

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.Nos.180/00597/2017, 180/00741/17 & 180/00395/18

Tuesday, this the 31st day of July, 2018

CORAM

**HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, JUDICIAL MEMBER**

O.A 180/597/2017

K.K.Krishnankutty
TGT Malayalam, JNV Palakkad
Malampuzha P.O
Palakkad-678 651
Residing at JNV Quarters, Malampuzha P.O
Palakkad – 678 651

... **Applicant**

[By Advocate Mr.Vishnu S. Chempazhanthiyil]

V.

1. Union of India, represented by its Secretary
Ministry of Human Resource & Development
Shastri Bhawan, New Delhi -110 001
2. The Commissioner
Navodaya Vidyalaya Samiti
Department of School Education & Literacy
Government of India, B 15, Institutional Area
Sector 62, Noida, Budh Nagar
Uttar Pradesh-201 309
3. The Deputy Commissioner (Pers)
Navodaya Vidyalaya Samiti (Hyderabad Region)
Ministry of Human Resource & Development
1-1-10/3, Sardar Patel Road, Secunderabad-500 003

...

Respondents

(By Advocate Mr. S.R.K.Prathap, ACGSC for R1 & Mr.Millu Dandapani for R 2&3)

O.A 180/00741/2017

Seema D.K
 TGT Science, JNV Pathanamthitta
 Vechoochira P.O, Pathanamthitta -686 511
 Residing at JNV Quarters, Vechoochira P.O
 Pathanamthitta -686 511

... **Applicant**

[By Advocate Mr.Vishnu S. Chempazhanthiyil]

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1. Union of India, represented by its Secretary
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 Navodaya Vidyalaya Samiti (Hyderabad Region)
 Ministry of Human Resource & Development
 1-1-10/3, Sardar Patel Road, Secunderabad-500 003

... **Respondents**

(By Advocate Mr. N.Anilkumar, Sr.PCGC(R) for R1 & Mr. Millu Dandapani for R 2&3)

O.A 180/00395/2018

1. Padmanabhan V., aged 40 years
 S/o.Shri.Venkatachalam
 Post Graduate Teacher(Commerce)
 Jawahar Navodaya Vidyalaya
 Neriamangalam, Kothamangalam
 Ernakulam District-686 693
 Residing at: JNV Quarters, Neriamangalam
 Kothamangalam, Ernakulam District-686 693
2. Ajai P, aged 38 years
 S/o.Shri.Balakrishnan P
 Post Graduate Teacher (Physics)
 Jawahar Navodaya Vidyalaya
 Mayannur P.O
 Pin -679 105
 Permanent Address: Punnadiyil
 Panamanna P.O
 Palakkad District – 679 501

3. Sreenivasan T.A, aged 41 years
S/o.Shri.T.V.Appukuttan
Post Graduate Teacher (Physics)
Neriamangalam, Kothamangalam
Ernakulam District-686 693
Permanent Address: Thattampully House
Meempara P.O, Choondi, Kolenchery
Ernakulam District-682 308

... **Applicants**

[By Advocate Mr. T.C.G Swamy]

V.

1. Union of India, represented by the Secretary to the Government of India
Ministry of Human Resource Development
Department of School Education and Literacy
New Delhi – 110 001
2. The Commissioner
Navodaya Vidyalaya Samiti
B 15, Institution 4-B Nagar
Sector 62, Noida (U.P), Pin-201 307
3. The Deputy Commissioner
Navodaya Vidyalaya Samiti, Hyderabad Region
NLI Building, Nallagandla Road
Gopanpally P.O
Hyderabad-500 107, Telangana State

... **Respondents**

(By Advocate Mr. S.Sreenath,ACGSC for R1 & Mr. Millu Dandapani for R 2&3)

This original applications having been finally heard and reserved on 26.7.2018, the Tribunal on 31.07.2018 delivered the following.

O R D E R

PER: ASHISH KALIA, JUDICIALMEMBER

All these three OA.s were taken up together for hearing and are being disposed of by this common order as the facts and question of law involved are identical.

2. The brief facts in all these three Original Applications are that the applicants in O.A. Nos. 180/741/2017 and 180/597/2017 are working as TGT Malayalam, in Jawahar Navodaya Vidyalaya. They are aggrieved by the inaction on the part of the

respondents in extending the benefits of the decision of the Chandigarh Bench of the Tribunal in O.A. No. 1162/HR/2013 (Annexure A3) and OA No. 1163/HR/2013 (Annexure A3 (a)) filed by a similarly situated TGT, which has been implemented vide Annexure A4 order. The issue of fixation of pay under Rule 7 of the CCS (RP) Rules in respect of categories who were drawing pay in Rs.5000-8000, Rs. 5500-9000 and Rs.6500-10500, which was merged into the scale of Rs.7450-11500 and on being granted replacement scale in PB-2 Rs. 9300-34800 with GP of Rs. 4600/- drawing lesser pay than those who were directly recruited after 1.1.2006, was considered in O.A. No.3679/2012 by the Principal Bench and as per decision dated 7.5.2014 (Annexure A2), the OA was allowed. The above judgement was following in several decisions and it has been held that there can be no discrimination as between those recruited prior to 1.1.2006 and granted replacement scale of Rs. 7450-11500 and those who were recruited after 1.1.2006. Aggrieved by the inaction on the part of the respondents, the present O.As are filed by the applicants seeking the following reliefs:

