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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


O.A. No.471 of 2011

Cuttack, this the 23rd day of July, 2013

Mamata Patnaik & OrsApplicants
Union of India & OthersRespondents

FOR INSTRUCTION

1. Whether it be referred to reporters or not? ✓
2. Whether it be circulated to PB, New Delhi for circulation/report? ✓


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. NO.471 OF 2011

Cuttack this the 23rd day of July, 2013

CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. Mamata Pattnaik, aged about 51 years, D/o.Rajani Kanta Pattnaik
2. Sri Sanyasi Dakua, aged about 52 years, S/o. Arjuna Dakua
3. Chhabi Chakrabartty, aged about 52 years, D/o. Jamini Kanta Chakarbarty
4. Prafulla Kumar Lenka, aged about 57 years, S/o.Rama Chandra Lenka
5. Manoj Kumar Patnaik, aged about 51 years, S/o.Late Sarat Chandra Patnaik
6. Satya Narayan Acharya, aged about 50 years, S/o. late Harekrishna Acharya
7. Binod Chandra Mishra, aged about 49 years, S/o.late Jagannath Mishra
8. Sunita Pradhan, aged about 48 years, D/o. Sankar Pradhan
9. Rabi Narayan Sahu, aged about 52 years, S/o. late Basudev Sahu
10. Brundaban Mohapatra, aged about 49 years, Son of Late Krushna Mohan Mohapatra. [Inserted in compliance of the order of this Tribunal dated 1.8.2013]
11. Prasanta Kumar Pattanaik, aged about 43 years, S/o.Kasinath Patnaik.
12. R.Anand, aged about 40 years, S/o. R.Rudran
SI.No.1 to 11 are at present working as Civilian Education Instructor, Grade-I and SI.No.12 is at present working as Civilian Education Instructor, Grade-II in the Education Department, INS, Chilka, District-Khurda

...Applicants

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By the Advocate(s)-M/s.B.S.Tripathy, M.K.Rath
J.Pati, M.Bhagat

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Union of India represented through

1. The Secretary, Ministry of Defence, New Delhi-110 011
2. The Secretary, Ministry of Finance, Govt. of India, Department of Expenditure, North Block, New Delhi-110 001.
3. The Chief of the Naval Staff, Integrated Headquarters of Ministry of Defence (Navy), Sena Bhawan, New Delhi-110 011.
4. The Flag Officer Commanding in Chief, Headquarters, Southern Naval Command, Kochi-682 004
5. The Flag Officer Commanding in Chief, Eastern Naval Command, Naval Base, Visakhapatnam-530 014
6. The Commanding Officer, INS Chilka, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.D.K.Behera

ORDER

A.K.PATNAIK, MEMBER(J)

The applicants, in the above mentioned original application have challenged the order passed by Respondent No.2 in rejecting the proposal of the Ministry of Defence for granting the TGT scale of pay in favour of the applicants and the said order having been passed in an illegal and arbitrary manner the applicants have sought for quashing of the said order dated 11.03.2011 in annexure-A/9.

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2. It is the case of the applicants that they were appointed as Civilian Education Instructors (CEIs) in the Education Department of INS Chilka during different years in between 1981 to 1997 with a pay scale of Rs.440-750/-, at par with the pay scale of Trained Graduate Teachers (TGTs). At that time they were governed by the Recruitment Rules, 1979, which prescribed the minimum essential educational qualification "a degree from a recognized University with a diploma/degree in Teaching sound knowledge of Hindi" and the desirable qualification is "one year's experience in teaching". The applicants were imparting academic instructions to the Boys and ratings (non-matric entry) of the Indian Navy, but in course of time, the applicants have been imparting instructions to post matric recruits of the Navy and the entry qualification of the recruits has also been raised to +2 Science standard. The cadre of Civilian Educational Instructor is unique one in the entire Indian Navy having strength of less than 40 and there is no avenue of promotions as it is a non-gazetted, non-ministerial and non-industrial cadre. Therefore, since the inception of the cadre in the year 1956 the status and pay parity has been maintained and the applicants have been paid the scale of pay at par with TGTs of



