

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 140 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Binodini Hota, aged about 48 years, W/o. Mr. Ashok Kumar Mohapatra, Vill. Parichha Sahi, Banapur, PO/PS-Banapur, Dist-Khurda, PIN-752031(ODISHA), At present residing at Jawahar Navodaya Vidyalaya Campus, Qr. No.Type-III/24, Mundali, PO-Mundali, PS-Baranga, Dist-Cuttack-754006(ODISHA).

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary, Deptt. Of School Education and Literacy, Ministry of Human Resource Development, Govt. of India, New Delhi.
2. Commissioner, Navodaya Vidyalaya Samiti, B-15, Institutional Area, Sector-62, NOIDA, Dist- Gautam Budh Nagar, Uttar Pradesh.
3. Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, A-135A, Gate No.2 Alakapuri, Bhopal-462024(Madhya Pradesh) E. mail:nvsrobpl@gmail.com.
4. Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Boring road, Opposite A. N. College, Patna-800013(BIHAR). E. Mail: ptnavodaya@rediffmail.com.
5. Principal/Drawing and Disbursing Officer, Jawahar Navodaya Vidyalaya, At-Mundali, Dist-Cuttack-754006(Odisha).
6. Principal/Drawing and Disbursing Officer, Jawahar Navodaya Vidyalaya, At/PO-Masaria Dam, Dist-Gumula, State-Jharkhand.
7. Office Superintendent, Jawahar Navodaya Vidyalaya, At-Mundali, Dist-Cuttack-754006(odisha)
8. Umakanta Pradhan(TGT-Odia) Jawahar Navodaya Vidyalaya, At/PO-Tarbod, Dist-Nuapada. State Odisha.
9. Mrs. C. P. Kar (TGT Odia) Jawahar Navodaya Vidyalaya, Angul, Odisha.

.....Respondents.

For the applicant : Mr.N.Bishoi, counsel
Mr.M.Panda, counsel

For the respondents: Mr. B. Swain, counsel
Mr. S.K.Patra, counsel

Heard & reserved on : 16.1.2020

Order on : 04.02.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) To declare the office letter dated 05.03.2014 communicated to the applicant vide dated 13.03.2014 vide Annexure-A/10 illegal, unjust, arbitrary, unfair, unreasonable and unenforceable,
- (ii) To declare the Office Order dated 19.08.2014 vide Annexure-A/11 series particularly to the extent of rectification/reduction of the applicant's pay from the month of September, 2013 illegal, unjust, arbitrary and unreasonable.
- (a) To declare the order dated 13.03.2015 vide Annexure—A/16 and the order dated 19.03.2015 vide Annexure-A/17 illegal, unjust arbitrary, unfair unreasonable and unenforceable.
- (iii) To restore the pay fixation w.e.f dated 03.07.2002 to 31.08.2013 i.e. to restore the basic scale of pay @ Rs.7100/- fixed w.e.f. 03.07.2002 and accordingly to restore the consequent pay fixed in the month of July 2013 i.e. Rs.19470/- from the month of September 2013 as that of her counterparts which has been reduced since the month of September 2013 and to regularize such pay from the month of September, 2013 and onwards and re-pay her dues which has been rectified/reduced w.e.f. Sept. 2013, in the form of arrears(which has been reduced w.e.f. September, 2013) vide Annexure-A/10 and Annexure-A/11 Series,

And any other order/orders may be passed as this Hon'ble Tribunal deems fit and proper.

2. The applicant had earlier filed the OA No. 90/2015 for her grievances and the said OA was disposed of by the Tribunal with the following observations and directions vide order dated 25.2.2015 (Annexure-A/14 of the OA):-

"2. The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the following relief:

- (i) To declare the office order dated 19.08.2014 vide Annexure-A/12 series illegal, unjust, unfair and unenforceable.
- (ii) Not to recover the amount of Rs.69586/- (Rupees Sixty nine thousand five hundred eighty six) in instalments from the salary of the applicant vide Annexure-A/12 series pursuant to Annexure-11; and
- (iii) To restore the pay fixation w.e.f. dt. 03.07.2002 to 31.08.2013 i.e. to restore the basic scale of pay i.e. Rs.7100/- fixed w.e.f. 03.07.2002 and accordingly to restore the pay fixed in the month of July 2013 i.e. Rs.19470/- as that of her counterparts which has been reduced since the month of September 2013 and to regularize such pay from the month of September 2013 and pay her dues in the form of arrears, which has been reduced w.e.f. September 2013 vide Annexure-A/12 series pursuant to Annexure-A/11.

