

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

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Original Application No. 20 of 1992

this the 21st day of Oct. 1997.

HON'BLE MR V.K. SETH, ADMN. MEMBER
HON'BLE MR D.C. VERMA, JUDICIAL MEMBER

Ditendra Nath Jha, aged about 50 years, S/o late Sri Bindeshar Jha, R/o A-1280, Indira Nagar, Lucknow.

Applicant

By Advocate : Sri G.S. Gupta

Versus

Union of India through Secretary, Sports, Ministry of
Human Resources Development, Department of Youth Affairs
& Sports, Govt. of India, New Delhi.

Respondent

By Advocate : Sri A.K. Chaturvedi

O R D E R

D.C. VERMA, MEMBER(J)

By order dated 22.4.97 of the apex court, the
O.A. has come for hearing afresh after admitting the
evidence as may be, adduced by the parties.

2. By this O.A., the applicant has claimed
directions to the respondents to apply the correct scale
of pay in the cadre of Physical Education Teachers (in
short P.E.T.) from 1967 to 1976 as applicable to the
Graduate Physical Education Teachers having the qualifica

ion of the petitioner. The consequential relief of arrears of difference of salary for the said period has also been claimed. The applicant has also claimed that direction of O.A. No. 156/89 which has not been complied by the respondents, be complied.

3. The brief facts of the case is that in the year 1963, the applicant was initially appointed in National Discipline Scheme (in short N.D.S.) as Instructor in the pay-scale of Rs. 110-200/- at Etawah. In the year 1965, the applicant was subsequently transferred to Lucknow in the same pay-scale. Some time in the year 1965, the Govt. of India took a decision whereby three Schemes in operation in India for these Instructors/Teachers were merged into one scheme known as National Fitness Corps (in short N.F.C.) (Annexure-3 to the O.A.). There were number of changes in pay-scale of Instructors working in N.F.C. The applicant claims to have became entitled to the scale in P.E.T. cadre available to Graduate P.E.T. The case of the applicant is that due to some mis-understanding and mis-interpretation of the various G.Os, the scale available to Graduate P.E.T. was not applied in the case of the petitioner. The petitioner remained working in the pay-scale of Rs. 110-200/- from 1967 to 1976. On the basis of judgment of the Hon'ble Supreme Court published in A.I.R 1985 S.C. 431 Union of India & another Vs. R.G. Kashikar & another (Annexure-6 to the O.A.), the Govt. of India issued G.O. dated 19.5.86 revising pay-scale of Instructor w.e.f. 1.1.67. Such arrears of salary was paid to the petitioner. After receiving the said arrears, the applicant noticed that the correct pay-scale, as applicable to a Graduate Trained Instructor, has not been made available to the applicant.

4. For getting justice, the petitioner had filed O.A. No. 156/89 in the Lucknow Bench of the Tribunal and the same was decided by order dated 15.7.91 (Annexure-8 to the O.A.). In compliance of the said order, the applicant made a representation before the respondents (Annexure-9 to the O.A.), but the same was not decided in spite of the reminder (Annexure-10 to the O.A.), hence this O.A.

5. The claim of the applicant is that the respondent-s are discriminating between the employees of Central School and other Schools. According to the applicant, Central School Administration revised the pay-scale of Ex-N.F.C. Instructor by various G.Os (Annexure-11 to the O.A.); whereby candidates in the pay-scale of Rs. 110-200/- as that of petitioner, were given Post Graduate Diploma Holder Grade w.e.f. 1.11.72; whereas the same was denied to the applicant.

6. The case of the respondents is that the applicant was Junior National Discipline Scheme Instructor Grade-I in the scale of Rs. 110-200/- and remained so till he was transferred to the control of Government of Uttar Pradesh following decentralisation of National Fitness Corps Scheme w.e.f. 1.7.76. The scale of Rs. 110-200/- available to N.D.S. Junior Instructor Grade-I was revised subsequently to Rs. 330-560/- w.e.f. 1.1.73. The same was paid to the applicant. The claim of the applicant for scale of Rs. 440-750/- as on 1.1.73 was meant for N.D.S. Instructor Grade-II and not to N.D.S. Instructor Grade-I. It has been further submitted that Government of India issued