Kendriya Vidyalaya as they are having necessary qualification as well as experience and whenever the pay scale of TGTs is up-graded, the said up-graded pay scale was also paid to the CEIs (the present applicants) from time to time. Even the 5th Central Pay Commission vide its recommendation in paragraph-63.84 had suggested that since the level of teaching imparted by them is up to Class-XII, parity with TGTs in Kendriya Vidyalaya may be granted and accordingly recommended to grant the pay scale of TGTs to the CEIs. While the matter stood thus, during the year 2006, a proposal was made by the Commanding Officer, INS Chilka for inclusion of the said recommendations made by the 5th CPC in the 6th CPC and subsequently, a strong recommendation for modification of pay scale and designation of the CEIs was also made vide letter dtd.23.07.2007 (Annexure-A/1). During the year 2008 when the recommendation of the 6th CPC was implemented, the applicants came to know that they have only given the normal replacement scale of pay at par with other non-teaching general cadres of Central Govt. instead of granting them the revised pay scale at par with TGTs as because the suggestions made for the CEIs were not included in the report and therefore, the Commanding Officer INS



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Chilka (Respondent No.6) vide letter dt.05.04.2008 requested the Respondent No.4 for inclusion of CEIs in the 6th CPC report (Annexure-A/2). In the meantime, Respondent No.5 vide letter dated 15.09.2008 implemented the recommendations of the 6th CPC without considering the case of the applicants and without specifying the pay structure of the CEIs and as such there is anomaly in the pay fixation. In the above background, the Respondent No.6 vide his letter dated 25.09.2008 requested the headquarters for necessary clarification regarding the revised pay structure of the CEIs (Annexure-A/3). The applicants, being aggrieved, also submitted individual representations before the Respondent No.6 requesting therein to review the recommendation of the 6th CPC by the Anomaly Committee. The said representations were also forwarded by the Commanding Officer (Respondent No.6) to Respondent No.5, who in his turn forwarded to the Chief of the Naval Staff (Respondent No.3) for necessary examination and consideration (Annexures-A/5 and A/6). Thereafter, the Respondent No.6 vide letter dt.26.04.2010 strongly recommended the case of the applicants to the Flag Officer (Respondent No.4) as well as to the Eastern Naval Commandant (Respondent No.5) for granting of pay packages

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at par with Post Graduate Teachers (Annexure-A/7). The applicants also came to know under the RTI Act that prior to 6th CPC there was no anomaly in the cadre of CEIs, but as per the recommendation of the Naval headquarter, the 6th CPC recommended grant of normal replacement scales for CEIs (Annexure-A/8). Although the Ministry of Defence submitted a proposal for revision of pay scale of CEIs, but the Ministry of Finance did not accept the same on the ground that the TGTs have B.Ed. as essential qualification whereas CEIs in Navy have B.Ed. as desirable qualification in the revised Recruitment Rules, 2002 (Annexure-A/9).

3. Per contra, the Respondents in their counter have stated that the applicants are not entitled for the pay scale of TGTs of Kendriya Vidyalaya as because the essential minimum qualification for the post of CEIs has been amended, wherein B.Ed. from a recognized University or equivalent is a desirable qualification as per the revised Recruitment Rules, 2002 while TGTs have B.Ed as minimum qualification. The Respondents have submitted that prior to the 6th CPC the pay scale of CEIs in Navy and TGTs of Kendriya Vidyalaya were at par, but the 6th CPC had recommended higher pay scales to TGTs but did not make any specific recommendation for the CEIs of Navy,

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which created disparity in the pay scales of the CEIs. The Respondents further stated that the recruitment rules for the post of CEIs were amended as per the advice of the UPSC, but they could not place any records to show the reasons for the said change in the RRs. However, in paragraph-6 of the counter, the Respondents have stated that since both the posts of CEIs and the TGTs carry the same duties, the integrated headquarters of Ministry of Defence had forwarded the proposal for up-gradation of pay scale of CEIs of Navy at par with TGTs for approval, but the Ministry of Finance did not accept the same on the ground of minimum educational qualification.

