

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

OA 169/2001
MA 147/2001
MA 501/2001

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HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI GOVINDAN S TAMPI, MEMBER (A)

1. Shri Kaptan Singh Mann,
S/O Sh. Roop Singh
H No. 621, (1941) Vill & PO
Alipur, Delhi.
2. Mr. Prem Singh Sharawat,
S/o Sh. Moha Singh,
H. No.963, village & PO Bawana,
Delhi.
3. Sh. Davender Singh,
S/o Sh. Yad Ram,
H. No. 198, Vill & PO Pooth Kalan,
Delhi.

.....Applicant.

(By: Sh. D. R. Gupta, Advocate.)

Versus

1. Union of India through
Secretary,
Ministry of H.R.D.
(Deptt. of Education)
Shastri Bhawan, New Delhi
2. Govt. of NCT of Delhi.
through its Chief Secretary,
5, Sham Nath Marg, New Delhi
3. Secretary (Education)
Govt of NCT Delhi,
Directorate of Education.
Old Sectt. Delhi.
4. Director of Education,
Directorate of Education,
Govt. of N.C.T. of Delhi,
Old Sectt. Delhi.
5. The Controller of Accounts,
Principal Accounts Officer,
Govt of NCT of Delhi,
Mori Gate, Delhi.

.....Respondents.

(By: Ms Avnish Ahlawat, Advocate)

Sh. Mohit Madam, Advocate

O R D E R (ORAL)

By Sh. Govindan S. Tampi, Member (A) : 20.3.2001

M.A. 147/2001 for joining in single application is
allowed.

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2. In this OA relief sought by the applicant is that the order dated 8.11.2000 as well the decision of the Government of NCT Delhi, Directorate of Education Delhi whereby the pay scale of the applicants has been reduced from Rs. 550-900 to Rs.440-750 with effect from 30/31.7.85 ^{be} quashed with all the consequential benefits and the interim order issued be made absolute.

3. Heard the counsel for the applicant and the respondents. Shri D.R. Gupta, learned counsel for the applicants states that applicants were originally recruited as Physical Education Teacher (PET). Though originally there were two grades of PET (Grades I & II). By order dated 27.3.82, grade II on Rs. 425-640/- was upgraded to grade I at Rs.440-750/- w.e.f. 27.3.82. In spite of this, respondents continued with the selection to PET, II which was not admitted and the applicants were appointed only as PETs, in the scale granted to Sr. PETs. Following the adoption of 4th Pay Commission's report replacement scale of Rs. 1400-2600 was given to PETs (including to NDSIs). However, the pay scales of NDSIs were revised retrospectively so that they came to have the scales of Rs.. 550-900 & Rs.. 440-750 (in two grades). As with this the pay scale of NDSIs become higher, PETs made a representation followed by filing OA No. 1526/90 before the Tribunal, which was disposed of on 31.8.94, taking note of Govt of India's advice to NCT, ~~and~~ the latter directed on 4.8.98, that the scales of both PET and NDSIs be brought on par. Thus PET II were given the scale of Rs. 440-750/- and PET the scale of Rs. 550-900/- but w..e.f. 5.9.81, on the strength of Govt's decision of 27.3.82, both the grades became the

