

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
(CIRCUIT AT PORT BLAIR)

LIBRARY

O.A. 351/1427/2017

Date of order: 5.1.2021

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Lalita Nair,  
Retired Senior Lecturer of DIET,  
Andaman & Nicobar Administration,  
Port Blair,  
Aged about 65 years,  
W/o Shri A.K.S. Nair,  
R/o. DIET Complex Quarters,  
Garacharma, Port Blair.

.. Applicant

-Versus-

1. The Union of India,  
Through the Secretary to the  
Government of India,  
Ministry of Human Resource Development,  
(Department of Elementary Education & Literacy),  
Shastri Bhavan,  
New Delhi - 110 001.
2. The Lieutenant Governor,  
Andaman and Nicobar Islands,  
Raj Niwas,  
Port Blair.
3. The Chairman,  
Union of Public Service Commission,  
Sahajan Road,  
New Delhi.
4. The Chief Secretary,  
Andaman & Nicobar Administration,  
Port Blair.
5. The Principal Secretary (Education),  
Andaman & Nicobar Administration,  
Port Blair.
6. The Director,  
Directorate of Education,  
Andaman & Nicobar Administration,  
Port Blair.

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7. Deputy Director of Education (Peri),  
Directorate of Education,  
Andaman & Nicobar Administration,  
Port Blair.

.... Respondents

For the Applicant : Ms. A. Nag, Counsel  
For the Respondents : Mr. K.Rao, Counsel  
Mr. T. Lall, Counsel

**ORDER (Oral)**

**Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached this Tribunal in second stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "(a) An order/orders quashing the order dated 2<sup>nd</sup> March, 2017 issued by the Deputy Director of Education (Peri.), Directorate of Education, Andaman & Nicobar Administration, Port Blair.
- (b) An order/orders directing the respondent authorities to fix the pay band of the applicant @ Rs. 15600-39100 with grade of pay or Rs. 7600/- w.e.f. 16<sup>th</sup> March, 2010 which is corresponding to the pay scale of Rs. 12000-16500/-.
- (c) An order/order directing the respondent authorities to grant arrears of salary and retirement benefits to the applicant after fixing the pay scale in the aforesaid amount.
- (d) An order/orders directing the respondent authorities to grant all the consequential and monitory benefits to the applicant.
- (e) An order directing the respondent authorities to act in accordance with law.
- (f) An Order do issue directing the respondents to produce the records of the case before this Hon'ble Tribunal so that consciousnessable justice may be done.
- (g) Such other or further order direction or directions, as your Lordships deem fit and proper in the interest of justice."

2. The admitted facts in this matter are that the applicant was initially inducted as a Primary School Teacher (PGT) on 18.9.1975, was promoted to the post of TGT (Trained Graduate Teacher), thereafter to the post of PGT (Post

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Graduate Teacher) and finally promoted to the post of Vice-Principal on 29.8.2008.

While the applicant was functioning as a Post Graduate Teacher (PGT), she had applied for the post of Senior Lecturer in DIET (District Institute for Education & Training), Garacharma, South Andaman in 2005 in response to an advertisement dated 9<sup>th</sup> November, 2005. The terms and conditions as laid down in the said advertisement are contained in Annexure A-1 to the O.A.

The applicant was lastly promoted to the Gr. 'B' gazetted post of Vice-Principal /Headmistress SS in the scale of pay of Rs. 12000-375-16500/- with a Grade Pay of Rs. 5400/- which was later enhanced to Rs. 6600/-. Upon conclusion of the selection process to the post of Sr. Lecturer in DIET, the applicant was issued an appointment letter on 16.3.2010 and was engaged on deputation (ISTC) as a Senior Lecturer of DIET by UPSC and her scale was fixed on Rs. 15600-39100/- + Grade Pay Rs. 6600/-. The applicant superannuated on 31.8.2011.

The applicant had earlier approached this Tribunal In O.A. No. 2/AN/2012 in which she had primarily prayed for a Grade Pay of Rs. 7600/- with consequential benefits. The Tribunal disposed of this matter with the following directions:-

"5. Without deciding the matter on merits, at this stage, we would like to issue the following direction, as requested by the Learned Counsel for the applicant.

The Respondent appropriate authority shall issue a speaking order to her representation dated 15.12.2011 within a period of three months from the date of receipt of a copy of this order."

