

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3088/2015

MA 2732/2015

With

OA 3089/2015

MA 2733/2015

And

OA 3090/2015

Order reserved on: 13.01.2016

Order pronounced on: 19.01.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

OA 3088/2015

1. Paramjeet Kaur Dhillon (Physical Training Instructor)

W/o Shri Surinder Singh

R/o B-1/403, Janakpuri

New Delhi-58

Aged around 61 years

Presently posted at:

Meerabai Polytechnic

2. Ashok Kumar (Physical Training Instructor)

S/o Late Shri Naubat Singh

(Since died during the pendency of the instant OA)

Last posting of Applicant No. 2 at

Aryabhat Polytechnic

Through his legal heirs/ representatives

i. Ms. Rajni Rani (Aged around 43 years)

W/o Late Shri Ashok Kumar

ii. Ms. Shivani Anand (Aged around 19 years)

D/o Late Shri Ashok Kumar

iii. Mr. Mukul Anand (Aged around 16 years)

S/o Late Shri Ashok Kumar

All the legal heirs/ representatives are the
resident of Aryabhat Enclave, 5/6 Staff Quarters,
Ashok Vihar, Phase-III, Delhi-52

Since Applicant No.2 (i.e. Ashok Kumar) died

during the pendency of the instant OA ... Applicants

(Through Shri Sourabh Ahuja, Advocate)

Versus

1. GNCT of Delhi
Through its Chief Secretary
Delhi Secretariat, Players Building
IP Estate, New Delhi
2. Principal Secretary/Secretary
Department of Training & Technical Education
GNCT of Delhi
Muni Maya Ram Marg, Pitampura,
Delhi-110088.
3. Secretary,
Ministry of Home Affairs
Union of India
North Block, New Delhi.
4. Secretary
Ministry of Law & Justice,
Shastri Bhawan, A – Wing,
Dr. Rajender Prasad Road
New Delhi-110001.
5. Secretary
Department of Personnel & Training,
Ministry of Personnel, Public Grievances
& Pensions, Union of India
North Block, New Delhi.
6. UPSC
Through its Secretary
Union of India
Dholpur House, Shahjahan Road,
New Delhi.
7. The Principal
Meera Bai Institute of Technology
Directorate of Training & Technical Education
Maharani Bagh, New Delhi-65.
8. Principal
Aryabhakti Polytechnic,
Opposite Shakti Nagar Telephone
Exchange, G.T. Karnal Road,
New Delhi.

... Respondents

(Through Ms. Rashmi Chopra, Advocate)

OA 3089/2015

1. Swatantra Nayyar (Librarian) (Retired)
 W/o Sh. G.K. Nayyar
 R/o House No.1197, Sector-21,
 Gurgaon, Haryana-222016
 Aged around 67 years

Retired as Librarian
 From G.B. Pant Polytechnic

2. Asha Lata Srivastava (Librarian) (Retired)
 W/o Sh. V.K. Srivastava
 R/o 131, 1st Floor, Ashok Enclave Main,
 Faridabad, Haryana-121003
 Aged around 68 years

Retired as Librarian
 From Meerabai Polytechnic. ...Applicants

(Through Mr. Sourabh Ahuja, Advocate)

Versus

1. GNCT of Delhi
 Through its Chief Secretary
 Delhi Secretariat, Players Building
 IP Estate, New Delhi.
2. Principal Secretary/Secretary
 Department of Training &
 Technical Education, GNCT of Delhi
 Muni Maya Ram Marg, Pitampura,
 Delhi-110088.
3. Secretary
 Ministry of Home Affairs
 Union of India
 North Block, New Delhi.
4. Secretary
 Ministry of Law & Justice
 Union of India
 Shastri Bhawan, A-Wing,
 Dr. Rajender Prasad Road
 New Delhi—110001.
5. Secretary
 Department of Personnel & Training
 Ministry of Personnel, Public Grievances
 & Pensions, Union of India,
 North Block, New Delhi.

