

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.541/2006

Reserved on 17.02.2014.

Pronounced on 25-02-2014.

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

R.D. Shankhwar, aged about 61 years, son of Late Shri Badlu Prasad, resident of B-653, Indira Nagar, Rae Bareilly. (Died)

1/1. Rani Shankhwar aged about 55 years widow of Late Shri R.D. Shankhwar.

1/2. Sheel Bhandra Shekher, aged about 37 years, son of Late R.D. Shankhwar.

1/3. Pragga Jyati, aged about 35 years, daughter of Late Shri R.D. Shankhwar.

1/4. Shubhra Anand, aged about 23 years, daughter of Late Shri R.D. Shankhwar.

-Applicants.

By Advocate: Sri Praveen Kumar.

Versus.

Union of India, through

1. The Secretary, Ministry of Human Research and Development, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, New Delhi.
3. The Joint Commissioner, Kendriya Vidyalaya Sangathan, Lucknow.

-Respondents

By Advocate: Sri Surendran P.

ORDER

Pre Ms. Jayati Chandra, Member (A).

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

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- "(1). To grant Selection Grade with effect from 1983 and thereafter Senior Grade with effect from 1993 as per averments made in the instant OA with all consequential benefits like revision of pensionary benefits etc.*
- (2). To pay interest on arrears paid on account of grant of selection grade and Senior Grade @ 18% per annum till the date of actual payment.*
- (3). Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed."*

2. The facts of the case are that the applicant was initially employed with the Kendriya Vidyalaya Sangathan on the post of Yoga Teacher at Rae Bareilly vide appointment order dated 08.09.1981. The respondents issued a letter dated 20.11.1999 (Annexure-A-1) seeking names of persons, who have experience of three months training of Yoga and who are graduate with 12 years service for the purpose of grant of Senior Grade. The Principal of the concerned School i.e. Kendriya Vidyalaya Sangathan, Chakeri had sent the name of the applicant by letter dated 22.11.1999 (Annexure A-2) as he had fulfilled all the requisite qualifications. Two persons viz Smt. Rama Devi and Shri Girja Shanker whose names have been shown at Serial No. 2 and 4 in the list sent by the Principal were granted Senior Scale from the date when they completed their 12 years service vide promotion order annexed at (Annexure-A-3 to the OA) Shri Girja Shankar was given the Senior Scale from 11.10.1994 and his date of joining in the present scale was 11.10.1982. The other persons namely Smt. Rama Devi was granted the scale w.e.f. 7.10.1994 as her date of joining in the present scale is 7.10.1982. As the name of the applicant was not included in the said list he represented to the authority for grant him similar benefits as were given to the other

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two incumbents but the respondents paid no heed. Finally, he was granted Senior Scale w.e.f. 1996 instead of 1993 by an order dated 30.07.2004 (Annexure A-4). The second grievance of the applicant relates to the grant of selection grade w.e.f. 1983. The Ministry had introduced an provision for granting Selection Grade to the incumbents in the ratio of 20% of the total strength. A copy of Daily School Manual is produced at (Annexure A-5) in support thereof. The applicant was at Serial No.28 in the list and was at number 1 amongst reserved candidates. The applicant was eligible for the Selection Grade as per Annexure A-5 immediately after 2 years of regular service i.e. in the year 1983 but this provision has been totally ignored in his case.

3. The respondents have filed their Counter Reply by which they have challenged the maintainability of the OA. The first ground taken by them for challenging the maintainability of the OA is on the ground of limitation as provided under Section 21 of the Administrative Tribunal Act, 1985, which reads as under:-

"21. Limitation.

(1) A Tribunal shall not admit an application,--

(a) in a case where a final order such as is mentioned in clause (a) of sub- section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub- section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2)

(3) Notwithstanding anything contained in sub- section (1) or sub- section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub- section (1) or, as the case may be,

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the period of six months specified in sub-section (2), , if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

4. The present OA has been filed seeking two releifs (i) Selection Grade with effect from 1983 and second that of Senior Grade with effect from 1993. In so far relief with regard to the Selection Grade is concerned the matter has never been agitated since 1983 till he had raised this claim by his representation dated 18.08.1999 by which he had sought for the grant of pay parity with his junior Sri Lalit Kumar Shah whose pay was fixed at Rs.1520/- w.e.f. 31.03.1986. Accordingly, his pay was fixed at Rs.1520/- w.e.f. 31.03.1986 by an order dated 09.03.2004. It is pertinent to note that although respondents have stated that copy of representation dated 18.8.1999 is produced as CR-1, but the same is not on record. He gave the application for grant of Senior Scale from 1993 on 25.09.2004.

5. The respondents have further challenged the maintainability of the OA on the ground that five separate OAs bearing nos. O.A.No.532/2006, O.A.No.533/2006, O.A.No.539/2006, O.A.No.541/2006 and O.A.No.542/2006 have also been filed. The present OA number i.e. O.A.No.541/2006 has been filed for grant of Selection Grade w.e.f. 1983 and Senior Grade w.e.f. 1993 with all consequential benefits including revision of pensionary benefits etc. The claim of revision of pension has also sought through O.A.No.542/2006.