certain guidelines through letter dated 2.11.68 (Annexure-5) for State Government to facilitate the absorption of N.D.S. Instructors in the cadre of Physical Education Teachers. These N.D.S. Instructors were not having the requisite qualification of Diploma in Physical Education/Certificate in Physical Education etc. required for the post of Physical Education Teacher. To remove this handicap, the Central Government through letter dated 2.11.68 addressed to the State Government, for administrative purpose only, issued certain guidelines. Under such guidelines all those N.D.S. Instructors, ^{who} were Graduate and had received National Discipline Scheme Training followed by the re-orientation training prescribed for the purpose under the National Fitness Corps Programme by the Central Government, were to be treated equivalent to the post Graduate Diploma Holders in Physical Education for purposes of their appointment as Teachers for the National Fitness Corps Programme in Schools and also for the supervisory jobs in the field of Physical Education in so far as they relate to schools. It was further provided that all those N.D.S. Instructors, who had Matriculation/Higher Secondary Examination and had received National Discipline Scheme Training followed by the prescribed re-orientation training under N.F.C. Programme, were to be treated at par with the post Matriculate Certificate Holders in Physical Education. It was further provided that only those N.D.S. Instructor Graduate as well as under graduate, who had put in atleast three years, were entitled to claim the priority referred

to above. These guidelines were to be kept in mind while making absorption of N.D.S. Instructors in the cadre of their P.E.T. According to the learned counsel for the respondents, these guidelines were to become effective only w.e.f. the date of absorption of N.D.S. Instructor in the State Government Service. As per the respondents, the applicant was absorbed in the State Government Service on 1.7.76; as such the applicant could claim benefit only w.e.f. 1.7.76. No benefit could be claimed from the Central Government for the period prior to the date of absorption i.e. 1.7.76. The respondents' case is that after absorption w.e.f. 1.7.76, the State Government was competent authority to consider the matter for giving benefit of priority as per provision contained in State Government Rules and regulations. The administrative guidelines issued by the Central Government through letter dated 2.11.68 were not obligatory on the part of the State Government.

7. Further, it was submitted by learned counsel for the respondents that Kendriya Vidyalaya Sangathan's scale is not relevant in the case of N.D.S. Instructor. The N.D.S. & N.P.C. organisation was an organisation under the Central Govt.; whereas Kendriya Vidyalaya Sangathan is an autonomous body as such Kendriya Vidyalaya Sangathan was not responsible in respect of structure of pay of N.D.S. employees.

8. The submission of the learned counsel for the respondents is that under the guidelines, the applicant was

not entitled to any benefit from the Central Government for the period prior to the date of absorption i.e. 1.7.76. After absorption, the applicant is entitled from the State Govt. such benefit as may be available to him under State Govt. Rules and regulations. N.D.S. Instructor absorbed in Delhi administration were given benefit as per the respective Rules and regulations of Union territory. The applicant being an employee of Government of Uttar Pradesh cannot claim the benefit applicable in the service of Union territory. In view of the above, contention of the learned counsel for the respondents is that, the applicant is not entitled to any relief.

9. This O.A. No. 20/92 was earlier decided vide order of the Tribunal dated 14.8.92. The Tribunal had found that the O.A. was devoid of merit and had dismissed the same. The applicant filed Review Petition No. 791/92 and the same was dismissed by order dated 13.11.92. The applicant filed S.L.P. before the apex court which was admitted as Civil Appeal No. 9854/95. Before the Non'ble Supreme Court, it was pointed-out that the communication from the Ministry of Human Resources Development, Govt. of India, dated 7.1.92 addressed to Director of Education (N.F.C.), Govt. of U.P. under whom the applicant was working, was already on record but was not noticed by the Tribunal. The apex court, therefore, remanded the case as per order below :

"Having considered these rival contention we find that the relevant documents to which our attention was invited by learned counsel for the appellant and which appear to be in his favour have unfortunately not been noticed by the Tribunal though they were M

record of the Tribunal. Under these circumstances, in our view, interest of justice will be served if the impugned order is quashed and set-aside and the original application No. 20/92 (L) is restored to the file of the Central Administrative Tribunal, Lucknow Bench, Lucknow for reconsideration of the case in the light of the aforesaid communication of the Central Government as well as in the light of the relevant decisions of this Court on the point. We, therefore, at this stage, do not express any opinion on the merits of the controversy of the parties. The Tribunal will be required to reconsider the entire matter afresh and decide the matter in accordance with law in the light of the evidence on record and whatever additional evidence the contesting parties may choose to adduce before it. We order accordingly. As the matter is lingering since long and as earlier also the applicant moved the Tribunal and he was relegated to the remedy of representation, it would be appropriate to direct the Tribunal to dispose of the remanded proceedings as expeditiously preferably within a period of four months from the date of receipt of a copy of this order. The appeal is accordingly allowed. Under the circumstances, there will be no order as to costs.