6. UPSC
 Through its Secretary
 Union of India
 Dholpur House, Shahjahan Road,
 New Delhi.

7. The Principal
 Meera Bai Institute of Technology
 Directorate of Training & Technical
 Education, Maharani Bagh,
 New Delhi-65.

8. Principal
 G.B. Pant Polytechnic
 Okhla Industrial Area,
 New Delhi. ...Respondents

(Through Ms. Rashmi Chopra, Advocate)
OA No.3090/2015

Raj Dulari Gupta (Librarian) (Retired)
 W/o Sh. Narendra Mohan Gupta
 R/o 30/1556 Nai Bala, Karol Bagh
 New Delhi-110005
 Aged around 62 years

Retired as Librarian
 From Pusa Polytechnic. ...Applicant

(Through Mr. Sourabh Ahuja, Advocate)

Versus

1. GNCT of Delhi
 Through its Chief Secretary
 Delhi Secretariat, Players Building
 IP Estate, New Delhi.

2. Principal Secretary/Secretary
 Department of Training &
 Technical Education, GNCT of Delhi
 Muni Maya Ram Marg, Pitampura,
 Delhi-110088.

3. Secretary
 Ministry of Home Affairs
 Union of India
 North Block, New Delhi.

4. Secretary
 Ministry of Law & Justice

Union of India
 Shastri Bhawan, A-Wing,
 Dr. Rajender Prasad Road
 New Delhi—110001.

5. Secretary
 Department of Personnel & Training
 Ministry of Personnel, Public Grievances
 & Pensions, Union of India,
 North Block, New Delhi.

6. UPSC
 Through its Secretary
 Union of India
 Dholpur House, Shahjahan Road,
 New Delhi.

7. The Principal
 Pusa Polytechnic
 Karol Bagh,
 New Delhi

...Respondents

(Through Ms. Rashmi Chopra, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

By this common order, we propose to dispose of OA Nos.3088/2015, 3089/2015 and 3090/2015 together as they are founded on same facts. For convenience, facts have been extracted from OA 3088/2015/

2. The applicants were appointed as Physical Training Instructors (PTI)/ Physical Education Instructors (PEI) in the office of respondents i.e. Department of Training and Technical Education (DTTE) on 18.09.1982 and 14.06.1994 respectively. The All India Council for Technical Education (AICTE) vide notification dated 30.12.1999 notified the terms and conditions

of service of Teachers, Librarian and PEI for Diploma Level Technical Institutions and the scales of pay for Librarian and PEI in such Institutions were as under:

TABLE A-3 SCALES OF PAY FOR LIBRARIANS AND PHYSICAL EDUCATION INSTRUCTORS (PEI) FOR DIPLOMA LEVEL TECHNICAL INSTITUTIONS			
Sl.No.	Category	Proposed	Pay-Scales (Rs.)
1.	Librarian/ Education Instructors (P.E.I.)	Lecturer Physical	8000-275-13500
2.	Librarian (Senior Scale)/ Physical Education Instructor (Senior Scale)	Lecturer Instructor	10000-325-15200
3.	Librarian Lecturer Physical Education (Selection Grade)	(Selection Grade)/ Grade)/ Instructor	12000-420-18300

3. The applicants filed OA 2023/2008 and OA 2020/2008 with a prayer that they may be granted the pay scale of Rs.8000-13500 with effect from 1.01.1996, which was the date from which the aforesaid ACITE notification dated 30.12.1999 was made effective. Vide order dated 23.05.2008, the Tribunal allowed the prayer of the applicants and directed the Government of National Capital Territory of Delhi (GNCTD) to grant the pay scale to the applicants (PTI) and other aggrieved persons as prescribed in the notification dated 30.12.1999. The respondents challenged the above order of the Tribunal by filing Writ Petition Nos.10640/2009 and 13238/2009. The Hon'ble High Court vide order dated 6.08.2010 quashed the Tribunal's order and disposed of the Writ Petition No.10640/2009, **Govt. of NCT of Delhi Vs. Suresh Chand Vashist & ors.** along with

other identical writ petitions with direction to the GNCTD and AICTE to resolve the deadlock. Para 37 of the order of the Hon'ble High Court reads as follows:

“37. Since Government of NCT Delhi is permitted to implement pay scales for the post of librarian and physical education persons in technical institutions in Delhi other than those recommended by AICTE, but subject to the approval of AICTE, which has not been done we issue a direction requiring AICTE to decide specifically the issue of educational qualifications required by the librarians and physical education persons in technical institutes in Delhi and in what scale of pay they must be put. A specific approval shall be granted by AICTE in clear language for the reason its notification dated 30.12.1999, vide para 2.3 thereof casts an obligation on AICTE to consider for approval the pay scales to be applied if the State Government seeks not to implement the scales of pay recommended by AICTE and this must of necessity require AICTE to pass a specific order.”

4. In compliance of the order passed by the Hon'ble High Court in Suresh Chand Vashist (supra), the AICTE issue a clarification dated 8.08.2011 (Annexure-5), which reads as follows:

“In this connection a legal opinion has been sought from the Legal Advisor of AICTE in which it has been clarified that as per the pay scale revision notified by AICTE dated 30.12.1999.

1. The revised scale of pay will be applicable, however the qualification will not be applicable to the existing incumbents appointed before 01.01.1996.
2. AICTE has left it to the State Governments to implement the revised pay scale from a date after 01.01.1996 and even if to implement different pay scales and that pay scale should be furnished to the AICTE for its approval.

The above scale of pay as per the notification is applicable to all the Librarian and Physical Education Teachers working in Technical Institutions (both degree and diploma Institution) under the NCT of Govt. of Delhi."

5. Since this was not implemented by the respondents, Contempt Petition No.533/2012 in W.P. (C) No.13238/2009 and Contempt Petition No.535/2012 in W.P. (C) No.13199/2009 was filed before the Hon'ble High Court. The Hon'ble High Court vide order dated 20.01.2014 closed the CP as the respondents produced copy of the impugned order dated 23.01.2014 in complete compliance of the order of the Hon'ble High Court dated 6.08.2010 in Suresh Chand Vashist (supra). In fact, on 23.01.2014, Mr. P.P. Rao, IAS, Director, DTTE was present before the Hon'ble High Court and it is he who had handed over a copy of the aforesaid order. Order dated 23.01.2014 is reproduced below for ready reference:

"Hon'ble Lt. Governor, Delhi, in compliance of the orders of Hon'ble High Court of Delhi, dated 06.08.2010 in WP(C) No.10640/2009, dated 16.12.2013 in Contempt Case No.533/12 and 535/12, read with order dated 20.01.2014, is pleased to approve the followings in respect of the Librarian and PTI's of the Diploma level Technical Institutions under the Directorate of Training & Technical Education, Government of NCT of Delhi as recommended vide AICTE notification dated 30.12.1999:-

(1) Grant of upgraded pay scale of:-

Rs.8000-275-13500/- at the entry level,
Rs.10000-325-15200/- at the senior scale level
and
Rs.12000-420-18300/- at the selection grade level

w.e.f. 01.01.1996 to the existing Librarians and PTI's appointed before 01.01.1996 in view of the AICTE clarification dated 08.08.2011 stating that 'The revised scale of pay will be applicable, however, the qualification will not be applicable to the existing incumbents appointed before 01.10.1996.'

(2) The Enhancement of Age of retirement/superannuation in r/o PTI's from 60 to 62 years, with immediate effect."