4, We have heard Shri B.S.Tripathy, learned counsel for the applicants and Shri D.K.Behera, learned Addl. Central Govt. Standing Counsel appearing on behalf of the Respondents.

5. Shri Tripathy submitted that the applicants are governed by the Recruitment Rules, 1979 as they have been recruited much prior to the Amended Recruitment Rules, which came into force from 2002 and as such the new Amended Recruitment Rules, 2002 have no application to the applicants and therefore, the action of the Respondents in

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degrading the applicants on the plea of new recruitment rules is illegal, arbitrary, discriminatory and contrary to the sound principles of law also. According to Shri Tripathy, it is an admitted fact that the applicants were getting equal scale of pay at par with the TGTs of Kendriya Vidyalaya since the date of their appointment and prior to the 6th CPC the pay scales of CEIs in Navy were at par with the TYGTs of Kendriya Vidyalaya, but after 6th CPC there has been disparity. In spite of specific recommendation of the 5th CPC in para-63.84 the case of the applicants was not properly recommended by the cadre controlling authority, for which the Ministry of Finance rejected the proposal for up-gradation of the pay scale of the CEIs. Shri Tripathy further submitted that although the Recruitment Rules have been amended since the year 2002 without any justifiable reasons, but in fact the same has not yet been implemented as because a single incumbent has not yet been recruited as per the said revised/ amended Recruitment Rules. Rather, additional Instructors are being recruited on contractual basis to meet the surpassing workload. Therefore, the applicants, who were recruited as per the recruitment rules, 1979 cannot be denied the pay at par with the TGTs of Kendriya Vidyalaya on the basis of the amended

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recruitment rules i.e, SRO-235/2002. According to Shri Tripathy, as per the proposal submitted vide letter dtd.20.11.2006 and 17.05.2010, the applicants have been shouldering the higher responsibilities having less avenue of promotion and the most of the CEIs who entered into the cadre as CEI-II (Group-B non-Gazetted), retired in the same group before getting promotion to the higher posts of CEI-I and Group-B Gazetted rank (CEO). It was due to such anomaly, the applicants became unequal with their counterparts i.e. TGTs and became downgraded although the nature of duties and responsibilities of the applicants are higher than the TGTs. Besides, the Respondents have already stopped recruitment of CEIs since the year 2000, which is much before the new recruitment rules came into force during the year 2002. Therefore, the amended recruitment rules, 2002 being inoperative and having no retrospective effect, the action of the Respondents in granting lesser pay scale to the applicants in comparison to the TGTs is not only illegal and arbitrary but also discriminatory and violative of Articles-14 and 16 of the Constitution of India.

Based on the above, Shri Tripathy submitted that it is quite clear that the stands taken by the Respondents in

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their counter are not sustainable and as such liable to be rejected and the order dtd.11.03.2011 in annexure-A/9 being not sustainable in the eye of law is liable to be quashed and the original application should be allowed with costs.

6. On the other hand Shri D.K.Behera, learned Addl. Central Govt. Standing Counsel by refuting the contentions of Shri Tripathy submitted that the Integrated Headquarters of Ministry of Defence (Navy) has not violated the Articles 14 and 16 of the Constitution of India, because all the grounds put forth by the applicants were submitted to the Ministry of Finance before taking a final decision on the matter.

7. The Government of India has introduced Assured Career Progression Scheme 1999 now Modified Assured Career Progression Scheme 2008 to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenue. These schemes are also applicable to the Civilian Education Instructors in Navy for financial up gradation at regular intervals subject to their meeting stipulated performance standards.

8. The Ministry of Finance has examined the proposal for upgradation of pay scales of CEIs in Navy at par with TGTs

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in its entirety but did not agree to the same vide their ID No.134833/E-III(A)/20120 dated 14 September 2012.

9. The proposal for upgradation of pay scales of Civilian education Instructors in Navy was strongly recommended with due justification by the Cadre Controlling Authority. The same was, however, not accepted by the Ministry of Finance for reasons indicated in the preceding paragraphs.

