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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.399 of 2009

Sukanta Kumar Pati Applicant

Vs

UOI & Ors. Respondents

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Order dated - 04-08-2011.

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

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Applicant who is working as a Catering Assistant in Jawahar Navodaya Vidyalaya, Sundergarh, in this OA filed U/s.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- "i) Pass orders setting aside/quashing order dated 09.03.2009 of Respondent No. 1 (Annexure-A/4);
- ii) Pass orders directing the Respondents to put the applicant in pay band of Rs.9300-34800/- and Grade Pay of Rs.4200/- with effect from 01-01-2006;
- iii) Pass orders directing the Respondents to give Special Allowance of 10% of Band Pay/Grade Pay to the Applicant w.e.f. 01-01-2006;
- iv) Pass orders directing the Respondents to calculate the arrear emolument/entitlement of the applicant and pay him forthwith;
- v) And pass such other order/orders, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice and allow the Original Application."

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2. The Respondents filed their counter objecting to the stand taken by the Applicant in support of the aforesaid relief. But despite opportunity, no rejoinder has been filed by the Applicant.

3. We have heard Learned Counsel for both sides and perused the materials placed on record.

It was contended by Learned Counsel for the Applicant that similar matter came up for consideration before the Ernakulam Bench of the Tribunal in OA NO. 389 of 2009 which was disposed of on 5th day of August, 2010 allowing the prayer of the Applicant and following the Ernakulam Bench decision of this Tribunal, referred to above, the Principal Bench of the Tribunal also allowed the OA No. 1032 of 2010 on 4th day of April, 2011. Based on the aforesaid decisions, the Respondents held 47th Finance Committee Meeting on 10th February, 2011 under the chairmanship of Additional Secretary and Financial Adviser, Ministry of Human Resource Development and the Joint Secretary (SE) Department of School Education and Literacy, Ministry of Human Resource Development, Commissioner, Navodaya Vidyalaya Samiti and Joint Commissioner (Admn.) Navodaya Vidyalaya Samiti was nominated as the Members. The minutes prepared were duly forwarded vide F.No.1-14/2010-NVS (F&A) dated 18.2.2011 to all concerned for confirmation, ^{while} ~~which~~ placing

copy of the order of the Ernakulam Bench, Principal Bench and copy of the letter No. F.No.1-14/2010-NVS (F&A) dated 18.2.2011 (enclosing thereto copy of the minutes) before us today the Learned Counsel for the Applicant prayed that necessary direction may be issued to the Ministry of HRD to take a decision at an early date as according to the Applicant's Counsel the confirmation is still awaited. We have perused the above orders. For clarity, full text of the order of the Ernakulam Bench and Principal Bench are re produced herein below:

"O.A. NO. 389/2009 Dated this the 5th day of August, 2010

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants who are working as Catering Assistants in Jawahar Navodaya Vidyalayas in the Kerala Region, challenge the denial of appropriate pay scale and special allowance as has been recommended by VI CPC and non fixation of their working hours.

2 The applicants submitted that the mess workers like the Catering Assistants work for about 18 hours a day without enjoying Sundays and holidays. A Catering Assistant has to take care of the food requirement of about 600 students. As per the statutory recruitment rules, the minimum educational qualifications was Senior Secondary School with three year Diploma in Hotel Management and Catering. However, this was modified to Secondary School with three year Diploma. Though they were placed under teaching cadre, subsequently they were changed to non-teaching cadre. According to them, they are identically placed with the Catering Assistants working in Oak Grove School under the Railway Ministry and Military Schools under the Ministry of Defence. Therefore, they contend that they are entitled to the same pay scale granted to the Caterian Assistants in Oak Grove School/Military Schools. Hence, they filed this O.A to direct the respondents 1 & 2 to assign them PB-2 pay band in the pay scale of Rs. 9300-34800 with the grade pay of Rs. 4200/- w.e.f. 1.1.2006, to grant special allowance at the rate of 10% of pay and grade pay, to create promotional avenue, to fix working hours and to quash Annexure A-VII. The VI CPC has recommended a special allowance at the rate of 10% of pay band and grade pay for teachers and other residential staff. Therefore, denial of the same is discriminatory. The Government is bound to accept the recommendations of the expert body like the CPC, the promotional prospects of them are bleak as there is no provision for promotion, the non-fixation of working hours is unconstitutional, illegal and unsustainable.

