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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 3099/2002

New Delhi, this the 28th day of May, 2003

HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

1. Sh. Vir Singh
S/o Late Dal Chand
Working as Life Guard
Govt. Senior Secondary School
Defence Colony, New Delhi-24.
2. Sh. Jai Singh
S/o Sh. Amar Singh
Working as Life Guard
Sarvodaya Bal Vidyalaya
Shahdara, Delhi-32
R/o House No.265, Gali No.1
Bhola Nath Nagar, Shahdara
Delhi-110032.
3. Sh. Jai Pal Sharma
S/o late Sh. Kanshi Ram
Working as Life Guard
Govt. Boys Sr. Sec. School
Bharat Nagar, Delhi-52
R/o Qr. No. 112/224, Double Storey
Seelampur Market, Delhi-53.
4. Sh. Richhpal Singh
S/o late Sh. Kishan Singh
Working as Life Guard
Govt. Boys Sr. Sec. School No.1
Jheel Khuranja, Delhi-110031.
5. Sh. Dhani Ram
S/o Sh. Pirbhu Dayal
Working as Life Guard
Sarvodaya Vidyalaya Ludlow Castle No.2
Delhi-110054
R/o. 272/1/8, Khandasa Road,
Gurgaon, Haryana.
6. Sh. Braham Dutt
Working as Life Guard
Govt. Boys Sr. Sec. School No.1
Rajouri Garden Ext. Delhi.
(By Advocate: Sh. S.C. Singhal)

Versus

1. Govt. of NCT of Delhi
Sham Nath Marg, Delhi
(Through its Chief Secretary)
2. Director (Education)
Govt. of NCT of Delhi
Old Secretariat Building,
Delhi-54.
(By Advocate: Sh. Mohit Madan proxy for
Mrs. Avnish Ahlawat)

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ORDER (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicants who are working as Life Guards whose duty is to watch the swimmers at the swimming pools so that no untoward accident take place. These Life Guards are employed in various schools run by respondents where the facility of swimming pools are available. After the Vth Pay Commission came into force the pay of the applicants were fixed in the scale of Rs.5500-9000 w.e.f. 1.1.96. However, the respondents realised that pay of these Life Guards have been fixed erroneously. It should have been fixed at Rs.5000-8000 so they reduced the pay of the applicants. Applicants filed an OA No.3119/2001 challenging the revocation of their pay scale. Since the pay had been reduced without issuing a show cause notice, so court disposed of the OA with the direction to the respondents that it may be done only after giving the show cause notice.

2. In pursuance of the order dated 13.11.2001 passed in OA-3119/2001 the applicants were issued show cause notice by Govt. of NCT of Delhi on 24.12.2001. After considering their reply, the respondents vide their order dated 7.3.2002 reduced their pay scale from Rs.5500-9000 to Rs.5000-8000 and that too w.e.f. 1.1.96 and the excess amount paid to them was sought to be recovered. Applicants challenged the same by filing an OA which was decided on 30.4.2002 wherein directions were given to the respondents to re-examine the issue as raised by the applicants in their representations and they be also provided an opportunity for personal hearing and they should pass a supplementary order. If need be they may also review their order dated 7.3.2002. In pursuance of this order again

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notices were issued to the applicants and an opportunity was provided to them for hearing but the respondents maintained their order dated 7.3.2002.

3. The case of the applicant is that right from 1972 when some of the applicants were appointed and till the year 1996 when Vth Pay Commission's report came into force the applicants had been enjoying the parity of scales with TGT as per the chart given below:-

Pay Commission	Life Guard	TGT
1972	250-550	250-550
1973	440-750	440-750
1986	1400-2600	1400-2600
1996	5500-9000	5500-9000

So they pray that their pay cannot be reduced and in any case it cannot be fixed lesser than the TGTs.

4. In order to challenge the impugned order, the applicants also pleaded that the respondents have no power to reduce their pay scales which they are enjoying in parity with TGT for last so many years and they also pleaded that they have not been given proper hearing before reducing their pay scales.

5. Respondents are contesting the OA. Respondents in their reply pleaded that though the applicants were enjoying parity of pay scales with TGTs till 3rd Pay Commission but when 4th Pay Commission came a three tier pay scales were introduced in the case of TGTs whereas in the case of applicants, i.e. Life

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Guards. their pay scale remained static single tier system though they were granted selection grade later on. But in case of TGI three tier system of pay scale were introduced.