Common Reliefs in O.A.180/ 597/2017 and 180/741/2017:

1. Direct the respondents to extend the benefit of Annexure A2 and A3 to the applicant.
2. Direct the respondents to fix the pay of the applicant on the basis of Annexure A2 judgement at Rs. 18460/- i.e. Rs.7450/- (Existing pay as on 1.1.2006), multiplied by 1.86, which comes to Rs. 13857/- (Rounded off as Rs. 13860/-) when added to the Grade pay of Rs. 4600/- comes to Rs. 18460/- as on 1.1.2006 and regulate payments accordingly.

Or in the alternative,

3. Direct the respondents to fix the pay of the applicants at Rs. 12540/- and thereafter

add Grade Pay of Rs.4600/ which comes to Rs. 17140/- w.e.f 1.1. 2006 and regulate payments accordingly.

4. Any other further relief or order as this Tribunal may deem fit and proper to meet the ends of justice.

5. Award the costs of these proceedings.

3. Applicants in O.A. 180/395/2018 are presently working as Post Graduate Teachers in Level 8 of the Pay Matrix under the respondents 1 to 3 are aggrieved by the arbitrary and erroneous fixation of their pay consequent upon the implementation of the recommendations of the 6th CPC. All the applicants in this O.A. commenced their service under the respondents as Post Graduate Teachers in the then scale of pay of Rs. 6500-10500. The dates of appointments of the applicants were 22.12.2004, 20.09.2004 and 8.12.2003, respectively by direct recruitment. They seek the following reliefs:

Reliefs in O.A.No. 180/395/18:

(i) Declare that the applicants are entitled to have their pay in PB 2 + GP Rs. 4800/- fixed w.e.f 01.01.2006 at the stage of Rs. 13350/- + GP Rs.4800/- with all consequential benefits arising there from;

(ii) Direct the respondents to fix the applicants' pay in PB 2 + GP Rs. 4800/- w.e.f 01.01.2006, at the stage of Rs. 13350/- + GP Rs. 4800/- with all consequential benefits arising there from;

(iii) Award costs and incidental thereto;

(iv) Pass such other orders or directions as deemed just and fit by this Tribunal.

4. Notices were issued to the respondents and they have filed reply statements in O.A. 180/741/2017 and OA.180/395/2018 and resisted the claim of the applicants.

5. In their reply statements it is contended that vide Annexure R2(a) circular

F.No. 20-1/2008-NVS(Admn)/312, dated 26.3.2009, the respondents clarified vide para 3 (I, II & III) that while implementing revised pay structure as notified vide notification dated 11.11.2008 the entry pay of direct recruits appointed on or after 1.1.2006 will be regulated as per Sec. II, Part A of the First Schedule to the CCS (Revised Pay) rules, and thus stepping up of the seniors would be permitted at par with effect from the date of directly recruited juniors who were recruited on or after 1.1.2006 subject to the following conditions:

I. Stepping up the basic pay of seniors under the above provision can be claimed only in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is 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 junior.

II. 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 the Part A of first Schedule of the CCS (RP) Rules 2008, if their cadre does not have an element of direct recruitment, or in cases where no junior is drawing pay higher than them.

III. Stepping up of pay of the seniors in accordance with the above provision shall not be applicable in cases where direct recruits have been granted advance increments at the time of recruitment.

6. It is also submitted by the respondents that as laid down in Section II of Part A of first Schedule of the Annexure R2(b) CCS (RP) Rules, 2008 on initial

appointment on or after 1.1.2006 to posts Trained Graduate teacher with Grade Pay Rs. 4600 the entry pay is Rs. 12,540/- in the pay band totalling to Rs. 17,140/-. They contended that the seniority list of trained Graduate Teachers including Art, Music and PETs and Librarians etc. are being maintained region wise as one cadre for each subject and as such TGTs of different regions from different cadres. It is submitted that vide Annexure R2(c) instructions dated 8.16.2004 stepping up of pay with different cadre as well as different subject cannot be considered for claiming stepping up of pay. Thus, the claim of the applicants who were on the rolls/strength of Hyderabad Region as on 1.1.2006 for stepping up or her pay has already been considered with the earliest joined of the same subject and belonging to the same cadre who had joined Hyderabad Region on direct recruitment on or after 1.1.2006. It is further submitted that the applicant's pay was once stepped up by giving entry scale of Rs. 12540/- plus Grade Pay of Rs. 4600/- compared to their juniors who have joined the respondents on direct basis in Hyderabad region after 1.1.2006. Therefore, the grievance of the applicants has already been once settled and the claim for further stepping up of pay of the already stepped up pay compared to the juniors does not arise and is unjustified. It is prayed that the Original Applications are liable to be dismissed.

