

13

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

O.A.NO.347/2010 WITH MA 194/2010

Reserved on: 13.07.2012

Date of order: 03.08.2012

CORAM

HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER
HON'BLE MR. B K SINHA, ADMINISTRATIVE MEMBER

Shri Badri Narayan Gehlot,
S/o Sri-Bhanu Ramji Gehlot,
Aged 61 years, R/o 73, Malviya Nagar,
Air Force, Jodhpur (Raj)
(Ex.TGT under Respondent No.2)

...Applicant

(By Advocate Mr. K.K.Shah)

Vs.

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110 016.
2. Assistant Commissioner,
Kendriya Vidyalaya Sangathan (RO)
92, Gandhi Nagar Marg,
Bajaj Nagar, Jaipur-302015.
...Respondents

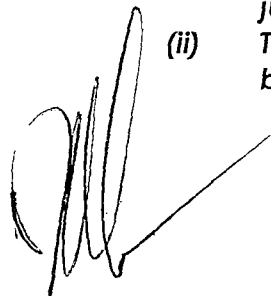
(By Advocate Ms V.S. Gurjar)

ORDER

Per: B K Sinha, Administrative Member

The instant OA is not against any impugned order but against the non-action of the respondents in not giving parity in the pay scale with other similarly situated persons who are junior to him.

Relief(s) sought

- (i) That the Original Application may kindly be allowed and by issuance of an appropriate order or direction the applicant's pay scale may please be stepped up at par with the persons who were junior to him and similarly situated person w.e.f 1.1.1996.
 - (ii) The applicant may please be granted all the consequential benefits after stepping up of his pay scale.
- 

- (iii) *The applicant may please be awarded interest @ 18% on the total amount becoming payable after stepping up of his pay scale w.e.f. 1.1.96 to till date.*
- (iv) *That the applicant may please be awarded exemplary costs.*
- (v) *That applicant may please be awarded any other relief which this Hon'ble Tribunal deems just and proper in the case.*

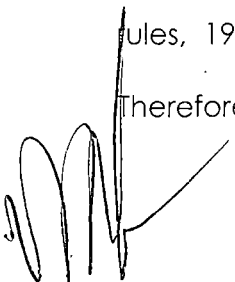
Case of the applicant

2. The case of the applicant in brief is that the applicant joined the services of Kendriya Vidyalaya Sangathan (KVS for short) on 2.8.1978 as a Primary Teacher and on 20.7.1981 he was appointed as TGT (Maths) at Kendriya Vidyalaya, Kota, Rajasthan. As on 31.12.1995 the basic pay of the applicant was Rs. 2100/-. On implementation of the 5th Central Pay Commission Report the pay of the applicant was fixed at Rs. 6900/- w.e.f. 1.7.1996. He was given increment in the pre-revised scale on 1.7.1995 and on implementation of the 5th CPC report, his next increment was given on 1.7.1996 and it continued in every year in July. Similarly situated persons like the applicant working in other schools were also fixed on Rs. 6900/-, but when few of them raised objection, their pay was stepped up and their pay re-fixed at Rs. 7100/- as on 1.1.1996. Copy of one such fixation is produced as Annexure.A/1. But the benefits of this re-fixation were not granted to the applicant. He submits that his pay was wrongly fixed from 1.7.1996 instead of 1.1.1996. He has mentioned the name of one Shri B.L.Sharma, who joined one year later the applicant joined service, whose pay as on 31.12.1995 was Rs.2060/- was fixed on Rs.7100/- w.e.f. 1.1.1996. His date of increment was 1.9.1995 but his pay fixed as on 1st January, 1996 and as such Shri Sharma is drawing Rs. 9300/- as on 1.1.2007. On coming to know this anomaly during 2006 for rectifying this anomaly he filed a representation to the 2nd respondent for stepping up his pay at par with other similarly situated persons. Since nothing had been heard in response to this representation, applicant sent another letter to the Principal KV No.1, AF, Jodhpur to meet the Assistant Commissioner personally and vide letter dated 9.5.2008 he was allowed to visit Regional Office of KVS. He visited and submitted his grievance, but nothing has

been done to rectify the anomaly in his pay fixation. He made another representation to R2 on 30.9.2008. He then sent a reminder to this representation which is produced as Annexure.A/3. He again made another representation on 7.11.2008. But nothing was done by the respondents. Hence he sent a demand of justice notice to R1 on 8.11.2010 [A/5] but to this notice also nothing was heard from R1. Now the applicant has retired from service and still waiting for a reply. Hence this OA has been filed. He has averred in his grounds that there is no denial from the respondents that he is eligible for getting stepping up of pay at par with his juniors. He is getting less pension than his juniors, because of the inaction on the part of the respondents. He alleges hostile discrimination against him as similarly situated persons are enjoying the revised pay fixation and he is singled out which is against the principles of natural justice.