6. Besides that respondents pleaded that both the service are different in nature. Their minimum essential qualification for entering into service is also different. In the case of Life Guards the minimum qualification is also different. In the case of Life Guards the minimum qualification is Matric plus two years swimming experience whereas in case of TGI minimum qualification is Graduate plus Degree of Bachelor of Education or similar degree. It was also pleaded that the nature of duties are also totally different. The working hours are different. The Life Guards cannot claim parity with the teaching staff. Respondents also pleaded that report of IV Pay Commission came. The parity being enjoyed by the Life Guards with the TGI had been disturbed and there was no special recommendation for Life Guards. Similarly in V Pay Commission also, there was no recommendation for the Life Guards and they had been paid in accordance with the replacement scales given by the Pay Commission.

7. We have heard the counsel for the parties and gone through the record. Counsel for applicant pleaded that after the 3rd Pay Commission a letter dated 19.2.90 was issued by the respondents when the applicants were granted selection scale similar to that of TGI. Vide letter dated 16.9.72 issued by the Directorate of Education, Delhi on the subject of revision of scales of pay of inter-changeable/left over categories of posts which included the post of Life Guards at Sl. No.31 and submitted that as per this letter the post was inter-changeable with teachers. Thus, once this proposition

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had been accepted by the department vide their letter dated 16.2.72. so applicants stand at par with TGT teachers. They are entitled to the same pay scale which have not been given to TGT teachers.

8 We have heard the counsel for the parties and given our thoughtful consideration.

9 Though counsel for the applicant had tried to justify the grant of pay scale of Rs.5500-9000 to the Life Guards but we find that learned counsel for applicant is unable to support his case from any recommendation by V Pay Commission particularly with regard to the Life Guards. Thus, the case of the applicant is still remained to be left over category for which no recommendations were made by the Pay Commissions. Respondents in their impugned order vide which they had admitted that IV Pay Commission did not mention about miscellaneous category of teachers nor the same had been mentioned in the V Pay Commission. He had also stated that the post of Life Guards are of special nature and they categorise the same as special post non-Ministerial in the Directorate of Education. V Pay Commission had not given them any parity with the TGT and even the IV Pay Commission had not granted parity with TGTs. So they were entitled only to the replacement scale. In our view also, the impugned order clearly suggest that from IV Pay Commission onward no parity was continued between Life Guards and the TGT teachers and neither the IV Pay Commission nor the V Pay Commission had mentioned grant of pay scales equivalent to that of TGT in favour of the applicants. Thus, the applicants are entitled only to the replacement scales.

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10. Counsel for applicant had also tried to persuade the Court that since the next higher post available to the TGI as well as to Life Guards is only scale of Rs 6500-10,500, so he cannot be given different pay scale for feeder cadre and feeder cadre should also be given same pay scales. In our view, this contention of the applicant again has no merits because there is no bar for giving promotion from a post carrying pay scale of Rs.5000-8000 to the next higher post carrying pay scale of Rs.6500-10,500. It depends upon the recruitment rules and the minimum qualification prescribed for the post the nature of duties which incumbent on a particular post is to perform, so the pay scales are fixed accordingly. Moreover it is a job of the expert body itself like Pay Commissions and anomaly Committees etc. to prescribe a particular pay scale and the Court should not interfere in this matter.

11 In this connection I may also mention that the Hon'ble Apex Court in Union of India and others vs. P V Hartharan and another 1997 SCC (L&S) 838 had held as under :-

"Quite often the Administrative Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

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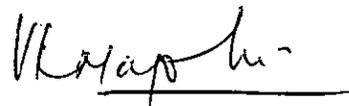
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"These orders have a serious impact on the public exchequer too."

12. Keeping in view the above, as already held by the Apex Court I think when the Pay Commission has not given the parity with the IGTs right from IV Pay Commission, so this Court should not interfere in the matter. So no case is made out for interference. OA stands disposed of.

13. At this stage, we may mention that after coming into force of the V Pay Commission it was the department itself that they have granted the pay scale of Rs.5500-9000 to the applicants without any discretion or connivance on the part of the applicants. So the department should not resort to recovery of the said amount. However, they can recover only from the date when they have passed the order, i.e. 7th March 2002. Recovery for the earlier period is not to be made. OA stands disposed of. No costs.


(KULDIP SINGH)
Member (J)


(V.K. MAJOTRA)
Member (A)

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