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3 The respondents 3 & 4 filed separate reply statement. They stated that the Samiti which is subject to financial control by the 1st respondent is not in a position to implement the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200/- to the applicants. They submitted that the recommendations made by the VI CPC has not been approved by the Ministry of Human Resources Development in respect of all the non-teaching category. They admitted that there is no avenue for promotion provided in the cadre of Catering Assistants. However, they are granted two financial upgradations on completion of 12/24 years of service under the ACP Scheme. They submitted that all the residential staff in the Vidyalayas are expected to work for 18 hours a day and that the applicants alone are not discriminated against.

4 The respondents 1 & 2 in their reply statement submitted that the provision of promotional avenues etc. to the Catering Assistants are policy decision of the Government which cannot be challenged in a Court. They submitted that Navodaya Vidyalayas are residential schools set up in rural areas providing free education to the rural children. Therefore, the duty hours of the applicants are fixed on the basis of job requirement. There is no reason or logic in comparing the Jawahar Navodaya Vidyalayas with special schools run by the Ministry of Defence or Ministry of Railways. As per the policy of the respondents, all the residential staff are expected to be on duty for 24 hours a day and 7 days per week. The special allowance of 10% of the pay scale and grade pay is declined in respect of all non-teaching staff. There is no discrimination as against the applicants. They further stated that even though there are no chances for promotion there is provision for financial upgradation under the ACP Scheme.

5 The applicants filed rejoinder reiterating their averments in the O.A. They further stated that the non-acceptance of the recommendations of the VI CPC is arbitrary and discriminatory and infringement of the fundamental rights guaranteed under the Constitution of India.

6 We have heard learned counsel for the parties and have gone through the records produced before us.

7 We notice that the Catering Assistants/Mess employees in the Jawahar Navodaya Vidyalayas are admittedly doing 18 hours work daily and 126 hours in a week whereas the other non-teaching staff like UDC/LDC etc. are doing 11 hours per day and 77 hours in a week. However, the Catering Assistant was clubbed with UDC and was drawing the pay scale of Rs. 1200-1800 during IV CPC, Rs. 4000-6000 during V CPC.

The VI CPC in its report at para 7.21.3 stated as follows:

7.21.3 High pay scales have been demanded for the teaching staff and Mess Workers of Navodaya Vidyalayas on the grounds that they have to put in higher hours of work every day of the week as compared to the staff working in day schools. They have also demanded introduction of pension scheme. Navodaya Vidyalayas are autonomous and as such are not covered under the terms of reference of the Commission. While no recommendation can be made in their case, however, their demand appears justified especially as the teachers and staff working in these schools will have to put in greater efforts vis-a-vis similar employees working in day schools. While the Commission makes no recommendation for residential allowance, because their terms of reference do not include Navodaya Vidyalayas, the Government should consider grant of special allowance in these schools on par with that being recommended by the Commission for Military Schools in Ministry of Defence and the Oak Grove School in

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Ministry of Railways. A similar dispensation can be considered for Sainik Schools as well.

The Commission at para 7.36.93 dealing with Oak Grove School, recommended as follows:

7.36.93: Teaching Staff in Oak Grove School Railways run residential school called Oak Grove School at Jharipani, Mussoorie. The teaching cadre in the school comprises Assistant Mistresses who are on par with Primary School Teachers, TGTs and PGTs. The Commission has made recommendations for various grades of Teachers in the Chapter on Common Categories. These recommendations will equally apply to the Teachers in Oak Grove School with the Assistant Mistresses being equated to Primary School Teachers. This relativity should be maintained in future as well. Else where, the Commission has recommended a special allowance of 10% for Military Schools on account of special functions that need to be performed by Teachers/other residential staff working in the residential schools. Teachers and other residential staff in Oak Grove School are also similarly placed. Accordingly, a special allowance is recommended for Teachers/other residential staff in Oak Grove School. The allowance shall be payable at the rate of 10% of pay band and grade pay as recommended in the case of Military Schools.