In compliance, the respondent authorities issued a speaking order in which her prayer was rejected primarily on the following grounds:-

"7. That on due consideration of representation dated 15.12.2011 of the applicant, it is to say that the pay scale of Rs. 15600-39100 with Grade Pay Rs. 6600/- granted to the applicant on her appointment to the post of Sr. Lecturer, DIET vide this office order No. 2559 dated 02/06/2010 was

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justified. The VI CPC never granted the replacement scale of Rs. 15600-39100/- with Grade Pay Rs. 7600/- to the post of Senior Lecturer, DIET.

8. Now Therefore, in view of the reasons narrated above, the prayer of the applicant for grant of Grade Pay of Rs. 7600/- cannot be granted in contrary to recommendations of VI CPC. The Department is under compulsion to follow the norms of Statutory Rules duly notified for every post and cannot act contrary to the Rules.

This is being issued in obedience of the order dated 9.10.2015 passed by the Hon'ble Central Administrative Tribunal, Circuit Bench at Port Blair in O.A. No. 02/AN/2012 (Smt. Lalita Nair -vs.- UOI & ors.).

Smt. Lalita Nair, Retd. Senior Lecturer, DIET may be informed accordingly."

Aggrieved with such speaking order, the applicant has approached this Tribunal in second stage litigation with the instant Original Application.

3. Ld. Counsel for the applicant would vociferously submit that while the applicant was functioning as Sr. Lecturer in DIET, the authorities had enhanced the Grade Pay of the Principal and the Education Officer/ Assistant Director of Education to Rs. 7600/- (Annexure A-7 to the O.A.).

Hence, as the applicant was last posted as Vice-Principal in the Education system, she claimed the Grade Pay of Rs. 7600/- at par with that granted to the Principal and preferred representations dated 12.4.2010 (Annexure A-4 to the O.A.) followed by an option dated 6.12.2020 (Annexure A-6 to the O.A.) and reminders dated 29.8.2011 and 5.12.2011, 15.12.2011 respectively. It was her final representation of 15.12.2011 (at Annexure A-6 to the O.A.) that was directed to be disposed of by the Tribunal in the first stage litigation.

The contentions of the applicant's representation of 15.12.2011 reads as follows:-



"From  
Lalita Nair,  
Sr. Lecturere (Retd.), DIET, Garacharma."

To  
The Asst. Secretary (Edn.),  
A&N Administration,  
Port Blair.

Fixation of Pay to the post of Sr. Lecturer of DIET in the revised scale of pay.

Sir,

In continuation of my representations dated 12.4.2010, 6.12.2010, 29.8.2011 and 5.12.2011, after meeting the Commissioner-cum-Secretary (Edn.) in person on 5<sup>th</sup> Dec 2011, I would like to mention below the following points to support my request for the revised scale of pay to the post of Senior Lecturer similar to the case of Principals of Education Department:-

1. The pre-revised scale of pay of Principals in the Dte of Education and the Senior Lecturer in the DIET, is one and the same prior to the Sixth Pay Commission (SPC), which is evident from the RRs of Principal & Sr. Lecturer (marked as A&B).
2. The SPC has revised the scale of pay of Principals from 10000-15200 to 12000-16500 with grade pay of Rs. 7600/- (Ref. is invited to extract of MoF notification No. GSR 622 (E) dt. 29.8.2008, marked as C) but there is no mention of the Sr. Lecturer in the SPC, which is a lone post in the Department at present.
3. The eligibility educational qualifications and experience required for the post of Senior Lecturer of DIET, is higher than that of Principals of Dte of Education, which is also evident from the RRs of Principals & Sr. Lecturer (Ref. is invited to A&B). It may be mentioned that the essential qualification required for the post of Principal is Master Degree and B.Ed with 10 years' teaching experience in Secondary School level, whereas the educational qualification required for Sr. Lecturer is good academic records with Master-Degree, M.Ed/MA (Edn) with 55% of marks and 5 years teaching experience in Teacher Education Institutions, which is also rare and higher level experience in comparison to that of secondary school level experience required for the post of Principal.
4. The post of Lecturer in State Institute of Education, carrying the same scale of pay of Principals of Education Department, and that the educational qualification and experience required for eligibility is also same as that of Principals. But, the Senior Lecturer of DIET is a higher post than that of Lecturer in so far as the qualifications and experience are concerned.

In view of the above, my request for the consideration of same pay scale of Principals to the post of Senior Lecturer in DIET is very clear and genuine, owing to the fact the entire posts from Primary School Teacher to Group A posts in the Education Department are upgraded, the same may kindly be got done for the post of Sr. Lecturer also at the earliest possible, since I have retired from the post on 31.8.2011.