3. Brief facts of the case are that the applicant was initially appointed as Trained Graduate Teacher in Odia in Jawahar Navodaya Vidyalaya, Bhopal Region on 03.07.1990 and continued as such for more than 24 years. After completion of 12 years of service since her joining, she was given Sr.Scale of Pay in the pay scale of Rs.6500-200-10500/- and her pay was fixed at Rs.7100/- w.e.f. 03.07.2002. Applicant's grievance is that after 12 years of such pay fixation, Respondent No.5 issued Office Order dated 19.08.2014 vide Annexure A/12 series to recover an amount of Rs.69,586/- on account of wrong pay fixation for the period from 03.07.2002 to 31.08.2013 and further her pay has been reduced to Rs.6900/-. It has been stated that the aforesaid recovery and reduction of pay has been done without giving any prior notice or opportunity of being heard to the applicant. Mr.Bisoi, Ld. Counsel for the applicant, submitted that ventilating her grievance, the applicant preferred representation to Respondent No.5 on 22.08.2014, which has been duly forwarded to Respondent No.3 vide Annexure-A/14, but till date no response has been received by the applicant.

4. Since the representation has been made and is said to be pending before the Respondent No.3, without expressing any opinion on the merit of the case, we consider it appropriate to give a direction to Respondent No.3 to dispose of the representation dated 22.08.2014 of the applicant, if the same is still pending, with a reasoned and speaking order and communicate the result thereof to the applicant within a period of 60 days from the date of receipt of copy of this order. It is made clear that till the representation is considered and result communicated to the applicant, no further recovery shall be made from the applicant from the month of March onward. If in the meantime the aforesaid representation has been considered and disposed of then the result thereof be communicated to the applicants within a period of two weeks from the date of receipt of a copy of this order.”

3. The respondent No. 3 passed the order dated 13.3.2015 (Annexure-A/16) rejecting the claim of the applicant with the mentioning the following grounds:-

“WHEREAS while scrutiny of the Pay fixation of Smt. Binodini Hota on account of grant of Sr.Scale was examined by the Audit team in connection with the request of Smt. Lili Jha to step up her pay at par with that of Smt. Binodini Hota and found that Smt. Binodini Hota has been granted one notional increment on account of grant of Sr. Scale while fixing her pay which is not in order. As per the prevailing rules of the Samiti, pay of Smt. Binodini Hota was required to be fixed under FR 22(1)(a)(ii) under which the benefit of notional increment is not admissible while fixing the pay on grant of senior Scale. Her representation dated 07.10.13 against the said fixation was carefully examined by this Office and the same was disposed off accordingly vide this Office letter No. 26-09/2013/NVS(BPL)/Pers./4596 dated 04.02.14 and the Principal, JNV, Cuttack was instructed to rectify the pay fixation and make recovery of the excess amount paid to Mrs. Binodini Hota in instalments.

WHEREAS in compliance to this Office letter No.26-09/2013/NVS(BPL)/Pers./4596 dated 05.02.14, Principal, JNV, Cuttack has intimated the proposal for recovery i.e. Rs.69,586/- from Mrs.Binodini Hota, TGT (Oriya) and asked her to submit her option for amount to be deducted from her from the month of August 2014 vide his Order No. PF/B.Hota-TGT(Odia)/NVM/2014/472 dated 19.08.14. Against this, Smt. Binodini Hota, TGT (Oriya), JNV, Cuttack has submitted a representation dated 22.08.14 to the Principal, JNV, Cuttack which was forwarded to this Office for consideration.

WHEREAS representation dated 22.08.14 of Smt. Binodini Hota, RTGT(Oriya) was carefully re-examined in this Office and found that grant of one notional increment on account of grant of Sr.Scale is not in order. Hence, excess amount paid to her due to wrong fixation is to be recovered.

AND WHEREAS the request of Smt. Binodini Hota, TGT(Oriya) to step up her pay at par with that of her Junior Sh.T.K.Bhanja TGT(Sc.) is examined carefully and to intimate that stepping up of the pay of a senior employee with that of his/her junior is admissible only if both are in the same cadre/borne in the same seniority list. As Mrs.Binodini Hota and Mr.T.K.Bhanja, TGT(Sc.) belong to different cadres/borne in different seniority lists, her request for stepping up of her pay with that of Sh. T.K.Bhanja, TGRT(Sc.) cannot be acceded to.”

