requesting under article 9, paragraph 1, of the statute.*

- “(i) The administrative decision of the UN Organisation, contained in their communications of 17 December 1980 (see annex 6) and PRU 81 of 6 April 1981 (see annex 7), to the effect that ‘Your OPAS services cannot be validated for the purpose of enabling you to participate in the United Nations Joint Pension Fund during these services’.
- “(ii) The decision of the United Nations Joint Staff Pension Fund, communicated in their letter A/121120 of 26 February 1980 (see annex 3), to the effect that the Fund is not competent to adjudicate on my terms of employment; and that ‘during the service in question, you were not a staff member of a member organization of the Fund, but an official of a government. Consequently, you are unable to validate the service in question with the Pension Fund.’
- “(iii) The conclusion drawn by the United Nations Joint Staff Pension Fund, in their letter A/121120 of 21 April 1980 (see annex 4), to the effect ‘What your status was during any particular period in a member organization of the Fund is determined by that organization and by that organization alone’ and that ‘it is clear that the service in question was not service performed by a staff member of a member organization of the Fund which alone can be made contributory for Pension Fund purposes’.

“(c) *The obligations which the applicant is invoking and whose specific performance he is requesting under article 9, paragraph 1, of the statute.*

- “(i) In the context of the terms of my OPAS contract with the UN organization; together with the actual facts of the situation of my service as OPAS personnel, my claim seeking validation of such service from 5 July 1974 to 31 December 1976 under Article 23 of the Regulations and Rules of the United Nations Joint Staff Pension Fund (see annex 8) is valid and justified and the respondents are obliged to recognise the same.
- “(ii) The Tribunal is requested to direct the UN Organisation and UN Joint Staff Pension Board to admit my request, validate and make eligible my above service for Pension Fund participation now and fulfill their obligations under the UN Joint Staff Pension Fund regulations and in particular under Article 25 (c)/25 (e)—(see annex 8).
- “(d) *The amount of compensation claimed in the event the Secretary-General decides, in the interest of the United Nations, to pay compensation for the injury sustained in accordance with the option given to him under article 9, paragraph 1, of the statute.*
- “(i) A capital fund which, together with my share of pension fund contributions, can reasonably be expected to provide for me in India from 1 January 1982 i.e. after my reaching the retirement age of 60 at the close of the year 1981, a tax free annuity equivalent to the UN retirement benefit (pension) that I will otherwise qualify for and get under Article 29 of the UN Joint Staff Pension Fund regulations.
- “In deciding the actual quantum the following may please be taken into consideration:
- “(a) The UN retirement benefit (pension) amount, after retirement, is subject to escalation to provide protection against inflationary cost of living. Such a formula is built in the scheme itself as modified recently and such a provision be also included while defining the capital fund administration.
- “(b) Such retirement benefits (pensions) from the UN, to its retired officers resident in India, are now not subject to Indian Income Tax under the convention on privileges and immunities of the United Nations and its member organisations. However, it becomes taxable if the same is separated from such an arrangement.
- “(c) The amount can be worked out conveniently by the UN Joint Staff Pension Fund secretariat.
- “(ii) In the event the service of mine as UN-OPAS officer from 5 July 1974 to 31 December 1976 is not accepted as UN service as a staff member then, as a consequence, the claims mentioned hereinbelow be also fixed for compensation.
- “(a) The arrears from pay award given by the Swaziland Government first but later recovered on the advice of Resident Representative of UN in Swaziland contrary to item 5 V(i) of the Financial Terms of OPEX appointment indicated to us (see annex 9). The amount is about—U.S. \$2,000/-.

“(b) When the OPAS service is not recognised as a UN service as a staff member, the deduction of staff assessment amounts from the salaries drawn during the period of such OPAS service loses its sanction, and so unauthorised. This amount be also decided for *refund*. Actual amount so deducted will be available with UN organisation. Approximately the amount involved is over U.S. \$205,000/-.

“(e) *Any other relief which the applicant may request in accordance with the statute.*

“(i) Under item (d) of the ‘pleas’ compensation is claimed under two headings i.e.

“(1) a capital fund to provide an annuity equivalent to the retirement benefit (pension) otherwise receivable and

“(2) in the event my UN-OPAS service is not recognised as service as a staff member, compensation for the pay award arrears given by the Swaziland Government first but later recovered at the instance of Resident Representative of UN and refund of staff assessment recoveries made that then loses sanction for such deductions.

“I request that the administration of the first item i.e. ‘capital fund’ and the payment of monthly pension or annuity amount be entrusted to the UN Joint Staff Pension Fund. This is specially requested as otherwise the capital fund/annuity may attract Indian Income Tax and these are quite heavy and vary each year.

“Similarly the refund/compensation under the second item will attract Indian Income Tax in the said event of UN treating the service as not a service as a staff member.

“In both the above cases the Tribunal is requested to provide for the reimbursement of the additional income tax liability on me on such compensation as well either directly or under the provisions of Article II item 3 of the OPAS contract of service (see annex 1).

“(ii) The Tribunal may award at its own discretion any amount it thinks fit to compensate for the mental anxiety and injury suffered by me between the period of request for validation on 16 February 1979 and now.”

Whereas, on 13 October 1981, a copy of the application was transmitted to the United Nations Joint Staff Pension Board under article 21 of the Rules;

Whereas the Secretary of the United Nations Joint Staff Pension Board submitted observations on the application on 29 October 1981;

Whereas the Respondent filed his answer on 20 November 1981;

Whereas the Applicant filed written observations on 3 February 1982;

Whereas the Respondent submitted additional information at the request of the Tribunal on 29 April 1982;

Whereas the facts in the case are as follows:

The Applicant served as Financial Controller, Water and Sewerage Services, in Swaziland from 5 July 1974 to 31 December 1976 under the OPAS Programme. He later