same. As these had taken place after adoption of 4th Pay Commission recommendation, they had the effect of modifying the replacement scale of Rs.1400-2600 to Rs. 1640/- to 2900/- . This was also noticed by the Tribunal while disposing of the Contempt Petition on 10.3.97, who directed the full payment of arrears with 12% interest. Respondents proceeded to do so but did not grant the arrears between July to December 85. Subsequently on 20.7.98, respondents sought to bring down the pay scale of PETs to Rs. 5500-9000 from Rs. 6500-10,500 w.e.f. 1.1.96. This was stayed by the Tribunal. On 4.1.99, PETs were again placed in two grades retrospectively, with those recruited subsequent to 1982 being given Rs. 440-750 scale and this illegal step was challenged in a few OAs 219, 700, 977, 1173 and 1537, all of 1999. While disposing of the above Tribunal on 26.10.99 held that PETs were entitled for Rs.. 1400-2600 between 1.1.86 to 31.12.95 and thereafter to Rs. 5500 - 9000 and only Sr. NDSIs would get Rs. 1640 - 2900 and Rs. 6500-10,500/- . Tribunal held decision in 1636/98 as valid and modified that in OA 219/99 and batch, showing that the bifurcation was not legal and contrary to earlier Presidential order dated 27.3.82. This was followed by the Respondents action on 16.5.2000, retrospectively refixing the scale and directing recovery of the amounts paid in excess. This as well as the Tribunal's order dated 26.10.99 was challenged before the Delhi High Court granted the interim stay on 28.7.2000. respondents have still taken steps to fix the pay of the applicants on rs. 440-750/- instead of at Rs. 550-900/- with appropriate replacement scales, which was wrong, as there was and can be only one grade after Presidential Order merging the grades. Even then one or two PETs have been fixed on the higher scale

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of Rs., 550-900/- which should have been given to all. Sh. Gupta learned counsel also invited our attention to the statement of fixation of pay dated 1.12.97, which showed the scales as Rs.1640-2900 & Rs. 6500-10500/- and the same once granted cannot be taken away. The respondents action has been clearly against law and facts and should be set aside, pleads Sh. Gupta. 9

4. Smt. Avinash Ahlawat, appearing along with Sh. Mohit Madan, for the respondents stoutly disputes the claim of the applicant and states that at no point of time, the scale of Pay of Rs. 550-900/- was granted to PETs Grade I and Grade II. The recruitment Rules in the case of the PET which have been notified on 23.2.84, after merger of the erstwhile two grades very clearly states that PET were put in the scale of Rs. 440 - 750/- . The learned counsel explains that after the merger/absorption of the NDS Instructors who were originally appointed by the Govt.. of India and ^{placed later} in the State Government NCT Delhi, they were kept alongwith PETs but the benefit of the scales they were drawing earlier was protected but as personal to them. She also draws our attention to the decision of the Tribunal dated 26.10.99, which according to her, has settled the issue in para 19 of the said decision. The applicants were very much parties in OA No. 219/99 which was also decided by that order. applicants are now attempting to gain certain benefits which were never theirs. She also states that the PETs all over have been equated with Trained Graduate Teachers, while what they are claiming is the status of Post Graduate Teachers (PGT). This has no sanction . Once the Tribunal has finally settled the

issue there was no reopening of the same unless it is upset either by the High Court or the Supreme Court. She further points out that in the circumstances res judicata also applies against the applicant. The application having no merit at all has to fail is, her plea. She also states that if by mistake anybody has been given the higher grade by mistake respondents undertake to rectify the same.

5. Opposing the objection raised by Smt. Ahlawat, Sh. D R Gupta, avers that there was no res judicata applying in this case, as the decision in OA No. 219/99 and batch in which PET were declared as being entitled to get Rs. 1400-2600 from 1.1.86 to 31.12.95 and Rs. 5500-9000 thereafter was still under challenge before the High Court of Delhi and that the applicants were in fact ^{fighting} against the reduction their pay scale prior to 31.12.85, made by the respondents in pursuance order dated 31.8.94 in OA No. 1526/1990 by the Tribunal.

6. We have carefully deliberated upon the contention raised from both sides and perused the papers placed before us. What the applicants are claiming is a declaration that their pay be fixed as Rs. 550/- - Rs. 900/- w.e.f. 31.7.85 with corresponding replacement scales w.e.f. 1.1.86 when the 4th Pay Commission's recommendation were adopted & 1.1.96 when the 5th Pay Commission recommendations were implemented. They are also in an indirect manner seeking to gain parity in scales of pay with the NDSI and P.G. Teachers. However, they do not have a case in view of the specific prescriptions in the Recruitment Rules themselves Recruitment Rules notified on 20.2.1984, after the merger

of the two grades I & II of PET show the scale of pay for them as Rs. 440-20-500-EB-25-700-EB-25-750. The rules do not anywhere mention a scale of Rs. 550 - Rs.900/- for the above category. All averments to the contrary are against facts. Further, it is seen that the applicants are attempting to reagitate a matter which has already been decided, in a batch of applications by a detailed & speaking order on 26.10.99 by the Tribunal, while disposing off OAs 1638/98 and a few others including 219/99 which was filed by a few applicants including those in the present case. Paras 19 & 22 of the said order details the reasoning adopted by the Tribunal and the same are reproduced as below:

