

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

O.A. No. 3217/2014

Reserved on : 28.03.2016

Pronounced on : 04.04.2016

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)**

1. Somvir Rana [TGT (Eng.)]
ID No.20071704
Aged about 43 years,
S/o Shri Dayanand Rana,
GBSSS Tikri Kalan, Delhi-41,
R/o Village Nizampur Khurd,
PO Kundal Distt. Sonipat, Haryana.
2. Om Prakash Deswal [TGT (Eng.)]
ID No.20071437
Aged about 54 years,
S/o Shri Suraj Bhan,
S.V. Co-Ed Sawda, J.J. Colony,
B-Block, Delhi-81.
R/o H.No. 1732, Sector-06,
Bahadurgarh, Distt. Jhajjar,
Haryana.
3. Raj Kumar [TGT (Eng.)]
ID No.20071867
Aged about 53 years,
S/o Shri Didare Singh,
S.V. Co-Ed Sawda, J.J. Colony,
B-Block, Delhi-81.
R/o H.No. 11/211A, Radha Colony,
Barahi Road, Bahadurgarh.
4. Aketa, ID no.20071752
Aged about 36 years,
W/o Shri Narender Kumar,
S.V. Co-Ed Sawda, J.J. Colony,
B-Block, Delhi-81.
R/o H.No. 456/2, Ramayan Pana,
Tikri Kalan, Delhi-41.

5. Arun Kumar [TGT (Hindi)]
ID No.20072705
Aged about 33 years,
S/o Shri Ram Karan,
GBSSS Mundka, Delhi-41.
R/o Gali No.2, Hanuman Dhani,
Bhiwani, Haryana.
6. Ramesh Kumar [TGT (N. Science)]
ID No.20036709
Aged about 44 years,
S/o Shri Daulat Ram,
GBSSS Tikri Kalan, Delhi-41.
R/o H.No. 706/12, Dayanand Nagar,
Bahadurgarh Distt. Jhajjar,
Haryana.
7. Suresh Kaushik [TGT (N. Science)]
ID No.19920132
Aged about 47 years,
S/o Shri Indersen Sharma,
GBSSS Tikri Kalan, Delhi-41.
R/o 165/7, Model Town,
Bahadurgarh, Jhajjar,
Haryana.
8. Sunil Kumar [TGT (N. Science)]
ID No.20036702
Aged about 45 years,
S/o Shri Mitter Singh,
S.V. Co-Ed. H-Block, J.J. Colony,
R/o H.No. 1497, Sector 06,
Bahadurgarh, Distt. Jhajjar,
Haryana.
9. Mrs. Suresh Jakhar [TGT (Sanskrit)]
ID No.20060459
Aged about 46 years,
W/o Shri Bijender Singh Jakhar,
G.S.K.V. Mundka, Delhi-41.
R/o H.No. 1590-A, Sector-06,
Bahadurgarh Distt. Jhajjar,
Haryana.
10. Mukesh Kumar [TGT (Maths)]
ID No.19990685
Aged about 41 years,

S/o Shri Nand Ram,
GBSSS Tikri Kalan, Delhi-41.
R/o H.No. 1769, Sector 06,
Bahadurgarh Distt. Jhajjar,
Haryana.

11. Manoj Kumar [TGT (Skt.)]
ID No. 20025500
Aged about 36 years,
S/o Shri Bansi Dhar,
GBSSS Tikri Kalan, Delhi-41.
R/o H.No. 2223/8, Dharampura
Bahadurgarh Distt. Jhajjar,
Haryana.
12. Rakesh Kumar Punia [TGT (Maths)]
ID No.20040696
Aged about 41 years,
S/o Shri Mohinder Singh,
GBSSS Tikri Kalan, Delhi-41.
R/o Vill. & PO Khudan, Distt. Jhajjar,
Haryana.
13. Munish Kumar [TGT (S.S)]
ID No.20040713,
Aged about 40 years,
S/o Shri Prahlad Singh,
GBSSS Tikri Kalan, Delhi-41.
R/o H.No. 420, Sector 2,
Distt. Rohtak, Haryana.

.. Applicant

(By Advocate : Shri R.K. Sharma)

Versus

Govt. of NCT of Delhi through

1. The Secretary,
Ministry of Human Resources Development,
Shastri Bhawan, New Delhi.
2. The Chief Secretary,
5th Level, Delhi Secretariat,
I.P. Estate, New Delhi-02.

3. The Secretary of Education,
GNCTD, Old Secretariat,
Delhi.

4. The Director of Education,
GNCT of Delhi,
Old Secretariat, Delhi.

.. Respondents

(By Advocate: Shri K.M. Singh)

ORDER

By Hon'ble Mr. P.K. Basu

The applicants were promoted to the post of Trained Graduate Teacher (TGT) from the post of Primary School Teacher (PST) before or after 01.01.2006 in the Department under the Departmental Promotion Scheme. According to the 6th Central Pay Commission (CPC) recommendations, the initial pay of TGTs recruited directly after 01.01.2006 was to be fixed at minimum level of Rs. 17,140/-. The pay of the applicants were fixed, however, adopting the formula given in 6th CPC, i.e. basic pay as on 01.01.2006 multiplied by 1.86. This was less than Rs.17,140/-. The applicants approached the Tribunal in O.A. No.1368/2014. The Tribunal disposed of the matter on 08.05.2014 directing the respondents to consider the representations of the applicants and pass reasoned and speaking order. As per directions of this Tribunal, the respondents passed a speaking order dated 02.08.2014. The applicants being aggrieved by this order have filed the present O.A. seeking the following relief(s):

- “(i) To quash and set aside the impugned order dated 02.08.2014.

