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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No. 196/97

2. OA No. 284/97

New Delhi this the 13th day of August, 1998.

HON'BLE MR. N. SAHU, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. OA-196/97

1. Ram Narain Singh,
S/o Shri Abhey Ram Singh,
R/o 1/4926, Gali No.7,
Balbir Nagar Ext.
New Delhi.
2. Braham Singh,
S/o Shri Birbal Singh,
R/o 10241, Gali No.1,
West Grakh Park,
Delhi.
3. Surandra Pal Singh,
S/o Ch. Malook Singh,
R/o 71, Malook Sing Marg,
Arjun Nagar,
Delhi.
4. Raj Kumar Bahil,
S/o Shri Piara Lal Bahil,
R/o C-139, Vivek Vihar,
Delhi.
5. Satyanarain Avasthi,
S/o Sh. H.L. Avasthi,
R/o 2244, Gali No.10,
Kailash Nagar,
Delhi.
6. Raj Kumar Verma,
S/o late Shri Charan Dass,
R/o K-84, Krishan Nagar,
Delhi.

...Applicants

(By Advocate Shri J.M.L. Kaushik)

-VERSUS-

1. Union of India, through
Govt. of India, Ministry of Human
Resource Development
(Department of Education),
New Delhi.
2. Govt. of N.C.T. of Delhi
through the Chief Secretary
Delhi-5, Sham Nath Marg
Delhi.

Ch. 2000/98

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

... Respondents

(By Advocate Shri S.K. Gupta, proxy for Shri B.S. Gupta,
Counsel).

2. OA-284/97

1. Sohan Pal,
S/o Shri Aghanuan
2. Chandu Lal,
S/o Shri Phool Chand
3. Amar Singh,
S/o Shri Mukhram Singh
4. Ved Prakash,
S/o Shri Ramphal
5. G.S. Singh,
S/o Shri Prem Dass
6. I.R. Singh,
S/o Shri Prbhati
7. Sukhbir Singh,
S/o Shri Attar Singh
8. S.P.S. Premi,
S/o Shri Banshi

(By Advocate Shri B.S. Mainee)

Applicants

Respondents

-VERSUS-

1. Delhi Administration through
the Lt. Governor,
Govt. of N.C.T. of Delhi
Raj Niwas,
Delhi.

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

3. The Dy. Director,
Directorate of Education,
East District,
Rani Garden,
Delhi.

... Respondents

(By Advocate Shri S.K. Gupta, proxy for Shri B.S. Gupta,
Counsel).

① Corrected via Courts
over dated 7-12-1997
No. OA-284/97

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XO
ORDER (ORAL)

HON'BLE Mr. N. Sahu, Member (A):

As common grounds and identical facts are involved in these OAs, they are disposed of together in a consolidated order.

2. We will take the facts in OA-284/97 first. The impugned order dated 16.1.97 withdrew the senior scale already awarded to the applicants by the order of the respondents dated 26.12.95 in the scale of pay of Rs.2000-3500 w.e.f. 1.4.93. It is stated also in that order that the applicant was promoted as PGT w.e.f. 22.1.86 in the pay scale of Rs.1640-2900 and, therefore, he has not completed 12 years period according to the respondents on 1.4.93. The senior grade of a TGT is Rs.1640-2900 which is the initial grade of a PGT and the selection scale of a TGT Rs.2000-3500 is the senior scale of a PGT. The applicants state that they were correctly fixed in the scale of Rs.2000-3500 in accordance with rules which prescribe that the entire period of service rendered in the erstwhile selection grade to be taken into account. Since the applicants were working in the scale of Rs.1640-2900, they correctly computed eligibility to the scale of Rs.2000-3500 after completion of 12 years. If the logic of the respondents has to be accepted it would lead to absurd results. The two submissions made by the learned counsel Shri B.S. Maine are to be found in para 5.4 of the grounds. Shri Maine states that had the applicants been found unsuitable for the posts of PGT they would have drawn by now the scale of Rs.2000-3500 even working as TGT. Their selection as PGT would become absolutely negative in terms of financial prospects. Having been found suitable for PGT if they continued to draw the lower scale of Rs.1640-2900, it would

