

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 549 of 2013

Monday, this the 7th day of December, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

1. A.V. Balachandran Nair, S/o. Late Velayudhan Nair,
Catering Assistant, Jawahar Navodaya Vidyalaya, Vechoochira,
Pathanamthitta District , Kerala – 686 511.
2. T.M. Vijayakumar, S/o. Marimuthukonar,
Catering Assistant, Jawahar Navodaya Vidyalaya, A.E. QHS No. 5,
PO Malampuzha, Palakkad District, Kerala – 678 651.
3. M.V. Varghese, S/o. Varghese, Catering Assistant,
Jawahar Navodaya Vidyalaya, Vadavathur, Kottayam,
Kerala – 686 010.
4. Aneesh K., S/o. P.K. Krishnan, Catering Assistant,
Jawahar Navodaya Vidyalaya, PO Kulamavu, Idukki District,
Kerala – 685 601.
5. Binu G. Nath, S/o. V.K. Gopinathan, Catering Assistant,
Jawahar Navodaya Vidyalaya, Nerjamangalam,
Ernakulam District, Kerala State – 686 693.
6. Vinod Kumar, S/o. Kantir Jha, Catering Assistant,
Jawahar Navodaya Vidyalaya, Thrissur District,
Kerala State – 679 105.
7. P.K. Manoharan, S/o. Late Kochukunju, Catering Assistant,
Jawahar Navodaya Vidyalaya, PO Chennithala, Alappuzha District.
8. Satheesh E.K.,S/o. A.T. Karunakaran, Catering Assistant,
Jawahar Navodaya Vidyalaya, Badagara, Palayadnada, Calicut
District.
9. G. Prathapan Nair, S/o. Late Gopalan Nair, Catering Assistant,
Jawahar Navodaya Vidyalaya, ETC Campus, Kottarakkara,
Kollam District, Kerala – 691 531. **Applicants**

(By Advocate : Mr. M.V. Bose)

V e r s u s

1. Union of India, represented by Secretary, Department of School Education & Literacy, Ministry of Human Resources Department, Shastri Bhavan, New Delhi – 110 001.
2. Union of India, represented by Secretary, Ministry of Finance, Department of Expenditure, North Block, New Delhi – 110 001.
3. Navodaya Vidyalaya Samiti, represented by the Commissioner, B-15, Institutional Area, Sector 62, District Gautam Budh Nagar, Noida, UP – 201 3017.
4. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Hyderabad Region, 1-1-10/3, S.P. Road, Secendrabad, Andhra Pradesh, Pin – 560 001. **Respondents**

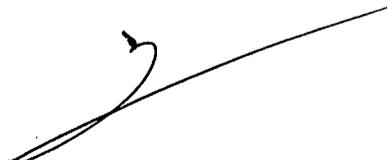
**(By Advocate : Mr. P. Parameswaran Nair – R3&4
Mr. P.R. Sreejith, ACGSC – R1&2)**

This application having been finally heard on 27.11.2015, the Tribunal on 07.12.2015, delivered the following:

O R D E R

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

The nine applicants in this case have filed this Original Application for a declaration that they are entitled to grant of higher pay scale and Grade Pay and for a direction to be given to respondents 1 & 2 to assign PB-2 pay band to the applicants and for fixation of pay scale in Rs. 9300-34800/- with the Grade Pay of Rs. 4200/- with effect from 1.1.2006. They have also seek a declaration that they are entitled to special allowance of 10% on pay band and Grade Pay and accordingly to direct the respondents to disburse those benefits as well.

