

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No 709 of 2004

Jabalpur, This the 24th day of October, , 2005.

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

J.P. Shrivastava, S/o late Sri Satyanarayanlal,
Aged about 59 Years, Upper Division Clerk,
Income Tax Office, Bara Pathar, Bhopal **Applicant**

(By Advocate – Shri S.K. Nagpal)

VERSUS

1. Union of India, Through : The Secretary,
Ministry of Home Affairs, Settlement Wing,
Jaisalmer House, New Delhi.
2. The Dy. Commissioner of Income Tax
Range-II, Annexy Bhawan, Jabalpur. **Respondents**

(By Advocate – Shri M.Chourasia)

ORDER

By M.P. Singh, Vice Chairman

By filing this Original Application, the applicant has sought
the following main reliefs :-

- i) to place the applicant in the scale of Rs.1640-2900
w.e.f. 1.1.1986 based on recommendations of Prof.
D.P.Chattopadhyaya Commission on Teachers.
- ii) to fix his pay in corresponding scale of pay from
26.11.1988 on re-deployment.
- iii) to pay arrears of pay and allowance after fixing his
pay in above scales w.e.f. 1.1.1986 to the date of actual
payment.
- iv) to pay interest @ 12% per annum on the amount of
arrears of pay and allowances due to the applicant from the
dates the same become due to the date of actual payment."



2. The brief facts of the case as stated by the applicant are that he was initially appointed as an Intermediate Teacher in the scale of Rs.100-155 on 10th January, 1969 in Middle School, Turihidi (Orissa) under Dandakaranya Project. Thereafter, he was promoted as untrained Graduate Teacher in the scale of Rs.115-220 from 19.2.1971 and was posted to Middle School Morada. He continued in that capacity and subsequently transferred to High School Boregaon where he served up to 31.12.1975. He was further transferred to Higher Secondary School, Pakhanjore as UGT by order dated 31.12.1975 and continued there up to 7.1.1982. On shrinkage of the Dandakarnya Project, the applicant and many others similarly placed in the project both in Orissa and Madhya Pradesh were declared surplus and redeployed in the office of Indian Meteorological Department, Delhi and joined there as Upper Division Clerk on 17.1.1989. He was again declared surplus and was subsequently transferred to the office of the respondent no.2 in the same grade of UDC on 29.3.1990 and is still working under respondent no.2. The Head Master and Assistant Teachers of Middle School employed in the Ministries/ Departments of Government of India were enjoying the scale of Rs.425-640 but not in the case of similarly placed teachers under the Dandakarnya Project. As such the affected teachers deployed at Mana Camp in Madhya Pradesh had filed a writ petition in the Hon'ble High Court of MP, Jabalpur which was registered as MP No.1734/1982. The same was decided in favour of the petitioners. When the benefits were granted to the similarly situated teachers employed in the Middle School, one Miss. Vidya Gupta filed a writ petition - MP No.2709/1985 in the Hon'ble High Court of Madhya Pradesh, which was subsequently transferred to this Tribunal and was registered as TA 360/1986. The Tribunal adjudicated the matter and passed the order in favour of the applicant in the said TA stating that since she had worked as Middle School Teacher under the directions from administrative



authorities, she was entitled to get the pay scale of Rs.425-640 from the date she was assigned the duties of Middle School Teacher with all arrears. In the meantime the National Commission on Teachers headed by Professor D.P.Chattopadhyaya recommended revised pay scale to Primary Teachers. According to the National Commission Primary School Teachers would be given the pay scale of Rs.1200-2040 from 1.1.1986. After 12 years they would be given senior scale of Rs.1400-2600 and after completing further period of 12 years, they would be given the selection scale of Rs.1640-2900. All the Primary School Teachers who were working in the Middle Schools were placed in the pay scale of Rs.425-640. This scale of Rs.425-640 was revised to Rs.1400-2600. After putting in 12 years of service the Middle School Teachers were entitled for the scale of Rs.1640-2900 as per the recommendations of the Chattopadhyaya Commission. The recommendations of the Chattopadhyaya Commission had been accepted by the Government and as the applicant had completed more than 12 years of service in the pay scale of Rs.425-640, he was due to be placed in the revised pay scale of Rs.1640-2900. But the respondents have not placed him in that scale. Aggrieved by this the applicant had filed OA No.336 of 1999 before this Tribunal and the said OA was disposed of vide order dated 23.1.2004 as under :-

