

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 09th day of August 2005

**TRANSFERRED APPLICATION NO. 06/2001
(CIVIL WRIT PETITION NO. 331/1999)**

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. M.K. MISRA, MEMBER (ADMINISTRATIVE)

K.R. Mathur son of Shri J.K. Mathur, resident of House No. 2514, Khajane Walon Ka Rasta, Jaipur since retired from the post of Post Graduate Teacher (PGT) - Maths from Kendriya Vidyalaya No. 1, Bajaj Nagar, Jaipur.

.....Applicant

By Advocate: Mr. R.P. Sharma.

versus

- 1 Kendriya Vidyalaya Sangathan through its Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
- 2 Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Bajaj Nagar, Jaipur.
- 3 Principal Kendriya Vidyalaya No. 1, Bajaj Nagar, Jaipur.

.... Respondents

By Advocate : Mr. V.S. Gurjar.

ORDER (ORAL)

The applicants have filed this TA thereby praying for the following reliefs:-

(i) by an appropriate writ, order or the direction, the writ petition (Transfer Application) may be allowed

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and the order dated 23/24.9.1999 may be quashed and set aside to the extent it operates detrimental to the rights of the petitioner and the respondents be directed provide the following benefits:-

- (a) to fix petitioner's pay at the stage of Rs.2900/- as on 1.1.1986 and carry out necessary pay fixation accordingly;
- (b) to provide benefit of FR 22-C in terms of clarification dated 26.11.1990 on promotion to the post of Post Graduate Teacher w.e.f. 26.3.1991;
- (c) to count petitioner's service w.e.f. 1.4.1995 to 30.06.1996 and thereby recalculate the pension, gratuity and other ancillary benefits'
- (d) to make payment of 4 days leave encashment which has been illegally withheld and
- (e) to carry out pay fixation under the revised pay scales given effect from 1.1.1996 on the recommendations made by the Vth Pay Commission and to revise the pension accordingly.

(ii) After the aforesaid exercise, to carry out the correct fixation and make payment of arrears alongwith interest @ 18% oa,a, from the date, it fell due.

2 Briefly stated, the facts of the case are that the applicant was initially appointed as Trained Graduate Teacher (TGT) and in pursuance thereof, the applicant joined the duties on 1.9.1964 in Kendriya Vidhyalaya Sangathan No. 1, Jaipur. The applicant was also provided selection scale on the post of TGT w.e.f. 05.09.1971. Since the applicant was possessing the requisite qualification and fulfilled the eligibility conditions, he was further promoted to the post of Post Graduate Teacher (PGT) w.e.f. 26.3.1991. The applicant retired from service in the afternoon of 30.06.1996 on attaining the age of

superannuation. At this stage, it may be stated that on recommendations made by the IV Pay Commission, the pay of Central Governments Employees were revised and made effective w.e.f. 1.1.1986. However, National Commissioner for Teachers under the chairmanship of Prof. D.P. Chattopadhyay was established who made various recommendations, as such, in partial modification of the Finance Ministry's Notifications dated 13.09.1986 and 22.09.1986, pay scales of teachers were further revised by Ministry of Human Resources Development (Department of Education) vide order dated 12.8.1987 providing three scales namely; Junior Scale, Senior Scale and Selection Scale. As per policy, Sr. Scale was to be granted after 12 years of service whereas the Selection scale was to be granted after 12 years in the Sr. Scale of the respective cadre. Since the applicant has completed 12 years of service in the Sr. Scale, he was granted Selection grade in the pay scale of Rs. 2000-3500 w.e.f. 1.1.1986 vide order dated 18.10.1994 (Annexure A/1). Since the pay of the applicant was not fixed correctly, in pursuance of granting selection grade for TGT in the pay scale of Rs.2000-3500 w.e.f. 1.1.1986 vide aforesaid order and further applicant was also not granted the benefit of Rule 22(c) of the Fundamental Rules when he was promoted to the post of PGT w.e.f. 26.3.1991, he made a representation to the authorities followed by demand of justice thereby ventilating his aforesaid grievances, besides other grievances namely that while granting pension, the period w.e.f. 1.4.1995 to 30.06.1996 be counted as qualifying

service and also to calculate pensionary benefits for aforesaid period which has been illegally withheld. Besides the relief as claimed aforesaid, applicant further stated in the representation that the respondents should also carry out pay fixation under revised pay scale given effective w.e.f. 1.1.1996 on the recommendations made by the Vth Pay Commission and to revise pay scales of the applicant. Notice issued by the applicant was answered by the respondents vide order dated 5.5.1997 (Annexure A/5) whereby the applicant was informed that as on 1.1.1986, the applicant was TGT in the pay scale of Rs.740-880 and thus his pay was fixed in the CCS(RP) Rules, 1986 in the corresponding scale of pay scale of Rs.1640-2900 and his pay is not required to be fixed with reference to pay scale of Rs.2000-3500 which is not a corresponding scale. As regards the claim of the applicant for taking service period w.e.f. 1.4.1995 to 30.06.1996 into consideration for calculating the pension and gratuity, the applicant was informed that service verification has already been submitted to the appropriate authorities. Regarding his claim for encashment of Earned Leave, he was also informed that he has been paid Rs.60,470 vide Cheque No. 878077 dated 29.10.1996 towards encashment of Earned Leave instead of Rs.59,997, which was admissible to him. Thus excess amount of Rs.473 is required to be recovered immediately. Since the entire grievance of the applicant was not redressed by the authorities, the applicant filed the Writ Petition before the Hon'ble High Court thereby praying for fixation of his salary w.e.f. 1.1.1986, grant of benefit