4. Grounds advanced in the OA are as under:-

(i) The basic pay of the applicant has been reduced in September, 2013 from Rs. 7100/- to Rs. 6900/- w.e.f. 3.7.2002 on placement in senior scale after 11 years of extending such benefit, where as her counterparts joining in same or junior batch were allowed the higher basic pay. Hence, her right to equality under Article 14 has been violated.

(ii) The applicant was chosen for such action arbitrarily on pick and choose method, where as respondent No. 9 being her junior was allowed to enjoy the higher basic pay of Rs. 7100/- w.e.f. 2.11.2003, which has not been reduced by the authorities.

(iii) Amount of Rs. 69586/- paid as excess salary paid to the applicant from 3.7.2002 till 31.8.2013 was not on account of any misrepresentation or wrong doing on the applicant's part. Hence, recovery of this amount from applicant is illegal.

5. Counter filed by the respondents to oppose the OA stated that the pay fixed for the applicant when she was placed in the senior scale was found to be incorrect. It is stated in para 4 of the Counter that "upon granting senior scale to the teaching staff, the pay is required to be fixed under FR-22(i)(a)(ii) under which benefit of notional increment is not admissible..." Hence, the basic pay of the applicant was to be fixed at Rs. 6900/- as on 3.7.2002 in the pay scale of Rs. 6500-200-10500/- in place of Rs. 7100/- allowed to her which was subsequently found to be not in order. When the erroneous pay fixation was detected, the respondents rectified the same and the excess payment of Rs. 69586/- was intimated to be recovered from the applicant. It is averred in Counter para 9 that the contention of the applicant that some of her counterparts juniors were getting higher basic pay are incorrect as would be revealed by the Annexure-R/3 with comparative salary of the applicant vis-à-vis others stated in the OA. It is submitted that since the applicant had furnished undertakings (copy at Annexure-R/12, the amount is recoverable.

6. Rejoinder filed by the applicant stated that the wrong fixation of pay giving one extra increment was not known to the applicant. Since she was not informed about any error, the applicant is not accountable for such excess payment. It is sated that the Annexure-R/3(A) of the Counter showed the discrepancy in applicant's pay fixation with Mr. Umakant Pradhan, Mrs. C.P. Kar, Mr. P.K. Mallik and Mr. Surendra Tripathy. It is further averred that the recovery of excess amount has been ordered after a lapse of 11 years which is not permissible.

7. The respondents have filed a reply to the Rejoinder stating that the applicant being a Trained Graduate Teacher remained silent about wrong fixation of her pay which was entered in service book and that entry was seen by her. It is reiterated that the error was not intentional.

8. Heard learned counsel for the applicant and the respondents and perused the pleadings on record. This Tribunal vide order dated 30.3.2015

passed in this OA, the respondents were directed not to make any recovery from the salary of the applicant as per the impugned order without leave of the Tribunal. The question to be decided in this case is whether the orders dated 4.3.2014 (Annexure-A/10) and dated 19.8.2014 (Annexure-A/11) are legally sustainable.

9. The order dated 4.3.2014 (A/10) states the following:-

“Your representation has been examined at this level and to state that the pay fixation on grant of senior scale w.e.f. 03.07.02 is not in order. You have been granted one notional increment in the existing pay of Rs.6900/- (in the pay scale of Rs.5500-175-9000) and the pay has been fixed at Rs.7100/- (in the pay scale of Rs.6500-200-10500) on grant of senior scale w.e.f. 03.07.2002 which is not allowed as per the prevailing rules of the Samiti. The pay was required to be fixed under FR 22(1)(a)(ii) under which the benefit of notional increment is not allowed while fixing the pay on grant of senior scale to you. In accordance with the said rule, you are allowed to draw pay of Rs.6900/- w.e.f. 03.07.02 on grant of senior scale of Rs.6500-200-10500/-, if otherwise admissible.

As such, your representation dated 07.10.2013 stands disposed of accordingly as you are not entitled for the benefit of notional increment while fixing your pay on grant of senior scale w.e.f. 03.07.02 in the pay scale of Rs.6500-200-10500.”

