

**Central Administrative Tribunal
Principal Bench**

OA No. 1962/2012

Order reserved on: 03.01.2017
Pronounced on: 27.02.2017

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Mr. V. N. Gaur, Member (A)

Bachaspati Mishra,
S/o Sh. Ramanand Mishra,
R/o House No.61, Gali No17,
A-2 Block, West Sant Nagar,
Burari, New Delhi-110084.

Office Address:

Bachaspati Mishra (TGT-Sanskrit),
ID No.20070101
Sarvodaya Vidyalaya Co-Ed. Sr. Sec. School No.3,
Shakti Nagar, Delhi-110007. ... Applicant
(By Advocate: Mr. K.P.Gupta)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Secretariat, I.P.Estate,
New Delhi.
2. Director of Education,
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat, Delhi.
3. Principal,
Sarvodaya Vidyalaya Co-Ed Sr.Sec.School No.3,
Shakti Nagar, Delhi-110007.
4. North Delhi Municipal Corporation
Civil Centre, JLN Marg, Minto Road,
New Delhi-110002 through its Commissioner,
Concerned Department: Department of Education,
Civil Line Zone, 16, Rajpur Road,
Delhi-110054. ... Respondents

(By Advocate: Mr. K.M.Singh and Ms. Alka Sharma)

ORDER

Hon'ble Mr. V.N. Gaur, Member (A)

The present OA has been filed by the applicant with the following prayer:

“a) To quash and set aside the impugned Memorandum dated 02.04.2012 (Annexure-A1) and the Audit observation in respect of the applicant (Annexure-A2) and also the pay fixation orders dated 15.05.2012 (Annexure-A3) and pay fixation order dated 11.02.2009 (Annexure-A4) and also pay fixation order dated 19.11.2008 (Annexure-A5) and not to effect any recovery in accordance with impugned Memorandum and Audit observations;

b) Direct the respondents to refix the pay of the applicant as under:

Pay as on	Pay in the Pay Band ()	Grade Pay ()	Total ()
01.01.2006 as PRT	12090 Treating his pay at 6500 the minimum of the revised scale.	4200	16290
01.07.2006	12580	4200	16780
18.01.2007	12580	4600 On promotion from the post PRT of PRT to TGT	17180
01.07.2007	13090 On grant of 3% increment of total pay of 16780/- on 01.07.2006	4600	17290
01.07.2007 On promotion	13600 By adding 3% increment as per FR 22(1)(a)(i)	4600	18200
01.07.2008	14150	4600	18750
01.07.2009	14720	4600	19320
01.07.2010	15300	4600	19900
01.07.2011	15900	4600	20500

c) Direct the respondents to pay all arrears what so ever fell due as per aforesaid re-fixation along with interest @12% per annum;

(d) That in case this Hon'ble Tribunal arrives to the conclusion that the aforesaid pay fixation cannot be directed, alternatively the respondents may please be directed to fix the pay of the applicant as under:

Pay as on	Pay in the Pay Band ()	Grade Pay ()	Total ()
18.01.2007	12540	4600	17140
01.07.2007	13060	4600	17660
01.07.2008	13590	4600	18190
01.07.2009	14140	4600	18740
01.07.2010	14710	4600	19310
01.07.2011	15290	4600	19890

e) Award the cost for the present application;

f) Any other further relief, which this Hon'ble Tribunal deems fit and proper in the circumstances of the case, in favour of the applicant and against the respondent.”

2. The applicant, a Primary School Teacher, was working in the scale of Rs.4500-7000 which was revised to Rs.9300-34800 with Grade Pay (GP) of Rs.4200 by the 6th Pay Commission. The scale of Primary School Teacher was also upgraded to the pre-revised scale of Rs.6500-10,500. Initially the pay of the applicant had been fixed at Rs.12540/- in the Pay Band (PB) Rs.9300-34800 with Grade Pay (GP) of Rs.4600 with effect from 01.01.2006 by the respondent no.3. (Annexure A-4). However, the respondent no.3 on the advice of Audit refixed his pay at Rs.10,170/- plus GP of Rs.4200 as on 01.01.2006 and issued an order for recovery of

Rs.2,18,477/- calculated till January 2012 vide memorandum dated 02.04.2012. The report of audit was enclosed with the aforesaid memorandum. The applicant has approached this Tribunal against refixation of pay and the order of recovery. The order of recovery was stayed by interim relief granted by this Tribunal by order dated 01.06.2012.

3. Learned counsel for the applicant submitted that there are two anomalies with regard to pay fixation. Firstly, the applicant, who was in the pre-revised scale of Rs.4500-7000, was entitled to fixation of pay in PB-2 corresponding to the upgraded pay scale of Rs.6500-10500 w.e.f. 01.01.2006. Therefore, his basic pay should have been fixed at Rs.12,090 + GP Rs.4200 and not Rs.10,170 + GP Rs.4200. Secondly, the respondents have discriminated in fixing the pay of the applicant on the date of his promotion, i.e. 18.01.2007 at Rs.10,610 + GP 4600 whereas a fresh appointee as TGT (Sanskrit) would be getting Rs.12,540 with GP 4600. Learned counsel cited the case of Kumari Pinki Devi, R.R.V.S.K.V(B) Block, Nand Nagri, Delhi, who was appointed on 03.01.2006 as TGT (Sanskrit) and her pay was fixed in the aforesaid manner and on 01.07.2006 at Rs.13,060 + GP Rs.4600. Learned counsel cited judgment of Hon'ble High Court of Delhi in WP (C) no.2071/2007 in support of his contention that it would be highly discriminatory to treat employees differently merely on account of the two coming from two different sources. Learned

counsel also relied on the order of this Tribunal dated 27.05.2016 passed in OA No.657/2012 and batch.

