

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 542 of 2011

Thursday, this the 12th day of January, 2012

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. Kendriya Vidyalaya Non-Teaching Staff Association
Represented by its General Secretary M.D. Murthy
S/o. Sri Dade Gowda, Upper Division Clerk
Regional Office, Kendriya Vidyalaya Sangathan
K. Kamaraja Road, Bangalore – 560 042.
Residing at LIG-437 (707-CHS)
3rd Main Road, Fourth Phase
Yelahanka New Town, Bangalore – 560 106.
2. S. Sreekantan Nair, S/o. K. Sreedharan Pillai
Upper Division Clerk, Kendriya Vidyalaya
Kollam. Residing at "Souparnika", Navaikulam (P.O)
Thiruvananthapuram – 695 603.
3. Amruta Kumari. K, D/o. (late) K. Gopalakrishna Menon
Upper Division Clerk, Kendriya Vidyalaya
INS Dronacharya, Kochi. Residing at "Padma Vilas"
Kithar Road, Panampilly Nagar, Ernakulam District.
4. Saraswathy Nair, W/o. V.G. Ramachandran Nair
Upper Division Clerk, Kendriya Vidyalaya Shift No. II
Adoor. Residing at "Archana", Vattaparambil House
Manarcadu (P.O), Kottayam.
5. Sujatha Prasannan, D/o. (late) Kuttappan Nair
Upper Division Clerk, Kendriya Vidyalaya
(Naval Armament Depot), Alwaye.
Residing at : Kadappana Saranalayam
Kakkanad (P.O), Thrikkakkara, Ernakulam Distinct.
6. Shaji B, S/o. (late) N. Bhargavan
Upper Division Clerk, Kendriya Vidyalaya (NTPC)
Kayamkulam. Residing at "Shanthi", Ayickad
Cheppad (P.O), Alappuzha Distinct.
7. C.P. Philipose, S/o. C.P. Philip
Upper Division Clerk, Kendriya Vidyalaya
Pangode. Residing at No. JRA 807-A, Plavila
Thirumala (P.O), Trivandrum – 695 006.

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8. K.P. Gangadevi
D/o. (late) K. Parameswaran Nair
Upper Division Clerk
Kendriya Vidyalaya No.1, Kochi.
Residing at : "Venu Mandiram"
Chitranjal Junction, Irumpanam (P.O)
Hill Palace, Ernakulam Distinct.
9. 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. Applicants

(By Advocate Mr. T.C. Govindaswamy)

Versus

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 Resources Development
New Delhi – 110 001. Respondents

(By Advocate M/s. Iyer & Iyer for R1-3)

The application having been heard on 19.12.2011, the Tribunal
on12-01-12.....delivered the following:



ORDER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants in this O.A. are Upper Division Clerks (UDCs) in the Ministerial cadre of the Kendriya Vidyalaya Sangathan (KVS). They were granted 1st or 2nd financial upgradations, as the case may be, under the ACP Scheme on a date prior to 01.08.2008. After the recommendation of the VI Central Pay Commission (CPC) was accepted by the KVS, their pay was revised to the Pay Band of Rs. 9300-34800 with Grade Pay of Rs. 4200/- with effect from 01.08.2008. As per letter dated 25.05.2009 (Annexure A-4), their pay was reduced to the Pay Band of Rs. 5200-20200 plus Grade Pay of Rs. 2800/-. O.A. No. 432/2009 was filed challenging the reduction of pay. The said O.A. was disposed of on 10.06.2010 with a direction to the respondents to take a final decision in the matter within 6 months. Till then, the letter dated 25.05.2009 was not to be implemented. The respondents have finally taken a decision as per Annexure A-11, which is reproduced as under :

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

Date : 13.06.2011

The Assistant Commissioner
 Kendriya Vidyalaya Sangathan
 Regional Office, Hyderabad.

Subject: O.A. No. 432/2009 filed by KEVINTSA & Others
 before Hon'ble CAT, Ernakulam Bench – 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.

Sir,

Kind attention is drawn towards KVS letter of even number dated 03.09.2009 whereby the directions of the competent authority were conveyed not to implement KVS order of even number dated 25.05.2009 and the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200, granted to UDC/LDCs as 1st or 2nd financial upgradation under ACP Scheme (as the case may be), may not be withdrawn till the final outcome of the Court or any revised instructions from KVS (Hqrs.). Proper undertaking was also directed to be obtained from each of them.



Now the Ministry of HRD after detailed examination of the matter vide their letter dated 26.04.2011 has clarified/conveyed their decision that the Grade Pay of Rs. 4200 is not admissible to UDC and LDC who have completed 12 and 24 of regular service before 01.08.2008 and have directed KVS to take rectificatory measures immediately.

Accordingly, the Grade Pay of Rs. 4200 granted in such cases need to be withdrawn immediately by restoring Pay Band 1 with Grade Pay of Rs. 2800 and the excess payment be recovered in minimum number of installments as permissible under rule.

The compliance report may be forwarded to HQ office by 28.06.2011 positively.

This issues with the approval of Commissioner, KVS.

