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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 2955/2001

WITH

O.A.No. 2956/2001 &
O.A.No. 2959/2001

Thursday, this the 11th day of April, 2002

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMN)

Smt. Rattan Wadhwa & Others ... Applicants
(By Advocate: Shri B.S. Jain)

Versus

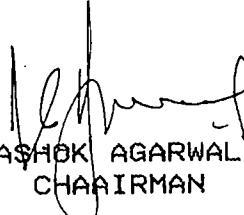
Union of India & Others ... Respondents
(By Advocate: Shri George Paracken &
Shri Amit Rathi, proxy for Shri Devesh
Singh)

Corum:-

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to
Benches of the Tribunal? NO


(S.A.T. RIZVI)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

Central Administrative Tribunal, Principal Bench

Original Application No. 2955 of 2001

with

Original Application No. 2956 of 2001

and

Original Application No. 2959 of 2001

New Delhi, this the 10th day of April, 2002

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. S.A.T. Rizvi, Member (A)

O.A.2955/2001

Smt. Rattan Wadhwa
W/o late Shri V.M. Wadhwa
Retired T.G.T. on 31.12.98
from Sarvodaya Kanya Vidyalaya
C-Block, Janakpuri, New Delhi
(now Satendar Nath Bose Sr. Sec. School)
C-Block, Janakpuri, New Delhi
R/o C-3A/76/B, Janakpuri
New Delhi-110058

- Applicant

O.A.2956/2001

Smt. Chander Kanta
PGT (Hindi) Retd. on 31.1.98
from G.G.S.S. School No. 2
Najafgarh, New Delhi-110043
R/o A-291, Vikaspuri
New Delhi-110018

- Applicant

O.A.2959/2001

Smt. Usha Khanna
PGT (Hindi) Retd. on 31.12.97
from G.G.S.S. School No. 2
Najafgarh, New Delhi-110043
R/o A-1/69, Janak Puri
New Delhi-110058

- Applicant

(By Advocate: Shri B.S. Jain)

Versus

1. Union of India
Through Secretary
Dept. of Expenditure
Ministry of Finance
New Delhi-1

2. Govt. of N.C.T. Delhi
through Chief Secretary, Delhi
5, Sham Nath Marg,
Delhi

3. Director of Education,
Govt. of N.C.T. of Delhi
Old Secretariat, Delhi

- Respondents

(By Advocate: Shri George Paracken and Shri Amit Rathi,
proxy for Shri Devesh Singh)

O R D E R (ORAL)

By Hon'ble Mr. S.A.I. Rizvi, Member (A)

Identical issues of law and fact have been raised in these OAs. We are, therefore, taking these up for disposal by this common order.

2. For the purpose of stating the facts involved in these OAs, we will rely on the details given in OA No.2955/2001. The applicant in this OA superannuated on 31.12.98. She approached the Tribunal through OA No.1219/2001 for fixation of her pay in accordance with the relevant instructions. That OA was disposed of by an order of 14.5.2001 directing the respondents to dispose of the applicant's representation by having regard to the clarifications issued by the Ministry of Finance on 2.4.98. The respondents were also directed to keep in view the decision already taken by them in the case of Shri S.K.Mittal. In pursuance of the aforesaid directions, the respondent authority has fixed this applicant's pay at Rs.9100/- + Rs.200/- (= Rs.9300/-) as on 1.1.96. In the case of the other two OAs, the applicants' pays have been fixed at the same level of Rs.9500/-. The common grievance raised in these OAs is that at the time of fixation of revised pay, the respondents have ignored the clarifications issued by the Ministry of Finance on 2.4.98. The clarification in question alleged to have been ignored provides as follows:

"Clarification

It appears that there has been some confusion in some of the departments about the manner in which the next increment is to be regulated in respect of employee who have drawn stagnation increments in the pre-revised pay scales. In

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these cases, the pay of the employees is to be fixed initially in the revised scale in terms of the provisions of Rule 7 after allowing the benefits of bunching of one increment for every three increments earned in the pre-revised scale as the case may be. Thereafter, if the employees have also been stagnating for more than one year at the maximum of the pre-revised scale or have drawn one or more stagnation increments as admissible, they may also be allowed an additional increment on 1st January 1996 itself in terms of the said proviso to Rule 8."

3. The learned counsel appearing on behalf of the applicants submits that if the aforesaid clarification had been correctly followed, the pay of these applicants would have been fixed respectively at Rs.9500/-, 9700/- and Rs.9700/-. This follows, according to him, *inter alia*, by virtue of the provisions made in the Central Civil Services (Revised Pay Rules),1997. Rule 7(B) thereof which runs as under, according to him, provides that cases such as those of the applicants, in as much as no teaching allowance has been made admissible to them in consequence of the 5th Central Pay Commission's recommendations, would be covered thereunder:

"7.(B) in the case of employees who are in receipt of special pay/allowance in addition to pay in the existing scale which has been recommended for replacement by a scale of pay without any special pay/allowance, pay shall be fixed in the revised scale in accordance with the provisions of clause (A) above except that in such cases "existing emoluments" shall include -

- (a) the basic pay in the existing scale;
- (b) existing amount of special pay/allowance;
- (c) admissible dearness allowance at index average 1510 (1960=100) under the relevant orders; and
- (d) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale and special pay under the relevant orders."

