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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO. 622 OF 2005

Dated: ALLAHABAD THIS THE 22nd DAY OF Feb. 2007.

Hon'ble Mr. K. Elango, J.M
Hon'ble Mr. P.K. Chatterji, A.M

K.P. Dubey, S/o Shri M.B Dubey, aged about 49 years, Trained Graduate (Mathematics) Teacher, Kendriya Vidyalaya, N.H.P.C., Banbasa, P.O. Chandani, District Champawat (Uttaranchal), Presently dismissed from service, which is challenged in O.A. No.206/2004 in this Hon'ble Tribunal and presently residing at Pratibhayan, C-119, G.T.B Nagar, Kareli, Allahabad (U.P).

.....Applicant

(Applicant in person)

Versus.

1. Kendriya Vidyalaya Sngathan, through the Joint Commissioner (Administration) 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi- 110016.
2. The Principal, Kendriya Vidyalaya, N.H.P.O. Campus Banbasa, P.O. Chandani, District Champawat (Uttaranchal State), 262310.

.....Respondents

(By Advocate: Sri N.P. Singh)

ORDER

By Mr. P.K. Chatterji, A.M

The applicant in this OA has impugned the order 03.05.2005 of the respondents which were passed on his representation dated 29.03.2005 in pursuance of the direction of this Tribunal in OA 576 of 2003 (Annexure A1). This OA which is in connection with dispute of pay fixation of the applicant has a long history it would be necessary to put it in nutshell before we proceed further.

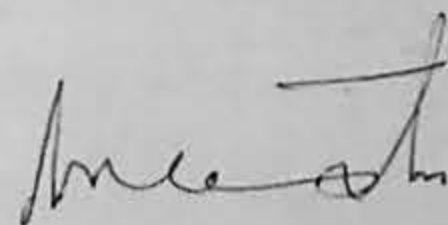


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2. The applicant joined as TGT on 31.08.1984 in pay scale of Rs. 440-20-750. The applicant was given the due increments in the following years. But it is alleged by him that there was a mistake in the fixation on 01.08.1986 which he detected in 1989 and requested the Principal of the KVS to rectify the same.

3. The applicant was suspended from service for some alleged irregularity/misconduct in February 1990 and he was removed from serviced on 22.11.1990. He challenged the order of removal in the Hon'ble High Court Delhi which set aside the order of removal on 13.03.1997. On 04.04.1997 he was reinstated and posted at KVS Imphal. However as claimed by him back wages was not paid to him. On his representation for transfer he was posted as KVS Jayant Koliary (MP) on 25.09.1998. The LPC which was issued to him from Imphal dated 03.09.1998 showed that he basic on 09.08.1998 was Rs. 5500/-. The applicant however says that it was the entry pay of TGT in the revised scale of Rs. 5500-175-9000. He made a representation to the Principal/Assistant Commissioner that his pay should be re-fix at Rs. 6900/- on 31.08.1996. However, his representation was turned down by Assistant Commission Jabalpur who however on consideration of the issue placed him at Rs. 6025/- of the scale.

4. The applicant was transferred to KVS Carnikobar by order dated 18.01.1999. He challenged the order at the Principal Bench of the Tribunal in OA 454 of 1999. The Principal Bench in its order on the OA directed that he be

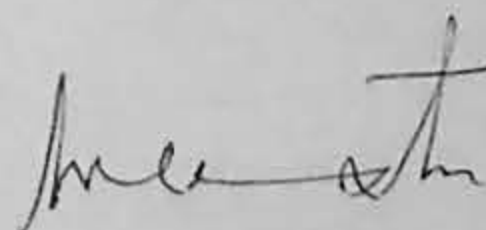


posted at UP. The respondents filed a WP against the order of the Tribunal, but before it was decided they posted him at KVS NHPC Banbasa.

5. At this stage, the applicant says, his pay was still not fixed as it should have been. Because the direction of the Hon'ble High Court Delhi passed earlier was not complied with, he filed a Contempt Petition No. 383/99. After notice was issued to the respondents they took some action and granted senior scale to the applicant from 31.08.1996. At the same time his suspension period from 02.02.1990 to 25.11.1990 was regularized and some back wages was paid to him by orders of the Principal KVS Banbasa dated 03.08.2000. But his request for taking his option for fixation of pay under the provisions of the relevant circular was still not acceded to.