10. The applicant moved M.P. No. 1193/97 alongwith the copy of the order of the apex court. Both the parties thereafter were given time to adduce additional evidence. The applicant filed certain documents with M.P. No. 1634/97 which was taken on record. The respondents did not adduce any additional evidence.

11. We have heard the learned counsel for the parties and have perused the documents on record.

12. The relief No. 8 (iii) claimed by the applicant is "to direct the respondents to implement the judgment of this Tribunal immediately and pay all consequential benefits to the petitioner." To see whether the issue involved in the present O.A. was decided by the Tribunal in earlier O.A. we perused the earlier order of the Tribunal passed in O.A. No. 156/89. We, however, found that no issue was decided

by the Tribunal in O.A. No. 156/89. The order passed by the Tribunal in the said O.A. is quoted below :

"In view of the submissions made by the learned counsel on both sides, we consider it appropriate to direct that the applicant shall make a self contained representation mentioning all the contentions which have been raised before us duly supported by various documents and circulars on which his claim is based, to the competent authority in the Central Govt. within a period of one month from today and the said representation shall be entertained by the respondents and disposed of on merits through an speaking order within a period of three months from the date of receipt of the representation.

7. With these observations, the present application stands disposed of. However, this will not preclude the applicant from filing a fresh application, if so advised, after he has exhausted the remedies available to him under the service rules. There shall be no order as to costs."

13. The respondents in para 13 of their Counter reply stated that the matter was considered and necessary guidelines was issued by the Central Govt. through letter dated 7.1.92. A copy of the said letter has been annexed as Annexure C-1 to the Counter reply. This letter Annexure C-1 dated 7.1.92 sent by Govt. of India, Ministry of Human Resources Development is the same letter, which was not discussed by the Tribunal in its earlier order and has been referred to in the apex court's judgment by which O.A. has been remanded. It is, however, seen that while deciding O.A. No. 156/89 a direction was given to the applicant to make a self contained representation and the respondents were directed to entertain and decide the same through a speaking order. The applicant had made a representation and the same was decided by Annexure C-1 dated 7.1.92.

The only direction given to the respondents was to dispose of the representation on merit through a speaking order and the same was done by Annexure C-1 dated 7.1.92. Thus, the relief claimed by the applicant in para 8 (iii) of the O.A. that the respondents be directed to implement the judgment of the Tribunal and pay all consequential benefits, has no basis.

14. For the other reliefs that the respondents be directed to apply the correct scale of pay in the cadre of P.E.T. from 1967 to 1976 as applicable to Graduate Physical Education Teacher, it is necessary to give, in brief, some facts which are necessary for decision on the point.

15. In exercise of the powers conferred by proviso under Article 309 of the Constitution of India, Rules regulating the method of recruitment of persons to class II & III posts under the National Discipline Scheme known as National Discipline Scheme Instructor (Class II & III posts) Recruitment Rules 1961 were notified vide G.S.R. 336 on 24.2.61. This provides the name and scale of posts and qualifications for such posts. The name and scale of posts, relevant for the purpose, is given below : Revised as on 1.1.61

(i) Senior N.D.S. Instructor Gr. I	Rs. 210-320/-
(ii) Senior N.D.S. Instructor Gr. II	Rs. 150-240/-
(iii) N.D.S. Instructor Gr. I	Rs. 110-200/-
(iv) N.D.S. Instructor Gr. II	Rs. 95-155/-

The above scales were revised subsequently w.e.f. 1.1.73 which is as below :

(i) Senior N.D.S. Instructor Gr. I
(ii) Senior N.D.S. Instructor Gr. I

(iii) N.D.S. Instructor Gr. I	Rs. 330-560/-
(iv) N.D.S. Instructor Gr. II	Rs. 330-560/-

16. Different qualifications are prescribed for different category of posts. For the purpose of decision of this case, we have examined the qualifications prescribed for Senior N.D.S. Instructor Gr. II and N.D.S. Instructor Gr. I. For convenience, qualifications prescribed for the two posts in the G.S.R. 336 is extracted below :

" Sr. NDS Instructor
Grade II

Essential

- a) Graduate of recognised Indian University,
- b) Lively interest in out door Games,
- c) Capability to deliver lectures in mental training,
- d) Willingness to serve anywhere in the Union of India.