Regarding the teachers and other staff in the Military schools the Commission recommended as follows:

7.10.21:-Teachers in Military Schools

Higher pay scales for Teachers in Military Schools have been demanded. It is seen that presently the Assistant Masters in these schools are in the same pay scale as the entry grade of Trained Graduate Teachers i.e. TGT-III. The next higher post of Masters Gazetted is in the scale of Rs. 7500-12000 that corresponds to the Apex scale of Trained Graduate Teacher i.e. TGT-I. The Commission has recommended upgradation of the pay scales of common category of teachers with TGT-III being placed in the pay scale of Rs. 7450-11500 and TGT-I being extended the scale of Rs. 8000-13500. To maintain the existing parity between the posts of Masters and Assistant Masters vis-a-vis the various grades of TGTs, a similar dispensation will need to be extended in case of former. The Commission, accordingly recommends that the post of Assistant Master in Military Schools may be placed in the scale of Rs. 7450-11500 Corresponding to the revised pay band PB-2 of Rs. 8700-34800 along with a grade pay of Rs. 4600. Master Gazetted shall be placed in scale of Rs. 8000-13500 corresponding to the revised pay band PB-3 of Rs. 15600-39100 along with a grade pay of Rs. 5400. Further, as these schools are residential schools, a special allowances at the rate of 10% of the pay band and grade pay shall also be paid to the teachers librarians and other staff associated with teaching in these schools. This dispensation will also be extended to RIMC Dehradun. A similar allowance can be considered for analogous posts in Sainik Schools that are also residential schools being run as an autonomous organization under the Ministry of Defence

Based on the recommendations of the VI CPC to similarly situated employees, the applicants contended that they are also entitled to the same scale of pay and special allowances granted to the mess employees of the schools referred to above.

8 Jawahar Navodaya Vidyalayas are residential schools upto Senior Secondary level set up with the noble intention of providing better educational facilities for economically backward children in rural areas. The students and



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teachers are required to stay in the Vidyalaya campus. The teaching staff and mess workers of the Vidyalayas are working more than 18 hours per day. They have to work on holidays including public holidays, 2nd Saturdays and Sundays. While a teacher/non-teaching staff in the Kendriya Vidyalayas which is also a society under the Ministry of Human Resources, work for 6.30 hours per day, they are getting more pay than the Navodaya Vidyalaya staff who work for more than 18 hours per day.

9 In this Application we are concerned with grievances of the Catering Assistants in the Navodaya Vidyalayas. Admittedly they have to be present in the Vidyalayas to take care of basic needs of the students and that they are not given any compensatory off in lieu of working on holidays or any overtime or honorarium for putting in extra hours of duty. They have to reside within the campus. Thus, they are integral part of the Vidyalaya. The arduous nature of duty of the applicants have not been taken into consideration by the 1st and 2nd respondents while revising the pay scale.

10 Another ground raised by the applicants is that they have no promotional avenues. This has been answered by the respondents that the applicants are eligible for financial upgradation under the ACP/ MACP Schemes. In this case the Principal Bench of the Tribunal in O.A.2091/2007 dated 10.12.2008 considered the matter and directed respondents to expedite their consideration to create promotional avenue in consultation with the Government. No action appears to have been taken so far.

11 The Navodaya Vidyalaya Samit is a Society registered under the Societies Registration Act, 1860. Though the Vidyalaya is fully financed by the Government of India, the pay scales recommended by the Central Pay Commissions are not automatically followed in the Vidyalaya. The Governing body of the Society has to deliberate on the service matters of its employees and take a decision as in the case of Kendriya Vidyalaya, to improve the scale of pay and other facilities to the staff, keeping in view that the Navodaya Vidyalaya is a residential school where the teachers and other staff including the applicants are required to stay within the campus and work for long hours in all days.