Case of the respondents

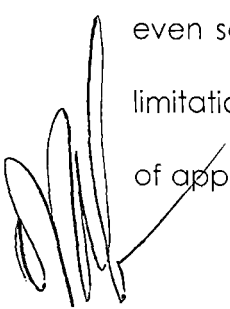
3. The respondents filed a counter affidavit and contested the case. The case of the respondents is that the application is not maintainable as no impugned order is passed against the applicant and that the similarly situated persons mentioned in the OA are not impleaded as party respondents. They have also raised the question of limitation as the applicant is seeking retrospective revival of cause of action date backs to the year 1996 which is hit under Section 21 of the Administrative Tribunals Act. In this respect they have cited a judgment of Hon'ble Supreme Court in the case of **Union of India Vs. M.K.Sarkar, (2010) 2 SCC 59 (66)**. On merit they state that in view of the clarification issued vide communication No. F.19-9/2002/Audit dated 10.6.2004 [R1] the claim of the applicant is not sustainable. Annexure R1 states that "**decision** regarding maintenance of seniority of TGTs and PGTs subject wise is effect from 5.7.2001. **Pay** anomalies arising of implementation of revised pay rules, 1997 will be determined as per seniority position existing as on 1.1.96. Therefore pay anomaly cases of TGTs/PGTs may be determined as per the



position existing as on 1.1.96 Common All India Seniority List of PGTs/TGTs pay anomaly arising on or after 5.7.2000 in case of promotion to the post of TGT/PGT may be examined with reference to seniority in subject wise seniority." They further stated that if a representation is not responded for six months, it will be deemed to have rejected and the applicant should have approached the Tribunal to redress the remedies immediately after expiry of 6 months as contemplated under Sub Section (2) of Section 20 of the Administrative Tribunals Act. The basic pay of the applicant was Rs. 2120/- as on 31.12.1995 and his pay was correctly fixed with effect from 1.1.1996 at Rs. 6900/-. As regards BL Sharma, respondents state that since he belongs to different subject than the applicant, applicant cannot compare his case with that of Shri BL Sharma. The pay anomaly has been determined as per the seniority position existing as on 1.1.1996 as per Annexure.R.1 communication. The pay anomalies arising on or after 5.7.2001 in case of promotion to the post of PGT/TGT was to be examined with reference to subject wise seniority list, which they have done and hence there is no element of any illegality in the action of the respondents. Even though applicant as alleged came to know about the anomaly in 2006 he has not approached the Tribunal for redressal of grievances then and that his averment that he filed representation is not correct. Repeated representations do not furnish a fresh cause of action for the applicant and, therefore, on this count alone the application is liable to be dismissed.

Case of applicant in the rejoinder:

4. Applicant submitted that the citation of Hon'ble Supreme Court mentioned by the respondents on the question of limitation is not applicable in his case as that case was dismissed on merit and not on limitation. Applicant was sending representations to the respondents and when no reply received, he even sent a legal notice to the respondents on 8.11.2010, hence there is no limitation involved in this matter. The averment of the respondents that the pay of applicant on 31.12.1995 was Rs. 2120 and his pay was fixed at Rs. 6900/- w.e.f.



1.1.96 is not correct. He has also questioned the averment of the respondents that teachers of different subjects are governed by different pay scales when they are working on the same post. He has reiterated most of the contentions in the OA in his rejoinder.

Facts in issue:

5. After having gone the pleadings of both the parties and hearing the arguments of the learned counsel for the parties as also perusal of the record, the following issues emerge for consideration:

- i. **Whether the OA is hit by limitation?**
- ii. **Whether the issue of seniority of the TGTs is to be approached subject wise or through a combined list of seniority?**
- iii. **Whether there has been hostile discrimination to the applicant vis-à-vis the case of one Harish Chandra Saxena as alleged?**
- iv. **What relief, if any, could be granted to the applicant?**

Whether the OA is hit by limitation?

6. On the issue of limitation the respondents have challenged the OA on the ground that the cause of action had arisen in the year 1996 and should have been agitated earlier. The respondents averred that there is a contradiction within the pleadings regarding the issue of limitation and that it is liable to be dismissed as one barred by Section 21 of the Administrative Tribunals Act, 1985.