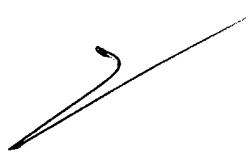


2. The applicants were working as Catering Assistants in various Jawahar Navodaya Vidhyalayas (JNVs) in the State of Kerala. The applicants used to do Catering Assistant work for not less than 18 hours daily and 126 hours in a week. The initial scale of pay of Catering Assistant was Rs. 1200-2040/- . Even Upper Division Clerks who are lesser qualified and work for lesser hours are conferred with various allowances. They are having prospects of promotion as well. The VIth CPC justified the demand of the mess workers in JNVs and directed the Government to consider grant of special allowance on par with similarly placed employees of Military Schools in Ministry of Defence etc. The Government of India extended the scale of pay of Central Government employees as recommended by the VIth CPC to the employees of the autonomous organizations, statutory bodies, etc. The Ministry of HRD has conveyed the decision to the Samiti. A detailed proposal for revision of pay scales of various categories of employees in JNVs in accordance with the recommendations of the VIth CPC was forwarded. The proposal was denied by the 1st respondent in respect of Catering Assistants and certain other categories. Special allowance at the rate of 10% of pay was also declined to the applicants. The qualified Catering Assistant is placed in the same pay band as that of Mess Worker. Initially the Catering Assistants are placed under the teaching cadre in 1995. The benefits of the VIth CPC were denied to the applicants. They preferred OA No. 389/2009 before this Tribunal. It was found that the Catering Assistants have to be present in the Vidhyalayas to take care of the basic need of the students and that they are not given any compensatory off in lieu of working in holidays or any overtime allowance. OA No. 389/2009

was disposed of with certain directions. The 1st respondent was directed to call meeting of the governing body of the Jawahar Navodaya Samiti and to reconsider the issue regarding grant of pay scales with effect from 1.1.2006. The respondents sought six months time for implementation of the direction contained in the order in OA No. 389/2009. As per item No. 6 in Annexure A10 the General Body recommended grant of higher pay scale/higher Grade Pay to Catering Assistants and for grant of 10% special allowance as compensation for their extra efforts. A contempt petition was filed as CP(C) No. 160/2012 before this Tribunal. The respondents were directed to file status report in the wake of the minutes of the meeting. The Governing Body considered the issue and took a decision as evidenced by Annexure A10. Its financial implication was justified in Annexure A11. But still the scheme was not implemented. The reason stated in Annexure A14 is that the proposal was examined in the Department and that adequate justification has not been found to consider grant of higher pay scale with effect from 1.1.2006. The applicants came to know of the same only when a copy of Annexure A12 was served. Hence, the applicants approached this Tribunal seeking the reliefs as aforesaid.

3. The respondents resisted the claim of the applicants and filed the reply statements contending as follows:

The Governing Body in compliance of Annexure A9 order discussed the issue and its recommendations were referred to the Ministry of HRD for approval as per letter dated 13.7.2011. The Ministry as per Annexure A14 conveyed its decision stating that they do not agree to the proposal for grant



of higher Grade Pay as well as 10% of special allowance to the mess staff including Catering Assistant. Based on the same OA No. 389/2009 and Contempt Petition No. 160/2012 were closed vide Annexure A15 giving liberty to the applicants to challenge Annexure A14. Since the issue had already been decided in OA No. 389/2009 the present application is not maintainable. The Catering Assistants get financial upgradation under the ACP/MACP and as per the provisions of the Government of India's order. The benefits under the MACP scheme are available to the applicants. Thus, the respondents prayed for dismissal of the OA.

4. We have heard the learned counsel for the parties and perused the pleadings and records of the case.

5. The points of consideration are whether the applicants are entitled for grant of higher pay scale and Grade Pay as claimed by them and whether the applicants are entitled for special allowance at the rate of 10% on the pay band and Grade Pay ?

6. Annexure A9 is the order passed by this Tribunal in OA No. 389/2009. As per Annexure A9 this Tribunal directed the 1st respondent to evolve a scheme to grant higher pay scale, better career prospects and to fix their working hours. The Governing Body of JNV Samiti were directed 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 the OA. The observations made by this Tribunal were also directed to be

considered while deliberating on the relevant issue. It was pointed out that the Jawahar Navodaya Vidhyalaya Residential Schools up to senior secondary level set up with the intention of providing better education facilities for economically backward children in the rural areas. It was found that the teaching staff and mess workers of the Vidhyalayas are working more than 18 hours per day and they have also to work on holidays including public holidays, 2nd Saturdays and Sundays. It was observed that while a teacher/non-teaching staff in the Kendriya Vidhyalayas under the Ministry of HRD work for 6.30 hours per day they are getting more pay than Navodhya Vidhyalaya staff who work for more than 18 hours per day. The contention as aforesaid according to the applicants was not at all borne in mind while considering the request for higher pay scale. There is also a direction to consider the claim of the applicants for 10% of the pay or a lumpsum of extra allowance per mensem as the Mess Staff/Catering Assistant are required to be available in the Vidhyalaya and work more than 18 hours a day, on all days. Finally Annexure A9 was disposed of by this Tribunal as follows:

“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.”