While the order dated 4.3.2014 has cited the FR 22(1)(a)(ii) under which the notional increment is not to be added on placement in senior scale, but it was erroneously granted by the respondents from 3.7.2002 which was detected while examining the representation of another teacher and accordingly the pay fixation of the applicant was corrected since 3.7.2002 and the excess amount drawn by her was calculated for recovery from the applicant. The same plea was taken in para 5 of the Counter, which has not been denied in the Rejoinder by citing specific rule to show that the applicant was entitled for notional increment while being placed in the senior scale. Hence, there is no valid ground to challenge the order dated 4.3.2014 (A/10) which is, therefore, held to be legally sustainable.

10. The order dated 19.8.2014 (A/11) has enclosed the revised fixation of pay of the applicant, calculating the excess amount to be recovered from the applicant. By correcting the pay fixation w.e.f. 3.7.2002 on placement of the applicant in senior scale as per the order dated 4.3.2014 (A/10). The applicant has objected to the calculation of the excess payment to her by citing the discrepancies of the pay fixed vis-à-vis some other teachers who are similarly placed or junior to the applicant. The applicant specifically objects to her pay fixed at Rs. 19000/- (basic pay) as on 1.7.2013 as per the statement attached to the impugned order at Annexure-A/11, where as other similarly placed teachers like the respondent No. 9 were allowed the basic pay of Rs. 19470/- as on 1.7.2013. Since this point was not answered specifically in the Counter,

learned counsel for the respondents was informed vide order dated 6.1.2020 of this Tribunal to clarify the position.

11. In response, learned counsel for the respondents produced a copy of the order dated 14.1.2020 of the Deputy Commissioner, Bhopal (respondent no.3), enclosing the revised pay fixation statement of the applicant in which the basic pay fixed as on 1.7.2013 was shown to be 19470/-. Clearly, there is a discrepancy between the statement attached to the letter dated 14.1.2020 and the statement attached to the order dated 19.8.2014 (A/11) as the later shows the basic pay of the applicant as on 1.7.2013 to be Rs. 19000/- for the purpose of calculating the excess salary drawn by the applicant.

12. It is seen that the pay of the applicant has been re-fixed vide order dated 11.10.2019 of the respondent No.3 taking into account the discrepancy between the pay of the applicant and the pay of Sri SN Tripathy. Perusal of the order dated 11.10.2019 which is the same as the order dated 14.1.2020, it is seen that the applicant's pay has been fixed at Rs. 5850/- w.e.f. 1.1.1996 with increment fixed on 1.1.1997 compared to less pay as per the impugned order dated 19.8.2014 (A/11). Accordingly, the basic pay of the applicant has been fixed at Rs. 19470/- compared to Rs. 19000/- fixed as per the order dated 19.8.2014 (a/11) which has been effectively modified as per the order dated 11.10.2019 (enclosed to the 'Notes of Argument' submitted by the respondents' counsel on 19.12.2019. It clear that the statement enclosed with the order dated 19.8.2014 based on which the amount of recovery has been determined, the Basic Pay of the applicant has been shown to be less than the Basic Pay shown in the letter dated 11.10.2019 and 14.1.2020. The respondents have also submitted in the above written notes of argument that the pay anomaly of applicant has been settled and no further adjudication of the OA is required. However, nothing has been stated about the order dated 19.8.2014. It is clear that the applicant's pay was not been fixed correctly in the order dated 19.8.2014 and the recovery of Rs. 69586/- based on the incorrect statement attached to the impugned order dated 19.8.2014, is not legally sustainable.

13. In view of the discussion above, while the order dated 4.3.2014 (Annexure-A/10) is legally sustainable, but the order dated 19.8.2014 (Annexure-A/11) showing the amount of Rs. 69,586/- to be recovered from the applicant towards excess amount paid to him, is not legally sustainable in the light of the discussion at paragraph 12 above and the order dated 14.1.2020, copy of which is filed by the respondents' counsel at the time of hearing on 16.1.2020. The question framed in paragraph 8 of this order is answered accordingly.

14. In the circumstances, we allow the OA by quashing the order dated 19.8.2014 in view of the revised order dated 11.10.2019 and 14.1.2020 passed by the respondent No. 3 and by directing the respondents to refund if any amount has been recovered from the applicant in pursuance to the order dated 19.8.2014. As a consequence, the order dated 19.3.2015 (Annexure-A/17), rejecting the representations of the applicant, is also quashed. The respondents will also pay a cost of Rs. 2000/- to CAT Bar Association within one month.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath