

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 228 of 2007

wednesday, this the 8th day of July, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

M.V. Syed Koya,
S/o. The late P.P. Attakoya Thangal,
Headmaster (Retired),
Junior Basic School, Androth,
Union Territory of Lakshadweep,
Residing at Kadavath House,
Opposite Faruzia Complex,
Bettath Puthiyangadi, Tirur,
Malappuram District.

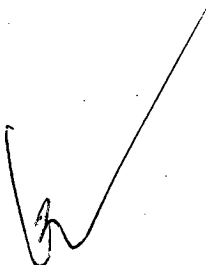
... Applicant.

(By Advocate Mr. O.V. Radhakrishnan (Sr.) with
Mrs. K. Radhamani Amma)

v e r s u s

1. Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. Pay and Accounts Officer,
Principal Pay & Accounts Office,
Kavaratti Island.
3. Director of Education,
Union Territory of Lakshadweep
(Director of Education), Kavaratti.
4. Headmaster,
Government High School, Androth,
Union Territory of Lakshadweep.
5. Union of India represented by its
Secretary, Ministry of Human Resources
Development, Department of Secondary and
Higher Education, New Delhi.

... Respondents.



[By Advocate Mr. S. Radhakrishnan (R1-4) and
Mr. TPM Ibrahim Khan, SCGSC (R-5)]

The Original Application having been heard on 16.06.09, this Tribunal
on 8/7/09 delivered the following :

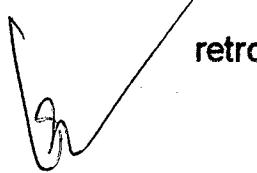
O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Fixation of pay is the issue involved in this O.A. The case of the applicant is as hereinafter mentioned. The applicant was initially appointed as Primary School Teacher in 1966 and after his successful attempt by filing OA 499 of 1992, he was given selection grade in the said post in the scale of Rs 530-630 w.e.f. 01-01-1978. The pay scale of the said selection post was rescheduled in the wake of Pay Commission Recommendations, to Rs 1400 – 2600 and pay fixed at Rs 2150. The said pay scale underwent another revision w.e.f. 01-01-1996 and this time it was Rs 5000 – 8000. The applicant was promoted as Head Master w.e.f. 18-06-1998 and as the applicant at that time was drawing a pay of Rs 8000/- in the scale of Rs 5000 – 8000 as selection grade primary school teacher, he deferred his promotion to 01-08-1998 so as to enjoy the benefit of stagnation increment before having his pay fixed in the scale of pay admissible to the post of Headmaster. The respondents had revised the selection grade scale from 1400 – 2600 to Rs 1640 – 2900 with retrospective effect from 06-01-1990, whereby the

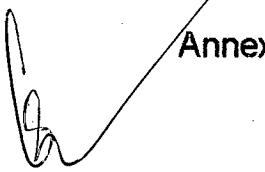
applicant's pay in that scale was accordingly fixed w.e.f. 06-01-1990 and the pay of the applicant in the said selection grade (prior to promotion as Headmaster) as on 01-01-1996 came to be Rs 2825/-. This was revised in the revised pay scale of Rs 5500 – 9000 and pay fixed at Rs 8650/-. Annexure A-7 Pay Fixation Statement dated 10-03-1999 refers. The applicant thereafter having reached the maximum in the said scale of Rs 5500 – 9000, was entitled to stagnation increment and the same was granted w.e.f. 01-01-2002 fixing the pay at Rs 9350/-. It was around this time, i.e. 04-04-2002 that the respondents had revised, with retrospective effect from 01-01-1996, the pay scale of primary teachers as under: -

- (a) Senior Scale: from Rs 5000 – 8000 to Rs 5500 – 9000
- (b) Selection Grade from Rs 5500 – 9000 to Rs 6500 - 10500

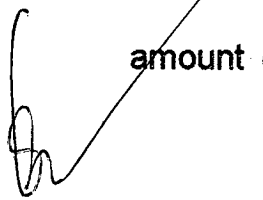
As the applicant as on that date was only a primary teacher in the pay scale of Rs 5,500 – 9,000/-, his scale was to be revised to Rs 6,500 – 10,500 as on 01-01-1996 or from a later date as opted by the applicant and the same was w.e.f. 01-08-1996. His pay was fixed at Rs 8700/- in the said scale with the DNI as on 01-08-1997. Annexure A-10 pay fixation order dated 02-01-2003 refers. Thus just prior to his being promoted as Head master, the applicant in his selection grade in the scale of pay of Rs 5500 – 9500 (prior to the revision in 2002 with retrospective effect) was drawing a pay of Rs 9000 as per annexure A-7