7. The respondents did not challenge Annexure A9 order but instead they deliberated upon the issue. It is stated by them that in compliance of

Annexure A9 order they discussed the issue and its recommendations were referred to the Ministry of HRD for approval. Annexure A14 is the impugned order dated 26.10.2012 of the Government of India, Ministry of HRD where it is stated that no special allowance is provided to Cook and Mess Helper in Sainik Schools and they do not have such a cadre. Regarding Oak grove schools also it was stated that there are not similar post of Catering Assistant and hence the request for special allowance was declined. Regarding the grant of higher pay scale it was stated in Annexure A14 as follows:

“3. Regarding grant of higher pay scale w.e.f. 1.1.2006 at Sl. No. (I) to the Catering Assistant and Mess Staff is concerned the Department of Expenditure has advised that the administrative ministry would need to provide adequate justification in the first instance to enable them to process the proposal further. Consequent to your letter dated 31.10.2011, the proposal was examined in the Department and adequate justification has not been found to consider grant of higher pay scale w.e.f. 1.1.2006.

4. So far as point at Sl. No. (iii) i.e. to evolve a scheme for promotion as in the case of Drivers/Teachers, etc. referred to above, it was decided in the meeting of the Governing Body of NVS held on 1.7.2011 that the Career progression of Mess staff would be taken care of through MACP, which has been introduced in the Samiti. Thus, the matter has not been considered by the Department.

5. You are requested to file an affidavit in CAT, Principal Bench, New Delhi accordingly in compliance of CAT order in the next date of hearing. You are also advised to inform Hon'ble Tribunal at Ernakulam suitably of this decision. You may safeguard the interest of Union of India and intimate the progress of the case to the Ministry from time to time.”

8. The observations contained in Annexure A14 have been taken strong exception to by the applicants pointing out that the observations made by them are against the facts. Annexure A10 which is the minutes of the XIVth

meeting of the society of the Navodaya Vidhayalaya Samiti held on 1.7.2011 has been relied upon by the applicants. Item No. 6 therein is relevant for consideration here which was with regard to the proposal for grant of higher pay scale, special allowances at the rate of 10% of the basic pay and to evolve a scheme for promotion and fixation of working hours in respect of Mess staff namely Catering Assistants, Cooks, etc. on the roll of Navodaya Vidhyalayas. The decision taken in that meeting is as follows:

“The Society perused the orders passed by the Hon'ble CAT, Ernakulam Bench in OA No. 389/2010 & OA No. 439/09 & 441/09 and made the following recommendations:-

(1) Considering the distinctive features of the job profile of these posts and the qualification and experience required for appointment, the Society recommended grant of higher pay scale/grade pay to Catering Assistant, Cook and Mess Helper as under:-

Post	Existing Pay Scale (Rs.) (approved by the Ministry)	Pay structure proposed by NVS (Rs.)
Catering Assistant	5200-20200+GP 2400	9300-34800+GP 4200
Cook	5200-20200+GP 1900	5200-20200+GP 2400
Mess Helper	4440-7440+GP 1300	5200-20200+GP 1800*

*Already approved by the Ministry of HRD vide its letter dated 09.03.2009

(2) The Society considered the working hours of mess staff in the Vidyalayas & recommended that mess staff may be compensated for their extra efforts by way of grant of 10% special allowance as has been granted to teaching staff. It also noted that creating additional posts of Catering Assistant, Cook & Mess Helper to run the mess in two shifts will not be economical.

(3) The career progression of mess staff would be taken care of through MACP which has been introduced in the Samiti.”

9. The decision so taken by the Samiti is followed by Annexure A11 the statement pertaining to the financial implication. In Annexure A11 dated 31.10.2011 the Navodaya Vidhyalaya Samiti, Ministry of Human Resources and Development addressed the Deputy Secretary to the Government of India, Ministry of HRD regarding the financial implications. The reply was furnished on the subject advising the Samiti to furnish adequate justification for providing higher pay scales to Catering Assistants, Cooks and Mess Helper in the Navodaya Vidhyalaya Samiti. A reading of Annexure A11 would show that the Samiti considered the whole issue and has actually supported the claim made by the applicants in this case particularly the fact that the mess staff have to work for almost 18 years a day and the mess has to run on all days and no specific designated weekly off or holidays are available to the mess staff. Further fact that they were not provided any compensatory off in lieu of working on holidays or any overtime allowance for putting extra hours of duty were highlighted. In Annexure A11 it was stated that higher pay scales were provided to some other cadres like Staff Nurse, Librarians etc. where the minimum required qualifications are comparable to that prescribed to the post of Catering Assistants. The examples were provided in Annexure A11 itself. Regarding the actual financial implications it was stated in paragraph 10 of Annexure A11 as:

