

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 141/2000

Date of Decision: 23.12.2002

Shri Kanjibhai U. Patel & Ors.

Applicants

Shri K.R. Yelwe.

Advocate for Applicants

Versus

U.T. of Daman & Diu & anr.

Respondents

Shri R.K. Shetty.

Advocate for Respondents

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT.

VICE

CHAIRMAN

HON'BLE SMT. SHANTA SHASTRY.

MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

*Shanta Shastri*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 141/2000

THIS THE 23<sup>rd</sup> TH DAY OF DECEMBER, 2002<sup>January</sup>

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN  
SMT. SHANTA SHASTRY, MEMBER (A)

1. Shri Kanjibhai U. Patel,  
Govt. Primary School Kachigam.
2. Smt. Maniben J. Patel,  
Govt. Primary School Kachigam,
3. Smt. Binaben J. Joshi,  
Govt. Primary School, Moti Daman,
4. Shri Arunkumar K. Desai,  
Govt. Primary School, Bhimpor.
5. Shri Bhanbahi U. Patel,  
Govt. Primary School, Ehensroad;
6. Shri Ratilal L. Patel,  
Govt. Primary School, Ehensroad,
7. Shri Bhagvanji B. Desai,  
Govt. Primary School, Zari.
8. Shri Nerhari B. Talekar,  
Govt. Primary School, Dalwada.
9. Shri Kishore B. Desai,  
Govt. Primary School, Thanapardi.
10. Shri Hari B. Dhonde,  
govt. Primary School, Retired.
11. Smt. Pushpaben B. Desai,  
govt. Primary School, Retired.
12. Smt. Kumudben B. Desai,  
Govt. Primary School, Retired.
13. Smt. Sulochana B. Desai,  
Govt. Primary School, Varkund,
14. Shri Ramesh H. Joshi,  
Govt. Primary School, Bhimpor,
15. Smt. Kantaben M. Desai,  
Govt. Primary School, Varkund.
16. Shri Ashok D. Desai,  
Govt. Primary School, Moti Vakad. Applicants

By Advocate Shri K.R. Yelwe

Versus

1. Administrator,  
U.T. Admn. of Daman and Diu,  
Moti Daman.
2. Director of Education,  
U.T. Admn. of Daman and Diu,  
Moti Daman.
3. Assistant Director of Education,  
U.T. Admn. of Daman and Diu,  
Nani-Daman. ... Respondents

By Advocate Shri R.R. Shetty.

ORDER

Smt. Shanta Shastry. Member (A)

The applicants in this case are primary teachers in primary schools in Daman and Diu. They are PSC PTC i.e. they are trained primary school teachers. They were appointed on the initial pay scale of Rs.118-225. They were appointed some time during 1964-65. On 05.3.1971 the pay scales were revised for Government and non Government teachers serving in the Union Territory of Goa, Daman and Diu. These pay scales were to come into force with effect from 21.12.1967 and further from 27.5.1970. Accordingly the applicants were given revised pay scale of Rs.118-270 with effect from 21.12.1967 and scale of Rs.125-230 with effect from 27.5.1970. Their pay was fixed accordingly vide letter dated 20.9.1972. However, vide the impugned letter dated 17.4.1973 the aforesaid revised pay scales given to the applicants were withdrawn and recoveries were

effected from all the applicants for the excess payments made. The applicants were later on granted revised pay scales as indicated in the order dated 05.3.1971 with effect from 30.11.1974 vide order dated 01.9.1975 after completion of eight years of service on 30.11.1974 or thereafter. The applicants were further granted the revised pay scales of Rs.165-350 with effect from 01.01.1973 as per the recommendation of the IIIrd Pay Commission.

2. The applicants' main grievance is that when as per the order of 05.3.1971 all teachers were given the revised pay scale of Rs.118-270 with effect from 21.12.1967 the applicants are also entitled to the same. The applicants point out to item 5 in the Annexure to the order dated 05.3.1971 which indicates the pay scale of Rs.118-270 to be granted to basic teachers, Craft teachers, drawing teachers, Physical Education Teachers and other teachers in the present pay scale of Rs.118-225. The applicants have construed that other teachers include ESC PTC teachers and since the applicants were in the scale of Rs.118-225 they were rightly given this scale initially and it was wrongly withdrawn later on by interpreting the order differently by the Assistant Accounts Officer.