10. The recruitment of the Civilian Education Instructors (CEIs) in the Navy commenced in the year 1956. They were then^e imparting academic instructions to Boys Entry Sailors. The Boys Entry of the Sailors was upgraded to Matric Entry Recruits (MER) in the year 1977 and to Senior Secondary Recruits (SSR) in the year 2007. The induction of trainees with a higher entry qualification was necessitated due to requirement of higher proficiency levels to handle sophisticated weapons and equipment as well as job profile becoming increasingly technically inclined in the Indian navy. The training system and training needs also got revamped accordingly. With this background, the role of basic trainer (CEIs) has definitely got enhanced due to upgraded syllabus and requirement to teach higher educational subjects. This

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should ideally have culminated to an enhancement, or at least maintaining status quo instead of the ensuing reduction in status.

11. Consequent upon implementation of the 5th CPC recommendations, when the recruitment rules for the post of CEIs were amended, the qualification of B Ed was changed from essential to desirable as per the advice of UPSC. However, at this juncture there is nothing on record to show the reasons for the said change.

12. On the basis of recommendations of Departmental Anomaly Committee, the proposal was submitted to Ministry of Finance twice with due justification for approval. Thus the statement of the applicants that the Respondents did not act upon the recommendation made by the department Anomaly Committee is totally incorrect and the same is denied.

13. Lastly, Shri Behera submitted that the Respondents having no role to play in the action taken by the finance department, the O.A. has absolutely no merit, the same is liable to be dismissed.

14. Applicants have filed this Original Application for quashing the order dated 11.03.2011 in Annexure-A/9. to

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pass appropriate orders directing the Respondents/Department to consider the case of the applicants to grant them the pay scales of TGTs w.e.f. 01.01.2006 and to pass appropriate orders directing the Respondents Department to extend all the service and consequential benefits in favour of the applicants, to which they are eligible and entitled.

15. From the facts narrated above, it is quite clear that prior to Sixth Central Pay Commission, Civilian Education Instructors (CEIs) in the Navy were in receipt of pay scale at par with Trained Graduate Teachers (TGTs) in Kendriya Vidyalaya. For the sake of clarity the pay scales as per the 5th CPC recommendations are as under.

(a) CEIs in the Navy

Designation	Number of posts	Pay scales as per 5 th CPC
Civilian Education Officer	03	7500-12000
Civilian Education Instructor Grade I	29	6500-10500
Civilian Education Instructor Grade II	29	5500-9000

(b) TGTs in Kendriya Vidyalaya

Designation	Number of posts	Pay scales as per 5 th CPC
TGT Grade I	-	7500-12000
TGT Grade II	-	6500-10500
TGT Grade III	-	5500-9000

16. The Sixth Central Pay Commission vide paras 3.8.21 and 3.8.22 of its recommendations has upgraded the pay scales of TGTs but did not make any specific

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recommendations for CEIs of Indian Navy. By the recommendations of Sixth Central Pay Commission, the pay scales of TGTs and CEIs of Navy are as under:

(a) CEIs in Navy

Name of the post	Pay scales as per 5 th CPC	As per 6 th CPC	
		Pay scales	Grade Pay
Civilian Education Officer	7500-12000	PB-2(9300-34800)	Rs 4800
Civilian Education Instructor Grade I	6500-10500	-do-	Rs 4600
Civilian Education Instructor Grade II	5500-9000	-do-	Rs. 4200

(b) TGTs in Kendriya Vidyalaya

Name of the post	Pay scales as per 5 th CPC	As per 6 th CPC	
		Pay scales	Grade Pay
TGT Grade I	7500-12000	PB-2(9300-34800)	Rs. 5400
TGT Grade II	6500-10500	-do-	Rs 4800
TGT Grade III	5500-9000	-do-	Rs 4600

17. The above anomaly has created a sense of discrimination amongst CEIS of Navy as they have been performing the same duties as that of TGTs in Kendriya Vidyalaya. Thus, a proposal for upgradation of pay scales of CEIs at par with TGTs was taken up with Ministry of Defence for approval. The proposal was however was not accepted by the Ministry of Finance quoting 6th CPC vide their letter UO No.10/1/2010-IC dated 22 Mar 2010 placed at Annexure- R/1 which reads as under.

