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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-1638/98
OA-219/99
OA-700/99
OA-1079/99
OA-977/99
OA-1173/99
OA-1531/99
OA-1537/99

New Delhi this the 26th day of October, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN(J)
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

OA-1638/98

1. Delhi School Sharirik Shikshak
Sangathan (Regd.), through
its General Secretary Sh. Hari Om Sharma,
PET, having its office at
64-A, Madangir,
New Delhi-110 062.

2. Sh. Mahavir Singh Sharma, PET,
Govt. Boys Senior Secondary School,
Mangol Puri,
Delhi-110 083. ...Applicants

(By Advocate Shri Vivekanand)

-Versus-

1. National Capital Territory of Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.

2. The Secretary of Education,
Govt. of NCT of Delhi,
Directorate of Education,
Old Secretariate, Delhi.

3. The Director of Education,
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariate, Delhi.

4. The Controller of Accounts,
The Principal Pay and Accounts Officer,
Govt. of N.C.T. of Delhi,
Morigate, Delhi.

(By Advocate Mrs. Avnish Ahalawat)

5. Union of India through the
Secretary to the Govt. of
India, Ministry of Human
Resource Development,
Department of Education,
Govt. of India, Shastri Bahwan,
New Delhi-110 001. ...Respondents

(By Advocate Sh. P.H. Ramchandani, Sr. Counsel with

Shri K.R. Sachdeva, Counsel)

OA-219/99

1. Shri Prem Singh,
   S/o Sh. Amir Singh,
   R/o E-965, Saraswati Vihar,
   Delhi.

2. Sh. R.P.S. Malik,
   S/o Sh. Harpal Singh,
   R/o 332, Delhi Admn. Flats
   Kalyanvas, Delhi-91.

3. Sh. Khursheed Ahmad,
   S/o Sh. Abu Ahmad,
   Govt. Sr. Sec. School,
   Rouse Avenue, Delhi.

4. Sh. Kaptan Singh,
   S/o Late Shri Roop Chand,
   R/o V & PO Alipur,
   House No.1942, Delhi.

5. Pritpal Singh,
   S/o Shri Subey Singh,
   R/o A-115, Inder Puri,
   New Delhi.

6. Pawan Kumar Vats,
   S/o Sh. Devi Singh,
   R/o V&PO Jamti,
   Delhi.

7. Anil Kumar Mann,
   S/o Shri Samar Singh,
   R/o V.&P.O. Alipur,
   Delhi.

8. Devender Solanki,
   S/o late Sh. Yad Ram,
   Village & P.O. Poothkalan,
   Delhi.

9. Om Prakash Solanki,
   S/o Shri Kartar Singh,
   R/o V&PO Poothkalan,
   Delhi.

10. Virender Kumar,
    R/o V&PO Karala,
    Delhi.

11. Sh. Satvir Singh,
    S/o Sh. Sardar Singh,
    R/o V&PO Karala,
    Delhi.

12. Dil Bagh Singh,
    S/o Sh. Ganga Sahai,
    R/o V&PO Malikpur,
    Delhi.

...Applicants

(By Advocate Smt. Meera Chhibber)

-Versus-

1. Union of India through
the Lt. Governor,
Raj Niwas, Delhi.

2. Secretary Education,
Directorate of Education,
Old Secretariate,
Delhi.

3. Jt. Director of Education,
Directorate of Education,
Old Secretariate, Delhi.

4. Controller of Accounts,
Principal Accounts Office,
Govt. of NCT of Delhi
Mori Gate, Delhi. ...Respondents

(By Advocate Mrs. Avnish Ahlawat)

OA-700/99

1. Smt. Raj Bala Khatri,
W/o Shri Bhoop Singh,
R/o 417/22, Durga Colony,
Jail Road, Rohtak,
Haryana.

2. Sh. Satbir Singh,
S/o Shri Niranjan Singh,
R/o 119, Delhi Admn. Flats,
Phase-IV, Ashok Vihar,
Delhi. ...Applicants

(By Advocate Smt. Meera Chhibber)

-Versus-

1. Union of India through
the Lt. Governor,
Raj Niwas, Delhi.

2. Secretary Education,
Directorate of Education,
Old Secretariate,
Delhi.

3. Jt. Director of Education,
Directorate of Education,
Old Secretariate, Delhi.

4. Controller of Accounts,
Principal Accounts Office,
Govt. of NCT of Delhi
Mori Gate, Delhi. ...Respondents

(By Advocate Mrs. Avnish Ahlawat)

OA-1079/99

Balbir Singh Dagar,
S/o Sh. Amrat Sigh Dagar,
R/o H.No.29, V&PO Malikpur,
New Delhi. ...Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. N.C.T. of Delhi through
the Secretary,
Old Secretariate,
Delhi.

