

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No 571 of 2004

Jabalpur, this the 17th day of May, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan Judicial Member

1. Vinayak Prasad Sharma
S/o Shri Ram Rathi Sharma
Aged about 63 years,
Occupation – Service Retd. N.L.T.(H.S.)
Ordnance Factory School Katni,
R/o Village Belva Sursarisingh
Post- Khairahan
District – Rewa(M.P.)
2. Ramesh Chandra Sharma
S/o Raghuwar Prasad Sharma
Aged about 63 years
Occupation- Service
Retd. N.L.T.(H.S.) Ordnance Fy.
School, Katni, R/o H.No.89,
Naulakha, Sadar Bazar, Agra Cantt.
Agra(U.P.)
3. Smt. Krishna Kumari Tiwari
W/o Shri Ram Gopal Tiwari
Aged about 53 years
Occupation-Service N.L.T.(H.S.)
Ordnance Factory School Katni
R/o Quarter No.510/2, Type-II,
Sector-1, New Colony, Near G.C.F.
Central School,
Jabalpur(M.P.)

Applicants

(By Advocate – Shri S.P.Tripathi)

VERSUS

1. Union of India, through Secretary,
Ministry of Defence, New Delhi.
2. Chairman, DGOF,
Ordnance Factory Board,
Kolkata(W.B.)



3. The General Manager,
Ordnance Factory,
Katni (M.P.)

(By Advocate – Shri S.A.Dharmadhikari)

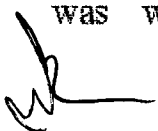
ORDER

By M.P. Singh, Vice Chairman –

By filing this Original Application the applicants have sought the following main reliefs :-

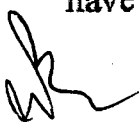
- “(1) That the senior scale (1640-2900) be granted to applicants No.2 w.e.f. 1.1.86 and applicant No.3 w.e.f. 7.7.88.
- (2) The difference of pay of both the scales i.e. 1400-2600 and 1640-2900 be paid to applicants.
- (3) The seniority of applicant No.3 be fixed in proper place in the seniority list of senior scale.
- (4) All pensionary benefits be given to applicant No.1 and 2 granting consequential relief.
- (5) Impugned orders dt. 16.2.2004 Annexure A-1 and A-2, order dt. 17.2.2004 Annexure A-3, order dt. 25.9.90, Annexure A-6, order dt. 10.11.89 Annexure A-7, order dt. 10.10.90 Annexure A-8 and A-9 be quashed”.

2. The brief facts of the case are that the applicants Nos.1,2 & 3 were initially appointed as Physical Training Inspector(for short ‘PTI’)(Middle), Head Master(for short ‘HM’)(Primary School), and Drawing Master(for short ‘DM’)(Middle) in the pay scale of Rs.425-640 w.e.f. 3.3.1967, 20.7.1970 and 7.7.1976 respectively. They were promoted as Non Language Teacher High School(for short ‘NLT HS’) w.e.f. 1.12.1979, 1.4.1981 and 3.4.1982 respectively, in the pay scale of Rs. 440-750. The recommendations of the Chattopadhyay Commission were made applicable to the Teachers working in the Ordnance Factory Schools vide Factory Order Part-I No.103 dated 10.3.1989 and the posts of HM and Trained Graduate Teachers(for short ‘TGT’) were equated and granted the pay scale of Rs.1400-2300. The applicants 1 & 2 were granted the senior scale (Rs.1640-2900) w.e.f. 1.1.1986 and 1993 respectively. However, vide Factory order dated 26.9.1989, the senior scale granted to the applicant No.1 was withdrawn. The applicants had filed OA No. 368 of

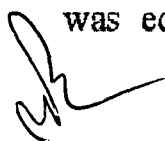


1991(Vinayak Prasad Sharma & 3 Ors. Vs. Union of India & Others) and this Tribunal vide its order dated 17.6.1999 passed in the said OA has held that the "Union of India in the Ministry of Railways and Defence cannot take two different steps in dealing with employees placed similarly." This order of the Tribunal was challenged before the Hon'ble High Court of Madhya Pradesh by filing Writ Petition No.3245/2000. The Hon'ble High Court of M.P. vide its order dated 25.11.2002 passed in the said writ petition, maintained the decision of the Tribunal but granted a liberty to the respondents to take a decision and while doing so, they will give adequate reasons as to why the clarifications at Point Nos.5 and 10 dated 3.11.1987 should not be made applicable. In pursuance of the direction of the Hon'ble High Court, the respondents have taken a decision that the applicant no.2 is not entitled for the senior scale w.e.f. 1.1.1986 and the applicant no.3 is not entitled for senior scale w.e.f. 7.7.1988. Vide order dated 17.2.2004 it has been held that the applicant no.1 is entitled for senior scale w.e.f. 30.11.1991. Since the respondents have not computed the service rendered by the applicants as HM, PTI and DM for the purpose of grant of senior scale, they have filed this Original Application claiming the afore-mentioned reliefs.

3. The respondents in their reply have stated that the applicants 1,2 & 3 were appointed as HM(Primary School), PTI and DM(Middle) on different dates and were subsequently promoted to the post of NLT w.e.f. 30.11.1979, 19.12.1977 and 30.4.1982. Their Service conditions are governed by the Ordnance Factory Organisation(Group A,B & C posts of Scholl Establishment) Recruitment Rules, 1976 which were notified vide SRO 199/1977. As per the said SRO, the post of NLT is promotional post from HM(Primary School) PTI(Middle) and DM(Middle). The said rules also provide that a NLT shall be eligible for senior scale on completion of 12 years service in the grade of NLT. The respondents have further submitted that in compliance of the order dated



25.11.2002 passed by the Hon'ble High Court of Madhya Pradesh in Writ Peition No. 3245/2000 filed by the department against the judgment dated 17.6.1999 passed by this Tribunal in OA 368/1991, the department issued a show cause notice vide letter dated 17.2.2004 to applicant No.1. This letter was issued to him in the light of law and clarification of Min. of HRD, Department of Education dated 3.11.1987. Aggrieved by the aforesaid show cause notice, the applicant No.1 preferred a representation dated 19.4.2004 to the General Manager, Ordnance Factory, Katni. The same was considered and ~~rejected~~ vide order dated 22.7.2004. Further, in compliance of the said order, the department had also examined the cases of the applicants Nos.2 and 3. According to the respondents, the Teachers engaged in the school run by the Railway department and those who working under Ordnance Factory Board Organisation are different. The post of NLT is a promotional post from PTI, DM/HM(P) and applicable for OF Board Organization only, whereas in the case of teachers engaged by the Railway Department, the post of HM(P), DM, PTI, NLT, TGT all carrying the same pay scale from the beginning, as such there is no linking with Railway Organization and the clarification given by the Ministry of HRD cannot be made applicable for OF_s Organization. ^{Sh} ~~Because~~ The recruitment rules etc. of Teaching staff of Railway department and O.F. Organization are different. They have further stated that the HM(P), Drawing Art. & Crafts Teacher/PTI of (M/J) School in the pay scale of Rs.425-640 with three years service in their respective grade were eligible for promotion to Language/NLT(now redesignated as TGT) in the pay scale of Rs.440-750. According to the respondents the difference in the grade and pay of HM(P), Drawing/Art & Crafts and PTI of (M/J) School with that of Language and NLT(Now TGT) was continuing till the implementation of IV CPC w.e.f. 1.1.1986. In other words, the HM(P), Drawing/Art & Crafts Teachers, PTI of (M/J) School were lower in the grade and scale of pay prior to 1.1.1986. Their pay scale was equated to the pay scale of TGT with effect from 1.1.1986

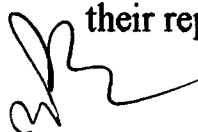


onwards only. Therefore, equating HM (P), Drawing/ Art & Craft Teacher and PTI of M/J School with LT/NLT (now TGT) prior to 1.1.1986 is wrong since it violates SRO 199 of 1977 and no executive orders can supersede statutory rules. In view of these facts, the applicants did not make out their case for grant of relief sought for in this OA and, therefore, this OA is liable to be dismissed.

4. Heard the learned counsel of both the parties and perused the records carefully.

5. We find that the applicants were initially appointed as HM/PTI/DM in the pay scale of Rs.425-640 and were subsequently promoted to the post of NLT in the pay scale of Rs.440-750 during 1977 – 1982. The pay scale of HM/PTI/DM was equated with that of the TGT w.e.f. 1.1.1986 on the recommendations of the Chattopadhyaya Commission. As per the recommendations of the Chattopadhyay Commission, the TGTs were eligible for grant of senior scale after rendering 12 years of service. The respondents have not counted the period of service rendered by the applicants as HM/PTI/ DM for the purpose of counting 12 years service in the grade of LT /NLT, for granting senior scale. The applicants had earlier filed OA No.368/91 and the Tribunal vide its order dated 17.6.1999 has passed the following order:-

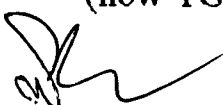
“7(i) The order Annexure A/6 shall stand quashed. If the respondents have a legally valid case, they are at liberty to issue a show cause notice, obtaining remarks of the applicant no.1 and can issue fresh orders only after considering his claim in the light of the law laid down on the subject. In respect of applicants No.2 & 3 the respondents are directed to reconsider the cases in the light of the clarifications given at points no.5 & 10 of the O.M. dated 3.11.1987. The applicants shall be informed of the decisions taken in this respect with reference to their representation at P/7 and P/8 respectively.”