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(a) As far as pay scales are concerned, they are granted to a post based on the minimum educational qualification prescribed in the Recruitment Rules (RR) and not on the basis of educational qualification possessed by the present incumbent to the post.

(b) The post of TGT have B.Ed as minimum qualification. The minimum essential educational qualifications prescribed for the post of CEIs in Navy is Degree in Science with Physics and Mathematics as optional subject. B Ed has only been prescribed as desirable qualification. Therefore, no parity can be claimed between TGT and CEIs. Recruitment Rules for the posts of CEIs in Navy and TGT is filed respectively.

18. The above facts were brought to the notice of Departmental Anomaly Committee meeting which in turn requested Integrated Headquarters of Ministry of Defence (Navy) to re-process the case for upgradation of pay scales of CEIs at par with TGTs for the purpose of approval by the Ministry of finance. The proposal was re-submitted to the Ministry of Finance for approval on 17 Nov 2011 on the following grounds:

(a) The 5th CPC vide para 63.84 of its recommendations had equated CEIs of Navy with TGTs in terms of pay scales and grade structure. Hence parity in pay scales granted by one Commission and deprived by the subsequent Commission can be considered an anomaly.

(b) Civilian Education Instructors (CEIs) of the Navy are indeed teachers with another designation. They are imparting education to the Navy recruits upto the level of Class XII. It was simply on account of this

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fact that the 5th CPC had equated them at par with TGTs of Kendriya Vidyalayas.

(c) The statement of VI CPC {para 6(a)} as quoted by Ministry of Finance is more in the context of posts in identical scales which can not be held analogous, especially if their functions are totally diverse. Whereas in the case of CEIs of Navy it is a fact that their functions are the same as those of TGTs.

(d) As regards no specific recommendation in the VI CPC report about CEIs of Navy, it is mentioned here that parity with the TGTs was already granted by the 5th CPC to CEIs of Navy, that explains why the issue was not raised before the 6th CPC.

(e) As per the Ministry of Finance observation that minimum essential qualification in the case of TGTs is B Ed and in the case of CEIs is only a desirable qualification, it is stated that in the case of CEIs also B Ed was an essential qualification till 2002. Consequent upon implementation of 5th Central Pay Commission recommendations, when the RRs for the posts of CEIs were amended, the same was changed from essential to desirable as advised by the UPSC. At this juncture, there is nothing on record to show the exact reasons for such amendment. This may presumably be to attract more teachers and to retain them in Government jobs. The 6th CPC on the same principle was inclined to recommend higher starting pay for the teachers from Primary Teachers onwards. (Para 3.8.22 of the 6th CPC Recommendations refers).

(f) There are now only 33 persons in this cadre and all of them were recruited before amendment in RRs and possess B Ed degree. Nevertheless amendment to RRs incorporating B Ed as essential qualification in respect of CEIs is being deliberated upon.

(g) The amendment of minimum educational qualification made in the year 2002 is prospective in nature and has no applicability in the case of the CEIs who have rendered service of more than 25

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years and have been granted the pay scales of TGTs even after the said amendment, and as such the individuals are governed by the Recruitment Rules 1979 and therefore the provisions contained in the amended Recruitment Rules 2002 has no applicability in the case of these 33 CEIs.

(h) The 33 CEIs recruited based on SRO 165 of 1979, which has B Ed as an essential qualification may be granted upgraded pay scales at par with TGTs of Kendriya Vidyalaya, because amended Recruitment Rules 2002 has no applicability in their case.

(i) The case for amendment to RR 282/2002 incorporating B Ed as essential qualification is being reviewed.

(j) The 33 CEIs recruited based on the SRO 165 of 1979 which has B Ed as an essential qualification may be granted upgraded pay scales at par with TGTs of Kendriya Vidyalaya because, amended Recruitment Rules 2002 has no applicability in their cases.

19. The Ministry of Finance again did not accept the above proposal on the grounds that the RRs of CEI in Navy were amended in 2002 to the effect that their educational qualifications were downgraded from "degree/diploma in teaching as essential to degree/diploma in teaching as only desirable". This makes the post of CEI in Navy on a different and somewhat lower pedestal vis-à-vis TGTs and thus not found feasible for parity in terms of pay. In this regard, the Ministry of Finance ID No.134833/E-III(A)/2002 dated 14 September 2012 is relevant (Annexure R/2,3,4).

