

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.86/2014 & 78/2014**

Dated this Wednesday, the 16<sup>th</sup> day of Sep., 2020

**CORAM : DR. BHAGWAN SAHAI, MEMBER (A)  
R.N.SINGH, MEMBER (J)**

Shri Zacharia Varghese, Age 52 years,  
working as Trained Graduate Teacher (Maths) in KV, INS Hamla,  
Malad, Mumbai 400 095,  
residing at C-4, Sheetal Sangeet, Sheetal Nagar,  
Mira Road (East), Dist. Thane 401 107.      - Applicant in OA 86/2014

Mrs. Santosh Bhatkal, Age 55 years,  
working as Post Graduate Teacher (Hindi) in KV, INS Hamla, Malad,  
Mumbai 400 095, residing at C/5, INS Hamla, Staff Quarters,  
Malad West, Mumbai 400 095.      - Applicant in OA 78/2014  
(By Advocate Shri S.V.Marne)

**Versus**

1. Union of India, Through the Commissioner,  
Kendriya Vidyalaya Sangathan, 18, Institutional Area,  
Shahid Jeet Singh Marg, New Delhi 110 016.
2. The Dy. Commissioner, Kendriya Vidyalaya Sangathan,  
Mumbai Region, I.I.T. Powai, Mumbai 400 076.
3. The Principal, KV, INS Hamla, Malad (West),  
Mumbai 400 095.      - Respondents in both OAs  
(By Advocate Shri V.S.Masurkar)

Order reserved on 04.12.2019  
Order pronounced on 16.09.2020

**COMMON ORDER**

**Per : Dr. Bhagwan Sahai, Member (A)**

1(a). Shri Zacharia Varghese working as Trained Graduate Teacher (Maths) in Kendriya Vidyalaya, INS Hamla, Malad, Mumbai has filed OA No.86/2014 on 17.12.2013 and Smt. Santosh Bhatkal working as Post Graduate Teacher (Hindi) in Kendriya Vidyalaya, INS, Hamla, Malad, Mumbai has filed OA No.78/2014 on 23.12.2013. Both these



applicants seek setting aside of reply of the Deputy Commissioner, Kendriya Vidyalaya, Mumbai dated 13.12.2011 and direction to the respondents to fix their pay at Rs.13,760/- and Rs.17,730/- respectively, with effect from 01.07.2007 and to grant arrears of pay accordingly from 01.07.2007 with 12% interest per annum. They also seek cost of these applications from the respondents.

**1(b).** Both these OAs seek relief against the same common reply of the respondents dated 13.12.2011, rejecting representations of the applicants for accepting revised options for pay fixation date on promotion stating that option exercised once is final and the pay fixed accordingly cannot be revised. As the issues involved in them are common, with consent of the parties' counsels, both these OAs have been heard together and are being decided by this common order by taking OA No.86/2014 as the lead case.

**2. Summarized relevant facts :**

**2(a).** The applicant in O.A.86/2014 has stated that while implementing Government decisions on VI Central Pay Commission recommendations, his pay has been incorrectly fixed by the respondents on his promotion as Trained Graduate Teacher (Maths) with effect from 30.04.2007 [applicant in OA No.78/2014 was promoted as Post Graduate Teacher (Hindi) vide order dated 19.03.2007 with effect from 18.04.2007]. In letter of Deputy Commissioner, KVS, New Delhi dated 15.09.2010, it was conveyed that one increment would be admissible on promotion to the higher post carrying same Grade Pay in the same pay band and accordingly the promoted employees were directed in



February, 2011 to fill up option forms for fixing their pay under VI Central Pay Commission pay structure.