Desirable :

Desirable a

- a) A Diploma from some recognised Physical Trg. Institute.
- b) Service in the Army Commissioned rank.

NDS Instructor Gr.I

Essentials

- a) Matriculate or Army in special Certificate i.e. Roman Hindi, /Urdu ICI Certificate
- b) Physical bearing & special aptitude for the job
- c) Robust physique, height preferably 5'-5" in case of males & 5'-3" in case of females
- d) Knowledge of aptitude for laziom/Malkhamb polo exercise (for laziom & Malkhamb polo Instructor only).
- e) Willingness to serve in any part of the Union of India.

Desirable : a) A Diploma from some recognised Phy. Trg. Institution.

- b) Lively interest in outdoor games.
- c) Capability to deliver lectures in mental training.
- d) Graduate of Indian University will be given preference. "

For Senior N.D.S. Instructor Gr.II, four essential qualifications are required. Of which (a) is Graduate of recognised Indian University. The desirable qualification is Diploma from some recognised Physical Training Institute.

For the post of N.D.S. Instructor Gr. I amongst the essential required qualification (a) is only Matriculate or Army in special Certificate in Roman Hindi/Urdu ICI Certificate. Amongst the desirable qualification required for the post of N.D.S. Instructor Gr. I is (a) Diploma from some recognised Physical Training Institute or (d) Graduate of Indian University. Looking to the various qualifications prescribed for the various posts, it is found that the scales were based on respective essential qualifications and experience as mentioned in the Recruitment Rules. Scale is not based on desirable qualifications. A candidate having desirable qualification was only to get preference over the other candidates who may have essential qualifications only. It is also seen that one of the desirable qualification for both the posts was Diploma from some recognised Physical Training Institute, still the scale of the two posts differ. Thus, the scale of N.D.S. Instructor Gr. I for which the essential qualification was Matriculation or even less was kept lower than the Senior N.D.S. Instructor Gr. II for which the essential qualification was Graduate of recognised Indian University.

17. Admittedly, the applicant was appointed in the year 1963 as N.D.S. Instructor Gr. I in the scale of Rs. 110-200/-. He remained in the said scale till the date of absorption in the State service.

18. As per the applicant's case upon introduction of N.F.C. Programme in Schools throughout the country in place of existing programme of Physical Education, National Discipline Scheme and A.C.C., it was decided to transfer N.D.S. Instructor

to the control of State Government concerned w.e.f. 1.3.66. To give effect to this, Rules were framed as per memorandum No. F.35/45/65-A.1 dated 24.12.65 issued by the Ministry of Education, Government of India. The claim of the applicant is that according to this, the applicant stands absorbed w.e.f. the said date and is entitled to get the scale as was provided to Diploma Holder in Physical Education, as the applicant was Graduate with N.D.S. Training.

19. The respondents' case is that with O.M. dated 24.12.65 only the draft transfer Rules framed by the Govt. of India, was enclosed and forwarded to the State Govts. for their concurrence. The date given as 1st March, 1966 in the said O.M. was only a tentative date as is apparent from the subsequent O.M. issued by Govt. of India. The learned counsel for the respondents has further pointed-out that the referred O.M. dated 24.12.65 says that the N.D.S. Instructors were to give option for transfer to the State Govt. and order of preference of State upto four to which, he would like to be transferred. The O.M. further states that incase the option is not in the proper form, it was to be assumed that the Instructors have not opted for service under the State Government concerned and his services were to be terminated w.e.f. 28.2.66. The submission of the learned counsel for the respondents is that the applicant had not given any option as per this O.M. and if, as claimed by the applicant, this O.M. was final, the services of the applicant would have been terminated w.e.f. 28.2.66. It has been further submitted

Directorate and thereafter the process of screening was to

option is given, suitability is to be examined by the

a Committee appointed by each State Govt. Thus, after an

found suitable by the Directorate, were to be screened by

name of such Instructor found suitable. Such Instructors

if found suitable, the Directorate were to recommend the

option and discharge the Instructor, if found not suitable.

option. The N.P.C. Directorate had power to set-aside the

prescribed for service, as Teacher in the State of his

record and on the basis of requisite minimum qualification

suitability for further service on the basis of service

to be examined by N.P.C. Directorate with reference to

The case of the Instructor, who had opted for transfer, was

Discipline Scheme were to be absorbed, if opt for transfer.

tions in various States for implementation of the National

Directorate" and posted to the various Educational Institute.

its subordinate office called " National Pitnesse Corps

who were in the past recruited by the Central Govt. through

has been examined. It provides that N.D.S. Instructors,

20. The transfer Rules attached to O.M. dated 24.12.65

has been approved by the Central Govt.

scale from the date of absorption only, after re-fixation

N.D.S. Instructors were to get revised pay in the State

The O.M. dated 16.12.86 (Annexe-4) also stated that the

to State, were to be fixed under Rule 6 of the draft Rules.