12 The VI CPC have taken the stand that the Navodaya Vidyalayas were not covered under the terms of reference of the Commission. However, the Commission have opined that their demands appear to be justified and suggested pay scales and allowances on par with the Military Schools in Ministry of Defence and Oak Grove School in Ministry of Railways.

13 We have an occasion to consider the case of promotion of Staff Car Drivers in the Kendriya Vidyalaya. The Department of Personnel & Training had introduced a scheme of promotion of Staff Car Drivers in 1993 and directed the manner in which promotion is to be effected vide its OM No. 22036/1/92-Estt(O) dated 30.11.93. The Kendriya Vidyalaya Sangathan, also adopted the same promotion scheme to Staff Car Drivers, sometime in 1999. Under this scheme, 3 grades were introduced wherein the Driver in ordinary grade moves to Grade-II in 9 years and from there to Grade-I in another 6 years subject to availability of vacancy in Grade-II and Grade-I in the ratio fixed as 55:25:20 for Grade -II and I. In compliance with an order from the Principal Bench New Delhi, even a special grade after Grade-I was created and the ratio was revised vide DOPTs OM dated 15.2.2001 in the ratio 30:30:35:5, according to which Grade-I Driver can be promoted to Special grade after 3 years service, within 5% of total number of vacancies, The pay scales granted to various Drivers are given below:

V CPC

1 Driver Ord. Grade Rs. 3050-4590

- 2 Driver Grade-II Rs. 4000-6000
3 Driver Grade-I Rs. 4500-7000
4 Driver Special Grade Rs. 5000-8000

In the case of Primary School Teachers, the following three scale of pay were recommended by IV CPC and accepted by the Government.:

- Entry Scale Rs.1200-2040
Senior Scale Rs.1400-2600
Selection Scale Rs.1640-2900

In the case of Librarians also, libraries are categorised as A,B, C and the scale of pay fixed accordingly.

14 Hence, we are of the view that a scheme fixing three or four grades of Catering Assistants in the Navodaya Vidyalayas should provide a practical solution for giving them timely promotion with suitable upgradation in pay, But for the fact that Government was keen to insist on the students getting nutritious and balanced diet, there was no need to recruit Catering Assistants, with Diploma in Catering management. They were expected to plan delicious, tasty and healthy food so that the children will eat proper food instead of skipping meals. If that objective is achieved, then these applicants have to be suitably compensated to keep their morale up. Even in the case of engineering cadres where degree was made compulsory, now, a certain per centage of posts is earmarked for Diploma holders for promotion up to Superintending Engineer in units under the ICAR. Therefore, there is a strong case for higher promotional avenues and enhancement of pay scales of the applicants.

15 Therefore, we direct the 1st respondent to evolve a scheme to grant higher pay scale, better career prospects and fix their working hours etc. to the Catering Assistants in the Navodaya Vidyalayas. The Governing body of the Jawahar Navodaya Vidyalaya Samiti would have to deliberate on the issues and pass a resolution proposing the pay scales of the applicants, keeping in mind the case of the applicants as projected in this O.A and our observations above. They are also entitled to 10% of the pay or a lump sum amount of extra allowance per mensem, as they are required to be available in the Vidyalaya and work for more than 18 hours a day, on all days.

16 In the result, we direct the 1st respondent to call meeting of the Governing body of the Jawahar Navodaya Samiti, deliberate and reconsider the following issues, as early as possible at any rate within three months from the date of receipt of this order:

- (i) to grant higher pay scale w.e.f. 1.1.2006
- (ii) to grant special allowance @ 10% of pay.
- (iii) to evolve a scheme for promotion as in the case of Drivers /Teachers, etc. referred to above
- (iv) to fix the working hours

15 The O.A. is disposed of as above. No costs."

The order of the PB in OA No. 1032/2010, dated the

4th day of April, 2011 reads as under:

"O R D E R (Oral)

Mrs. Meera Chhibber, Member (J)

Applicant No.1 is Jawahar Navodaya Vidyalaya Catering Assistant and Mess Welfare Association and other applicants are working as Catering Assistant in Jawahar Navodaya Vidyalaya and have sought the following relief

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(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the recruitment rules for the post of catering assistant only to the extent by which minimum qualification prescribed as 10th Class/Secondary School Examination and pass an order directing the respondent to prescribe at least 10+2 (Senior Secondary Examination) qualification in the recruitment rules to the post of catering assistant and consequently pass an order of considering the case of the applicants for revision of the pay scale on the basis of revised education qualification.