2. The Joint Director of Education (Admn.)
Govt. of NCT of Delhi,
Department of Education,
Old Secretariate,
Delhi.

3. The Principal,
Sarvoday Co-Education School,
Mundhela Kalan,
New Delhi. ...Applicants

(By Advocate Mrs. Avnish Ahlawat)

OA-977/99

1. Mrs. Bhupinder Ahlawat,
W/o Shri Satya Dev Singh,
R/o G-392, Nauroji Nagar,
New Delhi.

2. Om Parkash,
S/o Shri Bahari Lal,
R/o RZ-2711-C, Gali NO.30,
Tughlakabad Extn.
New Delhi.

3. Raj Kumar,
S/o Shri Dilip Singh,
R/o F-32A, Khanpur Extn.
New Delhi.

4. Promila Pachnanda,
W/o Sh Mukul Kumar Pachnanda,
R/o 183, Raja Garden,
New Delhi.

5. Vishnu Dutt Dixit,
S/o Late Shri Damodar Dixit
R/o T-64, Vishnu Garden Extn.
New Delhi. ...Applicants

(By Advocate Smt. Meera Chhibber)

-Versus-

1. Union of India through
the Lt. Governor,
Raj Niwas, Delhi.

2. Secretary Education,
Directorate of Education,
Old Secretariate,
Delhi.

3. Jt. Director of Education,
Directorate of Education,
Old Secretariate, Delhi.

4. Controller of Accounts,
Principal Accounts Office,
Govt. of NCT of Delhi
Mori Gate, Delhi. ...Respondents

(By Advocate Mrs. Avnish Ahlawat)

OA-1173/99

Kum. Sangita,
D/o Dr. A.C. Singh,
R/o II-F, 137, Nehru Nagar,
Ghaziabad. ...Applicant

(By Advocate Smt. Meera Chhibber)

-Versus-

1. Union of India through
the Lt. Governor,
Raj Niwas, Delhi.

2. Secretary Education,
Directorate of Education,
Old Secretariate,
Delhi.

3. DDO, S.K.V.,
West Vinod Nagar,
Delhi-92

4. Jt. Director of Education,
Directorate of Education,
Old Secretariate, Delhi.

5. Controller of Accounts,
Principal Accounts Office,
Govt. of NCT of Delhi
Mori Gate, Delhi.

(By Advocate Mrs. Avnish Ahlawat) ...Respondents

OA-1531/99

1. Chandan Singh Ahalawat,
S/o Sh. Mange Ram,
R/o Village Bindapur, P.O.
Uttam Nagar, New Delhi.

2. Dharam Pal Chahal,
S/o Late Sh. Bharat Singh,
R/o RZ-138B, Gali No.3, Durga Park,
P.O. Palam Colony, New Delhi.

3. Smt. Ravi Kanta Jossi,
W/o Sh. Diwakar Jossi,
R/o D-77-78, East Uttam Nagar,
New Delhi.

4. Smt. Prem Lata,
W/o Sh. Dalbir Singh,
V&PO Mittaru, New Delhi-43. ...Applicants

(By Advocate Shri Yogesh Sharma)

-Versus-

1. N.C.T. of Delhi through
the Secretary, Old Secretariate,
Delhi.

2. Joint Dirctor of Education,
Directorate of Education,
Old Secretariate,
Delhi.

3. The Pay and Accounts Officer,
No.20, Govt. of NCT Delhi,
DTC Depot, Mayapuri, New Delhi.

4. The Pay & Accounts Officer,
No.1, NCT Delhi, SBI Building,
West Block, Sec. 1, R.K. Puram,
New Delhi.

5. The DDO/Supdt.
Govt. Boys Sr. Sec. School No.3,
Tilak Nagar,
New Delhi.

6. The DDO/Supdt.
Govt. Boys Sr. Sec. School,
A Block Janakpuri, New Delhi.

7. The DDO/Supdt.
Govt. Girls Sec. School No.II,
A Block, Janak Puri,
New Delhi.

8. The DDO/Supdt.
Govt. Girls Sr. Sec. School No.II,
C Block, Janak Puri,
New Delhi. ...Respondents

(By Advocate Mrs. Avnish Ahlawat)