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4. In this view of the matter, the existing emoluments will, in accordance with the aforesaid provision, contain the element of teaching allowance. Accordingly in fixing the revised pay of the applicant in the pay scale of Rs.6500-200-10500, the sum of Rs.100/- payable as teaching allowance prior to the 5th Central Pay Commission's recommendations has been duly taken into account and the applicant's pay has been fixed at Rs.9100/-.

5. The learned counsel has thereafter proceeded to draw our attention to Rule 8 of the same rules which provides as under:

"8. Date of next increment in the revised scale - The next increment of a Government servant whose pay has been fixed in the revised scale in accordance with sub-rule (1) of Rule 7 shall be granted on the date he would have drawn his increment, had he continued in the existing scale; (emphasis supplied)

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xxx xxx xxx xxx xxx xxx xxx xxx

Provided also that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January,1996, next increment in the revised scale shall be allowed on the 1st day of January,1996."(emphasis supplied)

6. The contention raised is that in the case of the applicant, who was given stagnation increment on 1.1.1995, the next increment will ^{as have} fall due on 1.1.96 in any case but by following the aforesaid proviso, the applicant will become entitled to that increment (next increment) merely on the basis that he had been drawing the maximum of the existing scale for more than a year as on the 1st of

January, 1996. This increment to be given to the applicant will, according to the learned counsel, be in addition to yet another increment to which the applicant is entitled in terms of the clarifications issued by the Ministry of Finance on 2.4.98. Rule 8, according to him, unmistakeably contemplates grant of an increment, termed as next increment, to all those whose pay has already been fixed according to Rule 7. For this purpose, the relevant date in the case of the applicant is 1.1.1996. Thus, by virtue of the provision of this rule (rule 8) above, the applicant is entitled to have his pay fixed at Rs.9100/- + Rs.200/- (=Rs.9300/-).

7. The learned counsel, in support of the applicant's claim, has also relied on the case of Shri Y.P.Dua, a similarly placed person. In this case (Annexure A-3), the respondents have allowed both the increments arising from Rule 8 position adverted to by us above and from the clarifications issued by the Ministry of Finance on 2.4.98. Thus in the case of Shri Dua, his pay was fixed at Rs.9300/- and he has been allowed two increments giving him Rs.9700/- as on 1.1.96. Similar situation obtained according to the learned counsel, in another case, namely, that of Shri S.K.Mittal.

8. The learned counsel appearing on behalf of the respondents has first brought to our notice that the fixation of pay in the case of Shri Y.P.Dua and also in the case of Shri S.K.Mittal has since been reversed and they have been called upon to refund the excessss payment and accordingly, the excess amount is being recovered from both

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of them. The learned counsel has thereafter argued that in terms of Rule 8 position, the applicant will be entitled to only one increment by way of next increment as on 1.1.96 and this will be on the ground that she had been stagnating for more than a year. No further increments can be given, according to the learned counsel, on the basis of the clarification issued by the Ministry of Finance on 2.4.98. The contention raised is that the applicant's case is broadly covered by Rule 8 position reproduced by us above ~~much~~ as the applicant has stagnated in the pre-revised scale. The fact that she had earned stagnation increments in the pre-revised scale will not, according to him, alter the situation.

9. On a proper consideration of the Rule 8 position together with the clarification issued by the Ministry of Finance on 2.4.98, we find ourselves unable to agree with the contention raised by the learned counsel appearing on behalf of the respondents. A careful perusal of the clarification in question, in our judgement, clearly enough lays down that in addition to the next increment granted in terms of Rule 8 position to which we have already made a reference, one more increment will become due to the applicant because she had earned one stagnation increment. The term used in the aforesaid clarification is additional increment and not next increment. It is the use of this term which lends strength to the case of the applicant. Even otherwise, it stands to reason that one who had already received a stagnation increment in the pre-revised scale by virtue of longer service rendered at the maximum of the pre-revised scale, should get an extra

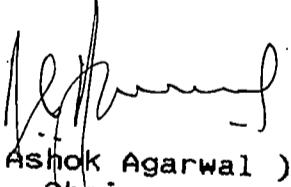
(or additional) increment compared to someone who may have stagnated at the maximum of the pay scale but not long enough to get an increment on that basis alone. We decide accordingly. Having concluded in the matter this, we find it unnecessary to go into the cases relating to Shri Y.P.Dua and Shri S.K.Mittal.

10. In the circumstances, the applicant in OA-2955/2001 will be entitled to fixation of pay at the level of Rs.9100+200+200 (= Rs.9500/-) as on 1.1.96. Likewise the other two applicants will each be entitled to fixation of pay at the level of Rs.9300+200+200 (= Rs.9700/-) as on 1.1.96. The respondents are directed to make payments of dues and arrears of pay and pension together with such other consequential benefits as might flow in accordance with the rules within a maximum period of four months from the date of receipt of a copy of this order. The OAs are allowed in the aforesated terms.

11. A copy of this order be kept on each of the case files relating to OA No.2955/2001, OA No.2956/2001 and OA No.2959/2001.


(S.A.T. Rizvi)
Member(A)

/dkm/


(Ashok Agarwal)
Chairman

Attested


[Signature]
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