3. The case of the applicants is that according to the recruitment rules of 01.9.1966 for the post of primary teachers in primary schools the requisite

qualification for the post of primary teachers is Matriculation (10th Standard) or equivalent or should have passed primary school certificate examination with at least 50% marks in aggregate. Primary teachers training certificate or equivalent. Thus, both Matriculate with PTC and FSC with PTC were qualified for the post and accordingly the applicants were appointed along with SSC/PTC on the same date initially, as primary teachers. Having treated them on par at the time of appointment, no distinction can be made now at this later stage by granting the higher scale of Rs.118-270 with effect from 01.9.1967 to Matriculates and not granting the same to the applicants. It was wrong on the part of the respondents to have withdrawn this scale by order dated 17.4.1993. The applicants have also argued that in the Union Territory of Dadra and Nagar Haveli their counterparts with the same qualification of FSC with PTC were paid the revised scale of Rs.118-270 throughout. The applicants are performing the same duty and the same responsibilities. The action of the respondents is therefore, discriminatory.

4. The applicants state further that in similar circumstances the Tribunal allowed OA No.16/94 decided on 22.7.1999 filed by S.S. Yadav & Others Vs. Animal Husbandry & Veterinary Officers, Dadra & Nagar Haveli. The applicants are also relying on the judgment in the case of State of Gujarat & Ors Vs. Rajpal Sharma & Ors

(1996 SCC 1159) wherein it was directed to give equal pay scale with all consequential benefits. The applicants are also placing reliance on another case of Instructors working in Industrial Training Institute of Silvassa who have been granted the pay scales as that of those working in Daman. The applicants further have cited the TA Nos. 90/86 to 97/86 decided on 22.12.1986 by the Tribunal directing to allow the applicants therein the same pay scales from the date of joining with consequential benefits. The learned counsel for the applicants submits that there was a similar anomaly in the pay scale of staff nurse and movie operators in the department of Medical and Public Health at Silvassa vis-a-vis those working at Daman. They had approached in W.P. No.4576-77/84 later transferred to the Tribunal on 24.8.87. The Tribunal gave direction to respondents to give the same pay scales to others in the Union Territory of Daman also. SLP was filed against this judgment, however, the same was dismissed on 18.1.1998. The applicants have also referred to the case of Patel/ Talathi of Silvassa and those of other Union Territories filed in OA No. 731/90 (Dattaray Gajanand Desai) decided by the Principal bench on 30.7.1993 to grant them the same pay scales as given to Patel/ Talathi in other Union Territories. In this judgment the Tribunal relied on the Supreme Court decision in the case of Randir Singh Vs. Union of India (1982 (1) SCC 618). The applicants also pleaded that being a small Union Territory with small strength of teachers they could not

represent directly to the Pay Commission. The applicants have therefore, prayed to extend the pay scale of Rs.330-560 to the applicants as per the recommendations of the Third Pay Commission, further the standard pay scale of Rs.1200-2040 with effect from 01.01.1986 as prescribed by the IVth Pay Commission and Rs.4500-7000 with effect from 01.01.1996 on the basis of the recommendations of the 5th Pay Commission. The applicants have amended the OA and the relief clause (c) and have sought a direction to the respondents to fix the pay of the applicants notionally in the revised pay scales as recommended by the various Central Pay Commissions and to give them arrears of difference of pay for last three years prior to the date of filing of the OA, the arrears of difference in refixation of pay scale to be paid with interest at the rate of 18% per annum and to give pensionary benefits to those who have retired.

5. The respondents submit that no doubt the applicants were granted the scale of Rs.118-270 as on 21.12.1967 and Rs.125-320 as on 27.5.1970. However, this was wrongly given to them as these scales were not meant to be for the primary teachers, who had the qualification of PSC PTC. The respondents had issued different orders in regard to revision of pay scale on different dates. Accordingly on 31.10.1973 order was

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issued according sanction to the revision of pay scales to the primary teachers with PSC and PTC and Standard VII as basic qualification as follows:

"Pay scale prior to 21.12.1967 - 118-180. Scale applicable from 21.12.1967. On completion of 15 years of service on 21.12.1967 or thereafter, Scale of Rs.165-350 on completion of 15 years of service on 27.5.1970 or thereafter."