OA-1537/99

1. Govt. & Govt. Aided Schools
Physical Education Teachers
Association through its
General Secretary,
Shri Jai Ram Solanki,
S/o Captain Sukhlal,
R/o 569, Pooth Kalan,
Delhi.

2. Shri Prem Singh Sehrawat,
S/o Sh. Maha Shiv,
R/o 963, Bawana,
Delhi.

3. Sh. Ran Singh Shokeen,
S/o Sh. Hukam Chand,
R/o BC-12, Maianwali Nagar,
New Delhi-87. ...Applicants

(By Advocate Smt. Meera Chhibber)

-Versus-

1. Union of India through
the Lt. Governor,
Raj Niwas, Delhi.

2. Secretary Education,
Directorate of Education,
Old Secretariate,
Delhi.

3. Jt. Director of Education,
Directorate of Education,
Old Secretariate, Delhi.

4. Controller of Accounts,
Principal Accounts Office,
Govt. of NCT of Delhi
Mori Gate, Delhi.

(By Advocate Mrs. Avnish Ahlawat) ...Respondents

ORDER

By Reddy, J.

The dispute in all the matters relates to the fixation of the pay of Physical Education Teachers (PETs for short). As the facts are almost similar and the questions of law that arise are the same, they are disposed of by a common judgement.

2. The applicants challenge in OA-1638/98 and batch, the validity of the order dated 20.7.98, by which the NCT Delhi clarified that the pay of the PETs shall be in the scale of Rs.5500-9000 w.e.f. 1.1.96 and that the fixation of their pay at Rs.6500-10500/- was wrong. After

the OA-1638/98 had been filed, OA-219/99 and batch came to be filed, challenging the subsequent order of the NCT Delhi dated 4.1.99 revising the pay scales applicable to PETs Grade I and II w.e.f. 1.1.73 to 1.1.96. The facts in OA-1638/98 are stated, as illustrative of the dispute arising in these cases.

OA-1638/98

3. The Delhi School Sharirik Shikshak Sangathan and a member of the Association are the applicants in the above OA. Respondents 1-4 are the NCT of Delhi and its officers and R-5 is the Union of India. The members of the above association are the PETs working in various Government Schools of NCT Delhi. The primary job of PETs is more to help the students in sports and physical activities than imparting teaching. Prior to 1981 there were two grades of PETs, viz. PETs Grade II (Junior) and PETs Grade I (Senior). The PETs grade II is the feeder post of PETs Grade-I. One shall possess diploma/certificate in Physical Education to be appointed as PET Grade II. The IInd Pay Commission recommended in 1959 the following pay scales to the PETs. PET Grade I Rs.170-380; PETs Grade II Rs.130-300.

4. Along with the PETs National Discipline Scheme Instructors (NDSIs for short) were also working in the same Schools who also comprised of two cadres, viz., Senior NDSIs Grade I and Senior NDSIs Grade II. The NDSIs were the employees of the Government of India till 1972.

Their pay scales were lower than the pay scales of PETs, as on 1.1.67. In 1972 Government of India having decided to abolish the cadre of NDSIs, directed the Government Organisations to absorb them in the pay scales of PETs I and II as per their grades. Accordingly, the NDSIs were absorbed in the scale of PETs I and II in 1972 and 1976 as per their grade. By an order dated 4.8.88 the Government of India ordered for revision of the pay scale of the NDSIs w.e.f. 1.1.67 till NDSIs were absorbed with PETs, with the result that the pay scale of the NDSIs became much higher than those of the PETs. Accordingly the respondents ordered to pay the revised higher pay scale to NDSIs who had been absorbed by them. The following table illustrates the difference in pay scales as on 1.1.76:

| PET Grade I | NDSI Grade I | PET Grade II | NDSI GradeII |
|---|---|---|---|
| Rs.440-750 | Rs.550-900 | Rs.425-600 | Rs.440-750 |

Meanwhile, by an order dated 27.3.82 the pay scales of PETs Grade II were upgraded to the pay scale of PET Grade I w.e.f. 5.9.81 and thereafter the appointments were made in the grade of PETs in the scale of Rs.440-750. Thus the grade of PET II has been virtually merged with PET I. The recruitment rules of PETs were also amended suitably in 1984.

5. As the NDSIs were getting higher pay scales than that of the PETs despite the fact that both were performing the same duties and although the qualifications of PETs were higher than that of the NDSIs, the PETs made representations to the respondents to revise and fix

higher pay scales at par with NDSIs w.e.f. 1.1.67. During the pendency of the consideration of the representation some of the Junior PETs grade II approached the Principal Bench of the Tribunal in OA-1526/90, seeking parity with the scale of NDSIs. During the pendency of the OA as it was brought to the notice of the Tribunal that the Government of India came to a tentative decision that the PETs were also entitled to the pay scale at par with the NDSIs w.e.f. 1.1.67, in its order dated 11.1.94 (A-8), the OA was disposed of by an order dated 31.8.94, directing the respondents to act in terms of the letter dated 11.1.94. This order has become final as no appeal has been filed against it. Though this decision was implemented by the respondents by revising scale of pay to the PETs at par with the NDSIs w.e.f. 1.1.67 by order of 2.3.95, subsequently, however, respondents 1-4 stopped the payment of the revised scale, which provoked the applicants in OA-1526/90 to file CCP Nos. 43 and 44 of 1996. The respondents also filed a review application No.106/96, seeking to revise the order dated 31.8.94. The Contempt Petitions were disposed of with a direction that the order dated 31.8.94 should be complied with forthwith and arrears should be paid to the applicants therein with 12% interest w.e.f. 2.3.95. The review application filed by the respondents was dismissed by order dated 19.8.97. Accordingly, the respondents complying with the directions issued yet another order dated 9.12.97, directing all concerned that the PETs be paid the pay scale at par with NDSIs.

6. The recommendations of the IVth Pay Commission and Vth Pay Commission revising the pay scale of the Teachers having been accepted by the Government they were accordingly placed in the corresponding scale of Rs.1640-2900 for PETs I and Rs.1400-2600 for PETs II w.e.f. 1.1.86 and Rs.6500-10500 for PET grade I and Rs.5500-9000 for PET-II w.e.f. 1.1.96.

7. The subsequent developments are significant. The Government of NCT Delhi was in a fix as to how the pay scales as stipulated in the order dated 2.3.95 could be implemented in view of the fact that both the Grades i.e. Grade I and Grade II having been integrated w.e.f. 5.2.81 there remained one pay scale to all PETs. Hence clarifications were sought for from R-4 the Controller of Accounts. It was the opinion of R-4 that the PETs were not entitled for the pay scale of Rs.6500-10500, which was the corresponding scale to the pay scale of Rs.550-900. Thereupon, the Government of NCT Delhi passed the impugned order dated 20.7.98 clarifying that the pay of PETs shall be fixed at Rs.5500-9000.

8. It is vehemently contended by the learned counsel for the applicants Shri Vivekanand that the impugned order was an attempt to over reach the process of the court and nullify the order dated 31.8.94 passed by the Tribunal in OA-1526/90, which has become final, hence binding upon the respondents by which the PETs are entitled for the pay scales at par with NDSIs. It was further contended that the respondents deliberatley disregarded the order dated 10.3.97 of the Tribunal in CCPs 43 and 44 of 1996. It was further contended that the

revised scale of Rs.6500-10500 being the replacement scale in the Vth Pay Commission's recommendations which were implemented by the Govt., the PETs are entitled for the same and placing them at the replacement scale of Rs.5500-9000 is wholly arbitrary and unjustified. PETs grade II having been upgraded to PET-I all the PETs are entitled to the corresponding scale of PGT which is Rs.6500-10500. It was lastly contended that some PETs having been given the scales in terms of the judgement dated 31.8.94 and the orders dated 2.3.95 and 31.12.97 of R.1 to 4, all the PETs shall also be given the same scale of pay.

OA-219/99 and batch

9. The applicants in this batch of cases are also PETs. They are aggrieved by the order dated 4.1.99. The applicants question the impugned order whereby two categories of the PETs were created and different pay scales were fixed even after 5.9.81. The thrust of the arguments advanced by the learned counsel for the applicants Mrs. Meera Chhibber who has been appearing in this batch of cases, is that since the order of the Tribunal dated 27.3.82 has become final all the PETs are entitled for the upgraded pay of PETs grade I w.e.f. 5.9.81 in the scale of Rs.440-750. After the NCT Delhi passed the order dated 2.3.95 and they were granted the revised pay scale at par with NDSIs, all the applicants are entitled to the pay scale of Rs.1640-2900 w.e.f. 1.1.86 and Rs.6500-10500 w.e.f. 1.1.96. It is also contended that the order dated 27.3.82 having been issued

by the President of India it is binding upon all the respondents and hence no action could be taken in variance of the same.

10. A preliminary objection was raised by the learned counsel for the respondents that the OA-1638/98 is liable to be dismissed on the ground that the Union of India was not impleaded as a party and as the fixation of the pay scale of Teachers in the Union Territory of Delhi is done by the Government of India and not by the Govt. of Delhi the Union of India is a necessary party. It should be stated that R-5 was not impleaded as a party respondent by the applicants. Union of India has since impleaded itself as R-5 in this OA and contested the case, the objection does no more survive. As far as other cases are concerned, Union of India was impleaded as a party respondent by the applicants themselves.

11. It is contended by Mrs. Avnish Ahlawat, the learned counsel for respondents 1-4 that the Government of NCT Delhi had accepted and implemented the scales as recommended by the IVth and Vth Pay Commissions for the teaching staff in the Schools. The applicants (PETs) are, therefore, entitled to the pay scales shown in the gazette notification of the Govt. of India dated 30.9.97 which were the pay scales recommended by the Pay Commission but they are not entitled for any higher pay scale as was being claimed by the applicants. The impugned orders were passed correcting the error that was committed by the drawing officers by giving a higher pay scale. It is contended by the learned counsel that the assumption by the applicants that after the upgradation of

the pay scale of PET Grade II, the applicants are entitled for the higher scale of Rs.550-900 is wholly misconceived. They are only entitled to the scale of Rs.440-750. After the acceptance of the recommendations of the IVth Pay Commission by the Government of India all the PETs are entitled to the replacement scale of Trained Graduate Teachers (TGTs) in the pay scale of Rs.1400-2600 (revised). The scale of Rs.1640-2900 was given only to the Post Graduate Teachers (PGTs). The Government of India while accepting the recommendations of the IVth Pay Commission mentioned in the revised pay scales of school teachers, three categories of Teachers, viz. Primary School Teachers, TGTs and PGTs and their respecitve revised pay scales. All the miscellaneous Teachers, including the PETs were equated with TGTs and were given the pay scale TGT viz. Rs.1400-2600. Subsequent to the recommendations of the Vth Pay Commission the TGTs were given the replacement scale of Rs.5500-9000. It is, therefore, submitted that the scale of Rs.6500-10500 which is the corresponding scale of PGTs cannot be given to the applicants who are only PETs and the said scale was only given to the Senior NDSIs Grade I and the Senior PETs Grade I who were appointed as PGTs,as per the recruitment rules. It is contended that Senior NDSIs who were drawing the scale of Rs.550-900 and were equated with PGTs, were also given the higher scale of PGTs.

12. It is further contended that the applicants, without any valid order in their favour fixing their pay at the higher scale, as claimed by them, cannot claim that wrong scales fixed in certain cases without

reference to the valid orders passed by the Govt. of India in fixing the scales cannot confer any right on the applicants. It is contended that the respondents did not violate any orders passed in OA-1526/90 and that in fact the applicants were already placed in the scales of pay of NDSIs Grade II to which grade all the PETs were equated with.