19. The contention of the learned counsel for the applicants, however, is that as scales of pay of PETs having been revised at par with the scales of NDSIs, all the PETs are entitled for the scale of pay of Rs.550-900 and to the corresponding scales shown in the IV and V Pay Commissions. The contention appears to be fallacious. In the OA filed by some of the Junior PETs what they have sought for was a direction for payment of the pay scales at par with NDSIs as per the orders dated 4.8.88 and 20.6.89. Accordingly the Tribunal directed the respondents to pay the pay scales at par with the NDSIs. In compliance thereof and in accordance with the order dated 4.8.89 the applicants scales were revised. Thereafter in view of the Pay Commission's recommendations and the Government of India's orders dated 20.6.89 they have been equated with NDSIs Grade II and the TGTs and they have been placed in the pay scale of Rs. 1400-2300 that of TGTs. Only senior NDSIs Grade I have been given the higher scales of PGTs. Thus all the PETs were already given the benefit of the revised scales alongwith NDSI II w.e.f. 1.1.86. Thus the claims made by the applicants in the OA were complied with. It should be kept in mind that there were no directions in the OA to pay the PETs at par with Senior NDSIs. Hence, we are of the view that there is no basis for the claim that the PETs are entitled to the pay scale of Rs. 550-900, which is the scale of Senior NDSIs.

20. The applicants have forgotten the fact that the Govt. of NCT Delhi having implemented the pay scale as per the orders passed by the Government of India accepting the recommendations of the IVth and Vth Pay Commissions by which pay

scales of different categories of Teachers including PETs were revised in its order dated 7.8.98. The applicants have not challenged these orders whereby respondents has implemented the pay scales recommended by the IVth Pay Commission, way back in 1987 and several teachers were placed in the said scales. We are, therefore, of the view that the applicants claim for higher scales of pay is neither warranted by the order of the Tribunal not sanctioned by any of the recommendations of the pay Commissions. The NDSIs are Central Govt servants and as clarified in the counter-affidavit of R-1 to R-4 only 17 of the Senior NDSIs were absorbed into the cadre of PETs Grade. Even after their absorption into the cadre of the PETs Grade I they were authorised to be paid the higher salary which was revised i.e. at Rs. 550-900. One of the conditions at the time of their absorption which is evident from the letter dated 12.4.73, of the Ministry of Education, Government of India, was that if as a result of any revision of pay, they get higher emoluments they should be allowed the same or the pay drawn under the Central Government at the time of absorption. Their pay was, therefore, protected. The higher pay scale was also treated as personal to them. Hence, the PETs cannot be equated with a few senior NDSIs Grade I who were given the equivalent scale of PGTs.

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21. We are also of the view that in pursuance of the order of the Tribunal dated 31.8.94 the applicants therein may be entitled for the higher scales of pay but the same benefit need not be extended to all the PETs, as they are not parties to it. If we examine the nature of the said order, it was not a considered order. None of the parties were heard on merits of the case. No reasons were assigned in the order why the applicants therein were entitled to the scales at par with senior NDSIs-I. The crucial fact that the scales fixed by the Pay Commissions and accepted by the Government of India and NCT Delhi and also implemented in cases of all the PETs were also not brought to the attention of the Tribunal. The law on the subject is well settled and by a catena of decision of the Supreme Court. In Union of India & another V. P.V. Hariharan, 1997 (3) SCC 568, the Supreme Court dealt with the question of parity of pay scales of Tool Room Assistants in the Integrated Fisheries Project with the pay scale of Tool Assistants in Central Institute of Fisheries, Nautical and Engineering Training Department. The Tool Room Assistants in the Integrated Fisheries Project were placed in the scale of Rs. 800-1150 on the recommendations of the IVth Pay Commission. They sought their pay scale in parity with the higher pay scale of other group of Tool Room Assistants in Central Institute of Fisheries. The Hon'ble Supreme Court setting aside the Tribunal's order where the Tribunal directed to grant higher pay scale to other group of Tool Room Assistants held that:

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"Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the 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 be decided upon this issue. Very often, the doctrine of 'equal pay for equal work' is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too."

