

10

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 633/2002

WITH

OA NO. 662/2002

New Delhi, this the 4<sup>th</sup> day of December, 2002

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

O.A. NO.633/2002 :

Shri Parmeshwar Dayal Bhatnagar,  
S/o Late Shri Shamboo Nath,  
Physical Education Teacher (Retired),  
From Govt. Boy's Senior Secondary School,  
No. 2, C. Block  
Yamuna Vihar, Delhi-110 053  
C/o Shri Brabha Saroop Bhatnagar,  
1/74-78, Gali No.14,  
East Gokal Park, Shahdara,  
Delhi - 110 032

... Applicant

(By Advocate : Shri K.P. Dohare)

Versus

1. Chief Secretary,  
Govt. of NCT of Delhi  
5, Sham Nath Marg, Delhi - 54
2. Secretary,  
Deptt. of Education,  
Govt. of NCT of Delhi,  
Old Secretariate,  
Delhi-54
3. Director of Education,  
Govt. of NCT of Delhi,  
Old Secretariate,  
Delhi-54

... Respondents

(By Advocate : Mrs Avnish Ahlawat)

OA NO:662/2002 :

Shri K.L. Mirag,  
S/o Shri Tikan Ram  
PET (Retired)  
From Shaheed Bhai Bal Mukund Govt. Sarvodaya  
Vidyalaya, Shankracharya Marg,  
Behind I.P. College, Delhi - 110 054  
R/o 88, Priya Darshini Vihar,  
Near New Gupta Colony,  
Delhi - 110009

... Applicant

(By Advocate : Shri K.P. Dohare)

2  
Versus

Government of NCT of Delhi through

1. Chief Secretary,  
Government of NCT of Delhi  
Delhi Sachivalaya, I.P. Estate,  
New Delhi - 110 002
2. Secretary,  
Deptt. of Education,  
Govt. of NCT of Delhi  
Old Secretariate,  
Delhi-110 054
3. Director of Education,  
Govt. of NCT of Delhi  
Old Secretariate,  
Delhi - 110 054

(By Advocate : Mrs. Avnish Ahlawat)

... Respondents

O R D E R

By Shri S.A.T. Rizvi, Member (A):

Both these OAs deal with a similar matter and raise the same issues. These are, therefore, being taken up together for passing this common order.

2. Recapitulating the facts briefly, it is stated that in OA No.633/2002 the pay of the applicant at the time of his retirement on 31.08.2001 earlier fixed at Rs.9500/- per month in the pay scale of Rs.6500-10500/- has been reduced to Rs.8900/- per month vide respondents' order dated 26.12.2001 (A-1), whereas in the other OA (662/2002) the last pay drawn by the applicant has been reduced at the time of his retirement on 31.07.2001 from Rs.10100/- to Rs.8900/- in the same scale of pay by the respondents' order dated 01.09.2001 (A-1 in OA No.622/2002). The pay scales applicable to the applicants have been revised by the respondents by the aforesaid impugned orders w.e.f. 01.01.1972 onward at all stages from time to time right upto the stage of fixation of pay in the pay scale of Rs.6500-10500/- w.e.f. 1.1.1996.)

3. The applicant in OA No.633/2002 has placed on record a number of statements showing the fixation of his pay from time to time right from 1.1.1973 (A-3 to A-6). By an office order dated 12.07.2000 (A-7), the pay of this applicant has been fixed at Rs.9300/- w.e.f. 1.1.2000. The next increment in the pay scale of Rs.6500-10500/- became due on 01.01.2001 taking his pay on that date to Rs.9500/-. ~~On 28.06.2000~~ On 31.08.2001, this applicant stood retired from service and accordingly the last pay drawn by him was Rs.9500/- per month. The other applicant (OA No.633/2002) has placed on record a copy of the office order dated 28.06.2000 (A-2) showing that the pay drawn by him as on 01.11.1999 in the pay scale of Rs.6500-10500/- was Rs.9900/-. When the next annual increment became due, this applicant's pay went up to Rs.10100/- per month w.e.f. 01.11.2000. Since he retired from service on 31.07.2001, i.e., before the next increment becoming due, the last pay drawn by him remained pegged at Rs.10100/- per month.