- (ii) Issue a direction to respondents to re-fix the pay of applicants as per 6th Pay Commissions revised report dt. 29.08.2008, PB-II in Pay Band 9300-34800 Grade Pay Rupees 4600 from 01.01.2006 for TGT post, pay scale of Rs.17140 p.m. (12540+4600) and direct the respondents to pay interest on the arrears of pay till the date of payment.”

2. Similarly situated teachers sought clarification from M/o Human Resources Development (MHRD) and the MHRD issued clarification vide letter dated 13.03.2009 through which it was informed that clarification issued regarding stepping up of pay of Senior Teachers may be extended to the similarly placed Teachers working in the Govt. of NCT of Delhi. The clarification dated 13.03.2009 pertains to stepping up the revised pay of Teachers working in NVS consequent upon implementation of 6th CPC, which reads as follows:

“I am directed to say that matter relating to stepping up of pay of Seniors with the directly recruited juniors, recruited on or after 1.1.2006 i.e. after implementation of recommendation of 6th Central Pay Commission was taken up with Deptt. of Expenditure Ministry of Finance. It has been decided that stepping up of pay of seniors will be permitted with reference to suen of their directly recruited juniors who are recruited on or after 01.01.2006 and whose basic pay is more than that of the seniors subject to the following conditions:-

- (a) Stepping up the basic pay of seniors under the above provisions can be claimed only in the case of those cadres which have an element of direct recruitment and cases where a directly recruited junior actually drawing more basic pay than the seniors. In such cases, the basic pay of the seniors will be stepped up with reference to the basic pay of the juniors.
- (b) Using the above provision, Government servants cannot claim stepping up their revised basic pay with reference to entry pay in the revised pay structure for direct recruits appointed on or after 1.1.2006 as laid down in Section-II of part A of First Schedule to the CCS (RP) Rules, 2008, if their cadre does not have any element of

direct recruitment or in cases where no junior is drawing basic pay higher than them.

- (c) Stepping up of pay of the seniors in accordance with the above provisions shall not be applicable in cases where direct recruits have been granted advance increments at the time of recruitment.

2. This issues with the approval of the Ministry of Finance (Department of Expenditure Implementation Cell), Govt. of India.”

The applicants, therefore, submitted representation/legal notice but nothing happened. They ultimately filed OA No.1368/2014 and the aforesaid order was passed.

3. The applicants state that the similarly placed teachers serving in some other schools, such as GBSS School, Bawana, Delhi-39 and GBSS School, Katewara, Delhi-39 etc. have been granted the initial basic pay of Rs.17,140/- w.e.f. 01.01.2006 and afterwards. It is stated that being a welfare state, the respondents should suo moto have extended the benefits to the similarly situated teachers in tune with the decision of the Constitution Bench of the Hon'ble Apex Court in **K.C. Sharma and Others Vs. Union of India & Ors.** 1998 (1) SLJ SC 54. Further, it is stated that in O.A. No.657/2012 with O.A. No. 931/2012, this Tribunal has granted similar relief. The applicants further relied on decision of this Tribunal in O.A. No. 2835/2011 with O.A. Nos.2842/2011 and 2843/2011.

4. The respondents in their speaking order dated 02.08.2014 have come to a conclusion that there is no provision for granting

entry level pay indicated in Section II of Part A of First Schedule of the CCS (Revised Pay) Rules, 2008 to those who are already in service as on 01.01.2006 and, therefore, has reiterated the correctness of the stand taken by the respondents vis-a-vis the applicants. This conclusion has been drawn by the respondents based on some clarification issued vide letter No.F-05-14/2009/UT.1 dated 05.05.2010 issued by the MHRD in consultation with the Department of Finance, Govt. of India. The learned counsel for the respondents has also supplied a copy of the clarification dated 05.05.2010, specifically mentioning clarification No.1, which reads as follows:

Sl.No.	Points raised	Comments
1.	Teachers appointed prior to 1.1.2006 are getting less pay than those appointed after 1.1.2006 for example; post of TGT in 5500-9000 has been upgraded to scale of Rs.7450-11500. Pay of a TGT appointed in 2005 with basic pay of Rs.5500/- on 1.1.2006 is fixed as Rs.14830/- (5500 x 1.86 + 4600 GP) whereas for new recruit it is Rs.17140/- (12540+4600)	Cases may be settled in accordance with the clarification given by D/o Expenditure (Implementation Cell) vide their IC UO No. 10/1/2008 IC dated 27.2.2009 (copy enclosed)

The clarification dated 27.02.2009 is nothing but the same as clarification issued vide letter dated 13.03.2009 by MHRD, which has already been cited above.