6. For this reason the applicant still remained aggrieved and filed OA 576/03. By an interim order the Tribunal directed on 27.11.2003 that the respondents should prepare/update his service book. finally the Tribunal disposed of the OA by order dated 13.01.2005 in which respondent No. 4 was directed to decide the representation regarding correct fixation of pay scale, granting him senior scale and the question of the exercising the option and issue a reasoned and speaking order. The relevant portion of the judgment of the Tribunal is as follows:

"Shri N.P. Singh, learned counsel for the respondents stated at the bar that so far the relief regarding preparation of service book is concerned the same does not survive in view of the fact that the service book of the applicant has been prepared. If that be so the only grievance that now remains is in respect of the amount as shown in Ann. A/31. The matter, in our opinion, needs consideration and adjudication at the

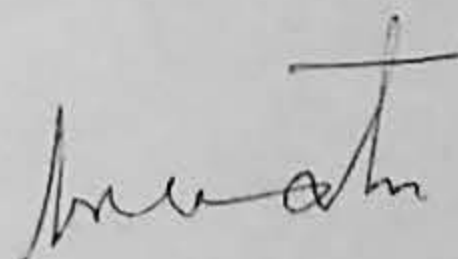


level of the competent authority. Therefore, we are of the considered view that the ends of justice shall be met if O.A. is disposed of with the direction to the respondent NO.4 to look into the grievances of the applicant and take appropriate decision in respect of his claim as shown in Annexure A 31 by means of reasoned and speaking order within a period of four months from the date of receipt of certified copy of this order along with his representation accompanied with the copy of Annexure A 31."

7. It may be seen from the history of this case that the claim of the applicant for fixation of pay has been looked into by the respondents time and again. This is not the first OA which has been filed by the applicant. In the previous OA also the Tribunal/Court considered the matter and issued direction to the respondents for applying their mind and arrive at a just and proper decision. While the Tribunal was considering OA 576 of 2003 a part of the dispute was resolved, but the remaining portion which still remained in dispute were as follows:

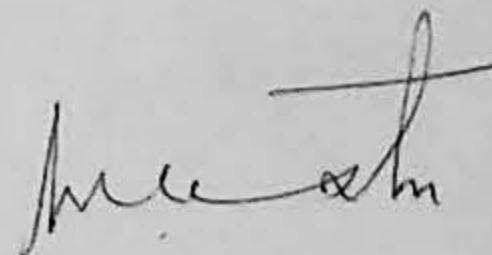
- a. Whether his pay on 1.1.1986 would have been 1480/- as claimed by the applicant (A 31), or it should have been 1440/-.
- b. Whether his pay on 1.1.1996 should have been Rs. 1900 or Rs. 1950/- as claimed by the applicant (A 31).
- c. Whether the applicant was given the opportunity to exercise his option for fixation of pay at the time of revision or whether he was denied such opportunity.
- d. Whether the opportunity of 40% fitmen benefit as per CCS (RP) Rules 1997 was duly given to the applicant or whether it has been denied.

8. The respondents have countered all the allegations in the OA. Firstly they have stated that the applicant had filed OA



3115/01 before the Principal Bench on the same relief. As the matter was decided by the Principal Bench it had reached finality and, therefore, the applicant cannot file another OA on the same grounds and relief. The principle of res-judicata should apply and debar him from filing the OA. We have applied our mind to this matter. The applicant had filed OA 576/03 even after the Principal Bench decided the issue in OA 3115/01. the Tribunal in its order directed the respondents to dispose of his representation as per rules and apply their mind to all the issues raised by the applicant. The applicant is aggrieved that it is not an appropriate order as per direction of the Tribunal. After, all the pleadings are exchanged, it is too late in the day to dismiss the OA on the ground of res-judicata. However, we are of the view that in this OA the Tribunal's responsibility is only to examine the impugned order in the light of the orders of the Tribunal in OA 576/03 and then come to a conclusion.

9. It has been stated by the respondents that in the revised scale (First revision) the applicant's pay was correctly fixed at Rs. 1440/- on 01.01.1986 with DNI on 01.08.1986. Necessary entry showing the correct fixation was made at page 4 of the Service Book with necessary attestation. Subsequently, pay of the applicant was fixed at Rs. 6025/- w.e.f. 01.01.1996 by giving 40% fitment benefit. It has been categorically stated by the respondents that as per the CCS (RP) Rules 1997 the benefit of 40% fitment can be availed of only once. It cannot be availed both on the revised and the pre-revised scale.