4. The impugned order dated 26.12.2001 (A-1) passed in the case of the applicant in OA No.633/2002 provides that the amount of over payment made to him will be calculated <sup>2 worked out 3</sup> and ~~recovered~~ so as to be recovered from his gratuity under rule 71 of the CCS (Pension) Rules. The impugned order dated 01.09.2001 issued in respect of the other applicant (OA No.662/2002) does not in terms provide for the recovery of over payments but the same is shown to have been issued in supersession of various orders issued from time to time including the aforesaid order dated 28.06.2002 (A-2) by which the last pay drawn by him at the time of his retirement has been worked out as Rs.10100/- per month.

(13)

(4)

Both the applicants have, in the circumstances, challenged the refixation of the last pay drawn by them at the time of their respective retirements at Rs.8900/- in each case vis-a-vis the amounts of Rs.9500/- and Rs.10100/- claimed by the applicants respectively. Hence these OAs.

5. The respondents have disputed the claims of the applicants and have filed replies and in each case rejoinders have also been filed by the applicants.

6. We have heard the learned counsel on either side at length and have perused the material placed on record.

7. The applicants in both these OAs were initially appointed as NDSIs (Grade-II) under the erstwhile National Discipline Scheme run by the Ministry of Education, Government of India, in 1964 and 1962 respectively in the pay grades of Rs.95-155 and Rs.95-135. The Department of National Discipline was abolished some time in 1972. The services of the applicants along with a large number of others were thereupon transferred to the various States and Union Territories. All such persons including the applicants were to be absorbed by the respective States and Union Territories as Physical Education Teachers (PETs) in the available pay scales. Both the applicants were accordingly absorbed as PETs and started working under the Government of NCT of Delhi.

8. NDSIs were placed, before the National Discipline Scheme was abolished, in four grades, namely, NDSI Gr-I, NDSI Gr-II, NDSI Junior Gr-I and NDSI Junior Gr-II. In all

363 NDSIs then working in different pay grades were to be absorbed by the Government of NCT of Delhi during the period from 1972 to 1976. The applicants herein were placed in the NDSI Junior Gr-II scale of pay at the material time. As decided they were also absorbed as PETs.

9. It appears that while the process of absorption of NDSIs into the PET cadres of various States and Union Territories was still going on, the Government of India revised the pay scale of NDSIs with retrospective effect from 01.01.1967 to 01.01.1973. This gave rise to anomalies in the pay scales as well as in the matter of fixation of pay in respect of a good number of NDSIs already absorbed as PETs. Accordingly, certain PETs filed OA No. 1526/1990 (Madan Lal Gautam & Others) seeking quashment of various orders by which the pay scales of NDSIs alone had been revised retrospectively w.e.f. 01.01.1967. They claimed parity with the NDSIs and sought directions for revision of their pay scales. Of the applicants, 15 were junior PETs and 2 senior PETs. The aforesaid OA was disposed of on 31.08.1994 with a direction to the respondents to take action in accordance with the contents of the letter dated 11.01.1994 issued by the Department of Education, Ministry of HRD, Government of India. In pursuance thereof, the Government of NCT of Delhi issued orders dated 02.03.1995 (R-1) giving the benefit of higher pay scale, already given to senior NDSIs, to the PETs. It was in pursuance of this order dated 02.03.1995 that the applicants herein were granted higher pay scales leading to the fixation of the last pays drawn by them retrospectively at Rs.9500/- and Rs.10100/- per month.

10. Since anomalies in pay scales as well as in the matter of fixation of pay continued unabated, a number of OAs were filed and, in course of time, a number of Civil Writ Petitions were filed in the High Court of Delhi. The matter has been settled by the orders passed by the High Court of Delhi on 23.08.2002 in CWP No.2390 of 1998 and other CWPs. A copy of the aforesaid order was placed before us by the learned counsel appearing on behalf of the respondents.

11. The relevant portions of the High Court's aforesaid order were read out to us by the learned counsel for the respondents who has, in the light of the decision rendered by the High Court, argued that the applicants have no case and, therefore, the present OAs should be dismissed.