**2(b).** The applicant submitted his option on 22.02.2011 for fixation of pay as TGT with effect from 30.04.2007. He claims that he was under impression that he would get his next increment from 01.07.2007 and filled up the option accordingly. His option form mentioning the date of next increment as 01.07.2007 was endorsed by the respondent No.3. However, that mention was because of misrepresentation by the respondent No.3. When approval for his pay fixation was received on 30.06.2011, the date of his next increment was mentioned as 01.07.2008 (Annex A-6) stating that as per the provisions under the relevant rules, there must be a gap of six months between date of promotion and that of next increment. But in case of another Trained Graduate Teacher (TGT) promoted along with the applicant, since she had correctly filled up the option form for fixation of pay with effect from 01.07.2007, her pay was fixed as Rs.13,760/- whereas that of the applicant was fixed at Rs.13,220/- as on 01.07.2007 thereby resulting in loss of his one increment.

**2(c).** He submitted revised option on 23.08.2011 for fixation of his pay in the post of TGT with effect from 01.07.2007. But respondent No.2 vide order dated 13.12.2011 rejected his request stating that the option once exercised is final. Later on, respondent No.2 in his letter dated 27.05.2013 directed the respondent No.3 to justify whether the applicant's request for revised option was tenable. However, the respondent No.3 did not taken any action on it.



2(d). The applicant has further stated that when he was promoted by order dated 11.04.2007, pay scales of V Central Pay Commission were applicable and with his promotion on 30.04.2007, the date of next increment was fixed as 01.08.2007 and the applicant exercised his option accordingly.

2(e). CCS (Revised Pay) Rules, 2008 were also made applicable to Kendriya Vidyalaya Sangathan and employees working in earlier pay scale of Rs.5,000-8,000/- and Rs.5,500-9,000/- were placed in the same pay band of Rs.9,300-34,800/- with Grade Pay of Rs.4,600/-. As per letter of the respondent No.1 i.e. Commissioner, Kendriya Vidyalaya Sangathan, New Delhi dated 15.09.2010, one increment equal to 3% of sum of pay in the pay band and existing Grade Pay was admissible on promotion from the lower post to the higher post when the feeder post and promotional post carry identical Grade Pay in the same pay band (Annex A-4).

2(f). For pay fixation under VI CPC pay structure, no guidance was provided to the applicant for filling up option form and he was asked by respondent No.3 to fill up the option form. He filled up the form opting for promotional grade from 30.04.2007 and next increment from 01.07.2007 as per the representation made by the Principal. Respondent No.3 forwarded that option form to respondent No.2. The Account Officer in the office of respondent No.2 communicated approval his pay fixation vide letter dated 30.06.2011 as on 30.04.2007 at Rs.13,220/- with date of next increment as 01.07.2008 (Annex A-6).



**2(g).** Since the date of his next increment was mentioned as 01.07.2008 (instead of 01.07.2007), the applicant learnt that as per OM of Department of Expenditure, Ministry of Finance, Government of India dated 13.09.2008, the Government servants are required to complete six months and above for getting next increment and since the period from his pay fixation from 30.04.2007 up to 01.07.2007 was less than six months, the date of his next increment would be 01.07.2008 (Annex A-7).

However, in case of Smt. Shobhana Karunakaran posted at Kendriya Vidyalaya, Colaba, she was properly guided by the Principal and she exercised correctly the option for fixation of pay as Trained Graduate Teacher with effect from 01.07.2007 and her pay was fixed at Rs.13,760/- on that date.

**2(h).** To his representation dated 24.08.2011 to respondent No.2, enclosing therewith fresh option form for fixing his pay at Rs.13,760/- from 01.07.2007, (which was also endorsed by the respondent No.3), Respondent No.2 in his reply dated 13.12.2011 informed that as per Fundamental Rule 22 and Government orders No.17 and 18 thereunder, option of date of pay fixation on promotion to higher post is to be exercised is within one month and option once exercised is final. This reply Annex A-1 is being challenged in the present O.A.