6. It would be seen that by this order, the GNCTD had notified the revised pay scales for Librarian and PTIs and it had also made it clear in that order that in view of AICTE clarification dated 8.08.2011, the revised scales of pay will be applicable with effect from 1.01.1996, however, the qualification will not be applicable to the existing incumbents appointed before 1.01.1996. When this order was not implemented by the respondents, the applicants again approached the Hon'ble High Court in Contempt Petition No.24/2015, which was disposed of vide order dated 3.07.2015 as follows:

"In the opinion of this Court, with the issuance of the order dated 23rd January, 2014 by the Lieutenant Governor, Delhi, the limited direction given by the Division Bench vide judgment and order dated 06th August, 2010 stands complied with. In fact, the said position had been accepted by the petitioners when they had not pressed their earlier contempt petition being Cont. Cas.(C) 533/2012.

Admittedly, the pecuniary benefit has not been given to the petitioners as consent of Ministry of Home Affairs, Government of India and DOPT, Government of India, is required.

Since neither of them are parties to the present contempt petition, this Court is of the view that no

further orders can be passed in the present contempt petition.

However, the statement of learned counsel for respondents is accepted that they would pursue the matter with the Ministry of Home Affairs and DOPT. This Court expects that the Ministry of Home Affairs and DOPT shall promptly deal with the request put forward by the Delhi Government and the petitioners.

With the aforesaid observations, present contempt petition and pending application stand disposed of."

7. The applicants have now approached this Tribunal being aggrieved by the inaction of the respondents in not implementing their own order dated 23.01.2014 and prayed as follows:

- "(A) Direct the respondents to implement their own order dated 23.01.2014 in its totality by granting the upgraded pay scales of Rs. 8000-275-13500/- at the entry level w.e.f. 01.01.1996, Rs. 10000-325-15200/- at the senior scale level and Rs. 12000-420-18300 at the selection grade level from the due dates) with all consequential/ pecuniary benefits (viz. difference in salary, arrears, interest @ 18% on the arrears) to the applicants within a fortnight, and
- (B) Award cost in favour of the Applicants and against the respondents."

8. The case of the respondents in not implementing the pay scales as notified by order dated 23.01.2014 is that in CP No.24/2015, as quoted above, the Hon'ble High Court had closed the contempt on the assurance of the respondents that they would pursue the matter with Ministry of Home Affairs (MHA) and the Department of Personnel and Training (DoP&T). The

Court had, however, expected that both MHA and DoP&T shall promptly deal with the request put forward by the Delhi Government and the petitioners. It is, therefore, the case of respondent no.1 that as long as they do not have concurrence of MHA and DoP&T, they cannot implement the pay scales. It is also stated that this upgradation from Group 'C' to Group 'A' involves higher responsibilities and higher eligibility services and assessment of suitability is required to be made by the Union Public Service Commission (UPSC) and the officials cannot be automatically given higher pay scales. In fact, in para 4.11 to 4.13 of the reply, the respondents have stated as follows:

"4.11-413The Department vide letter dated 8.09.2014 has sent proposal to UPSC for the assessment of suitability of Librarian & PTI appointed before 1.01.1996. UPSC vide letter dated 19.11.2014 advised to take up the matter with DoP&T & Ministry of Law, Govt. of India. Accordingly a draft note was referred to MHA, GOI, DOP&T in turn informed this Department that DOP&T instructions are not suo motu applicable on the officers of GNCTD, however as per DOPT OM No.AB-14017/66/2008-Estt. (RR) dated 9.03.2009, read with DOPT OM No.22011/10/84-Estt (D) 4.02.1992 in cases where the up gradation involves higher responsibilities and higher eligibility services, assessment of suitability is required to be made. To resolve the issue of suitability, Department has further approached the MHA with the request to relook into the matter in consultation with the Ministry of Law & Justice as to whether assessment of suitability for up gradation of posts from Group 'C' to Group 'A' is applicable to the Applicants in compliance of Hon'ble Court/ AICTE guidelines. The MHA/DOPT has further reiterated the same phrase that DOP&T instructions are not suo-motu applicable on the officers of GNCTD, however as per DOPT OM No.AB-14017/66/2008-Estt.(RR) dated 9.03.2009 read with DOPT OM No.22011/10/84-Estt.(D) dated 4.02.1992 in cases where the up gradation involves

higher responsibilities and higher eligibility services, assessment of suitability is required to be made. And to resolve the issue, Department is processing the case for seeking assistance of Ministry of Human Resource and Development which is controlling authority of both AICTE and UPSC."

