

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.1780 of 1988.

16th day of December, 1993.

Shri J.P. Sharma, Member (Judl.)

Shri P.T. Thiruvengadam, Member (A)

1. Shri Samuel Hector George,
32, Tagore Road,
New Delhi.

2. Shri R.C. Sharma,
1042, Timarpur,
Delhi.

Applicants

By Advocate Shri Vivekanand.

Versus

1. Chief Secretary,
Delhi Administration,
Alipur Road, Delhi.

2. Director of Education,
Directorate of Education,
Old Secretariat,
Delhi.

3. Joint Director (Admn.),
Directorate of Education,
Old Secretariat, Delhi.

Respondents

By Advocate Shri B.R. Prashar.

O R D E R

Shri P.T. Thiruvengadam, Member

The two applicants in this O.A. were appointed as Junior Physical Education Teachers in the Directorate of Education, Delhi Administration. Applicant No.1 was allowed Selection Grade in the post of Jr. P.E.T. from 5.9.1971 and applicant No.2 was allowed this Selection Grade from 1.1.1973. After 1.1.1973, the scale of pay

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of Jr. P.E.T. was Rs.425-640 and the Selection Grade in Jr. P.E.T. was in the scale of Rs.600-750.

2. In addition to the junior scale for Physical Education Teachers, there was also a senior scale for P.E.Ts and the scale for Sr.PETs was Rs.450-750 w.e.f. 1.1.1973. There was also a Selection Grade for the Sr. PETs and the scale for this Selection Grade was Rs.740-880.

3. On 27.3.1982, Department of Education issued instructions for upgrading the scale of Jr.PETs from Rs.425-640 to Rs.440-750 effective from 5.9.1981, the scale applicable to Sr. PETs ^{as} ~~upto~~ that point of time. On 31.8.82, the Director of Education (Coordination Branch) issued instructions vide letter dated 31.8.1982, conveying the sanction for upgradation of Selection Grade posts from junior scale in Rs.600-750 to senior scale in Rs.740-880 effective from 5.9.1981. In this sanction, specific ^{Schedule} number of junior scale grade posts which were being upgraded to the senior grade selection posts of the category of PETs, amongst others, was indicated as under:-

| Sl. No. | Category | Administrative Cadre | | Special Cadre | |
|---------|------------|----------------------|--------|---------------|--------|
| | | Male | Female | Male | Female |
| 1. | Jr. P.E.T. | 35 | 29 | 18 | 11 |

4. Based on the sanction dated 31.8.1982, the applicants were allowed the scale of Rs.740-880 w.e.f. 5.9.1981 in lieu of the selection grade junior post scale which they were enjoying earlier. This fixation in the higher scale of Rs.740-880 was allowed to them by office orders dated 28.3.1984 and 20.11.1984, respectively, which orders were issued by the Deputy Director of Education. While the matter stood thus, a memorandum was issued by Joint

Director of Education on 18.3.1988 to the following effect:-

"A number of representations had been received from the teachers who were granted Selection Grade of the Junior time scale of Rs.600-750 of the respective category for grant of selection grade of the Senior time scale of 740-880/- on the basis of letter dated 31.8.1982, issued by the Coordination Branch up-grading some posts of Selection Grade.

After due consideration of the representations about applicability of Senior Selection scale in all such cases, the competent authority has decided that the scale so demanded by these incumbents is not applicable to them. A circular to this effect had already been issued on 25.12.1983, by the Coordination Branch, but the same appears to have not been scrupulously followed by the DDOs of the Schools.

It is, therefore, once again reiterated that where such fixation has been made in the upgraded scale of Rs.740-880/-(pre-revised) in cases of those teachers who were holding the Selection Grade in the scale of Rs.600-750/- be re-fixed and recoveries, if any, may be effected immediately without making any further reference to the Headquarters."