Rules. The pay of such Instructors, who opted for transfer

not terminated from the date i.e. 1.3.66 given in draft

the applicant had not given any option, his services were

that this O.M. contained only draft Rules, so even though

be made. After the three stages, an Instructor could be absorbed. After the said absorption, the pay was to be fixed as per the educational qualification. Incase the Instructor was Graduate with N.D.S. Training, he was to be considered equivalent to Diploma Holder in Physical Education.

21. According to the applicant, this fixation of pay as per the educational qualification, was to be done from the date the scheme came into force and not from the date of absorption. The respondents have vehemently contested this point and have submitted that the applicant was only N.D.S. Instructor Gr.I in the scale of Rs. 110-200/- and was ~~been~~ paid equivalent of that scale till the date of absorption i.e. 1.7.76. The applicant was ~~been~~ placed in the State Service as equivalent to Diploma Holder in Physical Education. The contention of the learned counsel for the respondents, in view ^{of} the above, was that prior to absorption, the applicant was ~~not~~ entitled to get the revised scale of Rs. 440-750/- as the said scale was available to Senior Instructor Gr.II under the N.D.S. to which the applicant was never promoted.

22. For decision of the above, contentious issue it is necessary to first examine some earlier decisions cited by learned counsel for the parties and O.Ms & G.Os on the subject.

23. The learned counsel for both the parties have referred to the decision in the case of Union of India & others Vs. R.G. Kashikar reported in 1986 S.C.C. 431

(Annexure-6). In the cited case, Karnataka High Court had issued a writ in the nature of mandamus directing the Government to extend the benefit of the ~~xxxix~~ pay-scale from January 1, 1967 to January 1, 1973 taking the view that denial to the respondent R.G. Kashikar, who was Instructor Gr.II in the National Fitness Corps, of the benefit of revision of pay-scale as accorded to all other Central Government employees, was tantamount to denial of equality before law or equal protection of law and thus, violative of Article 14 of the Constitution of India. The said order was passed by Karnataka High Court because the pay-scales of the Instructors working under the N.D.S. were not considered by Third Pay Commission on the ground that they were to be transferred to State Govt. and the transfer was in the process of implementation under mutually agreed terms. Since the organisation was in transitional phase, the Third Pay Commission thought that it was not necessary to recommend any revised pay-scale. The result was that though the pay-scales of other Central Government employees were revised by the Third Pay Commission, the pay scales of Instructors working in the N.D.S. who were to be transferred to State Government was not revised and, thus, there was denial of equality. In S.L.P. filed by Union of India, the apex court held that the Instructors working under the N.D.S. "continued to be employees of Central Government till the process of absorption was completed, until then they were still be retained in Central Government Service although allocated into the different States and as such employees they were entitled

to be treated alike." Finding no merit in S.L.P. filed by Union of India, apex court dismissed the same. In the light of the judgment of the Karnataka High Court and judgment dated 28.12.95 of the apex court benefit of revised pay-scale was extended to N.D.S. Instructors as per G.O. Iletter dated 19.5.86 (Annexure-1). It was mentioned in the said letter that the pay-scale of Rs. 110-200/- would be revised to Rs. 330-560/- w.e.f. 1.1.73. Para 3 further stated that the benefit of all these scales was to be given only till the date of absorption in the State Service. From the date of absorption, the pay was to be fixed in the State scale. In accordance with Annexure-1 dated 19.5.86, the applicant of the present case was given the revised scale of Rs. 330-560/- w.e.f. 1.1.73 till 30.6.76, the date the applicant was in Central Govt. Service. From the date of absorption i.e. 1.7.76, the applicant's pay was fixed in the State Service scale. Thus, as per Kashikar's case (supra), the applicant was to be given revised scale as per the scale given to other Central Government employees till 30.6.76. There is nothing in the judgment that the applicant's pay would be fixed in the State Service scale even prior to the date of absorption. This is also reflected in the order dated 7.1.92 (Annexure C-1) issued by the Ministry of Human Resources Development; wherein it is mentioned that "Sri Jha will be accordingly fitted into the appropriate scale w.e.f. the date of his absorption in the State service i.e. 1.7.76 ..".