"7. In the circumstances, we are of the view that we may direct the applicant to make a detailed representation to the respondents within one month from the date of communication of this order, pointing out the above referred clerical mistake committed by them. We do so accordingly. If the applicant complies with this order, the respondents are directed to consider the request of the applicant in the light of the statement dated 3rd March, 1989 (Annexure-A-17) issued by the Gun Carriage Factory, Jabalpur read with their letter dated 14th September, 2000 (Annexure-A-18) and take a decision by passing a speaking, detailed and reasoned order within three months from the date of receipt of the representation".

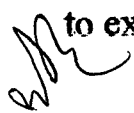


In pursuance of the aforesaid order, the respondents have passed the impugned order dated 14.6.2004 (Annexure-A-1) and have rejected the claim of the applicant. Para 2 of the order dated 14.6.2004 is reproduced as under:-

"In this connection, it is to inform you that Order of the Gun Carriage Factory, quoted by the CAT in their aforesaid order, has clearly mentioned that the Primary School Teacher in the pre-revised scale Rs.330-560 as on 31.12.85 will get the pay scale of Rs.1200-2040 as per Chattopadhyay Commission report w.e.f.1.1.1986. In case, the incumbent has worked for 12 years in the said scale, he would be allowed senior scale of Rs.1400-2600. He would further be allowed Selection Scale of Rs.1640-2900 after 12 years in Senior Scale and attainment of qualifications laid down for T.G.Ts. You were Intermediate Teacher/Untrained Graduate Teacher carrying pay scale of Rs.330-560 and not Rs.425-640 and as such the observation of the Hon'ble Central Administrative Tribunal is not applicable in your case. As per the order of Supreme Court in Civil Appeal No.7268 of 1996, dated 13.8.1997, the appellants were allowed pay scale of Rs.425-640 and it was made clear in the said order that the applicants would not be entitled to the pay scales of Middle School Teacher i.e.Rs.425-640 but they would be paid the scale of Middle School Teachers so long they worked as teachers in the middle school. Since you had worked as Intermediate Teacher/UGT in the Middle School, you were, therefore, allowed only difference of pay in the pay scale of Rs.425-640 for the period you had worked in Middle School and were not given the pay scale of Rs.425-640 as per Supreme Court order. This order of the Hon'ble Supreme Court still prevails and as such your request is not maintainable. You are entitled for the benefit already given to you as per this office order dated 14.9.2000".

Hence, this Original Application.

2. In this OA, the notices were issued to the respondents on 2.9.2004 and the same have been accepted on the same date by Shri Manish Chourasia, Additional Central Government Standing Counsel. The respondents have been given ample opportunities, but they have failed to file their reply. On 31.3.2005 this Tribunal has directed the Secretary to Ministry of Home Affairs to depute a senior officer to be present in the court on the next date of hearing to explain as to why the reply has not been filed even after ample



opportunities granted to them. The Registry of the Tribunal was also directed to send a copy of the order dated 31.3.2005 to the Home Secretary, Government of India, New Delhi by registered post, and the same was issued on 1.4.2005. On 20.5.2005, we had granted further four weeks time to file reply, and again directed the Secretary, Ministry of Home Affairs to depute a senior officer to explain as to why reply has not been filed & a cost of Rs.2000/- was also imposed, as the learned counsel for the respondents had expressed his inability to get any communication from the Ministry of Home Affairs despite repeated requests made by him to send comments. A copy of the order dated 20.5.2005 was also sent, on the same date, by our Registry to the Secretary, Ministry of Home Affairs, New Delhi by registered post. Since no reply had been filed despite several opportunities granted to the respondents, vide order dated 16.9.2005, this Tribunal has forfeited the right of the respondents to file their reply and the case has been finally heard on 26.9.2005.

3. Heard the learned counsel for the applicant as well as the learned counsel for the respondents. We have also carefully perused the pleadings available on record.

4. We find from para 2 of the order No.1(2)/SW/DNK/MHA/PF/2000 dated 14.9.2000 (Annexure-A-12) issued by the Govt. of India, Ministry of Home Affairs, Rehabilitation Division (Settlement), New Delhi that the respondents themselves have fixed the pay of the applicant in the scale of Rs.425-640 with effect from 1.1.1973. Paragraphs 2 & 4 of the order dated 14.9.2000 are reproduced as under:

"2. Consequently, upon the judgment dated 13.8. 1997 of Hon'ble Supreme Court and with reference to the orders dated 27.4.1998 and 22.5.2000, the pay of Shri J.P.Srivastava, Ex-Intermediate Teacher/ Untrained Graduate Teacher, Dandakarnya Project is fixed @ Rs.425/- per month with effect from 1.1.1973 in the pay scale of Rs.425-15-560-EB-20-640 with date of next increment on 19/1.2.1973, raising his pay to Rs.440 due to revision of pay



scale". Subsequently periodical increments are also sanctioned.." (emphasis supplied by us).

4. "Further, the pay of Shri J.P.Srivastava is fixed in the scale of Rs.1400-2600 w.e.f. 1.1.1986 instead of corresponding revised pay scale of Rs.1400-2300 of the pre-revised scale of pay of Rs.425-640, allowed by Ministry of Home Affairs, Rehabilitation Division, New Delhi as per order dated 27.4.1998, on the basis of 12 years regular service as teacher as per the recommendations of the National Pay Commission in pursuance of Hon'ble Supreme Court Judgment dated 4.3.1998 in Civil Appeal Nos.12448, 12449, 12504 and 12505 of 1996 and with reference to order No.10(9)/95-RO(Lit) dated 9.6.1998 of Ministry of Home Affairs, Rehabilitation Division, New Delhi. Accordingly, the pay of Shri J.P.Srivastava is fixed @ Rs.1900/- per month in the corresponding pay scale of Rs.1400-40-1600-50-1650-FB-50-1950-FB-50-2250-FB-50-2300-60-2600 as recommended by the National Pay Commission (Chattopadhyay Commission for teachers) with date of next increment on 1.12.1986 raising his pay to Rs.1950 per month".(emphasis supplied by us)

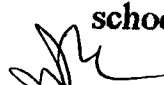
On a perusal of para 4 of the above extract, we find that after completion of 12 years service in the grade of Rs.425-640(Revised Rs.1400-2300) the pay of the applicant has been fixed in the grade of Rs.1400-2600.

5. We further find from the Factory Order Part-I dated 3.3.1989 issued by the Gun Carriage Factory, Jabalpur (Annexure-A-15) relating to revision of pay scale and grant of teaching allowance/ special allowance to Ordnance Factories School Teachers as per recommendations of Chattopadhyay Commission, that the pay scale of Rs.425-640 was revised as per recommendations of the 4th pay commission to Rs.1400-2300, whereas the same scale was revised to Rs.1400-2600 as per recommendations of the Chattopadhyay Commission, and after 12 years of service the senior scale of Rs.1640-2900 was required to be granted as per their own order. However, in the instant case, we find that instead of granting the scale of Rs.1640-2900, the respondents have granted the pay scale of Rs.1400-2600 to the applicant after putting in 12 years service, which is not in

accordance with their own order. It was for this reason that in the order dated 23.1.2004 passed by this Tribunal in the earlier OA No.336/1999 filed by the applicant this Tribunal had observed in para 6 of the order that "the fixation of pay of the applicant in the pay scale of Rs.1400-2600 vide order dated 14th September, 2000, appears to be a clerical mistake". But despite our clear directions to consider the case of the applicant, the respondents have rejected the claim of the applicant.