9. The learned counsel for the applicants drew our attention to annexure R-3 filed by the respondents, which is a letter dated 12.10.2015 from MHA to the Director (TTE) on the subject of grant of AICTE pay scale to the Librarians/ PTI's of Polytechnics and enhancement of age of superannuation from 60 to 62 years:

"DTTE has requested this Ministry to refer this matter to DOPT with request to re-look into the matter in consultation with the Ministry of Law & Justice as to whether assessment of suitability for upgradation of posts from group 'C' to group 'A' is applicable to the applicants in compliance of Hon'ble Court/ AICTE guidelines.

2. Accordingly, MHA had referred this matter to DoP&T with request to re-look into the matter. Now, DOPT has, vide note dated 1.10.2015 (copy enclosed) stated that the proposal has been examined and it is observed that there is no factual difference brought forward by MHA/ DTTE which requires reconsideration of the issue and re-iterated its earlier decision dated 14.05.2015 (copy enclosed).

3. The matter may be examined for taking further necessary action, in terms of the advice of DOP&T."

The enclosed decision dated 14.05.2015 is reproduced below:

"2. This is regarding a proposal received from MHA regarding the proposal of Department of Training & Technical Education (DTTE) of GNCTD seeking advice/ opinion of DOPT as to whether it is necessary to assess the suitability of Librarian/ PTI (Group 'C') by UPSC for granting upgraded pay scale (Group 'A') in the background of protracted litigations and Court orders.

3. The proposal has been examined and it is observed that instructions issued by DOPT are not suo-moto applicable on the officers of GNCTD. However, as per DOPT OM No. AB-14017/66/2008-Estt.(RR) dated 9.3.2009 read with DOPT OM No.22011/10/84-Estt.(D) dated 04.02.1992, in cases where the upgradation involves higher responsibilities and higher eligibility service, assessment of suitability is required to be made."

10. Our attention was also drawn by the learned counsel to UPSC letter dated 11.11.2014 addressed to the Chief Secretary, GNCTD regarding assessment of suitability for the upgraded scale of Librarian and PTI working in the Polytechnics under DTTE in which the concluding advice is as follows:

"3. Taking into account the above position and in view of the fact that the matter involves compliance of court order, it is requested that the Govt. of NCT of Delhi may consult DOP&T and Ministry of Law through MHA whether it is legally in order and necessary to assess the suitability of officials in the instant case by the Commission for granting upgraded pay scale in the backdrop of the protracted litigation and Court orders and taken further course of action accordingly."

11. The learned counsel for the applicants lastly drew our attention to letter dated 8.09.2014 of DTTE (R-1) which is addressed to the UPSC by which they have forwarded the dossiers of 18 officials i.e. Librarian and PTIs for assessment of their suitability for the upgraded post of Librarian and PTIs working in Polytechnics under DTTE and the enclosed list in which the names of the five applicants involved in these three OAs are indicated as follows:

Sr. No.	Name	Post as on 01.01.1996	Date of appointment to the respective post	Whether educational qualification possess as per the existing RRs (Y/N)	Integrity Cert./ Vigilance Clearance
1.	Ms.Paramjeet Kaur Dhillon	PTI	17.09.1982	Yes	Satisfactory/NIL
2.	Mrs. Asha Lata Srivastava, Retd	Librarian	02.04.1985	Yes	Satisfactory/NIL
3.	Mrs. S. Nayyar, Retd.	Librarian	27.05.1983	Yes	Satisfactory/NIL
4.	Mrs. Raj Dulari Gupta	Librarian	27.10.1988	Yes	Satisfactory/NIL
5.	Mr. Ashok Kumar	PTI	14.06.1994	Yes	Satisfactory/NIL