13. Union of India in all the cases filed the counter-affidavit and contested the cases. It is submitted by the learned counsel appearing for R-5 Mr. Ramchandani, supplementing the arguments advanced by the learned counsel for R 1-4 that Union of India is the competent authority to fix or revise the pay scale of the Teachers including PETs and the Government of NCT of Delhi has to give the pay scales only in accordance with the pay scales fixed by it. R-5 being not a party and was not aware of the judgement in OA-1526/90, it is not bound to comply with the same. It is also contended that after it was found that certain PETs were given higher pay scales contrary to the decision taken by the Government of India and NCT Delhi, the impugned order was passed placing the PETs in the proper pay scales to which they are entitled as per the recommendations made in the IVth and Vth Pay Commissions. It was also contended that PETs are not entitled to the corresponding pay scale of senior NDSIs grade I whose scales were protected and personal to them and only Senior NDSIs Grade I were given the higher pay scale of PGTs at Rs.6500-10500.

14. We have carefully considered the rival contentions advanced by the learned counsel of either side and perused the voluminous pleadings and the annexures filed in the cases.

15. Most of the facts are not in dispute. The matter relates to fixation of pay scales of a category of School Teachers working in the various Government Schools as PETs. They work along with the Teachers who are categorised as Primary School Teachers, TGTs, and PGTs. PETs are apppointed from persons possessing the qualification of Graduation (Physical Education), or B.Sc. (Physical Education) or B.A. with Diploma in Physicial Education. In each school generally one or two PETs are posted.

16. From the pleadings the following facts appear to be undisputed. PETs, initially comprised of two grades, PETs I and PETs II. National Discipline Scheme Instructors (NDSIs) who were the employees of the Government of India were later absorbed in the category of PETs during 1972 and 1976. During 1982 PETs of both the grades were integrated into one category as PETs w.e.f. 5.9.81 and thereafter the pay scale of all PETs was fixed as Rs.440-750 as per the amended rules of 1984.

17. Subsequently, in pursuance of the decision of Karnataka High Court which was approved by the Supreme court, the pay scales of NDSIs were increased retrospectively w.e.f. 1.1.67, by an order dated 4.8.88. After their absorption with PETs Senior NDSIs Grade I and

II were given higher pay scale in view of the revision of pay scales, with retrospective effect from 1.1.67 as shown in the table below:

| | |
|---|---|
| PETs I | Rs.440-750 |
| Senior NDSI-I | Rs.550-900 |
| PETs II | Rs.425-640 |
| Senior NDSIs II | Rs.440-750 |

Even after their absorption the Government in its orders dated 30.1.89 and 28.3.89, clarified that NDSIs I and II should be paid the revised scale of pay as they were getting on the date of their absorption. It is seen from the above table that the pay scale of PETs and NDSIs II was the same.

13. At this stage it has to be noticed that the IVth Pay Commission had recommended revised pay scales for Teachers. Four categories of Teachers were mentioned therein, viz. Primary School Teachers, TGTs, PGTs and Vice-Principal/Head Masters of the Secondary Schools. The basic controversy in these cases centres round the question whether the PETs are to be placed in the corresponding scales shown against TGTs or the PGTs, at Rs.1400-2600 and 1640-2900 respectively w.e.f. 1.1.86. The Government of India in its order dated 12.8.87 has stated that the National Commission of Teachers has made various recommendations concerning the pay and conditions of Teachers. Pending the Government decision thereon, the IVth Pay Commission recommended certain replacement scales which were accordingly implemented by the Govt. in its order dated 22.9.87. In partial modificationof the above

order the Govt. decided the implementation of the pay scales as revised. Accordingly for TGTs the revised scale was Rs.1400-2600 and for PGTs Rs.1640-2900. It was stated that the senior scale will be granted after 12 years to the TGTs. It was also stated that the above scales would be admissible to School Teachers of the categories mentioned above and to the incumbents of such teaching posts as are analogous to the above mentioned posts of Teachers. In the order dated 3.11.87 clarification was sought to the order dated 12.8.87 whereby the instructions were given as to how the revised pay scales of School Teachers should be implemented. At point No.9 it was clarified that the above pay scales are applicable to miscellaneous/allied categories of Teachers like PETs, Drawing Teachers, Art Teachers etc. and that the scales of pay in respect of these categories are equated to one or the other categories of Teachers taking into consideration their parity and accordingly Teachers should be granted appropriate pay scales. In view of the above clarification all the PETs including the PETs who were appointed after their merger into one group were equated to and granted the pay scales as applicable to TGTs w.e.f. 1.1.86 in its order of NCT Delhi dated 20.6.89, on the analogy that the qualifications and nature of functions of PETs and that of the TGTs are identical. Their scales were, therefore, fixed at Rs.1400-2600. Unless the PETs with the required qualifications and experience were appointed as PGTs by the competent authority, PETs cannot be paid the pay scale of PGTs. It is significant to notice that neither in the National Commission for Teachers recommendations or in the reports given by the IVth Pay Commission or Vth Pay Commission as accepted by