**2(i).** After meeting Audit and Accounts Officer and discussing his case, he again submitted his representation on 03.01.2012 pointing out anomaly in his pay fixation as compared to that of Smt. Shobhana Karunakaran. But he received a reply from the respondent No.2 on



20.02.2012 that his case with reference to pay fixation of Smt. Shobhana Karunakaran had been examined and no anomaly was found in their pay fixation (Annex A-12). Respondent No.3 also forwarded the applicant's case of anomaly in the pay fixation but no reply has been received from the respondent No.2. The applicant made further representation to respondent No.1 on 01.09.2012 and 05.12.2012. Respondent No.2 replied on respondent No.3 on 27.05.2013 to explain as to whether the applicant's case was admissible under the rules as the applicant had questioned knowledge of the Principal about fixation of pay. However, the respondent No.3 did not act on it.

**3. Contentions of the parties :**

In the OA, rejoinder and during the arguments of the counsel on 04.12.2019, the applicant contends that -

**3(a).** not fixing of his pay as on 01.07.2007 with date of next increment as 01.07.2008 by the respondents on promotion as Trained Graduate Teacher (Maths) as per VI Central Pay Commission pay structure is illegal and void;

**3(b).** the applicant is a teacher and is not expected to know provisions of rules and OMs, and he is required to be guided by the office of the respondent No.3 while exercising the option for pay fixation, but he was not guided properly by respondent no.3 that at least six months service is required after promotion for earning the next increment. Because of misrepresentation by respondent no.3, the applicant opted for his pay fixation from 30.04.2007;



3(c). respondent No.2 has not appreciated that the embargo on not changing option once exercised cannot be enforced in the present case because he is a teacher and his duty is only to impart knowledge to students, and fixation of pay, scrutiny of options under the rules, etc are duty of the administration. As per Article 24 of Education Code, one of the duties of the Principal is to provide special help and guidance to new teachers as he is the authority sanctioning increments. The applicant had also submitted an undertaking to refund any excess amount if found on account of his changed option, but it has been ignored;

3(d). the contentions of the respondents that Principal, Kendriya Vidyalaya, INS, Hamla never misguided the applicant for filling up option form is false as the Principal had endorsed the applicant's form which mentioned that his next increment would be 01.07.2007. The Principal did not make the applicant aware that as per the Department of Expenditure notification dated 29.08.2008 and OM dated 13.09.2008, he was not entitled for getting next increment to 01.07.2007. Since in the revised option that mistake had been corrected by the applicant its acceptance is not going to cause any loss to the respondents. The rule stating that option once exercised is final is not rigid and it should be relaxed in genuine cases as that of the applicant. Therefore, the OA should be allowed.

3(e). The applicant has filed MA No.118/2013 for condonation of delay stating that his incorrect pay fixation was done by the respondents with letter of 30.06.2011 and thereafter his representation was rejected on 13.12.2011. Thus the cause of action arose at that time. However,



because of his subsequent representations in the proforma of anomaly in pay fixation and correspondence on his case between respondents No.2 and 3, the applicant has filed this OA on 17.12.2013, which is within limitation and if there is any delay in filing OA, it should be condoned.

In reply, sur-rejoinder and during the arguments of their counsel on 04.12.2019, the respondents contend that -

3(f). the applicant has claimed relief from 01.07.2007 but this OA suffer from delay and laches. In support of this contention, the respondents are replying upon the following judgments :

(i). P.S.Sadasivaswamy V/s S/o Tamil Nadu AIR 1974 SC 2271.

(ii). Jacob Abraham and others A.T.Full Bench Judgments, 1994-96.

(iii). Ram Chandra Samanta V/S UOI 1994 (26) ATC 228.

(iv). S.S.Rathore V/S S/O M.P. 1989 (2) ATC 521.

(v). Bhoop Singh V/S UOI IR 1992 SC 1414.

(vi). Secretary to the Govt. of India V/S Shivaram M. Gaikwad (1995) 30 ATC 635 1995 (6) SLR (SC) 812.

(vii). Ex. Capt. Harish Uppal V/S Uoi 1994 (2) SLJ 177.

(viii). L.Chandra Kumar V/S UOI 1997 (2) SLR (SC) 1.