6. A similar order was issued in regard to the revision of pay scales of Matriculate untrained teachers in the Union of Territory of Goa Daman & Diu by the Directorate of Education of the Government of Goa Daman & Diu. Since they had not put in the requisite service in the grade they were not entitled to the revised scale of Rs.118-270 as on 21.12.1967. According to the respondents, the applicants have been given all the revised pay scales as demanded, from IIIrd Pay Commission onwards. Even the scale of Rs.118-270 was granted to them with effect from 30.11.1974 after completion of eight years of service, therefore, nothing survives in this.

7. The respondents have raised some preliminary plea. First of all the demand of the applicants pertains to the period prior to 01.11.1982 i.e. three years prior to establishment of the Tribunal. Therefore, this Tribunal has no jurisdiction to adjudicate on such matters. This has been clearly pronounced in V.K. Mehara Vs. Secretary, Ministry of Information & Broadcasting (ATR 1986 (1) CAT (PB) 203.

Secondly the demand for revised pay scale of IIIrd Pay Commission with effect from 01.01.1973 is also hit by limitation under section 21 (2) of the Administrative Tribunals Act, 1985. However, pay revision is only consequential, therefore, on point of jurisdiction, the entire prayer of the applicants is washed off. Also it suffers from delay and laches.

8. On merits also the demands were agitated through their association before the IIIrd Pay Commission, 4th Pay Commission and 5th Pay Commission. Pay scales were periodically revised with effect from 01.01.1973 to 01.01.1986 and 01.01.1996. Having got the same, the present demand is hit by principles of resjudicata.

9. The learned counsel for the respondents submits that the demand for revision of pay scale is a policy matter and is within the domain of Expert Bodies and function of the Government. The Tribunal is not competent to revise the pay scales as has been held in Delhi Veterinary Officers Association Vs. Union of India 1984 (2) SLR 144 as well as in Union of India Vs. Mallikarjun Rao-AIR 1990 SC 1251.

10. According to the respondents, the applicants are non-matriculantes, they demand parity with matriculates. They are only VIith standard pass and cannot demand parity after 35 years. There is

definitely difference in the quality of imparting education by a matriculate trained and by a PSC trained. The respondents have also relied on judgment of this Tribunal in OA Nos. 7/95, 415/95 & 420/95 in the case of Dr. Prabhakar D. Kasodekar Vs. Union of India & Others decided on 22nd June, 2000. The issue therein was of granting equal pay to the BAMS Doctors vis-a-vis MBBS Doctors. The Tribunal did not find any merit in that case and dismissed the same holding that "the Tribunal had no jurisdiction to grant relief from 1973 and the claim is barred by limitation and delay and the applicants had already been given reliefs on the basis of the report of the 5th Pay Commission and on the basis of law declared by the Apex Court. No retrospective benefit of the report of the 5th Pay Commission either from 01.01.1973 or 01.01.1986 can be given". The respondents have further pointed out that merely because in the Union Territory of Dadra and Nagar Haveli the pay scale of PTC teachers is higher from those granted in Daman the argument cannot be accepted. According to the respondents, the Union Territory of Dadra & Nagar Haveli was liberated in the year 1954; whereas the Union Territory of Goa, Daman & diu was liberated in 1961. Therefore, the pay scale in the case of teachers in the Union Territory of Dadra & Nagar Haveli on the one hand and Union Territory of Goa, Daman & Diu on the other hand cannot be compared after a lapse of 30 years, even

though they may be under the administrative control of the same Administrator and under the same Ministry of Home Affairs.

11. We have given careful consideration to the rival pleadings and have perused the various orders and judgments relied upon by both the parties. We find that the recruitment rules by which the applicants came to be appointed as primary teachers provide for those with SSC trained qualification as well as those with PSC trained qualification as being eligible for the post of primary teachers. Accordingly, they were recruited, no distinction was made between the matriculates PTC and PSC PTC., they all came under the same administrative control of the Administrator for Daman & Diu as well as Dadra & Nagar Haveli. There is no specific mention of the PSC PTC teachers and the pay scale to be given to them in the annexure attached to the order dated 05.3.1971 whereby the pay scales were revised. Only revised pay scale for matriculate teachers is given in column No.3 and column No.4. Though the order is said to be for all teachers in Government and non Government schools, there is absolutely no mention at all of the PSC PTC teachers. These teachers were also in the scale of Rs.118-225. The respondents have relied on the orders dated 31.10.1973, 14.3.1974, 11.02.1973 and 13.6.1974. A reading of these orders goes to show that only the order dated 31.10.1973 can be said to be applicable to some extent in the case of the PSC PTC

