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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.: 97 OF 1992.

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Date of Decision 10-10-95

KHANDUBHAI N. NAIK,

Petitioner/s

SHRI D. V. GANGAL WITH SHRI B.C. SAHA
AND SHRI DESAI,

Advocate for
the Petitioner/s

Versus

UNION OF INDIA & OTHERS,

Respondent/s

SHRI SURESH KUMAR FOR
SHRI M. I. SETHNA,

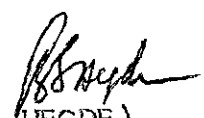
Advocate for
the Respondents

CORAM :

Hon'ble Shri. B. S. HEGDE, MEMBER (J).

Hon'ble Shri. M. R. KOLHATKAR, MEMBER (A).

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


(B. S. HEGDE)
MEMBER (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 97 OF 1992.

Khandubhai N. Naik ... Applicant

Versus

Union Of India
through
Secretary to the Govt. Of India,
Ministry of Human Resources Development,
(Department Of Education),
NEW DELHI.

Administrator of Dadra & Nagar Haveli
through
Collector,
Dadra & Nagar Haveli,
Silvassa. ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri D. V. Gangal alongwith
Shri B. C. Shah and Shri Desai,
Counsel for the applicant.
2. Shri Suresh Kumar for
Shri M. I. Sethna, Counsel for the respondents.

JUDGEMENT

DATED : 10-10-95

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. This application has been filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order dated 6.11.1990 for non-grant of pay scale of Rs. 440-750 revised scale of Rs. 1440-2600 with effect from 07.10.1994.

2. The undisputed facts are that the applicant is a Diploma holder (Drawing DTC) and joined services as

Drawing Teacher in the High School on 11.07.1968 in the pay scale of Rs. 105-4-185-EB-5-205-10-215 with other allowances as admissible under the Rules, on the basis of advertisement made by the respondents on 17.05.1968. It is seen that there are two types of pay scales for Assistant Teacher of Higher School and the pay scale is (i) Rs. 160-370 (ii) Rs. 100/- fixed. Qualification prescribed are (i) B.T., B.A. B.Ed., B.Sc B.Ed and D.Ed. (ii) Untrained graduates.

Drawing Teacher High School the pay scale is (i) Rs. 160-370 for Arts Master (ii) Rs. 105-215 for S.S.C. Matriculate D.T.C., respectively. Admittedly, at the time of joining as Drawing Teacher the applicant was SSC D.T.C. and he was selected for the lower scale. In 1970 both the posts, Drawing Teacher and Arts Master the pay scale is Rs. 160-370 and Drawing Teacher with SSC/Matriculate with pay scale of Rs. 105-215 were amalgamated together in consonance with the Central Pay Scale and the revised pay scale was made applicable with effect from 06.03.1970 in the pay scale of Rs. 140-330. However, he contends that during his service, the applicant obtained Arts Master on 07.10.1974 and therefore he was entitled to get higher pay scale of Rs. 160-370 on the basis of recommendations of the Third Pay Commission. Therefore, the applicant contends that he is entitled for T.G.T. pay scales at various stages with effect from 07.10.1974 i.e. the date of obtaining the degree of Art Master. Accordingly, he prayed for the following reliefs :-

- (i) The applicant's case is similar to those untrained teachers having S.S.C. STC qualification, who after obtaining B.A. B.Ed. Degree/Diploma respectively were granted T.G.T. pay scales, since

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the applicant also acquired qualification of Art Master on 7.10.1974 which is equivalent to B.A., B.Sc. B.Ed, therefore the applicant is entitled to TGT pay scales with effect from 07.10.1974.

- (ii) To direct the respondents to give retrospective effect to the order dated 06.06.1988 mentioned in letter dated 6.11.1990 and grant higher pay scales of Rs. 1400-2600, etc.