“10. The financial implications involved in the proposed upgradation of scale of pay would be approximate Rs. 8.30 crore per annum. On the other hand in case if the suggestions of the Ministry of Finance to resolve the issues relating to increase in workload or long working hours by engaging more workers or outsourcing of the work is accepted, it will involve an additional expenditure of about Rs. 28 crores per annum. Considering the

financial aspects of the proposal, the Samiti had recommended grant of higher pay scales and 10% special allowance to the mess staff. As may be observed, the financial implications in proposed upgradation of scale of pay of Catering Assistants and Cook would be much less than on engaging more workers as suggested by Ministry of Finance.”

10. It was also stated that since the Government have not agreed for grant of 10% of special allowance the Samiti did not recommend fixing of duty hours and that the only available means to provide appropriate and conducive working conditions and suitable compensation package to the mess staff is by way of granting higher pay/Grade Pay as mentioned therein namely:

Name of post	Existing pay scale	Proposed by scale
Catering Assistant	Rs. 5,200-20,200 + grade pay Rs. 2,400/-	Rs. 9,300-34,800/- + grade pay Rs.4,200/-
Cook	Rs. 5,200-20,200 grade pay Rs. 1,900/-	Rs. 5,200-20,200 + Grade Pay Rs. 2,400

11. It is submitted by the learned counsel for the applicants that since Annexure A11, more particularly paragraphs 9 & 10 therein, would specifically show the financial implication and the details regarding the necessity of providing higher pay scales to the employees the observation made in Annexure A14 that adequate justification has not been found to consider grant of higher pay scale cannot be accepted at all. As mentioned earlier in paragraph 10 the financial burden, if this scheme evolved and proposed by the Samiti is accepted it would be only 8.30 crores per annum whereas it would involve an additional expenditure of about 28 crores per

annum if the suggestions of the Ministry of Finance is accepted. (It is the suggestion made by JNV Samiti) If that be so the proposal made by the Samiti for grant of higher pay could have been very well accepted by the respondents, it is contended.

12. Orders similar to the order in OA No. 389/2009 was passed by other Benches of this Tribunal as well. Annexure A16 is one such order in OA No. 2091/2007 of the Principal Bench of this Tribunal. That OA was disposed of with a direction to the respondents to expedite their consideration to create a promotional avenue in consultation with the Government. Annexure A15 is the order passed by this Tribunal in Contempt Petition No. 160/2012. That Contempt Petition was closed since the respondents have issued letter dated 26.10.2012 stating that the directions issued by this Tribunal were considered but the higher pay scale could not be granted to the petitioners. There was no willful default or violation so as to take action for contempt. That does not mean that the respondents have actually complied with the order, the learned counsel for the applicants submits.

13. Be that as it may, the point for consideration is whether the observation by the respondents in Annexure A14 that adequate justification was not found to consider grant of higher pay scale is correct ? That plea does not appear to be correct in the light of what have been stated in Annexures A10 and A11 especially paragraphs 9 & 10 of Annexure A11 wherein expenditure on outsourcing is cited as more than better pay scale



and 10% special allowance. Therefore, considering the nature of the duties performed and the extra work the Mess Staff/Catering Assistant used to undertake we hold that the second respondent is to be directed to reconsider the issue to provide a higher pay scale to the applicants. If in the meantime the grievance voiced by the applicant has been considered by the VIIth CPC and appropriate reliefs by way of higher pay scale has already been provided therein, the reconsideration of pay scale with effect from 1.1.2006 shall be only for the limited period. In other words, the benefits which the applicants may get on the strength of this order will be supplanted by the benefits they will get under the VIIth CPC.

14. Original Application is disposed of accordingly. No order as to costs.



(P. GOPINATH)
ADMINISTRATIVE MEMBER



(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

“SA”