The aforesaid order of the Tribunal was challenged by the respondents before the Hon'ble High Court of Madhya Pradesh in Writ Petition No.3245/2000. The Hon'ble High Court vide its order dated 25.11.2002 has passed the following order:

"6. As far as the applicant no.1 is concerned, we have held that the said direction is correct and is to be complied with. As far as other directions are concerned, we are only disposed to clarify that the Competent Authority shall take a decision and while so doing will give adequate reasons why the clarifications at point No.5 to 10 dated 3-11-1987 should not be applicable to the applicants No.2 and 3. We may hasten to add that though the Tribunal has observed that Union of India, in the Ministries of Railways and Defence cannot take two different steps in dealing with the employees placed similarly, we think it appropriate to further clarify that while dealing with the cases of the applicants No.2 and 3 the respondents No.2 and 3 would be at liberty to point out that on what base and foundation they make such a difference or there are any rules/ instructions governing the service condition of the applicants".

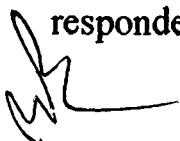
In pursuance of the aforesaid direction of the Hon'ble High Court, the respondents have issued show cause notices to the applicants indicating the grounds as to why the senior scale in the grade of TGT cannot be granted to them by counting their service rendered by them in the grade of HM, PTI and DM. They have stated in the show cause notice that the posts of HM, PTI and DM were in the pay scale of Rs.425-640 and the posts of LT and NLT were in the pay scale of Rs.440-750. The HM, PTI and DM with three years regular service in their respective grade were eligible for promotion to the posts of LT/NLT in the pay scale of Rs.440-750. This difference in the grade and pay of HM, DM and PTI of M/J school with that of the LT and NLT (now TGT) was continuing till the implementation of IVth CPC w.e.f. 1.1.1986. In other words the HM, DM, PTI etc. were lower in the grade and scale of pay prior to 1.1.1986. They became at par in grade and scale with those of LT & NLT (now TGT) w.e.f.1.1.1986 onwards only. Therefore, equating HM, DM and PTI with LT/NLT (now TGT) prior to 1.1.1986 is wrong since it violates SRO 199 of



1977 and no executive orders can supersede statutory rules. Thereafter, the applicants had submitted their representations and the respondents vide their order dated 22.7.2004 have rejected the representations of the applicants on the ground that the applicants had not brought out any new facts.

6. We find that the facts mentioned by the respondents in their reply that in the Railways the posts of HM, DM, PTI, NLT were all carrying the same pay scale from the beginning and, therefore, their services could be counted for the purpose of computing the period of 12 years for granting senior scale, have not been denied by the applicants by filing any rejoinder. The respondents have also stated in their reply that the O.F. Board had also approached the Ministry of HRD, Department of Education, seeking clarification with regard to the matter raised by the applicants. In the clarification, which was circulated vide order dated 30.3.1989 (Annexure-R-2) with regard to the matter of fixation of pay and counting of service in respect of those teachers, who are in a grade higher than the one to which they were recruited as ^{is} the case of applicants 1,2 & 3, it was clarified that their services in the present grade would be counted from the date of promotion, as per normal practice. However, the respondents have not shown us any departmental correspondence by which clarification with regard to the counting of service of the applicants rendered by them as HM,DM & PTI was sought by them from the Ministry of HRD.

7. Earlier, the Tribunal has adjudicated this matter and have taken a view that the Union of India, in the Ministries of Railways and Defence cannot take two different steps in dealing with the employees placed similarly. However, the Hon'ble High Court of Madhya Pradesh vide its order dated 25.11.2002 in Writ Petition No.3245/2000 has modified the order to the extent that the respondents would be at liberty to point out as to on what base and



foundation they make such a difference or there are any rules/ instructions governing the service condition of the applicants. The respondents have now rejected the representations of the applicants on the ground that the HM, PTI and DM after completion of three years service were eligible for promotion to the posts of LT & NLT (now TGT) . The present applicants were promoted to that grade prior to 1.1.1986 and the respondents are counting their service in that grade for the purpose of granting them senior scale. Since the respondents have now justified their action for not counting the service in the grade of HM, DM & PTI for the purpose of grant of senior scale in the grade of TGT as directed by the Hon'ble High Court, and particularly on the ground that till 1.1.1986 the posts of LT and NLT were the promotional posts for HM, DM & PTI and were governed by the statutory rules which could not be superseded by executive instructions, we do not find any ground to interfere with the findings arrived at by the respondents while rejecting the representation of the applicants.

8. In the result, for the reasons stated above, we do not find any merit in this Original Application and accordingly the same is dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

Rkv.

पूरांकन सं ओ/न्या.....जबलपुर, दि.....
सतिविधि काये पिल:-
(1) सतिवि, उक्त न्यायालय का एगो रिप्रेजेंट, जबलपुर
(2) एगो न्यायी/डीपुटी/जु.....के काउंसल
(3) एगो न्यायी/डीपुटी/जु.....के काउंसल
(4) सेक्रेटरी, केसरी, जबलपुर न्यायालय
सूचना एवं आवश्यक कार्यवाही हेतु
ज्ये सेक्रेटरी

S.P. Tripathi BN
S.D. Sharma Mukherji
BN BN

Issued
on 20.5.05
BN