6. The Ministry of Home Affairs, respondent no.1 while issuing the order dated 14.9.2000 have stated that the pay of Shri J.P. Shrivastava is fixed at Rs.1900/- per month in the corresponding pay scale of Rs.1400-2600 as recommended by the National Pay Commission (Chattopadhyay Commission for teachers) with effect from 1.1.1986 with the date of next increment on 1.12.1986, raising his pay to Rs.1950/- per month. Therefore, in pursuance of the direction of the Tribunal in OA No.336/1999 (filed by the present applicant) dated 23.1.2004, the respondents have passed the impugned order dated 14.6.2004 (Annexure-A-1) rejecting the claim of the applicant for grant of senior scale of Middle School Teacher after completion of 12 years service in the pay scale of Rs.550-900, and the ground taken by the respondents in the said order is that the applicant "had worked as intermediate Teacher/UGT in the Middle School". In the order dated 14.6.2004, the respondents have placed reliance on the judgment of the Hon'ble Supreme Court dated 13.8.1997 passed in Civil Appeal No.7268 of 1996 (Pratima Pal and others Vs. Union of India and another) (Annexure-A-7) wherein the Hon'ble Supreme Court has held as under :-

"the appellants will be entitled to the salary of the middle school teachers during the period for which they worked as Middle School Teachers even though their appointment orders were for primary school teachers. We make it clear that the appellants are not entitled to the pay scale of middle school teachers, namely Rs.425-640 but they will be paid the

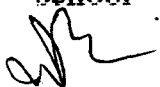


salary of middle school teachers so long they worked as the teachers in the middle school".

It is very significant to note that the respondents while fixing the pay of the applicant vide order dated 14.9.2000 (Annexure-A-12) have referred to the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.12448, 12449, 12504 & 12505 of 1996 (Union of India & others Vs. Shri Bijoy Lal Ghosh &Ors.) dated 4.3.1998 (Annexure-A-6), however, while rejecting the claim of the applicant vide impugned order dated 14.6.2004 they have placed reliance on the order of Hon'ble Supreme Court in the case of Pratima Pal (supra).

7. While rejecting the claim of the applicant, the respondents vide their impugned order dated 14.6.2004 have stated that as per the order of the Hon'ble Supreme Court in the case of Pratima Pal (supra) the appellants were allowed pay scale of Rs.425-640 and it was made clear in the said order that the appellants would not be entitled to the pay scales of Middle School teacher namely Rs.425-640 but they would be paid the scale of Middle School teachers so long they worked as teachers in the middle school. It has been further stated in the impugned order that since the applicant had worked as Intermediate teacher/UGT in the Middle School, he was allowed only difference of pay in the pay scale of Rs.425-640 for the period he had worked in the Middle School and he was not given the pay scale of Rs.425-640 as per the aforesaid order of the Hon'ble Supreme Court.

8. We have carefully gone through the order dated 13.8.1997 in Pratima Pal's case (supra). We find that the decision in the case of Pratima Pal (supra) is distinguishable and is not applicable in the present case. In that case the issue involved was that one Ms. Vidya Gupta similarly placed like appellants in that case, was given the benefit of the salary meant for the middle school teacher though she was appointed as Assistant Teacher but the work of middle school teacher was extracted from her. The Tribunal while



disposing of the OA in the said case, as a matter of fact had observed that in the case of Ms. Vidya Gupta she was given a specific order to work in the middle school and, therefore, that was distinguishable from the cases of the appellants before the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that the aforesaid observation of the Tribunal was not correct and accordingly their lordships have held that the appellants before the Hon'ble Supreme Court were entitled to the same benefit as was given to Ms. Vidhya Gupta in TA 360/1986 by this Tribunal. However, the Hon'ble Supreme Court in the said order have observed as under:

"the appellants will be entitled to the salary of the middle school teachers during the period for which they worked as Middle School Teachers even though their appointment orders were for primary school teachers. We make it clear that the appellants are not entitled to the pay scale of middle school teachers, namely Rs.425-640 by they will be paid the salary of middle school teachers so long they worked as the teachers in the middle school".