Ans

have resulted in a glaring anomaly because people found unsuitable as PGT and continued in TGT would have drawn Rs.2000-3500. Shri Maine submits that this is absurd and any interpretation of the rules which lead to absurd results should be rejected. Shri Maine also states that promotion order dated 16.8.95 which are similar to all the persons states as under:

"On the recommendation of the Departmental Promotion Committee constituted for limited purposes to award senior scale to the teachers as per Directorate of Education, Delhi Admin. notification NO.F.80-3(103)/87/Co.Ord./1518-1587 dated 8.1.86, the teachers working in the Government schools of Zone-II/E (as per annexure enclosed) who have completed 12 years of service or the dates mentioned against each in the annexure or onward in existing grade are hereby granted the pay scale from the dates mentioned against their names subject to the completion of terms & conditions laid down in the letter referred to in the letter No.F.30-S(Coord)/87-Edn. dated 3.12.87 issued by Directorate of Education (Co-ord. Branch).

The Senior Scale can be withdrawn in case any wrong information is detected at any later stage. The head of the Institution shall obtain an undertaking in writing from the officials to this effect."

3: Shri Maine emphasized on the words "existing grade" in the said order. That apart, Shri Maine has brought to our notice clarifications issued by the Directorate of Education dated 28.3.88 (Annexure A-2) relating to revision of pay scale of school teachers. He refers to the clarification provided at query in terms of paragraph 8 of the above instructions. We would extract the relevant portion of the query as well as the clarification:

In case a teacher has been awarded 'Selection' Grade from 1.1.1986 and promoted in higher post on officiating basis whether he will be entitled for Senior Scale of the post in which he/she is promoted taking into

Accordingly, it is clarified that for the purpose of counting service in the newly created senior grade, the entire period of service rendered in the

consideration his/her length of service in the lower grade. erstwhile selection grade may be taken into account."

4. Shri Mainee's argument is that the respondents have after careful consideration with open eyes have given the scale from the stated dates. He further states that no show cause notice has been given before the impugned order dated 16.1.97 was issued. He cites the famous decision of the Hon'ble Supreme Court in the case of **Bhagwan Shukla vs. Union of India** (AIR 1994 SC 2480). That was a case where the basic pay was reduced with retrospective effect without issuing a show cause notice. The Supreme Court cancelled the impugned order and held that once an administrative order has visited an employee with civil consequences he should be given an opportunity to show cause against reduction in his pay and allowances.

5. The learned counsel for the respondents states that in the scheme of the revised pay scales as we have mentioned above, the senior scale of a lower category was equivalent to the ordinary grade of the next higher category. He has brought to our notice the rule that selection scale was given to a teacher after rendering 12 years' service in senior scale. In the case of Sohan Pal the date of grant of selection scale as TGT was 1.4.81 and date of promotion on the post of PGT in ordinary grade was 22.1.86. According to the learned counsel Shri Gupta the 12 year period expired on 22.1.98. Shri Sohan Pal should have been given higher scale of Rs 2000-3500 only on 22.1.98. By a mistake the applicants were granted Senior scale of PGT (Rs.2000-3500) w.e.f. 1.4.93 counting the 12 years of service from the date of grant of selection scale as TGT, whereas the 12 years of service should have been counted from the date of promotion as PGT. He

agrees that no show cause notice was issued before the impugned order reducing their basic pay with retrospective effect was passed. But according to the circular dated 3.12.87 the 12 years of service should have been counted with effect from the date of the promotional PGT.

6. This point is now the subject matter of other Apex decisions. Two decisions of the Hon'ble Supreme Court are in the cases of **Shyam Babu Verma and others Vs. Union of India and others**, (1994) 27 ATC 121 and **Sahib Ram vs. State of Haryana**, (1994) 28 ATC 747. In the case of Shyam Babu Verma (supra) their Lordships have held that recovery of excess amount paid on account of higher pay scale erroneously given to the petitioners since 1973 would not be just and proper as the petitioners received the higher scale without any fault or without any misrepresentation on their part. In Sahib Ram's case (supra) their Lordships have again held that recovery of excess payment of pay is not permissible when an upgraded pay scale was given due to a wrong construction of the relevant order by the authority concerned without any misrepresentation by the employee. We also have a number of decisions of Tribunal Benches on this point. The ratio decidendi of the decisions in the cases of **T.R. Sundararaja Iyengar vs. The PMG, Karnataka Circle** [(1989) 1 SLJ (CAT) 238]; **Pushpa Bhide (smt.) vs. Union of India & Ors.** [ATR 1989 (1) CAT 397]; **C.S. Bedi vs. Union of India & Ors.** [ATR 1988 (2) CAT 510]; **Gobinda Sinha & Ors. vs. Garrison Engineer and Ors.** [1990 (1) SLJ (CAT) 74]; **Nilkanth Sinha vs. Union of India** [1987 93] SLJ (CAT) 306]; and **Satyanand Sinha vs. Union of India & Anr.** [1989 (4) SLJ (CAT) 272] is that even if a payment was made wrongly or in misinterpretation of any provisions or when the discovery of a wrong payment was