3. In reply the respondents denied the contention of the applicant and stated that the application is totally misconceived and discloses no cause of action and the same, therefore, deserves to be dismissed in limine with costs. There is no dispute regarding the fact as stated earlier that the applicant joined in the scale of Rs. 105-215 which was equivalent to the scale given to Assistant Teacher. His educational qualification at that time was S.S.C. and D.T.C. which is equivalent for Drawing Teachers Certificate. As per the Recruitment Rules, the applicant was initially fixed on the basis of his qualification that he possessed at the time of joining the service. Further, under the Recruitment Rule, the scale of pay would therefore be determined and continued to be so in accordance with the scale in which he was initially appointed and as and when the pay revision so effected, the applicant got the benefit of the revision of scale from time to time. Pursuant to the Third Pay Commission, the pay scale of Rs. 105-215 was revised to Rs. 425-640 and was granted to the applicant. The grievance of the applicant is that the pay scale of Rs. 440-750 which existed prior to 1.1.1986 and which was the scale applicable to the Drawing Teacher who

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possessed 'Art Master' qualification and which scale prevailed in other Union Territories including the neighbouring territories of Diu, Daman and Goa and accordingly the applicant should be placed in the scale with effect from 07.10.1974 on his acquiring the qualification of 'Art Master'. It is to be noted that with effect from 01.01.1986 the said scale of Rs. 440-750 has been equated to Rs. 1400-2600 pursuant to the recommendations of the Fourth Pay Commission. Accordingly, the said scale has been given to the applicant with effect from 01.01.1986. Therefore, the question of giving any higher scale on the basis of the acquisition of higher qualification cannot ~~be given~~ ^{advise} in view of the provisions of the recruitment rules, because under the Rules such specific higher qualification do not entitle a person who has joined in a different scale at the initial stage, as he could not fit in the higher scale which required a higher qualification which was not possessed by the applicant at the time of initial joining in service. Besides that, the applicant by virtue of amalgamation of two posts i.e. Drawing Teacher and Arts Master in the pay scale of Rs. 160-370 and SSC/Matric with DTC in the pay scale of Rs. 105-215. The applicant has been benefited by restructuring the pay scale. Since the applicant did not raise any grievance regarding merger of posts at that point of time, it is not open to him to raise the same plea after a lapse of 20 years.

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4. Heard the Learned Counsel for the parties and perused the records.

5. The question for determination here is whether acquiring a higher qualification subsequent to the joining of the applicant in service would entitle the applicant to a higher scale. In this connection, the Learned Counsel for the applicant, Shri Gangal draws our attention to Exhibit 'F' wherein the Assistant Teacher for Higher School, if he is an untrained graduate he is given Rs. 100/- fixed amount but on acquisition of B.T., B.A., B.Ed. B.Sc. B.Ed., D.Ed., he will be given the scale of Rs. 160-370, whereas for the Drawing Teacher there were two scales (i) Rs. 160-370 and (ii) Rs. 105-215. For the first category the minimum qualification is 'Arts Master' and for the second category the minimum qualification is SSC Matriculate, D.T.C. As stated earlier, the applicant does not possess the required qualification and he has joined in the lower pay scale whereas the Assistant Teacher referred to earlier untrained is given a lumpsum and at the time of acquiring the educational qualification he is given the scale prescribed for the purpose. In the circumstances, the two are uncomparable and both stand on different footing. As stated, his main contention is that ^{on} acquiring a higher qualification he should be given higher pay scale which cannot be given to him under the circumstances. Therefore, acquiring a higher qualification has no relevance with the relevant recruitment rules. Goa, Daman and Diu recruitment rules specifically states that the pay scale of the post of Drawing Teacher is Rs. 440-750 and the minimum educational qualification prescribed is Bachelor's Degree in Fine Art and it is by direct recruitment and not by promotion. The applicant is working in Dadra & Nagar Haveli (UT) which issued the Recruitment

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Rules vide dated 30.07.1975 and deemed to have come into force with effect from 01.01.1973. As a matter of fact, the Recruitment Rules of Goa, Daman and Diu are not applicable to applicant, as he is governed by Dadra & Nagar Haveli Recruitment Rules for Union Territory, whereunder the pay scale prescribed is Rs. 425-640. The increase in the scale the applicant got is on the basis of the Pay Commission and not by virtue of promotion. Higher qualification and seeking higher scale are not granted automatically. In such cases the provisions of Recruitment Rules are to be followed strictly. On the other hand, the Assistant Teacher Graduate with B.Ed. qualification can straightaway be appointed in the scale of Rs. 160-370 and in the case of untrained teachers a lumpsum of Rs. 100/-. There is nothing wrong in the two scales given to the trained teachers and untrained teachers, whereas the applicant was given the revised scale in accordance with the Pay Commission. Therefore, it is not for the applicant to state that he should be given higher pay scale, normally given to the persons who possess higher qualification at the time of joining the service.