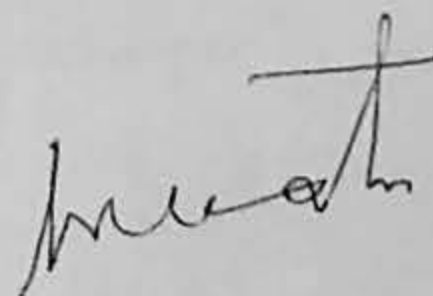


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10. The respondents have further stated that the applicant is trying to take advantage of the initial mistake committed in giving an additional increment in the year 1986. The first mistake was committed when an additional increment was given erroneously in the pay scale of 440-750. The respondents corrected the mistake at the appropriate level, but the applicant does not seem to be satisfied.

11. The respondents have further stated that the service book of the official was corrected as directed by the Hon'ble Court. Not only that it was produced at the Tribunal and the applicant perused the same (para 25 of the CA). The respondents have not committed any error nor has it violated any direction of the Hon'ble Court/Tribunal.

12. The applicant has alleged that he was not given the opportunity to exercise an option for fixation of pay . He has stated that after orders of the respondents dated 04.08.2000 (A6) he had exercised the option of fixation and made two representations, the first on 07.08.2000 to Principal Benbasa and the second on 27.10.2000 to Assistants Commissioner KVS Dehradun, but no copy has been attached to this OA. On the contrary the respondents averred (Para 18 of CA) the no option was ever exercised by him although he was free to do so. So his pay was fixed as per rules.



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13. Finally after assessing arguments of both sides, we decided to take a look at the impugned order dated 03.05.2005. it would be appropriate to extract the relevant portion of the impugned orders of the respondents as follows:

"Whereas the undersigned has received a representation dated 29.3.2005 received on 4.4.2005 from Sh. K.P. Dubey for compliance of order dated 13.1.2005 passed by the Hon'ble C.A.T, Allahabad Bench in the said O.A.

Whereas said Sh. K.P. Dubey as per annexure A 31 of the said OA has claimed his basic pay as on 1.1.86 to be Rs.1480/- and on 1.8.86 Rs. 1520/- and on 1.8.87 Rs. 1560/- (in fourth pay commission).

In compliance of the said order of the Hon'ble C.A.T Allahabad Bench the undersigned has gone through the matter of Annexure A 31 of the said OA and the standing rule applicable to the government employees. The facts are as under:-

In his service records basic pay of Sh. K.P. Dubey was wrongly recorded as Rs.1480/- as on 1.1.86 instead of Rs.1440/- due to clerical mistake which was rectified by showing his basic pay as Rs.1520/- on 1.8.87 as calculated below.

Basic pay as	On 1.1.86	Rs.1440/-
	On 1.8.86	Rs.1480/-
	On 1.8.87	Rs.1520/-

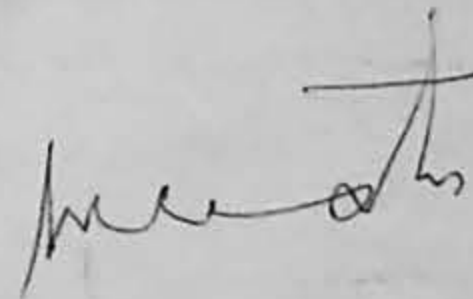
On perusal of his service records, it was found that no increment was withheld w.e.f. 1.8.1986. Sh. K.P. Dubey was drawing Rs. 460/- in the pre-revised scale of 440-20-500-25-750 on 1.1.86 and his pay was to be fixed at Rs.1440/- w.e.f 1.1.86. With DNI w.e.f 1.8.86 raising his pay to Rs.1480/- and further to Rs.1520/- w.e.f. 1.8.87 as per CCS (RP) Rules 1986 (fourth pay commission).

However as per direction from KVS (R.O) Dehradun vide letter No. F8-25./286/cc/2001 KVS/DDR/2575 dated 29.1.2003 necessary entry showing the correct pay fixation as per rules was made in his service book on page 4 with proper attestation on 22.3.2003 and the factual position was also conveyed to him vide letter No. F 2002-2003/PF/KPD/149 dated 3.5.2003 (copy of page 4 of service book and letter dated 03.05.2003 enclosed as Annexure A1 & A2 for reference).