teachers i.e. the applicants. However, it is seen that even here the reference is to the primary teachers who were drawing the scale of Rs.110-180; whereas the applicants were in the scale of Rs.118-225 right from the date of appointment thus, there is a distinction and the letter dated 31.10.1973 cannot apply to the applicants. The scale of Rs.110-180 was given for the PSC untrained teachers. This is also evident from another letter dated 16th April, 1977 wherein also the pay scale of the PSC/SSC PTC is shown as existing scale of Rs.180-270 as on 06.3.1970 and the sanctioned scale as Rs.165-350. There is however, a foot note to this that they would be applicable for matriculate untrained teachers on completion of 10 years service on 27.5.1970 and thereafter. The respondents, have however, refuted by saying that this was with reference to the Union Territory of Dadra & Nagar Haveli and not for Daman & Diu. Be that as it may, we do not find any order for not granting the revised pay scale of Rs.118-270 as replacement scale for the earlier scale of Rs.118-225 of PSC PTC. It is only a replacement scale for the earlier scale of Rs.110-180. This being so, there is absence of any material to substantiate the stand of the respondents that these applicants primary teachers having qualification of PSC PTC were not entitled for revised scale of Rs.118-270 as given to the matriculates on 05.3.1971. They were always treated as equal to the matriculate trained and the pay scale of Rs.118-270 granted vide order dated 05.3.1971 was meant for

matriculates and not for matriculates trained. This being so, in our considered view, no such distinction should have been made by the respondents in regard to these applicants vis-a-vis matriculate teachers, as far as the order of 05.3.1971 is concerned. Therefore, the order dated 17.4.1973 withdrawing the revised pay scales given to the applicants needs to be quashed and set aside.

12. The respondents have raised the plea of jurisdiction as well as limitation, delay and laches. It is true that there is enormous delay on the part of the applicants in approaching this Tribunal for a demand which pertains to the year 1973. The applicants have, however, filed MP for condonation of delay and have stated that as their grievance relates to the scales of pay, the cause of action arise every month and therefore it is continuous cause of action and no delay is caused. According to them their case is governed by the judgment of M.R. Gupta Vs. Union of India & Others (1995 (31) ATC 186). The respondents have refuted the same by saying that M.R. Gupta also does not apply because it is not the case of pay fixation but of revision of pay scale. We do find that there is enormous delay on the part of the applicants in approaching this Tribunal. This Tribunal also has no jurisdiction over the matters pertain to a period prior to 1982 as pointed out by the respondents. However, it has to be said that so long as the applicants are getting lesser pay than their

counterparts i.e. matriculates trained teachers as well as those PSC PTC teachers in Dadra & Nagar Haveli, the delay needs to be condoned relying on M.R. Gupta's case (supra). We also find that the applicants' case is squarely covered by the judgment in S.S. Yadav & Others Vs. Animal Husbandry & Veterinary Officers in OA No.16/94. They are under the control of same Administrator even though as stated by the respondents, the Union Territory of Dadra & Nagar Haveli became independent much earlier, it is to be seen that as on 05.3.1971 the scales were same in Dadra & Nagar Haveli as well as in Daman & Diu. The distinction was made only from 01.01.1973 onwards.

13. In view of the reasons recorded above, we are of the considered opinion that the applicants are entitled to the pay scale of Rs.118-270 as on 21.12.1967 and the withdrawal of the same was not correct. As the applicants have approached this Tribunal belatedly they shall be entitled to only notional pay in the revised scale of pay as on 21.12.1967 and 27.5.1970 as per the orders of 05.3.1971. The respondents are directed to consider the claim of the applicants on this basis and to grant them all the consequential benefits including retiral benefits if any in the case of those who have already retired. The arrears of difference in pay shall be payable only one year prior to the filing of the OA

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without any interest. This be done within a period of three months from the date of receipt of copy of this order.

14. The OA is thus allowed. No order as to costs.

*Shanta f*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

*B. Dikshit*  
(BIRENDRA DIKSHIT)  
VICE CHAIRMAN

Gajan