6. In this connection, the Learned Counsel for the applicant draws our attention to the decision of this Tribunal in the case of the applicant and other 12 persons decided on 14.02.1990 wherein the Tribunal after considering the contention of the parties passed the following order :-

"In the circumstances, we are of the view that proper assessment of the issue has to be done by the first Respondent without

further delay as it is patent that the matter has been unduly delayed. Such assessment has to be done having regard to the settled proposition of law that there shall be no discrimination among the employees in the various Union Territories doing the same job, of which the job requirements are the same and for which the qualifications for recruitment are also identical, and with due respect to the doctrine of 'equal pay for equal work' as enshrined in the Constitution of India and as reported by the law laid down by the Supreme Court. This shall be done within four months from the date of receipt of copy of this order."

Pursuant to the decision of the Tribunal, the Competent Authority vide its Order dated 06.11.1990 considering the existing anomalies passed the following order :-

"Drawing Teachers, Type and Shorthand Instructor and Carpentry Demonstrator

These teachers were in the pre-revised pay scale of Rs. 425-640 and in the revised pay scale of Rs. 1400-2300. Their demand is that the pre-revised pay scale of Rs. 425-640 may be upgraded to Rs. 440-750 in accordance with the Govt. Of India Order No. 5-44/82-Sch.6 dated 27th March, 1982, as done in the case of Junior Craft Teachers Junior Language Teachers and Junior Dance Teachers, etc. and Rs. 1400-2500 instead of Rs.1400-2300 w.e.f. 01.01.1986.

The Government have examined this demand of these teachers. The pay scale of Rs. 425-640 was upgraded in respect of six categories of Junior Teachers to the pay scale of Rs. 440-750 as the recruitment to the Junior Cadre had been stopped and that


Junior Teacher were eligible for promotion to the senior grades. In the case of present petitioners these conditions are not fulfilled. There is 100% direct recruitment to the post of Drawing Teachers, Type and Shorthand Instructor and Carpentry Demonstrator in the Union Territory, Dadra & Nagar Haveli and those teachers are not having any promotional avenue to the higher level posts.

In view of the position as above, these categories of teachers are not covered under the provisions of Govt. Of India order dated 27th March, 1982. These teachers are already in the revised pay scale of Rs. 1400-2600 with effect from 01.01.1986. The cases of these categories ~~was~~^{were} earlier examined by the Government and the pay scale of Rs. 1400-2600 was sanctioned to them vide order dated 6.6.1988. A copy of the order dated 6.6.1988 is enclosed. In view of this, there is no pay anomaly in these cases.

The contention of the applicant is that by virtue of the revision effected by the respondents with effect from 06.03.1970, the scale of the applicant has been revised from what he was drawing. It is an undisputed fact that after merger of the two scales, the scale has been revised corresponding to the Central Pay Scales and which was made applicable to all people who were similarly situated. Option was given to the employees, where the applicant had opted for the Central Pay Scale knowing fully well what will be the repercussion. Though the initial scale may be little lower but the maximum scale is much more than what he was drawing in the previous scale. The applicant also filed a writ petition before the Bombay High Court which has been subsequently transferred to the Tribunal -

T.A. No. 127 of 1986. The Tribunal vide its order dated 14.02.1990 alongwith other petitions disposed of the matter directing the respondents to make a proper assésment with respect to the doctrine of 'equal pay for equal work' with respect to the scale of pay availed by the applicant. The contention of the applicant that the revision of pay should have been allowed with retrospective effect has been negatived by the Tribunal while giving direction to the respondents. In this O.A. also the applicant has raised the very same plea that he should be given the benefit of anomalous situation with retrospective effect i.e. 06.03.1970.As stated earlier, the said plea has not been accepted by the Tribunal earlier and it is not open to him to raise the same plea once again. It is a settled principle that no relief can be granted to a period beyond three years from the date on which the Tribunal commenced to exercise its power under the Act. Such claims are barred by limitation. In the instant case, apart from the point of limitation, the principle of res judicata would also apply. Since the very same contention has been raised in the earlier petition,which has not been accepted, it is not open to the applicant to raise it again in this petition.