made subsequently, the Government servant cannot be compelled to refund the same suddenly and without giving him an opportunity to explain against the recovery action sought to be taken against him.

7. We wanted to know as to whether the impugned orders were passed on account of any wrong information furnished by the applicants which misled the respondents to pass such an order. In the case of Sohan Pal the original application for senior scale was placed before us. We shall extract the information filled in columns No.5,6 and 7.

5. Present Scale	1640-2900
6. Date of Appointment in the present scale 1.4.1981	TGT Scale 1640-2900 w.e.f. 1.4.81. 22.1.1981 (X)
7. Date of completion of 12 years in the present scale	PGT w.e.f 22.1.88/1640-2900 31.3.1993

With regard to Ram Narain Singh the other applicants we would also extract all the columns 1 to 9.

1. School	B.R. Govt. Comp. Model Boys Sr. Sec. School, Shahdara, Delhi.
2. Name	Ram Narain Singh
3. Designation	P.G.T. (Maths)
4. Date of Birth	10.1.1937
5. Present Scale	1640-2900
6. Date of appointment in the Present Scale	1.3.1975
7. Date of completion 12 years in the Present Scale	28.2.1987
8. Scale to be awarded	2000-3500
9. Date from which the Senior Scale is to be awarded	1.3.1987

(X) Corrected vide Court's
order dated 9/12/88
Panjab OA 284/9)

8. We must confess that we have seen nothing wrong in the information furnished by Shri Sohan Pal. He clarified that he was enjoying TGT selection grade w.e.f. 1.4.81 in the scale of Rs.1640-2900. It is also clarified that he is drawing PGT grade w.e.f. ~~22.1.88~~ 22.1.86. We do not think much can be made out of the interpretation of the words "present scale" occurring in columns 5 and 6 of the application. Even in the case of Ram Narain, we do not find any wrong information furnished on 27.3.93 if what he mentioned is read with page 5 of the enclosure dated 2.4.93 furnished, not by the applicants, but by the Government Composit Model School, Shahdara. The point we are trying to emphasize is that the entire information about the service tenure of the applicants are very much before the respondents and we are satisfied that no information was furnished which can be called wrong and which had the effect of misleading the respondents in this regard.

9. The law is now well established that one-sided action initiated to reduce drastically the pay of an employee without a show cause notice is bad in law. We accordingly quash the impugned order dated 16.1.97 in the case of Sohan Pal and others (OA-284/97) and in the case of Ram Narain and others the impugned orders dated 24.10.96 and 24.12.96 (OA-196/97). We direct that if any recovery has been made from the arrears paid to the applicants the said amount shall be refunded to them within a period of six weeks from the date of receipt of a copy of this order and further no further recoveries shall be made on this account.

⑩ Corrected vide Comst. 3
order dated 7.12.95
passed in OA-284/97

10. Even so, Shri Gupta, learned counsel for the respondents urged that an opportunity of hearing can be given to the applicants at any time and the process of natural justice can again be initiated at this stage. We do not want to make any comments on this. Suffice it to say that the respondents are at liberty to initiate such action as they are advised in accordance with law and take such action which will not be in conflict with the decisions cited by us above.

11. The O.A.s are allowed. No costs.

(DR. A. VEDAVALLI)
MEMBER (J)

'Sanju'

(N. SAHU)
MEMBER(A)

True Copy above
A. K. S.
प्रधान सचिवालय
टिकट.....
CERTIFIED TRUE COPY
Dated..... 21/12/88

अधिकारी (न्या०-१)
Section Officer (J-1)
केंद्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal
प्रमुख दायरी, नई दिल्ली
Principal Bench, New Delhi