5. The respondents while passing the order have also stated that so far as the entry grade is concerned, CCS (Revised Pay) Rules,

2008 clearly says that entry pay is applicable in the case of direct recruits appointed on or after 01.01.2006 and in the case of existing employees, as on 01.01.2006, their pay is fixed as per the provisions under rule 7 of CCS (Revised Pay) Rules, 2008 i.e. the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

6. Heard the learned counsel for both the sides and perused the pleadings/judgments.

7. It is true that the CCS (Revised Pay) Rules, 2008, specifically Rule 8 provides for granting entry level pay indicated in Section II of Part A of First Schedule to direct recruits to a particular post carrying a specific grade pay on or after 01.01.2006. This will not, therefore, apply to the applicants as they were in service before 01.01.2006 or were promoted on or after 01.01.2006 and Rule 7 and Rule 13 of the CCS (Revised Pay) Rules, 2008 will apply.

8. Rule 7 is basically multiplying the pre-revised basic pay with 1.86 etc. and Rule 13 provides for granting one increment equal to 3% of the sum of pay in the pay band and the existing grade pay round off to the next multiple of 10.

9. The clarification by the Department of Expenditure dated 27.02.2009 as well as order dated 13.03.2009 provide for stepping up of pay of seniors vis-a-vis directly recruited juniors who are recruited on or after 01.01.2006 but subject to certain conditions, already quoted above.

10. In O.A. No.657/2012 and 931/2012, some TGTs had raised the issue that their basic pay should be stepped up to the minimum level of new scale and then multiplied by the factor of 1.86. To this grade pay applicable in the pay band should have been added to arrive at the revised basic pay. On the other hand, the respondents contended that the basic pay in pre-revised scale is to be multiplied by the factor of 1.86 and if the figure arrived is less than minimum of the revised pay scale, then only the basic pay is to be increased to the level of minimum of the revised pay band. So the issue in this O.A. was different. In any case, the O.A. was disposed of holding that the pay of the applicant had been rightly fixed as per the formula provided in Rule 7 (1)(A)(i) and (ii). However, it further held that the cases needed to be considered under FR-27. Rule 7(1)(A)(i) and (ii) basically stipulates the 1.86 multiple formula and new basic pay not to be less than minimum of replacement scale.

11. As regards O.A. No.2835/2011 with O.A. Nos. 2842/2011 and 2843/2011 are concerned, these were filed by PSTs, TGTs and PGTs. The substantive question before the Tribunal was whether the direct recruits who have been appointed prior to 01.01.2006 can be placed at a lower pay scale than those direct recruits who were appointed after 01.01.2006. The Tribunal concluded that the respondents should ensure that the pay of no incumbent of the post of PST, TGT and PGT appointed prior to 01.01.2006 is fixed lower than the pay which could be drawn by the fresh appointee of the post as on 01.01.2006. The crucial clarification based on which the respondents have rejected the claim of the applicants seems to be the clarification dated 05.05.2010 which has simply quoted the DOPT clarification dated 27.02.2009, which is the same as the clarification issued by the MHRD dated 13.03.2009. As per this clarification, stepping up of basic pay of seniors can be claimed in case of those cadres which have an element of direct recruitment and in cases where the directly recruited juniors are drawing more basic pay than the seniors. However, as stipulated in Part C sub-para (C) of circular dated 13.03.2009, stepping up of pay shall not be applicable in cases where direct recruits have been granted advance increment. The respondents do not deny that there is an element of the direct recruitment in the Teacher cadres, i.e. PST, TGT and PGT. Therefore, this circular squarely applies which is also acknowledged by the respondents in their speaking order

02.08.2014. It is also not denied that juniors are drawing basic pay more than the seniors. Therefore, by a plain reading of these instructions, it is clear that pay of the applicants would need to be stepped up to the level drawn by the direct recruit juniors, who are appointed on or after 01.01.2006. The respondents argument, though not very clearly spelt out either in their reply or in the order dated 02.08.2014, seems to be that the direct recruits appointed on or after 01.01.2006 are granted advance increments at the time of recruitment and hence benefit of stepping up of pay is not available in such cases according to clause (c) quoted above. This leads to an absurd situation that a senior, on pay fixation under FR-22C draws lower pay than his junior. It is precisely for this reason that in O.A. Nos. 2835/2011 with O.A. Nos. 2842/2011 and 2843/2011, this Tribunal has held that pay of incumbents appointed/promoted prior to 01.01.2006 should not be lower than the pay which would be drawn by a fresh appointee on or after 01.01.2006.

12. In view of the above, the O.A. clearly succeeds and the order dated 02.08.2014 is set aside, with a direction to the respondents to re-fix the pay of the applicants as per 6th CPC recommendations. They should ensure that none of the applicants' pay is fixed at a stage lower than the pay which could be drawn by a direct recruit appointee on or after 01.01.2006. Time frame of two months is fixed

for implementation of this order. There shall be no order to pay the interest as costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

/Jyoti/