24. In the apex court's judgment dated 22.4.97 passed in Civil Appeal No. 9854/95 J. N. Jha Vs. Union of India

& others by which case has been sent for reconsideration, reference has been made in two earlier decisions of the apex court (i) W.P. No. 861/90 decided on 16.11.92 and (ii) W.P. No. 1198/87 decided on 16.8.91.

25. W.P. No. 861/90 was between the National Federation of State N.F.C. (Physical Education) Teachers Association & ors. Vs. Union of India & Ors. The Writ Petition was filed under Article 32 of the Constitution of India by National Federation of State N.F.C. (Physical Education) Teachers Association (in short Teachers Association). The contention before the apex court in the cited case was that the pay-scales given to N.D.S. Instructor Junior Gr. I Rs. 110-200/- revised to Rs. 330-560/- as on 1.1.73 where those which were applicable to Teachers in Primary School. The Teachers Association claimed that the Instructors Gr.I be given pay-scale of Secondary School Teachers. The contention was that by mistake the pay-scale applicable to Primary School Teachers was given to N.F.C. Instructors. The short question, therefore, which arose before the apex court was whether the Teachers belonging to Teachers Association were entitled to pay-scale of Rs. 440-750/- as was applicable to Secondary School's Teachers w.e.f. 1.1.73. After examining various earlier decisions and also the decision of Kashikar's case (supra), the apex court reached to the following conclusions :

"From a perusal of the record it is seen that there are no two scales one for Primary school and another for Secondary school teacher.

Once this aspect of the matter becomes clear it will follow that the assumption on the

part of the petitioner that they have been fixed on the pay-scale of primary school teachers is without foundation. The records also reveal that the N.D.S. Instructors Junior Grade I were recruited for a specific purpose. Their pay scale of Rs. 110-200/- was deliberately fixed. There was no mistake about it. That is evident from G.S.R. 336 dated February 24, 1961 issued by Ministry of Education, Government of India. Inasmuch as N.D.S. Instructors did not have the desirable qualification of diploma from a recognised Physical Training Institute as listed out in the Schedule of the said G.S.R. notwithstanding the fact that they were assigned the job of Physical Education Teacher, they could not be given the pay scale of Physical Education Teacher of Central School because of what is stated above. The Third Pay Commission also did not recommend the revised pay-scales for two reasons : (1) They were either temporary or quasi permanent or (2) were in the process of transfer to the State Service. Therefore, the mistake in fixing the scale of pay as alleged by the petitioners is not tenable."

26. Thus, ~~the pay-scale of~~ N.D.S. Instructor Gr.I were deliberately given pay-scale of Rs. 110-200/-. The essential qualification for such post was only Matriculation. Graduation was only a desirable qualification for N.D.S. Instructor Gr. I. The essential qualification for N.D.S. Instructor Gr. II was Graduation. Applicant was admittedly appointed as N.D.S. Instructor Gr. I (Rs.110-200) and was never selected to the grade of N.D.S. Instructor Gr.II till his absorption in State Service. Thus, applicant as Central Govt. employee in the grade of Rs. 110-200/-, could get equivalent scale as available to other Central Govt. employees of the cadre of Rs. 110-200/-.

27. The same line of arguments as was taken before the apex court in the cited case, has been pressed before this Tribunal also. The same need not be repeated in view of the findings arrived at by the apex court in

the cited case.

28. The learned counsel for the applicant has also referred to various circulars dealing with the revision of Pay-scales of Principal & Teachers of Kendriya Vidyalaya Sangathan. Reference has also been made to O.M. dated 30.9.75 (Annexure 4-D). The same is also not required to be discussed in view of the findings arrived at by the apex court, in para 23 of the Teachers Association's case (supra). The apex court in Teachers Association's case (supra) held that it was mere co-incident that revised scale was equivalent to that of Primary school/ of Central School Organisation. It further held that where the responsibility are different and nature of work is also different, pay-scale can also be different. Finding no merit in the Writ petition, the same was dismissed.