(ix). AIR 199 SC 564 Dattaram V/S Union of India.

(x). 1996 LLJ 1127 (SC) UOI V/S Bhagnoar Singh. (1999) 8 SCC 304 Ramesh Chand Sharma V/S Udham Singh Kamal & Ors.

(xi). 2002 (5) SLR (SC) 307 E. Parmasivan & Ors. VS UOI & Ors. AT Act, 1985-Article 226-Writ Petition-Delay and Latches-Maintainability of writ petition-Limitation Application before Tribunal in 1995, by retired MES Officers Retirement between 31-01-1974 to 31-05-1985, for fixation of pay in term of OM dated 12-1-1976. Tribunal right in dismissing applications on grounds of limitation.



The settled position in the law in the above case laws has also been accepted by this Tribunal dated 12.12.2006 in OA No.92/2006 (**Kaushal Kishore Vs. Union of India and others**). As ruled by the Full Bench of the Tribunal, preliminary objections regarding jurisdiction and limitation have to be decided first. As per Supreme Court decision in the case of **Union of India Vs. M.K.Sarkar, (2010) 1 SCC (L&S) 1126**, the issue of limitation for delay and laches has to be considered with reference to the original date of cause of action and not with reference to the date on which an order has been passed in compliance of the Court direction and also if someone has been wrongly extended a benefit, it cannot be cited as precedent for claiming similar benefits like others. Therefore, on this ground, the OA should be dismissed as it is not within limitation,

**3(g).** as per option exercised by the applicant on 22.02.2011 for fixation of his pay in the grade of Trained Graduate Teacher, the office of Deputy Commissioner, Kendriya Vidyalaya Sangathan, Mumbai Region fixed his pay by order dated 30.06.2011 at Rs.13,220/- with next date of increment as 01.07.2008;

**3(h).** in response to representation of the applicant dated 18.10.2011 for changing the date of next increment, he was replied on 13.12.2011 that as per Fundamental Rule 22 and Government of India orders (17) and (18) thereunder, option of date for fixation of pay on promotion to higher post has to be exercised by the promoted Government servant within one month and the option once exercised is final. His applications under the Right to Information Act were also dealt with by



the Public Information Officer, First Appellate Authority and Chief Information Commissioner, New Delhi. His another representation dated 01.09.2012 filed with the Grievances Cell of KVS for grant of additional increment was also replied on 21.03.2014 thereby settling his grievance;

3(i). the applicant submitted his option for fixation of pay under VI Central Pay Commission pay structure on 22.02.2011 after serving for four years as TGT as per KVS Headquarters letter dated 15.09.2010. The Principal, Kendriya Vidyalaya, INS Hamla, Mumbai has never misguided him for filing the option form. Since the applicant joined on the promotional post as TGT on 30.04.2007, he could not complete six months up to 01.07.2007 for getting next increment from that date. As per the stipulations under the notification of Department of Expenditure dated 29.08.2008, date of his next increment was fixed as 01.07.2008. Since Smt. Shobhana Karunakaran has exercised her option for pay fixation from 01.07.2007 (instead of her date of promotion i.e. 28.04.2007) her pay was refixed accordingly with effect from 01.07.2007;

3(j). the respondent No.2 i.e. Deputy Commissioner, KVS, Mumbai Region also informed by letter dated 20.02.2012 to the Principal, KV INS, Hamla, Malad, Mumbai that there was no anomaly found in the fixation of pay of the applicant and Smt. Shobhana Karunakar. The applicant made his representation on 01.09.2012 without routing it through proper channel i.e. through the concerned Principal. However, that representation was also disposed of with letter of 21.03.2014. Since



the Principal, KV, INS Hamla, Malad, Mumbai was convinced about proper fixation of pay of the applicant, he did not forward his case again to the respondent No.2. In view of these facts, the applicant is not eligible for change of option for date of pay fixation once exercised by him earlier on 22.02.2011. Because of this, his subsequent request for refixation of his pay from 01.07.2007 was rejected;

**3(k).** the provision under Article 24 of Education Code (Annex A-16) is about proper utilization of Vidyalaya Vikas Nidhi and it is not about annual increment of the staff. The copy of the new Education Code enclosed by the applicant as Annex A-16 is only a draft and it has not yet been approved by the Kendriya Vidyalaya Sangathan. Therefore, this provisions is not applicable. Since the applicant is not eligible for change of date of option of pay fixation exercised once by him, the OA has no merit and it should be dismissed with cost.