Yours faithfully,

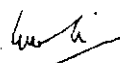
Encl: As above.

Dated: 15<sup>th</sup> December, 2011

(Lalita Nair)"

The response of the authorities to such representation are as under:-

- "7. That on due consideration of representation dated 15.12.2011 of the applicant, it is to say that the pay scale of Rs. 15600-39100 with Grade Pay Rs. 6600/- granted to the applicant on her appointment to the post of Sr.



Lecturer, DIET vide this office order No. 2559 dated 02/06/2010 was justified. The VI CPC never granted the replacement scale of Rs. 15600-39100/- with Grade Pay Rs. 7600/- to the post of Senior Lecturer, DIET.

8. Now Therefore, in view of the reasons narrated above, the prayer of the applicant for grant of Grade Pay of Rs. 7600/- cannot be granted in contrary to recommendations of VI CPC. The Department is under compulsion to follow the norms of Statutory Rules duly notified for every post and cannot act contrary to the Rules.

This is being issued in obedience of the order dated 9.10.2015 passed by the Hon'ble Central Administrative Tribunal, Circuit Bench at Port Blair in O.A. No. 02/AN/2012 (Smt. Lalita Nair -vs.- UOI & ors.).

Smt. Lalita Nair, Retd. Senior Lecturer, DIET may be informed accordingly."

4. On careful examination of the records, we are unable to find any fault with the reasoning of the respondent authorities that if the Sixth CPC had never recommended the Grade Pay of Rs. 7600/- to the post of Sr. Lecturer of DIET, the administration was not within its rights to violate the statutory rules notified for every post and grant the applicant the Grade Pay of Rs. 7600/- which would be at variance with the recommendations of Sixth CPC.

The applicant has not been able to bring before us any evidence that any Sr. Lecturer in DIET had been granted the Grade Pay of Rs. 7600/.

Rather, the applicant is relying on the fact that the Principal of the Educational Institutions have been granted Rs. 7600/- from 2008, and, accordingly, as the post of Lecturer in the DIET contains higher eligibility qualifications and experience to that of Principals, and, as because the post of Lecturers in the State Institute of Education carry the same pay scale of Principals of Education Department, she would be rightfully entitled to the Grade Pay of the Principals as decided vide notification dated 29.8.2008.

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5. It is a settled principle of governance that deputation posts are not necessarily borne on the same pay scale or Grade Pay as that of the substantive posts.

In **Babulal Jain v. State of MP, (2007) 6 SCC 180** it was held by the Hon'ble Apex Court that a deputationist transferred on deputation to a post carrying higher responsibilities would not be entitled to higher scale of pay in the absence of any channel of promotion to that post but would be entitled to allowance.

The applicant has also sought consequent retirement benefits. As per **Rule 33 of the CCS (Pension) Rules, 1972**, in case an employee who is on temporary deputation to a deputation post superannuates therefrom, he would not become subject to the rules and orders of the latter department and his pension would otherwise be calculated under the rules of the department of which he was a permanent employee.

In this context, the applicant was substantively a Vice-Principal whose Grade Pay admittedly was raised to Rs. 6600/- vide orders dated 22.6.2010 (Annexure A-4 to the O.A.).

Accordingly, the applicant would only be entitled to a Grade Pay of Rs. 6600/- while calculating her pensionary benefits upon superannuation. The applicant has not challenged the Sixth CPC's non-recommendation of Grade Pay of Rs. 7600/- to Sr. Lecturers of DIET.

Hence, the logic contained in the speaking order remains unassailed.

6. The applicant was quite within her rights to draw the higher Grade Pay, if promoted to the post of Principal upon reversion to her parent cadre but she chose not to opt for the same.

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Although the applicant had preferred certain options in her pay fixation as contained in Annexure A-6 to the O.A., we do not find any directions from the respondent authorities calling for such options, and, hence, would agree that such options were entirely voluntary in nature on the part of the applicant which would not be binding on the part of the respondents.

7. Hence, we do not find any merit in the applicant's claim for a higher Grade Pay of Rs. 7600/- and we would refrain from any intervention in the speaking order of the applicant in 2.3.2017 (Annexure A-11 to the O.A.) challenged in the instant O.A.

8. The O.A. fails to succeed. There will be no orders on costs.

(Dr. Nandita Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member