29. The order of the other Writ Petition No. 1198/87 has been filed as Annexure-6 by the applicant with his Supplementary affidavit with M.P. No. 1364/97. This was a case between Ram Pratap Yadav Vs. Union of India & Ors and this Writ Petition was also under Article 32 of the Constitution of India. For convenience, the order/ is reproduced as ~~mark~~ below :

"Ram Pratap Yadav	Petitioner
" Union of India & Ors.	Respondents
Vs. ORDER	
The main claim of the petitioner in this Petition is under Article 32 of the Constitution is that his case is squarely covered by the Government guidelines issued in 1968 and since he has the requisite qualification as prescribed under the guidelines he should be fixed in the DPE cadre. A letter has been produced in Court dated 21st June, 1991 issued by the Ministry of Human Resources Development in which the petitioner's case has squarely been dealt with. We may extract the contents of the letter :	

" I am directed to invite your attention on the above noted subject and to say that the Government of India has issued guidelines (copy enclosed) in 1968 regarding holder/Post Matriculation Certificate holders in Physical Education for the purpose of pay fixation. Sri Ram Pratap Yadav completed his graduation in October, 1968. As per our guidelines, his qualification alongwith N.D.S. Training undergone by him is equivalent to the D.PED degree. His pay may, therefore, be fixed with retrospective effect in the PTI/DPE cadre of the State Government on account of his being equivalent to D.P.E.D holders. The additional expenditure incurred in this respect will be borne by the Central Government as envisaged in the terms and conditions of transfer of the Ex-NDS Instructors. Necessary action in the matter may be taken immediately under intimation to this Department. The case is fixed for final hearing on 10.7.1991."

We are of the view that this order has virtually disposed of the matter in favour of the petitioner. He is already in the cadre of PTI. In view of the fact that he has acquired the higher qualification contemplated in the Government Scheme of 1968, he is to be fitted in the DPE cadre and the letter clearly specifies that the liability shall be borne by the Central Government. In view of these statements in the letter, we allow the Writ petition and direct that the petitioner may be given the benefits contained in the letter by fixing him in the DPE cadre within three months from today. No costs."

30. The contention of the learned counsel for the applicant is that as in the case of Ram Pratap Yadav (supra) the applicant's pay be fixed in the scale of degree holder.

31. Opposing the contention of the applicant's counsel, the submission of the respondents' counsel is that as will appear the facts of the case which led to the claim of the applicant Ram Pratap Yadav, is not given in the order.

The said case has been decided on the basis of the letter dated 21.6.91 issued by Ministry of Human Resources Development and it was in respect of Ram Pratap Yadav only. Copy of the letter dated 21.6.91, quoted in the order, shows that some case was pending and was fixed for final hearing

on 10.7.91. It was during the pendency of the said case, that referred letter dated 21.6.91 was issued by Ministry of Human Resources Development. The letter further shows that Ram Pratap Yadav had completed his graduation in October, 1968 and thus, acquired equivalence to Diploma in Physical Education. Therefore, it was submitted, the pay was to be re-fixed with retrospective effect in PTI/DPE of the State Govt. on account of being equivalent to D.P.ED holders. This "retrospective effect" refers the date of absorption or from the date of option given by the applicant, is not clear in absence of the facts on record.

32. Further submission of the learned counsel for the respondents is that the question for re-fixation of salary in the cadre of State Service on the basis of equivalence is to be made w.e.f. the date of absorption, has been decided by the apex court in the case of Teachers Association (supra); wherein various scales of N.D.S. Instructors viz-a-vi scales given to Primary School Teachers, Secondary School Teachers and Kendriya Vidhayalaya Sangathan, has been discussed.

33. In the case of R.G. Kashikar (supra) the apex court after exhaustive examination of and discussing the pay scales of N.D.S. Instructors prior to and after the date of absorption in the State Service, held that N.D.S. Instructors continued to be employees of Central Government till the process of absorption was completed. It has been further held that until then they were still retained in the Central Govt. Service although allocated to different States. It was on the basis of this, the apex court held that during the transitional period N.D.S. Instructors whose pay-scale

was not considered and revised by the Third Pay Commission, were to be given equivalent pay scale as was given to other Central Govt. employees after Third Pay Commission's report .