under FR 22(c) when he promoted to the post PGT w.e.f. 26.3.1991. It may be stated that vide notification dated 17.12.1998 whereby the KVS was brought under the jurisdiction of this Tribunal, the Writ Petition was transferred to this Tribunal. It may also be relevant to submit that during the pendency of this TA, the respondents issued another notification dated 23/24.09.1999 vide which selection grade which was granted to the applicant w.e.f. 1.1.1986 was modified to 1.1.1987 (Annexure A/8). Thereafter the applicant was permitted to file an Amended OA and the applicant challenged the impugned order dated 23/24.09.1999 to the extent it operated detremental to the rights of the applicant thereby providing selection scale w.e.f. 1.1.1987 instead of 1.1.1986 as claimed by the applicant. It is on the basis of these facts, the applicant has filed this OA praying for the aforesaid reliefs.

3 Notice of this application was given to the respondents. The respondents have filed their reply thereby contesting the case. During the pendency of this OA, the respondents have also filed an MA No. 504/2003 thereby placing certain documents Annexures MA R/1 to Annexures MA R/4 on record. From perusal of the aforesaid document, it is clear that applicant had been sanctioned Revised Commutation money/DCRG vide letter dated 03.04.2003 (Annexure MAR/1), Revised Pension Sanction vide letter dated 26.03.2003 (Annexure MAR/2) and sanction of lump sum of Rs.2,08,483 on account of commutation vide commutation dated 26.3.2002 (Annexure MAR/3). From perusal of these

documents, it is also clear that the period w.e.f. 01.04.1995 to 30.06.1996 has been counted as qualifying service and pensionary benefits on the basis of revised pay scales has been given to the applicant taking this period as qualifying service for the purpose of pension. Thus the only grievance which survives now is regarding grant of selection grade on the post of TGT w.e.f. 1.1.1986 and fixation of pay of the applicant as ondate and also giving the benefit of FR 22(C) when applicant was promoted on the post of PGT w.e.f. 26.3.1991.

4 The stand taken by the respondents in the reply is that the pay of the applicant was correctly fixed as on 01.01.1986 at Rs.2825/- on the post of TGT (Selection Grade) instead of Rs.2900/- as claimed by the applicant, as according to the respondents as on 1.1.1986, the applicant was TGT and was drawing the pay scale of Rs.740-880, the corresponding scale of which is Rs.1640-2900 as per the recommendations made by the IV Pay Commission. Thus the pay of the applicant was required to be fixed in the pay scale of Rs.1640-2900 and not in the pay scale of Rs.2000-3500 which is not the corresponding scale of Rs.740-880 as claimed by the applicant. As regards the modification of the order dated 18.10.1994 (Annexure A/1) whereby the applicant was granted selection grade of TGT in the scale Rs.2000-3500 w.e.f. 1.1.1986, the stand of the respondents is that the said order was rightly modified vide order dated 23/24.9.1999 (Annexure A/8) w.e.f. 1.1.1987 as according to the instruction dated 12.08.1987, the

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selection scale is to be granted after 12 years of service in the Sr. scale of the respective cadre and such selection grade was further restricted to 20% of total number of posts in the Sr. scale in the respective cadre. According to the respondents, no doubt the applicant had completed 12 years of service in the Sr. scale of TGT but as per notification dated 12.08.1987, the selection grade was restricted to 20% of the posts in the Sr. scale of the respective cadre which in this case is TGT. Since the selection grade w.e.f. 1.1.1986 was wrongly granted to respondents in excess of 20% post in the Sr. Scale of TGT, the impugned order dated 18.10.1994 (Annexure A/1) was modified by issuing another order dated 23/24.9.1999 (Annexure A/8) thereby granting the selection grade to the applicant w.e.f. 1.1.1987.

5 As regards the contention of the applicant that he is also entitled to the benefit of FR 22(c) for the purpose of fixation of pay on promotion to the post of PGT, the stand of the respondents is that in view of instructions dated 03.11.1987 read with instructions dated 25.5.1989, it is clear that when Govt. Servant is appointed from one post to another where the appointment to the new post does not involve assumption of duties and responsibilities of great importance than those attached to the old post, including appointment to a non-functional selection grade, he will draw initial pay the stage of the time scale of the new post post which is equivalent to old post thus not entitled to benefit of FR 22(C).

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6 We have heard the learned counsel for the parties and have gone through the material placed on record.