The facts of the present case are altogether different. In this case the applicant was initially appointed as an Intermediate Teacher in the scale of Rs.100-155 on 10th January, 1969 in Middle School, Turihidi (Orissa) under Dandakaranya Project. Thereafter, he was promoted as untrained Graduate Teacher in the scale of Rs.115-220 from 19.2.1971 and was posted to Middle School Morada. He continued in that capacity in the above school and was subsequently transferred to High School Boregaon where he served up to 31.12.1975. He was further transferred to Higher Secondary School, Pakhanjore as UGT from 1.1.1976, and he continued there up to 7.1.1982. He was employed to teach in 9th and 10th standard in the subject of Agriculture. From 28.1.1982 to 19.8.1982 the applicant was employed in Middle School Ambaguda (Orissa), from 20.8.1982 to 30.10.1984 he was further employed in H.S.School, Pakhanjore in Middle School MV-7 (Orissa) for teaching in Middle Classes. Thereafter, he continued to work upto



25.11.1988 at Malkhanjung in Middle School. The applicant had acquired the degree in B.Ed. in 1980. Thus, from the above facts it is very much clear that the applicant was a Middle school teacher and was posted in the Middle school right from the date of his initial appointment. He had never been posted and had worked in a Primary school. Thus, the aforesaid judgment of the Hon'ble Supreme court in the case of Pratima Pal (supra), on which reliance has been placed by the respondents, while rejecting the claim of the applicant vide impugned order dated 14.6.2004, is not applicable in the present case.

9. We find that since the applicant had all along been in the Middle School, he is entitled to the benefits which were granted to the Middle School Teacher. As per the Factory order dated 3.3.1989 (Annexure-A-15), the pay scale of the middle school teacher was Rs.425-640 which had subsequently been revised to Rs.1400-2600. As per the recommendations of the Chattopadhyaya Commission the Middle School teachers were entitled for the pay scale of Rs.1640-2900 (senior scale) after putting in more than 12 years of service. Since the applicant had put in more than 12 years of service, he was entitled to the pay scale of Rs.1640-2900 w.e.f. 1.1.1986. In fact the respondents themselves while issuing the order dated 14.9.2000 have themselves fixed the pay of the applicant in the scale of pay of Rs.425-640 w. e. f. 1.1.1973 in para 2 of the said order.

10. In the light of the discussions held above and from the facts mentioned above it is patently clear that the order passed by the respondents dated 14.6.2004 (Annexure-A-1) rejecting the claim of the applicant to grant the pay scale of Rs.1640-2900 w.e.f.1.1.1986 is illegal and has been passed by the respondent no.1 to overcome the direction given by this Tribunal in the earlier judgment dated 23.1.2004 in OA 336/1999. Therefore, the order passed by the respondents on 14.6.2004 (Annexure-A-1) rejecting the claim of



the applicant for grant of the pay scale of Rs.1640-2900 w.e.f. 1.1.1986 is not sustainable in the eye of law.

11. In the result, the OA is allowed. The impugned order dated 14.6.2004 is quashed and set aside. The respondents are directed to grant the pay scale of Rs.1640-2900 instead of the scale of Rs.1400-2600 (which was granted to the applicant after completion of 12 years service) in terms of the recommendations of the Chattopadhyaya Commission. The respondents are further directed to grant all consequential benefits to the applicants including arrears of pay along with a simple interest at the rate of 6 per cent per annum, from the date it was due to the date of actual payment, within a period of three months from the date of communication of this order. Since the applicant has been deliberately deprived of his entitlement even after the direction given by the Tribunal, we impose a cost of Rs.5000/- (Rs. Five thousand only) payable by the respondents to the applicant.

12. The Registry is directed to send a copy of this order (by name) to the Secretary, Ministry of Home Affairs, Settlement Wing, Jaisalmer House, New Delhi for information and necessary action as deemed fit. appropriate. *Sh*

(Signature)
(Madan Mohan)
Judicial Member

(Signature)
(M.P. Singh)
Vice Chairman

rkv

पृष्ठांकन सं ओ/व्या.....जयलपुर, दि.....

प्रतिलिपि आये रिक्त:-

- (1) सचिव, उच्च न्यायालय और जयलपुर, जयलपुर
- (2) आदेशक श्री/श्रीमती/सु,के कार्यालय
- (3) प्रत्यक्षी श्री/श्रीमती/सु,के कार्यालय
- (4) वांछना, को.प्र.अ., जयलपुर तथा जयलपुर सचिवालय एवं आवश्यक कार्यवाही हेतु

के सचिव

① S-K Noor peal 22/11/05

② The m. chow 19/11/05

③ Sh. V. K. Duggal
Home Secretary
Settlement wing

Jaisalmer house
North Block New Delhi

Received
17.11.05