pay fixation advice. With the revision of pay scale to Rs 6,500 – 10,500/-, the applicant's claim is that he should be fixed at Rs 9,100/- in the revised pay scale of Rs 6500- 10500 as on 01-07-1998 and his pay on promotion should have been accordingly fixed. The applicant submitted Annexure A-11 representation dated 14-12-2004 claiming the promotional benefit under Rule 22(1)(a)(1) of the Fundamental Rules. Vide order dated 13-01-2005, the pay of the applicant was fixed at Rs 9,100/- w.e.f. 01-07-1998 taking his pay at Rs 8900/- at the time of his promotion as Headmaster, vide order dated 13-01-2005 (Annexure A-12). The applicant superannuated as on 31-05-2006. He was issued with a copy of communication dated 01-06-2006 addressed to the fourth respondent by the second respondent, stating that his pay was not correctly fixed at the time of revision/awarding selection Grade scale/promotion etc., vide Annexure A-13. The applicant made his representation, vide Annexure A-14 dated 01-07-2006 stating that in fact his pay should be more and thus, requesting the respondents to fix the pay correctly, and he renewed his request through another representation dated 21-07-2006 vide Annexure A-15, followed by Annexure A-16 representation dated 04-08-2006. Vide Annexure A-17, the fourth respondent had advised the second respondent stating that the fixation of pay is correct and no error could be located and hence requested for processing of the pension papers of the applicant. Vide Annexure A-18, the second respondent sought clarification from the



fourth respondent as to how the applicant was placed in the scale of pay of Rs 6500 – 10500 as Headmaster, when the pay scale attached to the said post was only Rs 5500 – 9000. The applicant had given a reply to this query to the second respondent asserting that since he was already enjoying the scale of Rs 6500- 10500, he is entitled to the said scale even on promotion. Annexure A-19 refers. On his part, the fourth respondent had communicated to the second respondent vide Annexure A-21 communication dated 22-09-2006 stating that the earlier pay fixation made, vide order dated 02-01-2003 (Annexure A-10) was in tact and there is no requirement for revision of pay of the applicant. The applicant had requested the first respondent pointing out that in fact his pay had been fixed at a lower rate as he is entitled to stagnation increment as on 31-05-2006. Annexure A-20 refers. But, the third respondent informed the fourth respondent with copy to the applicant, vide **annexure A-25** order dated 23-12-2006 (impugned) about the discrepancy in the pay fixation stating that the applicant had been paid more and advised him to revise the pay of the applicant. This has resulted in the passing of **Annexure A-26** order dated 09-01-2007 by the fourth respondent to the 2nd respondent and **Annexure A-27** order dated 20-01-2007 by the second respondent who had refixed the pay of the applicant at Rs 8900/- as on 01-07-1998 and the date of increment as 01-08-1998 in the scale of Rs 6500 – 10500 and consequently an amount of Rs 52,442/- was directed to be recovered from the DCRG



payable to the applicant. **Annexure A-29** and **Annexure A-30** are the consequential orders in the wake of the aforesaid Annexure A-27, whereby, the afore said sum of Rs 52,442 had been withheld by the respondents and payment of balance of the DCRG alone had been made. Thus, the above five orders (Annexure A-25, A-26, A-27, A-28, A-29 and A-30) are under challenge in this O.A. The claim of the applicant is for quashing of the aforesaid orders, for re-fixation pension on the basis of Annexure A-12 fixation of pay, and for release of the withheld DCRG in addition to payment of the arrears that might arise due to re-fixation of the pay as per Annexure A-12 order.

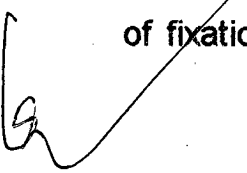
2. Respondents have contested the O.A. The facts as to the revision of the pay scale of primary teacher at the senior and selection grade and date of promotion of the applicant etc., have not been denied. The respondents have contended that when the pay scale at the feeder grade is lower than the pay scale attached to the promotional post, fixation benefits under FR 22(1)(a)(1) is not available. In the instant case, the pay scale of Head Master being Rs 5,500 – 9,000 and the applicant on the date of his promotion having the pay of Rs 9,100/- he is not entitled to pay fixation under FR 22(a)(1). According to them, the pay fixation statement vide Annexure A-7 is erroneous and hence, the applicant is not entitled to the relief of revision of pay as per the said annexure is not sustainable. They have also maintained that there is a

wrong fixation of pay of the applicant as stated above and due to the same, recovery of Rs 52,442 became inevitable.