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22. The ratio in the above case squarely applies to the facts of the case on hand. The pay scales as recommended by the IVth and Vth Pay Commission and accepted by the Central Government as well as by the NCT Delhi cannot be ignored and the higher pay scales given to the PETs on the basis of an order of the Tribunal, to which neither the applicants nor respondent 5 were a party, without considering the merits of the case and without considering various issues involved in the fixation of pay scales. The contention that as the pay scales are now sought to be altered by reducing the same from Rs. 6500-10500 to 5500-9000, it should have been done only after issuing notice is wholly unsustainable. What is sought to be done by the respondents is only to correct the wrong pay scales fixed and place them in accordance with the scales already fixed."

And then comes the operative portion of the order para 30:

"30. In the circumstances it is declared that all the PETs are entitled to the pay scale of Rs. 1400-2600 w.e.f. 1.1.86 to 31.12.95 and Rs. 5500-9000 w.e.f. 1.1.96 and only Senior NDSIs Grade

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I are entitled to the pay scale of Rs. 1640-2900 w.e.f. 1.1.86 to 31.12.95 and Rs. 6500-10500 w.e.f. 1.1.96 onwards. The impugned order in OA 1638-98 and batch is, therefore, held valid and the impugned order in OA 219/99 and batch is modified accordingly. The OAs are dismissed, subject to the above observation. It is also made clear that the respondents are entitled to recover the amounts paid by way of fixation of higher pay scale to some of the PETs. No Costs."

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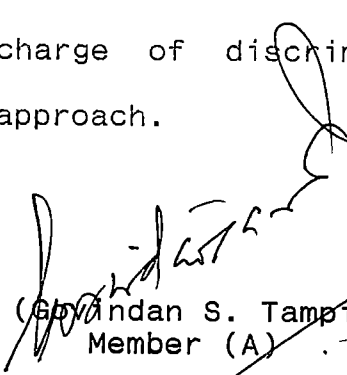
7. It is in pursuance of the above the respondents have taken steps for correctly refixing the pay of the PET in terms of their order No. DE.4(3)/4/E.IV/90 dated 16.5.2000 followed by the impugned order of 8.11.2001. There is no reason to assail the same either in law or on facts. In the circumstances, the fact that earlier wrong fixation of pay has been given to the applicants showing their scale of pay as Rs.550/- to 900/- with replacement scales of Rs. 1640 - 2900/- and thereafter in the scale of Rs.6500 - 10,500/- are incorrect and they deserve to be rectified. And that exactly is what the respondents have undertaken by the impugned order. The same cannot be ~~assailed~~ ^{called in question}. The mere fact one or two individuals have been wrongly given the fixation at higher levels does not alter the case of the applicants as on behalf of the respondents, it has been assured during the hearing that the matter would be examined and necessary correction ordered. We are satisfied with that assurance.

8. In the circumstances we are convinced that the applicants have not made out any case for intervention and that the application fails both on res judicator and on merits. The same are dismissed however we do not, in the circumstances of the case order any cost.

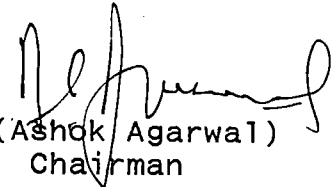
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7. Before parting with this application we would also like to direct the respondents to ascertain whether any of the PET have been placed in a higher scale vis-a-vis the applicants and against the recruitment rules the said mistake should also be rectified to avoid the charge of discrimination and to ensure fairness in approach.

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(Govindan S. Tampi)
Member (A)

Patwal/


(Ashok Agarwal)
Chairman