7. For the reasons stated above and in view of the peculiar facts and circumstances of the case, we see no merit in the O.A. It is not open to the applicant to claim any higher pay by virtue of his acquiring higher qualification at this belated stage, as the matter has already been adjudicated in the earlier T.A. No. 127/86. In the result, the O.A. is dismissed. No order as to costs.


 (B. S. HEGDE)
 MEMBER (J).

(Per M.R.Kolhatkar, Member(A))

8. I am inclined to agree with my learned brother Member(J) that the O.A. is liable to be dismissed. However, I wish to give my own reasons for this outcome. The main relief claimed by the applicant is to give him T.G.T.(Trained Graduate Teacher) pay scales from 7-10-1974 i.e. the date on which he obtained the certificate of Art Master. Subsequently the applicant had filed an MP 540/95 actually filed in Registry on 26-7-95 but not numbered in which the applicant had sought to add to facts of the case and so far as the relief is concerned the applicant had sought the pay scale of Rs.440-750 being the IIIrd Pay Commission's pay applicable w.e.f. 7-10-1974. This was the pay scale of T.G.T. as recommended by IIIrd Pay Commission and not Rs.425-640 as was originally mentioned by the applicant.

9. In my view, the O.A. cannot be said to be hit by limitation and by principles analogous to res-judicata. This is because the T.A.127/86 arose out of writ petition filed in the High Court. In the writ petition the relief of past arrears was claimed. The T.A. came to be disposed of by order of this court passed in a bunch of 13TAs on 14-2-1990. The Tribunal noted that several factors were required to be assessed. The existence of anomaly and its need for rectification were acknowledged. There were certain recommendations of National Commission on Teachers and there were recommendations of Committee on Petitions(8th Lok Sabha). Hence the Court disposed of the matter by direction

which are reproduced at para-6 of the judgment of learned brother Member(J). Subsequently the C.P. No.35/90 in T.A.No.158/86 was dismissed. This T.A. relates to another applicant but it is not in dispute that it was part of 13 TA's which ^{were} ~~was~~ disposed of by common order. The C.P. was discharged on short ground that no direction for revision of pay with retrospective effect was given in the final order. It was also observed that if the petitioners feel aggrieved the remedy open is to file an original application in accordance with the law. Accordingly the present O.A.97/92 has been filed. Since the issues raised by the present O.A. were not ^{disposed of} ~~earlier~~ on merits and in the background of what is stated earlier I am of the view that the O.A. cannot be dismissed at the threshold as being hit by limitation and the principles analogous to res-judicata.

10. I am, however, of the view that even otherwise, the applicant is not entitled to succeed for the reasons that it cannot be said that the department has not passed a proper order in terms of the directions given by the Tribunal while disposing of TA 127/86 on 14-2-90. The Govt. has given the reasons as to why the claim to revise the pay scale to Rs.440-750 and Rs.1400-2600 cannot be accepted. The main reason is that the pay scale of Rs.425-640 was upgraded in respect of six categories of Junior Teachers to the pay scale of Rs.440-750 as the recruitment to the Junior cadre had been stopped and that Junior Teachers were eligible for promotion to the senior grades. The reasons given by the respondents appear to be cogent and do not prima-facie need any interference from the Tribunal.

In their written statement the respondents have further contended that pay scales of miscellaneous categories of teachers in some cases are also different, meaning the Drawing teacher etc. are different because of difference in working levels and there is nothing wrong in prescribing different pay scale for similar posts in different Union Territories. This is stated in the context of the fact that applicant has stated that in Goa, Daman and Diu which was Union Territory then, Music Teachers and Drawing Teachers were given the pay scale of Rs.440-750 as part of implementation of 3rd Pay Commission. Respondents have further contended that pay scales of teachers revised from time to time are applicable to the miscellaneous/allied category of teachers like Music Teachers, Drawing Teachers, Librarians, Art Teachers, Craft Teachers, Physical Education Teachers, Language Teachers or equivalent teaching posts carrying any other designation. The scale of pay in respect of these categories are equated to one of the main category of teachers i.e. Primary School Teachers/ Trained Graduate Teachers etc.

11. In view of the cogent reasons given by the respondents there does not appear to be any need to interfere with the order of the department dated 6-11-1990 which has been challenged by the applicant. The O.A. is liable to be dismissed and therefore it is dismissed.

12. There will be no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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FINAL ORDER

In the result, OA is dismissed with no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
Member(J)