Sd/-
(DR. E. PRABHAKAR)
DY. COMMISSIONER (PERS)"

2. Aggrieved, the applicants have filed this O.A for the following reliefs:

- (i) Call for the records leading to the issue of Annexure A1 and quash the same;
- (ii) Declare that the applicants are entitled to the Revised Pay Band of Rs. 9300-34800 plus Rs. 4200 (GP) with effect from 01.08.2008 as has already been granted to hem and direct the respondents to continue to grant the benefits accordingly;
- (iii) Award costs of incidental to this application;
- (iv) Pass such other orders or directions as deemed just, fir and necessary in the facts and circumstances of the case.

3. The applicants submit that the denial of the revised pay scale of the post in the hierarchy of the applicants merely for the reason that they were seniors or that they were meritorious and suitable enough to be granted the benefit prior to 01.08.2008 is arbitrary and discriminatory. The direction in the impugned order to recall the revised scale of pay granted and recovery of the alleged over payment without giving an opportunity to them to show cause or



explain, is opposed to the principles of natural justice. The Annexure A-11 order is based on the order of the Ministry of Human Resources Development (HRD) dated 26.04.2011, a true copy of which has not been given to the applicants. They have not also been informed of the reasons leading to the conclusion indicated in Annexure A-11. The circumstances under which the Ministry has decided not to grant the benefit of Pay Band Rs. 9300-34800 plus Grade Pay of Rs. 4200/- are not shown.

4. The respondents in their reply statement submitted that in compliance of the decision received from the Government of India, they have issued the order dated 13.06.2011 (Annexure A-11) directing all concerned to restore the Grade Pay of Rs. 2800/- in PB-1 instead of Rs. 4200/- in PB-2 effecting the recovery of excess amount drawn as per rule. The KVS is only following the decision of the Government of India.

5. In the rejoinder, the applicant submitted that the MACP Scheme was introduced by the Government of India vide Office Memorandum No. 35034/3/2008-Estt (D) dated 19.05.2009 (Annexure A-12). It was adopted and implemented by the KVS by its Office Memorandum No. F 1102916/2009-KVS HQ(Admn.I) dated 09.02.2011 (Annexure A-13). As per Para 6.2 of Annexure-I to A-12 and also the clarification by the KVS letter dated 3/10.10.2011 (Annexure A-14), all those who were granted the financial upgradation under the erstwhile ACP Scheme prior to 01.08.2008 automatically became entitled to grant of Rs. 9300-34800 plus Grade Pay of Rs. 4200/- with effect from 01.08.2008. It is clear that the impact of Annexure A-11 and also the objections of the Audit, if any, no longer holds good.



6. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. V.V. Asokan, learned counsel appearing for the respondents and perused the records.

7. The respondents have issued the impugned order Annexure A-11 dated 13.06.2011 following clarification/decision of the Ministry of HRD as per letter dated 26.04.2011. A true copy of the said letter is not available on record. The reasons leading to the conclusion that Grade Pay of RS. 4200/- is not admissible to UDCs and LDCs who have completed 12 or 24 years of service, as the case may be, before 01.08.2008 are not shown or communicated to the applicants. On the face of it, the Annexure A-11 order is opaque and arbitrary. It is not a speaking order. Careful consideration of the relevant aspects of the case is not apparent. The respondents have adopted and implemented the MACP Scheme vide Office Memorandum No. F.1102916/2009-KVS HQ (Admn.I) dated 09.02.2011. Para 6.2 of Annexure-I to A-12 of MACP Scheme is reproduced as under.

"6.2. In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a result of the implementation of the Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay, the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1st ACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs. 6500-10500 corresponding to the revised grade pay of Rs. 4200 in the pay band PB-2, he will now be granted grade pay of Rs. 4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. in CPWD by granting them the grade pay of Rs. 4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPs, all the financial upgradations under the Scheme should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008."



It was also later clarified by the KVS as per its letter bearing No. F.11029/12/2010-KVSHQ(Admn.I) dated 3/10.10.2011 as follows:

"6. In case, if the promotional post upgraded due to implementation of 6th CPC, then whether the ACP granted to the feeder post for the purpose will be upgraded or not?"

In this regard, Para No. 6.2 of the Annexure-I of DOPT OM No. 35034/3/2008-ESst (D) dated 19.05.2009 may be referred to."

The respondents have not examined whether Annexure A-11 and objections of the Audit on which the entire action of the respondents are based, hold good any longer in the light of Para 6.2 above of the MACP Scheme. In the circumstances, we are of the considered view that the respondents should issue a speaking order in the matter of denial of Grade Pay of Rs. 4200/- to the applicants having regard to the relevant aspects with due application of mind.

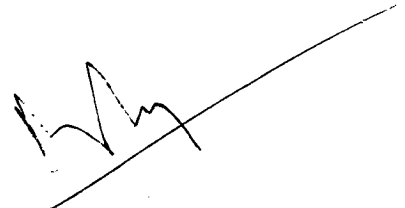
8. In the light of the above, Annexure A-11 is set aside. The interim direction dated 17.06.2011 not to recover the alleged excess amount from the applicants is made absolute till the respondents reconsider the matter and issue a speaking order and communicate the same to the applicants.

9. The O.A is disposed of as above with no order as to costs.

(Dated th 12 January, 2012.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER