

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.432/09

Thursday this the 10th day of June 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. Kendriya Vidyalaya Non Teaching Staff Association represented by its General Secretary C.S.Prem, S/o.late C.G.Stephen, Lower Division Clerk, Kendriya Vidyalaya No.2, Cochin – 682 004. Residing at Chiramel House, Thoppumpady, Kochi – 682 005.
2. Shaji B, S/o.late N.Bhargavan, Upper Division Clerk, Kendriya Vidyalaya (NTPC), Kayamkulam. Residing at Shanthi, Ayickad, Cheppad PO, Alappuzha District.
3. V.K.Mohanachandran, S/o.V.N.Kumarakartha, Upper Division Clerk, Kendriya Vidyalaya, Kadavanthara, Ernakulam. Residing at Sree Padam, AR-53, Aiswarya Lane, PO Udyamperoor, Ernakulam District.
4. Sujatha Prasannan, D/o.late Kuttappan Nair, Upper Division Clerk, Kendriya Vidyalaya, (Naval Armament Depot), Alwaye. Residing at Kadappana Saranalayam, Kakkanad PO, Thrikkakara, Ernakulam District.
5. K.P.Gangadevi, D/o.late K Parameswaran Nair, Upper Division Clerk, Kendriya Vidyalaya No.1, Kochi. Residing at Venu Mandiram, Chithranjal Junction, Irumpanam PO, Hill Palace, Ernakulam District.



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6. J.Indiramany Amma,
D/o.late P Damodaran Pillai,
Upper Division Clerk,
Kendriya Vidyalaya, Port Trust, Kochi.
Residing at Daiveekam, Valthara Madam,
Palluruthy, Kochi – 682 006.

7. Amrutha Kumari K,
D/o.late K Gopalakrishna Menon,
Upper Division Clerk, Kendriya Vidyalaya,
INS Dronacharya, Kochi.
Residing at Padma Vilas, Kithar Road,
Panampilli Nagar, Ernakulam District.

...Applicants

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18 – Institutional Area, Shahid Jeet Singh Marg,
New Delhi – 110 016.

2. The Deputy Commissioner (Pers.),
Kendriya Vidyalaya Sangathan,
18 – Institutional Area, Shahid Jeet Singh Marg,
New Delhi – 110 016.

3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, I.I.T.Campus,
Chennai – 600 036.

4. Union of India represented
by the Secretary to the Government of India,
Ministry of Human Resource Development,
New Delhi.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 10th June 2010 the Tribunal
on the same day delivered the following :-



ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicants herein are LDCs/UDCs working in the Kendriya Vidyalaya Sangathan. Their promotional post was Assistant Superintendent in scale of pay of Rs.4500-7000 and it was re-designated as Assistant with the higher scale of pay of Rs.5500-9000 with effect from 1.8.2008. After the recommendation of the 6th Pay Commission was accepted by the Sangathan, their pay has been revised to Rs.9300-34800 with Rs.4200 as Grade Pay from 1.8.2008. While the applicants were enjoying the aforesaid scale of pay, the respondents have issued the impugned Annexure A-4 letter dated 25.5.2009 which is reproduced as under :-

**KENDRIYA VIDYALAYA SANGATHAN
18 INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI – 110 016**

F.12-17/99-KVS (Admn-I) Vol.II

Date : 25.05.2009

The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Hyderabad Region.

Sub : Grant of 1st and 2nd Financial Upgradation under the ACP scheme to those LDCs/UDCs who have completed 12 and 24 years of regular service before 1.8.2008

Madam,

I am to refer to your letter no.F.21050/2008-KVS (HR) dated 1.4.2009 on the given subject and to clarify the point raised by you as under :-

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Point No.	Point Raised	Clarification
1.	<p>Whether the LDCs who were granted 2nd financial upgradation under ACP scheme in the scale of pay of Rs.4500-7000 (pre-revised) prior to 1.8.2008 are eligible to be placed in Pay Band-2 i.e. Rs.9300-34800 with Grade Pay of Rs.4200/-.</p>	<p>The matter pertaining to granting of financial upgradation under ACP scheme to those UDCs/LDCs who were granted 1st and 2nd upgradation (as the case may be) prior to 1.8.2008 (the date of upgradation of the existing hierarchical cadre by re-designating the post as Assistant in the scale of pay of Rs.5500-175-9000 w.e.f 1.8.2008) has been referred to the Ministry for clarification since Jan-2009. The reply is awaited.</p> <p>Having regard to the condition no.8 of Govt. of India ACP scheme, till the receipt of clarification from the Ministry no such UDCs/LDCs (who were already granted ACP prior to 1.8.2008) can be granted the 1st or the 2nd upgradation w.e.f 1.8.2008 in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4200/-.</p>
2.	<p>Whether UDCs in PB-1 i.e. Rs.5200-20200 with Grade Pay of Rs.2400/- on completion of 24 years of service as LDC are eligible for 2nd financial upgradation under ACP scheme in Pay Band-1 i.e. Rs.5200-20200 with Grade Pay of Rs.2800/- or Pay Band-2 i.e. Rs.9300-34800 with Grade Pay of Rs.4200/-.</p>	<p>The objection raised by the Internal Audit Party in pay fixation of Sh.Ashok Kumar and Sh.G.M.Potti UDCs is in order. The pay scale of Rs.9300-34800 with Grade Pay of Rs.4200/- be withdrawn forthwith by restoration of Pay Band-1 with Grade Pay of Rs.2800/- and the excess payments be recovered in minimum number of instalments as permissible under rules.</p> <p>The Sixth Pay Commission although has recommended three financial upgradations ie. after 10, 20 and 30 years of service, yet the detailed instructions are still awaited from the Govt. of India in r/o the revised ACP scheme.</p>