12. In the written submissions filed on behalf of the respondents, it has been made clear that in the case of both the applicants, pay fixation has been done in accordance with the Tribunal's orders dated 26.10.1999 and 20.03.2001 and the judgement of the Delhi High Court dated 23.08.2002. After fixing the applicants' pay in the correct pay scales right from 01.01.1967 till the last pay drawn by them, the amounts received by them in excess have been adjusted from the gratuity and the remaining part of the gratuity together with the commutation of pension and other benefits have since been released in favour of both the applicants. Shri P.D. Bhatnagar, applicant in OA No.633/2002, on his retirement on 31.08.2001 received the G.I. amount of Rs.11,902/- together with the GPF amount of Rs.3,65,697/-.

After adjusting a sum of Rs.1,45,243/-, which he had

(7)

received in excess due to wrong fixation of pay, the balance gratuity and commutation of pension amounting to Rs.2,77,232/- has been paid to this applicant. The leave encashment amount of Rs.92,056/- was paid to him on 06.04.2002. The entire amount due to this applicant has thus been paid even though he was, to begin with, reluctant to accept the payment. The other applicant, namely, Shri K.L. Mirag (OA No.662/2002) had received the payment of Rs.5,07,889/- being the amount of GPF on 31.07.2001. His insurance amount of Rs.11,774/-, amount of gratuity and the commutation of pension cheques are lying ready with the respondents but he has refused to accept the same. A sum of Rs.2,12,915/- paid to him in excess of the due amount for the aforestated reason has been adjusted from the amount of Rs.2,12,933/- payable to him as gratuity. The cheques relating to the balance amounts of gratuity, commutation of pension amounting to Rs.1,87,777/- and leave encashment amounting to Rs.95,067/- are lying with the respondent-department which this applicant can collect any time. The aforesaid Cheques were ready even on 07.11.2002 when these OAs were last heard but the applicant has refused to collect the same. According to the learned counsel for the respondents, now that the matter has been settled by the High Court, the respondents' action stands justified.

13. We have carefully perused the judgement rendered by the High Court of Delhi on 23.08.2002 on which reliance has been placed by the learned counsel appearing on behalf of the respondents. After examining the entire matter at great length, the High Court, inter alia, noted that the order dated 02.03.1995 issued by the Government of NCT of Delhi

which gave rise to anomalies was found by the Government of India to be bad and incorrect. In the circumstances, the Government of India directed that it be kept in abeyance. The High Court also agreed with the orders passed by this Tribunal on 26.10.1999 whereby the Tribunal came to the conclusion that PETs were entitled to the pay scale of Rs.1400-2600/- w.e.f. 01.01.1986 (upto 31.12.1995) and to Rs.5500-9000 w.e.f. 01.01.1996, and further that only the senior NDSIs Grade-I were to be given the replacement scale of Rs.1640-2900 w.e.f. 01.01.1986 and the scale of Rs.6500-10500 w.e.f. 01.01.1996, noting at the same time that the aforesaid higher pay scales given to the senior NDSIs grade-I were personal to them. The Tribunal, by the same order, had also directed that recovery be made from those PETs who have drawn <sup>3. pay in 2</sup> higher pay scales by way of wrong fixation of pay. The High Court thus found merit in the aforesaid order passed by this Tribunal on 26.10.1999 and dis-agreed with the orders earlier passed by the Tribunal on 31.08.1994 in OA No.1526/1990 which had led to the issuance of the controversial order dated 02.03.1995 by the Government of NCT of Delhi. The High Court concluded that the PETs are not entitled to the pay scales as claimed by them at par with the pay scales given to the senior NDSIs. After holding as above, the High Court proceeded to dismiss all the Writ Petitions filed by the PETs and allowed the CWP No.2390/1998 filed by the Union of India.

14. In the light of the foregoing, we find no merit in the present OAs which are dismissed. There shall, however, be no order as to costs. *2*



15. Let a copy each of this order be kept on the  
respective OA files.



(S.A.T. RIZVI)  
Member(A)

/pkr/



(V.S. AGGARWAL)  
Chairman