The respondents have relied upon decided cases namely: **Lachhmi Sewak Sahu Vs. Ram Rup Sahu, AIR 1944 Privy Council 24; Kamlesh Babu Vs. RLajpat Rai Sharma, (1008) 12 SCC 577 and Union of India V. MK Sarkar (2010) 2 SC 59.** In the case of Union of India Vs. MK Sarkar (supra) the Hon'ble Supreme Court has held:

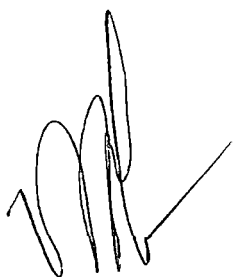
"16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal

deciding to direct "consideration without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

The primary point for consideration in view of the Union of India Vs. MK Sarkar (supra) is that whether the matter is live or dead. In this regard in the case of **MR Gupta Vs Union of India, 1995 SCC [L&S] 1273** the Hon'ble Apex Court has provided the basic guideline:

"4. The Tribunal has upheld the respondents' objection based on the ground of limitation. It has been held that the appellant had been expressly told by the order dated 12.08.1985 and by another letter dated 07.03.1987 that his pay had been correctly fixed so that he should have assailed that order at that time "which was one time action". The Tribunal held that the raising of this matter after lapse of 11 years since the initial pay fixation in 1978 was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merits of the appellant's claim for proper pay fixation.

5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cession of a continuing wrong if on merits his claim is justified. Similarly, any other consequently relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 01.08.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.



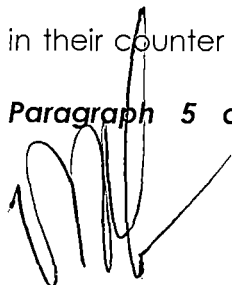
6. **The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of the redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the enquiry of redemption is extinguished. It is settled that the right of redemption is of this kind (see Thota China Subba Rao vs. Mattapalli Raju).**

7. **Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S.Rathore vs. State of M.P. That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case."**

It would be clear from above that there is no contradiction between the case of MR Gupta and that of Union of India Vs. MK Sarkar. Nor does the latter set aside the former. The case of Union of India Vs. MK Sarkar is complimentary to that of MR Gupta and not contrary to it. More over it is to be considered that the grievance of the applicant is a continuing one as he continues to sustain losses on its account and therefore, it cannot be hit by "a one time dispensation clause". Hence we hold that the objection of the respondents over the issue of limitation is not sustained by facts or by law.

Whether the issue of seniority of the TGTs is to be approached subject wise or through a combined list of seniority?

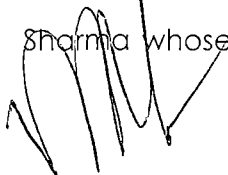
7. In so far as this issue is concerned it has been asserted by the respondents in their counter affidavit that **" the contents of sub-paragraph (b) of Grounds of Paragraph 5 of the original application are emphatically denied being**



go

absolutely misconceived, misleading and being contrary to the material available on record. It will be relevant to mention here that vide communication/clarification dated 10.6.2004 (Annexure.R/1) it has been clarified that the pay anomalies arising out of implementation of revised Pay Rules, 1997 were to be determined as per seniority position existing as on 1.1.1996. Therefore, pay anomaly case of TGTs/PGTs have been determined as per their position existing as on 1.1.1996, in common seniority list of TGTs/PGTs. Pay anomalies arising on or after 5.7.2001 in case of promotion to the post of PGT/TGT, was to be examined with reference to subject wise seniority list and therefore, there is no element of any illegality in the action of the answering respondents."

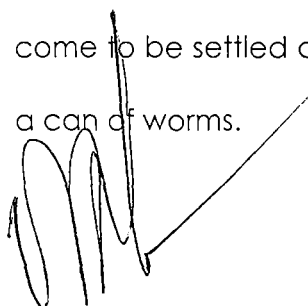
8. The admitted position, as it stands is that till 1.1.1996 there was a combined seniority list. The basic pay of the applicant was Rs. 2120/- as on 31.12.1995 which was fixed at Rs.6900/- w.e.f. 1.1.1996 with the next date of increment on 1.1.97 as per his service record. The applicant has submitted that persons who were junior to him were fixed in a higher scale. When this was being brought to the notice of the authorities a step up pay was given so as to bring them at par at Rs.7100/-. A1 indicates that Kumari Prem Chandwat (Biology) (sl.1), Kalicharan TGT (Hindi), Sashibala Sharma TGT (Hindi), Harish Chandra Saxena TGT (Maths), AK Gupta, TGT(Science) Anupama Parihar TGT (Hindi) and Rama Rani dill were fixed in Rs. 7100/-. In the case of Rama Rani one finds that her date of appointment in the cadre is 4.1.1983 and she is decidedly junior to others in this list but has been given a step up pay to bring her at par Rs. 7100/-. The respondents have stated in their CA (4(d) that from 5.7.2001 a subject wise seniority list was brought into existence wherein the seniority of the PGT would be decided subject wise implying thereby that as the result of this new arrangement pay anomalies were likely to arise and such cases would be examined with reference to subject wise seniority list. The respondents have also contended in paragraph 4(e) of their CA that no fair comparison could be made with BL Sharma whose name has been cited by the applicant as proof of anomaly as