(ii) That the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondents to grant the revised pay scale of Rs.9300-34800/- with grade pay of Rs.4200/- to the applicants with effect from 1.1.2006 with all consequential benefits including the arrears of difference of pay and allowances.

2. It is stated by the counsel for the applicants that as per the Recruitment Rules for the post of Catering Assistant, required educational and other qualifications are Secondary School (Xth class) pass and 3 years diploma in Catering or equivalent from an institution recognized by Ministry of Tourism Government of India/State Government or pass Sr. Secondary (Class-XII) from CBSE with Hotel Management and Catering as vocational subject and at least one year experience in catering or passed senior secondary (Class-XII) or equivalent and one year diploma in catering or equivalent from a recognized institution with 3 years experience in catering in reputed institutions/hotels or Trade proficiency Certificate in catering with a minimum 10 years service in Defence Services on regular establishment (for ex-Serviceman only), whereas there is no Diploma of 3 years for X Class pass. Only diploma which is available in the market is for 10+2 pass and because of this deficiency mentioned in the Recruitment Rules, applicants are being paid the lesser pay scale and same is not being revised.

3. Applicants have placed reliance on the judgment of Ernakulam Bench of the Tribunal dated 05.08.2010 given in OA No.389/2009, whereby the following orders have been passed:

In the result, we direct the 1st respondent to call meeting of the Governing body of the Jawahar Navodaya Samiti, deliberate and reconsider the following issues, as early as possible at any rate within three months from the date of receipt of this order :-

- (i) to grant higher pay scale w.e.f. 1.1.2006.
- (ii) to grant special allowance @ 10% of pay.
- (iii) to evolve a scheme for promotion as in the case of Drivers/Teachers etc. referred to above.
- (iv) to fix the working hours.

4. Respondents were given number of opportunities to file the reply but in spite of cost being imposed on them, till date no reply has been filed. Though counsel for the respondents disputed right of the applicants to challenge the Recruitment Rules but he submitted that since Ernakulam Bench has already taken a view, this OA may be disposed of in terms of the order passed by the Ernakulam Bench.

5. We have heard both the counsel and perused the pleadings also.

6. Since judgment had already been delivered by the Ernakulam Bench in OA No.389/2009 and they have recorded certain findings with a direction to the respondents to consider the issues framed by them, therefore, this OA is disposed of in terms of the order passed by the Ernakulam Bench as quoted above. Respondents shall also consider the claim of the applicants with regard to the prayer (i) as it is stated by the counsel for the applicants that a Committee has already been constituted for the purpose. The needful should


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be done within a period of six months from the date of receipt of a copy of this order under intimation to the applicants.

7. With the above direction, the OA stands disposed of. No order as to costs."

4. Respondents' Counsel could not throw any light on the outcome of the decision taken on the minutes of the 47th Meeting of Finance Committee of Navodaya Vidyalaya Samiti held on 10th February, 2011 which was held in compliance of the orders of the Tribunal and was duly approved by the Additional Secretary and Financial Adviser (HRD) and Chairman, Finance Committee of NVS although the minutes of the Committee have been circulated since 18.02.2011 for confirmation. In view of the above, the Respondents are hereby directed to take an early decision on the minutes circulated vide F.No.1-14/2010-NVS (F&A) dated 18.2.2011 and the said decision (pursuant to the minutes of the 47th Meeting of the Finance Committee of NVS) shall govern the case of the present Applicant also.

5. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.


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


(C.R.MOHAPATRA)
Member (Admn.)