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20. That the Ministry of Finance vide their letter UO No.10/1/2010-1c dated 22 March 2010 (Annexure-R/1) has held that, as far as pay scales are concerned, they are granted to a post based on minimum educational qualifications prescribed in the Recruitment Rules. TGTs have B Ed as essential qualifications whereas CEIs in Navy have B Ed as desirable qualification in RRs. Hence no parity can be granted between TGTs and CEIs in Navy.

21. Since the anomaly in pay scales of Civilian Education Instructors in Navy had arisen out of the implementation of the 6th CPC recommendations, it was duly communicated to the Departmental Anomalies committee constituted by Ministry of Defence for necessary action. The departmental Anomaly Committee examined the said anomaly and decided that matter for upgradation of pay scales of CEIs may be taken up again with Ministry of Finance for approval. The proposal was accordingly re-submitted to Ministry of Finance on 20 Nov 11 with due justification for grant of uppgaded pay scales to CEIs but the same was however, not accepted again by Ministry of Finance vide their letter ID No.134833/E-III(A)/20120 dated 14 September 2012 (Annexure R/4). It reveals that the grounds that the existing

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CEIs were recruited on old Recruitment Rules (SRO 165/1979) which has B Ed as essential qualifications and the amended Recruitment Rules (SRO 282/2002) has no applicability in their case, where properly highlighted while re-submitting the proposal to Ministry of Finance for approval. But the same however was not accepted by the Ministry of Finance vide their ID No.134833/E-III(A)/20120 dated 14 September 2012 (Annexure R/4).

22. We have considered the rival submissions of the learned counsel for both the sides and given our anxious thoughts to the arguments advanced at the Bar.

23. It is an admitted position that while the applicants were recruited as CEIs, B.Ed. was the essential qualification and this being the genesis of the matter, the 5th CPC did not alter the pay scale of the applicants at par with TGTs of Kendriya Vidyalaya which was a long drawn process and accordingly, as per its recommendations, the pay scale of CEIs remained in tact at par with TGTs of Kendriya Vidyalaya. It is the only stand point of the Respondents that pay scale is determined with reference to qualification prescribed for the post and since the qualification B.Ed. presently is desirable qualification for the recruitment to the post of CEIs in view of

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amendment to the Recruitment Rules that had taken place in the year 2000, the applicants are not entitled to pay scale at par with TGTs of Kendriya Vidyalaya.

24. In the above context, the ^hsort point that arises for consideration is whether by the amendment of Recruitment Rules in the year 2002, the service conditions of the applicant who were recruited in between 1981-1997, i.e., prior to amended Recruitment Rules, should undergo change.

25. There is no dispute that the Amended Recruitment Rules are having the prospective application, i.e., with effect from the date it was so notified in year 2002. Therefore, the change of B.Ed. as an 'essential qualification' to that of 'desirable qualification' in the year 2002 has no impetus whatsoever in so far as applicants who were recruited in the years 1981-1997, i.e., prior to amendment of the Recruitment Rules are concerned. Therefore, by no stretch of imagination their service conditions can be governed under the amended Recruitment Rules which stand to their disadvantages. Therefore, the pay parity which was perpetuating at par with TGTs of Kendriya Vidyalaya in so far as applicants are concerned has to hold good as their service conditions are not governed by the amended Recruitment Rules, 2002.

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26. In consideration of the above, we direct Respondent No.2, i.e., Secretary, Ministry of Finance, Government of India, to look into the matter afresh having regard to what has been observed ~~and~~ above and in the light of the proposal submitted by the Ministry of Defence vide letter date 17.11.2011, as quoted above, and pass appropriate orders within a period of ninety days from the date of receipt of this order. In the circumstances, the impugned order dated 11.03.2011 in annexure-A/9 is hereby quashed.

27. With the above observation and direction, this O.A. is disposed of. No costs.



(R.C.MISRA)
MEMBER(A)



(A.K.PATNAIK)
MEMBER(J)