In view of the above, we are bound by the decisions of the apex court given in Kashikar's case and Teachers Association's case (supra). We also feel that it is not possible to construe the order of the apex court in Ram Pratap Yadav's case as having effect of affirming on merit the decision taken by the Government in the letter dated 21.6.91. The principle laid down in the Kashikar's case and Teachers Association's case is binding precedent under Article 141 of the Constitution. We are, therefore, bound to follow the principle laid down by the apex court in the two cases, referred above. The decision in Ram Pratap Yadav's case with great respect does not lay-down the law and it merely directs that the benefit contained in the letter dated 21.6.91 issued in respect of Ram Pratap Yadav, be given. In view of discussions made above, the applicant gets no benefit from Annexure 6 i.e. the order passed in the case of Ram Pratap Yadav Vs. Union of India & ors.

34. The learned counsel for the applicant has drawn our attention towards the letter dated 7.1.92 (Annexure-7) issued by Ministry of Human Resources Development in respect of the case of applicant J.N. Jha and has submitted that as in the case of Ram Pratap Yadav (Annexure-6), the applicant should also be granted the benefit of fixation with retrospective effect. The submission of the learned counsel has no merit. In Annexure S-7, it has been specifically mentioned that "Sri Jha will be accordingly fitted into the appropriate scale w.e.f. the date of his absorption in State Service i.e.

1.7.76". (Emphasis made). The claim of the applicant is not for the benefit after the date of absorption, but for fixation of pay as Graduate Instructor prior to the date of absorption. As has been already found ~~that~~ the applicant was working as N.D.S. Instructor Gr.I in the pay-scale of Rs. 110-200/- only. He was not promoted to the grade of Senior N.D.S. Instructor Gr.II in the scale of Rs. 150-240/- which was revised to Rs. 440-750/-, the applicant is entitled to revised scale of Rs. 110-200/- and not to revised scale of Rs. 150-240/-. As per the respondents, applicant has been paid arrears of revised scale of Instructor Gr. I (Rs.330-560) in October, 1988. Thus, even though the applicant was Graduate, he will not be entitled to scale available to Senior N.D.S. Instructor Gr.II prior to absorption in State Service unless he was promoted to the said post as per recruitment Rules of 1961, only after absorption the applicant was entitled to be fitted into appropriate scale in State Service.

35. On the question of absorption, it is seen that as per recital in para 4 of the reply filed by the respondents, the applicant was transferred to ^{the} Control of Government of Uttar Pradesh following decentralisation of National Fitness Corps Scheme w.e.f. 1.7.76. In Rejoinder to this reply, the applicant has not denied the date of transfer i.e. 1.7.76. In representation dated 3.9.91 (Annexure-9), it is admitted to the applicant that he was working under the Central Govt. since 1963 as N.D.S. Instructor and continued to work under the Central Govt. till 30.6.76 under different nomenclature of the post. It is further admitted therein, that from

"1.7.76 services of the petitioner were placed (at) the disposal of the U.P. Government." This fact is further established from para 4 of the order of the Tribunal dated 15.7.91 given in O.A. No. 156/89 J.N. Jha Vs. Union of India & others (Annexure-8). Para 4 of the said order is as follows :

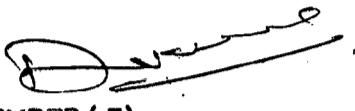
"In so far as the authority, which has to make payment we are clearly of the view that since the services of the applicant were transferred to Stat Government only from 1.7.76 and he was in the service of Central Government prior to that, the claim of the applicant has to be satisfied by the Central Govt. and not the State Govt. and, therefore, the question of jurisdiction does not arise in the present case."

This order of the Tribunal has become final. In the letter No. F-21-5/89/15 (V) dated 7.1.91 of Ministry of Human Resources Development, Govt. of India issued after the order of the Tribunal passed in O.A. No. 156/89, it is mentioned that " Sri Jha will be accordingly fitted into the appropriate scale w.e.f. the date of his absorption in the State Service i.e. 1.7.76 and all consequential benefits will be paid to him.". The applicant has not given any other date of absorption. Thus, from all these, it is established that the services of the applicant were placed at the disposal of the State Govt. and the applicant was absorbed in the said State Service w.e.f. 1.7.76.

36. In view of the above, fixation of pay into the appropriate scale with reference to educational qualification viz-a-viz State Service, as per Rule 8 of the Transfer Rules circulated with memorandum dated 24.12.65 (Annexure-3) would be available to the applicant only after the date of

absorption i.e. 1.7.76 and not prior to that date.

37. In view of the above discussions, there is no merit in the O.A. and the same is dismissed. No costs.


MEMBER (J)


MEMBER (A)

LUCKNOW: DATED: 21.10.97
GIRISH/-