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Yours faithfully,
Sd/-
(S.S.Sehrawat)
Deputy Commissioner (Pers)

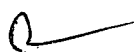
Copy to

1. The Assistant Commissioner, KVS, All Regional Offices (except Hyderabad Region) for similar action in similar cases, if any, under intimation to KVS (Hqrs).
2. The Education Officer (Estt.) KVS (HQ) for information & necessary action.
3. The Director, ZIETs Gwalior/Mumbai/Mysore for information & necessary action.
4. The Principal KV Moscow/Kathmandu/Tehran for information & necessary action.

Sd/-
Deputy Commissioner (Pers)

2. As a consequence of the above letter, the pay scale of Rs.9300-34800 being enjoyed by the applicants was reduced to Pay Band-I in the scale of pay of Rs.5200-20200 with Rs.2800/- as Grade Pay. However, according to the aforesaid letter itself, although the 6th Pay Commission has recommended three financial up-gradation i.e., after 10, 20 and 30 years of service, detailed instructions are awaited from the Government of India in respect of the revised ACP scheme.

3. On receipt of the aforesaid Annexure A-4 letter dated 25.5.2009, the applicants have made a detailed representation to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi (Annexure A-5 dated 29.5.2009). Their request was that the aforesaid letter dated 25.5.2009 shall be kept in abeyance, till the matter is clarified by the Ministry.



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4. When the matter was taken up for hearing today, counsel for the respondents, Shri.Thomas Mathew Nellimoottil, has produced letter No.F.No.4-11/2009/UT-2 dated 25.5.2010 addressed to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi in which it has been stated that the case relating to grant of 1st and 2nd financial up-gradation under the ACP scheme to those LDCs/UDCs who have completed 12 and 24 years of regular service before 1.8.2008 involves financial implications and as such the matter requires extensive consultation with Ministry of Finance (Department of Expenditure). They have, therefore, advised Kendriya Vidyalaya Sangathan to seek further time in this matter from this Tribunal. On the basis of the aforesaid letter the Joint Commissioner (Admn.) I/C, Kendriya Vidyalaya Sangathan also sought further six months time to file counter affidavit in this case vide his letter dated 7.6.2010 addressed to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Chennai Region.

5. We have heard Shri.Mohanakumar on behalf of Shri.T.C.Govindaswamy, counsel for the applicant and Shri.Thomas Mathew Nellimoottil, counsel for the respondents. It is an admitted fact that the applicants have been enjoying the scale of pay of Rs.5500-9000 (revised as Rs.9300-34800 with Rs.4200 as Grade Pay) with effect from 1.8.2008. It is also an admitted fact that the 6th Pay Commission has already granted three financial up-gradation ie., after 10, 20 and 30 years of service. The only impediment in this case is that the Government of



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India has not given clear instructions in respect of the revised ACP scheme pursuant to the aforesaid recommendations of the 6th Pay Commission as accepted by the Government. The respondents are still awaiting the required instructions from the Government.

6. In view of the above position, we dispose of this OA granting six months time as prayed for by the respondents themselves to take a final decision in the matter and communicate the same to the applicants with reference to their aforesaid representation dated 29.5.2009.

7. When this OA was initially heard on 29.6.2009, in view of the facts and circumstances of the case, we have given a direction to the respondents not to implement the aforesaid Annexure A-4 letter dated 25.5.2009 in respect of the applicants subject to their giving an undertaking that the excess amount, if any, paid to them will be refunded/adjusted against their pay or retirement benefits. We make that interim order absolute till a decision is taken and communicated to the applicants by the Sangathan.

8. There shall be no order as to costs.

(Dated this the 10th day of June 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER
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GEORGE PARACKEN
JUDICIAL MEMBER