4. Learned counsel for the respondents took the preliminary objection of limitation stating that the applicant is questioning the order in respect of pay fixation as on 01.01.2006 which he cannot do after so many years. Learned counsel also denied that there was any anomaly in the pay fixation as pointed out by the audit and which has been implemented by respondent no.3. It was a settled law that the pay of the applicant will be fixed according to the pre-upgraded scale which he enjoyed as on 01.01.2006 and only thereafter he will be given the Grade Pay of upgraded scale. It was further argued by the learned counsel that there can always be difference in pay between a direct recruit and a promotee officer.

5. We have heard the learned counsel for the parties and perused the record. With regard to the first issue, in OA No.657/2012 and batch, a similar matter had been considered and the Tribunal rejected the prayer. The relevant part of that order is reproduced below:

“5. The applicant’s counsel states that since the revised pay scale was treated to be at Rs.7450-11500 w.e.f. 01.01.2006 as per the formula provided in Rule -7 (1) (A) (i) & (ii), the basic pay for the purpose of working out the pay in the pay grade PB-2 should have been taken Rs.7450 (minimum of Rs.7450-11500) instead of actual basic pay being drawn by the incumbents as on 1.1.2006.

6. It is prayed during the course of the argument, though not mention anywhere in OA or in the prayer clause of the applicant, that in case Tribunal takes a view that this is not admissible, then at least direct that the pay of the applicants should be fixed not less than what a direct recruit appointed after 1.1.2006 would be drawing i.e. Rs. 12,540 with Grade Pay 4600.

7. Heard the learned counsel for both sides and perused the relevant Rules i.e. CCS (RP) Rules 2008 providing the formula for fixing the pay consequent upon the recommendations of the 6th CPC, which read thus:-

(A) In the case of all employees:-

(i) The pay in the pay band /pay scale will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and round off the resultant figure to the next multiple of 10.

(ii) If the minimum of the revised pay band/pay scale is more than the amount arrived at as per (i) above, the pay shall be fixed at the minimum of the revised pay band /pay scale.

8. The language is absolutely clear that the basic pay that should be taken into account is the existing basic pay as on 1.1.2006 and not notional "Basic Pay" as claimed above i.e. Rs.7450. Scale of Rs.7450-11500/- was only 'notional' for the purpose of granting higher replacement in the 6th CPC to the TGTs Grade-III. Therefore, the prayer of the applicants that their pay should be treated in the 6th CPC as Rs.7450-11500 cannot be allowed in view of the specific provision of the Rules ibid. To that extend the prayer is rejected."

6. We are, therefore, of the view that for parity of reasons the prayer of the applicant to fix his pay in the pre-revised upgraded scale w.e.f. 01.01.2006 cannot be accepted.

7. The second issue of the applicant drawing less pay on promotion as TGT (Sanskrit) than a direct recruit to that post has also been the matter of dispute in OA NO.657/2012 and batch and relying on this Tribunal's order in OA No.3379/2014 dated 28.04.2016 the prayer was allowed. The relevant portion of that order is reproduced below:

“9. Learned counsel has contended during the course of the arguments that in case prayer made in the OA is not allowed, the Tribunal at least protect the pay of the applicants at par with those who were direct recruits after 1.1.2006 and direct that the applicants pay should not be less than the direct recruits' pay, though this prayer has neither been made nor this issue has been raised in the OA. This issue has been decided by this Tribunal in OA No. 3379/2014 vide order dated 28.04.2016 wherein this Tribunal gave the following directions:-

“This very issue came up before us in OA3217/2014, **Somvir Rana and others Vs. Govt. of NCT of Delhi**, which was disposed of vide order dated 04.04.2016 holding that pay of none of the applicants therein, who have been appointed prior to 01.01.2006 and are senior to direct recruits, should be fixed at a stage lower than the pay which could be drawn by direct recruit appointee on or after 01.01.2006. The same principle will apply in this case.”

10. Learned counsel for the respondents vehemently opposed the prayer of the applicants stating that since they had not raised this prayer in the OA, the same cannot be entertained by this Tribunal at this stage.

11. We are of the view that once a similar and identical issue has been decided by this Tribunal and ratio laid down in this regard, the benefits of that should be made available to the applicants as well and they should not be deprived of the benefits of that OA just because their counsel has failed to draft the OA in a proper manner. We are of the view that denial of such benefits to the applicants would be against the principle of nature justice and it would a futile exercise to decide the issue which has already been decided by this Tribunal.”

The above order is squarely applicable to the case of the applicant.

8. We are, therefore, of the view that once both the issues have been considered and decided by this Tribunal in earlier OAs and the legal questions involved are identical, we are bound by the earlier orders of this Tribunal in view of the Hon'ble Supreme Court's judgment in **SI Roop Lal Vs. Lt. Governor Through Chief Secretary Delhi & Ors.**, (2000)1 SCC 644.

9. The prayer of the applicant to revisit his pay fixation as on 01.01.2006 is, therefore, rejected. On promotion to the post of TGT (Sanskrit) w.e.f. 18.01.2007 his pay will be fixed at the same level as a new entrant to the post is entitled to. The respondents shall implement this order within a period of 6 weeks from the date of receipt of a certified copy of this order. The excess amount already paid to the applicant for no fault on his part over a period of 6 years from 01.01.2006 till Jan 2012 shall not be recovered.

10. OA is partly allowed. No costs.

(V.N. Gaur)
Member (A)

‘sd’

27th February, 2017

(V. Ajay Kumar)
Member (J)