In view of the above, there is no question of re-fixation of his pay w.e.f. 1.1.86 and hence question of payment of arrears does not arise.

As regard his claim made vide Annexure A/31 Sh. K.P. Dubey has claimed his basic pay as under by wrongly showing one increment ahead.

On 1/1/96	Rs. 1950
On 1/8/96	Rs. 2000
On 31/8/96	Rs. 2000 (Pre-revised)
On 31/8/96	Rs. 6900 (Revised Scale as per CCS (RP) Rules 97



As per service records and as per rules Sh. K.P. Dubey was drawing Rs. 1900/- as on 1.1.96 (in pre-revised scale) and his pay was fixed at Rs.6025/- w.e.f 1.1.96 in the scale 5500-175-9000 (revised pay) with DNI 01/08/96 vide KVS (RO) Jabalpur letter No. F-18-Accounts/98-KVS (JBP) dated 22.12.1999. After allowing increment on 1.8.96 Sh. K.P. Dubey was drawing his basic pay as Rs. 6200 w.e.f 1.8.96. Sh. K.P. Dubey was granted Sr. Scale w.e.f 31.8.96 in the pay scale of 6500-200-10500. Since he was drawing Rs.6200 as on 31.8.96 in the scale of 5500-175-9000, his pay was rightly fixed at Rs.6500 in Sr. Scale as on 31.8.96 as per FR 22 (1) (a) (2) & Account Code article 22C (Refer to annexure A3-1 & A3-2)

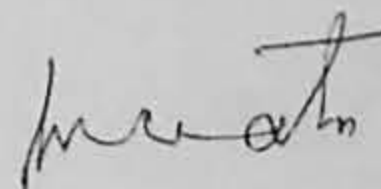
Since pay of Sh. K.P. Dubey was already fixed w.e.f 1.1.96 giving him the 40% fitment benefit as per CCS (RP) Rules 1997, it is not as per rule to allow him the said 40% fitment benefit again at the time of granting Sr. Scale as the Sr. Scale fixation was done as per FR 22 (1) (a) (2).

It is worthwhile to mention here that no option for pay fixation was submitted by Sh. K.P. Dubey within stipulated time, so his pay was fixed as per prevailing rules.

In view of the above facts, the rules do not permit refixation of pay w.e.f 31/8/96.

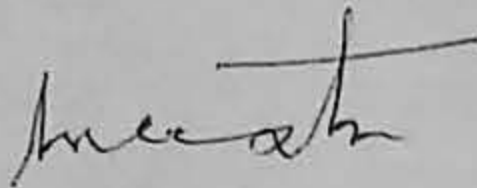
Therefore, Sh. K.P. Dubey is hereby informed that as his pay was rightly fixed w.e.f 1.1.86, 1.8.86, 1.1.96 and again w.e.f 31.8.96, his claim for payment of arrears does not bear any ground as per rules".

14. We have carefully looked at the above order in the light of the orders of the Tribunal on OA 576/03 as extracted above. We have earlier stated that the four points remained to be answered before finally disposing of this matter. These four points are at para 7 above. After looking at the orders of the respondents dated 03.05.2005 we are satisfied that the respondents have applied their mind to and answered all those points. Obviously, the option for pay fixation cannot remain open for ever. The question whether benefit of 40% fitment can be availed of twice both in revised and pre-revised scale has also been answered. The replies with regard to the fixation of pay on 01.01.1986 as well as 01.01.1996 alongwith with the DNI also seems to be satisfactory. Therefore there does not appear that any other question remains to be answered. The

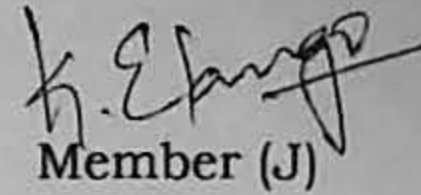


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matter has been agitated before the Tribunal/Court again and again. We are of the view that with the order dated 03.05.2005 it should be laid to rest as all the applicant's questions have been answered. We therefore do not find any merit in the OA, which we dismiss. No cost.



Member (A)



Member (J)

/pc/