For the applicant in OA No.78/2014, similarly the pay fixation order was issued on 30.06.2011 fixing her revised pay as Post Graduate Teacher (Hindi) with effect from 18.04.2007 with date of next increment as 04.07.2008 based on her option dated 22.02.2011. Hence, that OA should also be dismissed.

#### **4. Analysis and conclusions :**

**4(a).** We have perused the OA memo and its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents and considered the arguments advanced by their counsels on 04.12.2019. We have also perused the original case record of the applicants produced by the respondents with letter of 04.11.2019. On



our careful consideration, thus, the case is analyzed as follows :

**4(b).** The applicant has claimed in this OA that he was ignorant of (i) stipulations under notification of the Department of Expenditure dated 29.08.2008 for implementing the recommendations of VI Central Pay Commission as accepted by the Government of India, (ii) the Department of Expenditure OM dated 13.09.2008 containing clarification about date of next increment by implementing Rule 10 of CCS (Revised Pay) Rules, 2008 that there will be one uniform date of annual increment i.e. 01<sup>st</sup> July every year and Government servant completing six months and above in the revised pay structure as on 01.07.2007 will be eligible for grant of increment. However, this ignorance seems to be only a feigned ignorance. He has also claimed that he is only a teacher and he was not expected to know details of relevant rules, OM and instructions regarding pay fixation, etc. In fact after the notifications are issued by the Government for implementing recommendations of a new pay commission, every employee reads very carefully such notifications to understand details of his or her revised pay fixation. Therefore, the claim of the applicant about ignorance of stipulations under the above mentioned rules and OM/instructions cannot be accepted.

**4(c).** In fact in paragraph No.4.5 of the OA, the applicant himself has mentioned that on inquiring with the office of the respondent No.2 i.e. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Mumbai Region, IIT Powai, Mumbai, he learnt that as per Department of Expenditure OM dated 13.09.2009, completion of six months and above is necessary



under the revised pay structure for getting next increment. Whether he inquired from the office of the respondent No.2 before he submitted his option or after is not clear. In view of the above, when the applicant submitted his option for fixation of his revised pay, obviously he must have been fully aware of the stipulations in the above mentioned in OMs, rules and instructions.

4(d). The applicant submitted his option for fixation of his pay (proforma II) on 22.02.2011 (page 21). A perusal of his submitted option clearly reveals that he filled up the form in his own hand mentioning date of his new pay scale as 30.04.2007 and pay on that date to be Rs.13,220/-. In fact, the portion of the proforma meant to be filled up by the Principal was also filled up the applicant himself, which after the date of next increment contained a specific mention "if applicable". This option exercised by the applicant was forwarded by the Principal, Kendriya Vidyalaya, INS Hamla, Malad, Mumbai to the office of Deputy Commissioner, Kendriya Vidyalaya Sangathan, Mumbai Region, Mumbai and that office was to complete the last portion of the proforma which mentioned as :

"The pay fixation as indicated above is amended and approved.

Signature of  
Audit Assistant

Supdt. Of Accounts

Audit & Accounts  
Officer."

4(e). These details of the option form very clearly stipulated that the fixation of pay of the applicant by the Principal was only a tentative recommendation to be finally scrutinized and approved by the office of the Deputy Commissioner, Kendriya Vidyalaya Sangathan, Powai, Mumbai Region. The original case record reveals that the pay fixation



of the applicant was finally approved with the signatures of one Assistant, one more officer, Audit and Accounts Officer and Assistant Commissioner in the office of Kendriya Vidyalaya Sangathan, Mumbai Region, Mumbai.