5. This O.A. has been filed with a prayer for quashing the above memorandum dated 18.3.1988 ^{and} for allowing the applicants to continue in the scale of Rs.740-880 and for restraining the respondents from effecting recoveries. On 21.10.1988, this Tribunal had passed interim orders restraining the respondents from making any recovery pursuant to the Memorandum dated 18.3.1988.

5. The main ground advanced by the applicants is that with the merger of the scales of Junior PET and Senior PET, the selection grades for Jr. PET and the selection grade for Sr. PET also got merged and that is the purport of the letter of the Directorate of Education dated 31.8.82 vide which sanction for upgradation of Selection Grade posts from junior grade posts in the scale of Rs.600-750 to senior scale of Rs.740-80, was conveyed. As such,

FR-23 is directly applicable to them and the fixation orders issued on 28.3.1984 and 27.11.1984, are perfectly legal.

6. The applicants also advanced the ground that no reduction in pay or refixation can be effected without giving them show-cause notice and an opportunity to explain their position.

7. The respondents, in their reply, have stated that only some posts of Selection Grade were upgraded from junior to senior scale and the extent of such upgradation was spelt out by giving the actual number of posts which were got upgraded at the time of issue of letter dated 31.8.1982. Such upgradation had taken place only in respect of posts created in the category of junior status and not in place of the incumbents who ^{were} ~~are~~ already holding Selection Grade of the junior time-scale. It has been averred by the respondents that there is no question of depriving the applicants of the said Selection Grade which they were already enjoying. As regards filling up of the posts upgraded specifically by the sanction of 31.8.1982, this could be done only from the combined seniority list consequent to the merger of Jr. PETs and Sr. PETs and a specific order of posting has to be issued before anyone can get the benefit of the higher scale. In this view, there is nothing illegal about the subsequent order dated 18.3.1988 which has been impugned in this O.A.

8. Having heard both the sides, we do not see any reason not to accept the statement of the respondents that only some of the Selection Grade posts in junior grade were upgraded to the senior level, without depriving the applicants of the selection scale of Rs.600-750 already granted

to them. The further averment that the Teachers who are Selection Grade holders as Jr. PETs are placed at the tail of the Sr. PETs for further promotion as a result of the merger of the scales of Jr. PETs and Sr. PETs, resulting in the non-conferment of the higher Selection Grade to the applicants, cannot be held to be unreasonable. The stand of the respondents that the letter of 31.8.1982 sanctioning upgradation of certain Selection Grade posts from junior scale to senior scale, was not endorsed to any of the Deputy Directors of Education, but was only addressed to the Joint Director of Education for the purpose of issuing promotion orders thereon, cannot be faulted.

9. We, however, notice that the memorandum dated 18.3.88 ordering that where fixation has been made in the upgraded scale of Rs.740-880 in case of those Teachers who were holding the Selection Grade in the scale of Rs.600-750, be refixed and recoveries effected immediately, has been issued without giving any opportunity to the applicants to state their position of the case. In the interest of principles of natural justice, such an opportunity needs to be given and the respondents are directed to give a show-cause notice to the applicants before taking further action in pursuance of the impugned memorandum dated 18.3.1988.

10. There is an apprehension in the minds of the applicants that they may even be denied the scale of Rs.600-750, which they had been enjoying from 1.1.1973. In the reply affidavit, while giving remarks against ground (a),

it has been categorically stated that there is no question of depriving the applicants of the said scale (Rs.600-750). Hence, the apprehension of the applicants is unfounded.

11. It is needless to add that the stay order against the recovery as passed by this Bench on 21.10.1988, stands modified to the extent that such recovery could be made, if required, only after giving due consideration to the representation to be made by the applicants within two months after the show-cause notice is issued, as per the directions above.

12. The OA is disposed of on above lines. No costs

P.T. Thiruvengadam

(P.T. Thiruvengadam)
Member(A)

J.P. Sharma

(J.P. Sharma)
Member(J)

SLP