12. It is stated that officials at serial number 2, 3, 4 and 5 have since retired. In fact, Shri Ashok Kumar died during pendency of this OA and is represented through his legal heirs. The point emphasized by the learned counsel for the applicants is that it becomes clear from the above chart that all the applicants possess the educational qualification and had a satisfactory integrity certificate. Therefore, even if the question of assessment of suitability is there, since they possess the educational qualification and have integrity certificate, there is no ground to deny them the pay scales. In fact, four of the applicants have already retired and there is no way that any assessment can be done at this stage.

13. We have heard the learned counsel for the parties and gone through the pleadings available on record.

14. The facts are as follows. AICTE restructured the pay scales with effect from 1.01.1996. They also made it clear in their clarification dated 8.08.2011 that for those recruited before 1.01.1996, qualification criteria need not be insisted upon.

Annexure R-1 which is a letter dated 8.09.2014 further shows that all the applicants possess the educational qualification as per the existing Recruitment Rules (RRs). They also had specific integrity certificate/ vigilance clearance. A very senior officer of the Delhi Government appeared before the Hon'ble High Court and produced letter dated 23.01.2014 claiming that they have complied with the Court's order and on that basis, the contempt was closed. Thereafter, when the respondents failed to implement their own order and the petitioners approached the Hon'ble High Court in Contempt Petition No.24/2015, the respondents came up with a proposition that they need MHA/ DoP&T clearance and CP was disposed of on the understanding that this would be done expeditiously. Several months have passed but MHA and DoP&T concurrence is not available. In fact, as pointed out earlier, the respondents are now trying to consult Ministry of Human Resource Development (MHRD). The UPSC has washed its hands off by asking GNCTD and MHA/Ministry of Law to decide. As pointed out earlier, MHA threw the ball in the DoP&T's court and DoP&T vide its advice dated 14.05.2015 said that though instructions of DoP&T are not *suo motu* applicable on the officers of GNCTD, as per OMs of 2009 and 1992 in cases where the upgradation involves higher responsibility and higher eligibility service, assessment of suitability is required to be made. An ambiguous advice!

15. The above narration of facts would make it clear that the respondents namely GNCTD, UPSC, MHA, DoP&T along with

MHRD and Ministry of Law are, by their conduct, clearly demonstrating that none of them want to take a clear cut stand and they are harassing the applicants by forcing them to run from pillar to post. Even the High Court's order, on the assurance of a very senior officer of respondent no.1, apparently has no finality with the government. The order issued by the Lt. Governor in compliance of Hon'ble High Court's order is just a piece of paper! Needless to say, the judiciary cannot be a mute spectator to such sheer paralysis through analysis and at times, lack of it. To say the least, the attitude of the respondents is deplorable. This could have been sorted out in half-an-hour if the Chief Secretary of Delhi, Home Secretary, Union of India, Law Secretary and Secretary, DoP&T/HRD had sat across the table and decided the issue and not shirked their responsibility as they have demonstrated. If files move minds are closed; minds open when files are closed! We say no more.

16. We are convinced that in the backdrop of facts of AICTE notification dated 8.08.2011, the government's assurance before the Court that they are implementing the order and by issuing order dated 23.01.2014 and in the face of facts as contained in table at para 11 above, nothing more needs to be done in this case and pushing files from one department to another without any clear cut decision is only an attempt by the respondents collectively to frustrate the implementation of Court's order. The OA, therefore, deserves to be allowed.

17. In view of above discussion, we allow the OA and direct the respondents to grant the upgraded pay scales to the applicants with all consequential pecuniary benefits within a period of two months of the receipt of a certified copy of this order. However, there shall be no order as to costs and interest.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

/dkm/