7 So far as the first contention of the applicant that w.e.f. 1.1.1986 his pay should be fixed at Rs.2900/- is concerned, we are of the view that the applicant is not entitled to the said relief. Admittedly, prior to 1.1.1986, the applicant was drawing TGT Selection Grade in the scale of Rs.740-880 and corresponding scale of pay pursuant to revision of pay scale by the IV Pay Commission is 1640-2900. Thus the applicant whose basic pay in the old scale as on 1.1.1986 was Rs.880/- was to be fixed in the new selection scale at Rs.2580.40. This fact is also not disputed by the applicant as can be seen from Para No. 7 of the OA where the applicant has made such calculation. Since there was no stage in the pay scale of Rs.1640-2900 at Rs.2528 and thus the stage next above the aforesaid amount in the new selection grade of Rs.1640-60-2000-EB-60-2360-EB-60-2600-75-2750-EB-2900 came to Rs.2540 and not 2600 as calculated by the applicant by taking the pay scale of Rs.2000-3500, as corresponding scale of the pre revised scale of Rs.740-880. Thus we see no infirmity in the action of the respondents whereby the pay of the applicant was fixed at Rs.2825/- as on 01.01.1986 after granting stagnation increments. The next question which required our consideration is whether the applicant was entitled to the selection grade w.e.f. 01.01.1986 or w.e.f. 01.01.1987 as granted by the respondents vide impugned order dated

23/24.09.1999 (Annexure A/8) whereby modifying the earlier order dated 18.10.1994 (Annexure A/1). According to the respondents, the TGT selection grade was to be granted to those teacher who have rendered 12 years of service in the Sr. scale in the respective cadre. This was further restricted to 20% of the number of posts in the Sr. scale of the respective cadre. Since the selection grade was to be restricted to persons upto Sr. No. 80 (being 20% of the total number of posts in the Sr. scale of TGT), the selection grade granted to the applicant in excess of 20% of the posts in Sr. Scale of TGT was withdrawn and the same was rightly granted to the applicant and other similarly situated persons w.e.f. 1.1.1987 by issuing the modified order dated 23/24.09.1999 (Annexure A/8). We see no infirmity in the order passed by the respondents. The learned counsel for the applicant while drawing our attention to Annexure A/1 submitted that vide impugned order dated 23/24.09.1999 (annexure A/8) though the selection scale in respective of certain persons including the applicant has been modified w.e.f. 1.1.1987 but in the case of S/Smt. V. Venkatyamma and P.C. Mukherjee whose name find mention at sl. No. 25 and 26 and Smt. M. Premlata at sl. No. 27, no such order modifying the selection grade w.e.f. 1.1.1987 has been passed though they are junior to the applicant whose name find mention at sl. No. 22 of the order dated 18.10.1994 (Annexure A/1). To meet this point of the applicant, the learned counsel for the respondents has produced an order dated 16.07.1996, the perusal of which shows that the date of grant of selection grade of

the persons junior to the applicant has also been modified to that of 1.1.1987 and thus the grievance of the applicant that persons junior to him have been granted selection grade w.e.f. 1.1.1986 does not survive.

8 So far as the last contention of the applicant is concerned that the applicant is entitled to the benefit of FR 22(c) for the purpose of fixation of his pay on promotion to the post of PGT w.e.f. 26.3.1991, we are of the view that for want of material, it is not possible for this Tribunal to give definite finding on this point. The stand taken by the respondents in the reply is that in view of clarification dated 25.5.1989, the applicant is not entitled to the benefit under FR 22 (c) when promoted from Sr. Scale of the post TGT to that of PGT. The applicant has placed on record subsequent letter dated 26.11.1990 (Annexure A/2) which stipulates that the pay of TGT holding the revised selection grade scale of pay may be fixed on the same analogy under FR 22 (c) on promotion to the post of PGT in the revised scale. This communication has been issued after approval of Deputy Commissioner (Finance) KVS and this clarification has been issued in the light of Ministry of finance, Department of Expenditure's OM dated 09.08.1988. Thus keeping in view the aforesaid factual position, we are of the view that ends of justice will be met if the appropriate directions is given to the respondents to re-examine the matter again in the light of said OM and also in consultation with nodal Ministry viz. Ministry of Human Resources Development as to whether the

applicant who was holding the post of TGT selection grade is entitled to the benefit of FR 22 (c) on his promotion to the post of PGT w.e.f. 26.3.1991 and if not appropriate authority will pass a reasoned order. In case it is held that the applicant is entitled to the benefit under FR 22 (c) on his promotion to the post of PGT w.e.f. 26.3.1991, his pay may accordingly be fixed in the revised pay scale. Accordingly, the respondents are directed to take decision on this point within a period of six weeks from the date of receipt of a copy of this order and in case the applicant is held entitled for the benefit under FR 22(c) on his promotion to the post of PGT, his pay may be fixed accordingly and he shall be entitled to the arrears on account of such fixation in the revised scale as well as other retiral benefits which arrears may be paid within a period of two months from the date of passing of the order.

9 With these observations, the OA is disposed of with no order as to costs.



(M.K. MISRA)

MEMBER (A)

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(M.L. CHAUHAN)

MEMBER (J)