6. On merits the respondents have stated the background of the case was that the applicant had been working as Yoga Teacher in Kendriya Vidyalaya

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Sangathan, Rae Bareilly from 09.09.1981 to 14.11.1995. He was transferred from Kendriya Vidyalaya Sangathan No.1, Rae Bareilly to Kendriya Vidyalaya Sangathan, Chakeri No.2, Kanpur. Thereafter, the disciplinary action was initiated against him by an Order No. No.F.10-2/906-KVS(LR)/16424 dated 20.02.1996. He was given the penalty of compulsory retirement from service by an order dated 10.10.2000. He filed an appeal against the said order, which was also rejected by an order dated 20.2.2001. The applicant filed an O.A.No.207/2001, which was decided in his favour and the applicant was reinstated in service vide order No.F.9-33/2004-KVS(VIG) dated 29.09.2004. The case of the applicant on reinstatement was examined and by an order dated 30.07.2004, he was given the same benefits of pay fixation in the Senior Scale w.e.f. 01.01.1996. Through the filing of the C.A. the respondents have further submitted that the Kendriya Vidyalaya Sangathan has adopted a three tier pay scales w.e.f. 01.01.1996 and in relation to the same a circular was issued on 03.02.1999. Accordingly the applicant was given Senior Scale w.e.f. 1996 by an order dated 30.07.2004.

7. The applicant has filed his Rejoinder Affidavit stating more or less same things as earlier stated by him in his OA. The applicant has averred that his case does not suffer from any defect as his claim in this O.A. relates pay fixation. As observed by the Hon'ble Supreme Court in the case of M.R. Gupta Vs. Union of India & Others reported in 1995 (6) SCC-674 that limitation does not come in way in the mater of pay fixation as it is recurring cause of action.

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8. Coming to the issue of multiple O.As. the substantial relief prayed in this OA is the correct fixation of his pay in Selection Grade and Senior Scale with consequential benefit which would cover the revision of pensionary benefits.

9. During the course of hearing the applicant of the present OA expired and thereafter by way of substitution three persons of the deceased family have been arrayed as applicants in the present OA.

10. We have heard the learned counsel for both the parties and perused the entire material available on record.

11. As there is a technical objection for non-maintainability of the OA has been raised on behalf of the respondents hence the same is dealt with first. The applicant has claimed Selection Scale w.e.f. 1983 and Senior Scale w.e.f. 1993. It is true that he has produced no record that shows that he had given any representation with regard to the fixation of Selection Grade w.e.f. 1983, Senior Scale w.e.f. 1993 apart from copy of representation addressed to Prime Minister dated 30.10.2003 (Annexure-6). However, as held by the Hon'ble Supreme Court in the case of M.R. Gupta vs. Union of India & Others 1995 (6) SCC-674 in terms of the following:-

"The applicant'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, afresh 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

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appellant's claim is found correct on merits, he would be entitled to be paid according to the property 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 cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs."

12. Therefore, the delay is being condoned. With regard to multiple O.As. this relief in this OA is being restricted to examination of pay fixation and arrears, if any, thereof. Coming to the merits of the case with regard to grant of selection grade after 2 years of service, the applicant has produced copy of Daily School Manual Pay & Entitlement Para-9 of which simply states that the number of selection grade posts have been increased from 15% to 20%. The earlier provision related to 15% posts is mentioned in para-5. But, the applicant has not demonstrated how his case falls either under the 15% or 20% of posts who are entitled to get benefit of the selection grade. On the other hand the respondents have cited the representation dated 18.08.1999 by which the applicant had applied for pay parity with his junior Shri Shah w.e.f. 31.03.1986 and the same was granted to him. This has not been denied by the respondents. Hence, this relief cannot be granted to him at this stage.

13. We now come to the second relief that is the grant of Senior Scale w.e.f. 1993. The applicant has stated that Senior Scale is granted to a Yoga Teacher subject to his having put in 12 years service as a Yoga Teacher with certain minimum qualifications as was circulated by

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letter dated 22.11.1999. Further, he has stated that's his case was forwarded by (Annexure A-2) alongwith the cases of Smt. Rama Devi and Shri Girja Shanker. However, Smt Rama Devi and Sri Girja Shanker were given the benefit of Senior Scale by an order dated 14.09.1999 on completion of 12 years service but his case was overlooked. An examination of the order dated 14.09.1999 by which the said Smt. Rama Devi and Shri Girja Shanker were promoted reveals that the order was passed on the recommendation of the D.P.C. held on 2.09.1999. It is not clear from the O.A. as to the procedure for holding the DPC and for determination of eligibility. The applicant has not disclosed any service rules for us to adjudicate upon this issue apart from stating that he possessed the minimum of eligibility of 12 years. It is not at all clear whether his case was considered and rejected or not considered at all by the DPC. The respondents are also silent on the point. They have mentioned certain disciplinary action having been initiated in 1996 against the applicant but have not clearly mentioned that same was the ground of his non-inclusion in the order dated 14.09.1999 ~~on~~ considering him 'unfit'. Rather, they have stated that the applicant was granted senior scale w.e.f. 01.01.1996 as per the 3 tier pay-scale system adopted for Yoga Teacher as per order F.No.12-17/97-KVS (Admn.) dated 03.02.1999. The Circular dated 3.2.1999 is a revision of pay scale which is effective from 01.01.1996 and is not an amendment of the eligibility for granting of the senior scale after completion of 12 years of service or any other rule regarding the procedure thereof.

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14. In view of the discussions made above, we do not find any ground for grant of Selection Grade form 1983. The case of grant of Senior Scale on completion of 12 years of service merits reconsideration. Accordingly, the respondents are directed to consider the case for grant of senior Scale in accordance with the rules & regulation pertaining to eligibility and holding of DPC etc. This exercise shall be completed within a period of six months from the date of a copy of this order. In case the applicant was found to have merited the same, arrears of pay will be paid to his legal heirs No costs.

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(Ms. Jayati Chandra)
Member-A

U.R. Agrawal
(Navneet Kumar)
Member-J

Amit/-