4(f). Since the option proforma itself provided scope for amendment of the recommendation of the Principal and approval thereafter, there is no substance in the claim of the applicant that the Principal of the Kendriya Vidyalaya, INS Hamla misguided/misrepresented him for filling up of the form because of which he submitted a wrong option for fixation of his pay from 30.04.2007 with date of next increment as 01.07.2007. In fact after scrutiny of the recommendation of the Principal, the revised pay fixation order for the applicant was passed by the office of Deputy Commissioner, Kendriya Vidyalaya Sangathan, Mumbai Region, Mumbai. Thus fixation of his pay on promotion on 30.04.2007 was done by the respondents as per the option exercised by the applicant himself. This has been done by the respondents in view of their duties as mentioned by the applicant himself in paragraph 5(d) of the OA.

4(g). The claim of the applicant that because of fixation of his revised pay from 30.04.2007 and date of his next increment as 01.07.2008, he has suffered loss is also imaginary. The applicant has actually not suffered any monetary loss in this process. As per the option exercised by him, he received revised pay of Rs.13,220/- from 30.04.2007 in place of pre-revised pay of Rs.7,250/- in the old pay scale. Had he opted for revision of his pay from 01.07.2007, the higher pay received by him during May and June of 2007 would not have been allowed. During that



period, he received additional payment of Rs.11,940/- ( $13,220 - 7,250 = 5,970 \times 2$ ). In case his pay as per his revised option would have been refixed from 01.07.2007 i.e. as Rs.13,760/-, up to 30.06.2008 he would have received additional payment of only Rs.540x12 i.e. 6,480/-. This is the amount of loss claimed by him. However, instead he got additional payment of Rs.11,940/- with advancement of his revised pay for the month of May and June of 2007. Thus, there was a gain as a result, instead of any loss and his net gain during that period was of Rs.5,460/-. Therefore, because of revision of his pay earlier i.e. from 30.04.2007 itself instead of from 01.07.2007, even because of postponement of his one increment up to 01.07.2008, in the process he has been a net gainer and he has not suffered any financial loss. Therefore, there is no basis in the applicant's contention, who is TGT (Maths)!

**4(h).** As explained by the respondents, the stipulations under Fundamental Rule 22 and Government of India orders No.(17) and (18) thereunder, the option of date for fixation of pay on promotion to the higher post once exercised is final. This provision is uniformly applicable to all the Government servants and therefore, it cannot be relaxed by the respondents for the applicant. Hence, this stand of the respondents is justified and claim of the applicant for relaxation has no merit.

**4(i).** With reference to the applicant's contention that under Article 24 of the Education Code, one of the duties of the Principal is to provide special help and guidance to new teachers. However, neither the



applicant was a new teacher (he has joined as a teacher in 1987) as the present case involved refixation of his pay on his promotion nor the Code claimed by the applicant has yet been approved by the Kendriya Vidyalaya Sangathan as explained by the respondents. Therefore, there is no substance in this submission of the applicant.

4(j). The applicant has filed this OA on 17.12.2013 being aggrieved by refixation of pay by order of the respondents dated 30.06.2011. Thus, there is delay of about 18 months. Therefore, as contended by the respondents, it is clear that the OA has been filed belatedly and there is no satisfactory explanation for this delay. Therefore, this OA is also not within limitation and suffers from delay and laches, thus liable for rejection.

4(k). In view of the above analysis of facts of the case and relevant stipulations under the rules and Government orders, we conclude that the present OA has no merit and it deserves dismissal. The contention of the applicant in the other OA No.78/2014 being similar, that OA also fails. Therefore, both these OA deserve dismissal.

**5. Decision :**

Both the OAs are dismissed. No costs.

(R.N.Singh)  
Member (Judicial)

(Dr. Bhagwan Sahai)  
Member (Administrative)

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