the Government of Inida, there is any mention of the category of Teachers of PETs, obviously for the same reason that all the PETs and other Miscellaneous Teachers had been equated to one or other category of Teachers mentioned therein.

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 4.8.88 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 I. 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 forgotton 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 had 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 nor 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 I. Even after their absorption into the cadre of 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.

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 decisions 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 recommendatations 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 thus:

> "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 beofre it, is the proper authority to decide 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."

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.

23. It is also relevant to notice that the Writ Petition filed by respondent No.5 in the High Court aggrieved by the order of the Tribunal in rejecting the application to review the order dated 31.8.94 is pending. It is also stated that the question that arises in the present Writ Petition as to the correctness of the higher pay scale given to certain applicants is also in question.

24. 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 affording an opportunity to be heard is wholly unsustainable. What is sought to be done by the respondents is only to correct the pay scales given erroneously to some of the PETs and place them in accordance with the scales already fixed. By order dated 2.3.95 and 9.12.97 the Govt. of NCT Delhi place the PETs in the higher pay scales on subsequent clarification, the impugned order was passed placing them in the correct pay scales.

of the service conditions. It is only an action by the respondents to place the applicants in the scales to which they are entitled to. On the other hand, the learned counsel for the respondents contended that it is always permissible in law that wrongful drawal of excess pay can always be recovered. The learned counsel for the applicants places reliance on 1999 (4) SCC, 756, Kamlakar v. Union of India & Others in support of her plea that PETs are also entitled to the same pay of NDSIs. This is a case where the direct recruits were given higher pay scale and the same was denied to the promotees. It was held that the bulk of direct recruits lost significance after the promotees came over to a single cadre hence all the employees in the single cadre are entitled to the same scale of pay. This decision is again has no application to the facts of the cases before us.

27. In Chandigarh Admn. and Ors. v. Naurang Singh & Ors., 1997 (4) SCC 177 the Supreme Court held that the higher pay scale given to the Storekeepers at the instance of the Principal by mistake cannot be a ground for compelling the administration to keep on repeating that mistake. It was also held that the doctrine of 'equal pay for equal work' could not be invoked by the Storekeepers who are appointed subsequently.

28. The contention of the learned counsel for the applicants Mrs. Meera Chhibber in OA-219/99 and batch that the impugned order dated 4.1.99 differentiating the PETs into two groups and showing their pay scales differently is, in our view, misconceived. In fact all the PETs in the said order were equated to the posts of

TGTs and placed in the revised pay scale of Rs.1400-2600. Only Senior NDSIs Grade I who are shown as Senior PETs grade I, whose pay has been protected and whose pay was personal to them, have been given the scale of Rs.550-900 and the replacement scales of Rs.6500-10500. It cannot therefore be said that the impugned order dated 4.1.99 contrary to the order dated 15.4.82.

29. The decision Shankar Pandurang Jadhav & Ors. v. Vice-Admiral Flag Officer, Commanding-in-Chief & Ors. etc. etc., 1991 (2) SCC 209, cited by the learned counsel for the applicants has no application to the facts of the case. In this case it was held that the order of merger of two cadres sanctioned by the President cannot be altered or modified by an order of the departmental authority. In the present case the Government of India itself has passed the orders recommending the corresponding scales recommended by the IV and Vth Pay Commissions to all the PETs. However, we have held that there is no such alteration.

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 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.

(R.K. Ahooja)
Member(A)

(V.Rajagopala Reddy)
Vice-Chairman(J)

'San.'

Original judgement in OA 1638/90

23/7/92

C.O. Cm