the later belongs to Maths discipline. The respondents have contended that since the pay anomalies arising in the case of TGTs /PGTs would have to be determined as per their position as on 1.1.1996 the applicant did not avail of the legal remedy and woke from slumber after his retirement. Granting a relief to the applicant at this point of time would amount to unsettling many of the settled issues. The above issue has been dealt with vide Letter No.19-9/2002/KVS/Audit.32/43 dated 10/26\4.6.2004 [R1] has clearly provided :

02	Stepping up of pay of TGTs/PGTs whose seniority is now maintained subject wise.	Decision regarding maintenance of seniority of TGTs and PGTs subject wise is effect from 5.7.2001. Pay anomalies arising of implementation of revised pay rules, 1997 will be determined as per seniority position existing as on 1.1.96. Therefore pay anomaly cases of TGTs/PGTs may be determined as per the position existing as on 1.1.96 Common All India Seniority List of PGTs/TGTs pay anomaly arising on or after 5.7.2001 in case of promotion to the post of TGT/PGT may be examined with reference in subject wise seniority list.
----	---	---

At the same time it is the admitted position that the matter could have been conveniently agitated some time after 1.1.1996 and does not appear to have been agitated with the same fervor and zest as has been done in the instant OA. There is also merit in the contention of the respondent that many issues have come to be settled and re-opening the same would be tantamount to opening a can of worms.

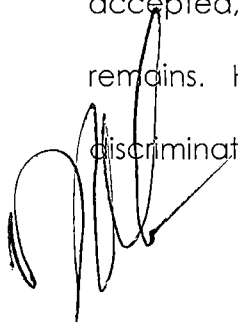


99

9. However at the same time the riddle is not being explained sufficiently in the counter affidavit or within the course of argument that how is it that while on 31.12.1995 the salary of the applicant had been fixed at Rs.6900/- w.e.f.1.1.1996 the next date of increment being 1.1.1997 the persons similarly situated and admittedly junior to him were given higher pay scale from 1.1.1996. The applicant was not getting even the benefit of a step up pay as has been the case of his juniors including one Harish Chandra Saxena who is from the same subject i.e., TGT (Maths). The silence of the respondents or their failure to sufficiently explain the anomaly vis-a-vis Harish Chand Saxena defies logic and leads to one conclusion alone that there was an anomalous situation amongst the two. Admitted that the applicant was delayed in pressing his claim with the same fervor as he has done now still the issue of anomaly being not decided to the detriment of the interest of the applicant, there is definitely case to look into the same. We too concede that where there is a contest between a patent error of law and the risk of reopening issue we unequivocally hold that it is much better to correct the patent error even at the risk of unsettling some of the issues. To think of it a step up provided to the applicant is not likely to unsettle many issues, albeit that is a fair risk that the process of justice has to run.

Whether there has been hostile discrimination to the applicant vis-à-vis the case of one Harish Chandra Saxena as alleged?

10. In so far as this issue is concerned, the matter has been dealt with in detail in respect of the previous issue and would sufficiently answer the same. Definitely anomaly in the pay fixation of the applicant vis -a vis one Harish Chand Saxena as we have seen and the same remain unaddressed. Even if the argument of the respondents regarding subject-wise seniority list were to be accepted, still the case of the applicant for parity with Harish Chandra Saxena remains. Hence we find that the applicant has been subjected to a process of discrimination.



23

What relief, if any, could be granted to the applicant?

11. In view of the above discussions we are of the opinion that the following reliefs needs to be granted in order to address the injury sustained by the applicant on account of anomaly in pay fixation:

- (i) The applicant be given a step up pay with his junior Harish Chandra Saxena who figures at Sl.No.4 in the impugned order of KVS, Jaipur.
- (ii) The applicant shall be paid the arrears and such other consequential benefits as admissible to him.
- (iii) The above scale shall also reckon in respect of his post retiral benefits.
- (iv) No order as to costs.

12. MA No. 194/2010 is allowed.


(B K SINHA)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

pps

RIC
Rajani Kant
Ravi K. K. Shah
Adv

6/9/12

RCopy
2719
201