3. The applicant had filed his rejoinder in which he had reiterated his contentions as in the OA.

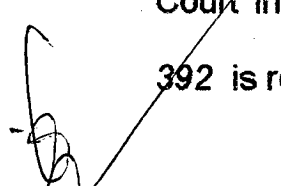
4. Counsel for the applicant argued that the confusion arose due to revision of pay scale of senior grade and selection grade of primary school teachers with retrospective effect, coupled with the fact that the pay scale of Headmaster which is a promotional post is lower than the pay scale of the selection grade primary teacher, which is the feeder grade to the said post of Head master. He has however, maintained that Annexure A-7 pay fixation is correct and again, since the post of Headmaster is carrying higher responsibilities compared to the post of Selection grade Primary Teacher, he is entitled to pay fixation under FR 22(a)(1). As regards recovery, the applicant has stated assuming without accepting that there is an excess payment, the same cannot be sought to be recovered as the pay fixation is not due to any misstatement from the applicant's side.

5. Counsel for the respondents contended that there is no question of fixation of pay under FR 22(a)(1) when the promotional post carries



lower pay scale. Again he has contended that Annexure A-7 pay fixation is erroneous.

6. Arguments were heard and documents perused. The applicant had been placed in the senior scale first w.e.f. 01-01-1978 on the basis of the court order and his pay was fixed in the scale of Rs 530-630/1400-2600/5000-8000 and later in the selection grade w.e.f. 01-01-1990 in the scale of Rs 1640-2900/5,500-9000 (w.e.f. 01-01-1996). From 01-01-1996, the above pay scale of Selection Grade was revised to Rs 6,500 – 10,500. Thus, as on 01-01-1996 when his pay was revised, his pay in the pre-revised scale was 8519/- as could be seen from Annexure A-7. The applicant desired to defer the revised pay till July 1996 as by that time he was to earn an increment. Hence, his pay was fixed at Rs 8,700/- w.e.f. 01-08-1996 and his next increment was to accrue on 01-08-1997 when his respondents have afforded him the pay of Rs 8900/- Annexure A-10 refers. Vide Annexure A-17 this fixation has been stated to be correct by Respondent No. 4. Vide Annexure A-21, the fourth respondent had rightly pointed out that fixation of pay of any official working in the higher scale of Rs 6500 – 10500 to lower pay scale of Rs 5,500 – 9,000 would mean reduction in rank which cannot be enforced save as a matter of penalty. In this regard, the decision by the Apex Court in the case of *Tarsem Singh v. State of Punjab*, (1994) 5 SCC 392 is relevant, where the Apex Court has held as under:-




"Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour. Opting to come to a lower pay scale or to a lower post cannot be considered a promotion, it is rather a demotion. Even otherwise it is difficult to comprehend why a person drawing a higher pay scale and enjoying a better status as a civil servant should hanker for a post which is carrying lesser pay and is comparatively of lower status. We are, therefore, of the view that only those ministerial employees are eligible for promotion under Rule 8(1)(a)(i) who are in the pay scale which is equal or lower than the pay scale of the post of the Labour Inspector. When examined in view of the meaning given by us to the expression 'promotion', the instructions are only supplemental to the Rules and are not contrary to the same."

7. In the instant case, it is certainly an anomaly that the feeder post carries a higher pay scale. This would have, in the instant case, been caused because of the revision of the pay scale of selection grade primary teacher with retrospective effect without a corresponding revision in the scale of pay of the Headmaster. In all probability, as on date, with one more pay Commission Recommendation having been implemented, this dichotomy would have been obviated. In any event, in so far as the applicant is concerned, according to the respondents, since the applicant had been earlier in the higher pay scale, the notional increment in the feeder grade and fixing of pay in the promotional post in the next higher stage is not permissible. Annexure A-25 refers. The respondents have stated that the pay of the applicant as on 01-07-1998



should have been retained at Rs 8,900/-. This is not correct, for the individual has enshouldered higher responsibilities and his entitlement to one notional increment and fixation in the next higher stage or the same if there is a stage, has to be there. This is what has happened. Hence, there does not appear to be any wrong fixation. The applicant is fully satisfied with the Annexure A-12 fixation, as has been recorded in one of the docket orders of this Tribunal. The calculation made in Annexure A-12 is correct and as such, there is neither any truncation in pay of the applicant nor any increase. Respondents shall have to release the withheld portion of the DCRG.


8. The OA is allowed to the extent that the respondents shall release the withheld part of DCRG to the tune of Rs 52,442/- on account of the alleged excess payment with simple interest at 9% per annum from the date of retirement of the applicant till the date of payment. Pension shall be fixed with reference to the last pay drawn calculated in accordance with Annexure A-12 and subsequent increments if any till the date of superannuation and if there be any arrears of pension to be paid, the same shall also be disbursed with simple interest @ 9% for the period from the date of retirement till the date of payment, and revised pension granted. Necessary calculations shall also be made available to the applicant in this regard.



9. Time scheduled for compliance with the above order including release of payment of withheld gratuity and arrears of pension etc., is three months from the date of communication of this order. No costs.

(Dated, the 8th July, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.