7. Applicants in O.A. No. 180/741/2017 and O.A. 180/395/2018 filed rejoinder and reiterated their pleadings and submitted that the issue raised in these O.As are covered by Annexure A3(A) order of Chandigarh Bench of the Tribunal in respect of similarly situated JNV employees. It is also submitted that identical issue had been

considered by the Bangalore Bench in O.A. 170/1143/2017 vide order Annexure A8 and the same has been implemented by the respondents. It is also submitted that the Ernakulam Bench of the Tribunal by Annexure A10 order in O.A.No. 180/00766/2016 decided in favour of the similarly situated persons.

8. We have heard the learned counsel appearing on both sides, perused the pleadings, case laws and also considered the rival submissions.

9. The issue for consideration is whether the fixation of pay under Rule 7 of the CCS (RP) Rules in respect of categories who were drawing pay in Rs.5000-8000, Rs. 5500-9000 and Rs.6500-10500, which was merged into the scale of Rs.7450-11500 and on being granted replacement scale in PB-2 Rs. 9300-34800 with GP of Rs. 4600/- drawing lesser pay than those who were directly recruited after 1.1.2006 and that there can be any discrimination between those recruited prior to 1.1.2006 and granted replacement scale of Rs. 7450-11500 and those were recruited after 1.1.2006.

10. In O.A. No. 1163/HR/2013 of Chandigarh Bench in the matter of *Vijay Pal vs.*

UOI it was held as under:

"11. We have carefully perused the pleadings of the parties and the material on record. It is evident from the OA that the applicant is getting less pay than even the persons who have been recruited as TGTs on 1.1.2006 and thereafter, while he was appointed in 2004. The fixation of pay of a TGT in the NVS on the basis of the recommendations of the 6th Pay Commission cannot be linked with the seniority of the individual in the region in which he is working in a manner that he gets less pay than the directly recruited teachers who came into service after 1.1.2006. The judgement of the Principal Bench in *Sheeja Santosh & Ors.* (supra) although it relates to the ESIC, is very pertinent to the matter wherein it had been held as follows:-

12. Therefore, the applicants are entitled to get at least the minimum of Rs. 13860/- (Rs. 18460 with Grade Pay) as on 01.01.2006, as the same post when held by a direct recruit who joins on or after 1.1.2006 and one who joined as direct recruit years earlier, cannot be given different pay scales, that too prejudicial to the persons who

joined much earlier as it would violate Article 39(d) of the Constitution of India which has now assumed the level of a Fundamental Right and also Article 14 & 16 of the Constitution being irrational and arbitrary. The settled law is that no rules can be made in violation of the provisions contained in the Constitution of India.

13. In view of the above observations, this OA is allowed and the applicant is held entitled to the pay scale of Rs. 12540/- + 4600 (Grade Pay) = Rs. 17140/- as has been granted to a new entrant joining as TGT on 1.1.2006 or after that date as recommended by the 6th Pay Commission. Hence, the respondents are directed to re-fix the pay of the applicant within a period of three months of a certified copy of this order being served upon the respondents and the arrears due to him on this account, may also be released within this period. No costs."

11. In O.A. No.180/766/2016 of Ernakulam Bench vide order dated 11.4.2018 it is held as under :

"5. At the outset of his arguments learned counsel for the applicants submitted that they are not pressing relief No. 2 which is based on the fixation using multiplying factor 1.86 with Rs. 7,450/- (existing pay) as on 1.1.2006 plus Grade Pay of Rs. 4,600/- = Rs. 18,460/-. The counsel submitted that the applicants would instead be satisfied if an order is given directing the respondents to fix the pay at Rs. 12,540/- with Grade Pay of Rs. 4,600/- which would come to Rs. 17,140/-, with effect from 1.1.2006, in the light of the order passed by this Tribunal in Annexures A2 and A3 orders of the coordinate bench of this Tribunal. Referring to Annexure A9 order of the Bangalore Bench of this Tribunal which was pronounced on 21.6.2017 Shri Vishnu S. Chempazhanthiyil pointed out that the said order was implemented by the respondents NVS in respect of the applicants in the said case and connected case vide Annexure A15 order dated 1.2.2018. Therefore, he submitted that an order similar to Annexure A9 can be passed in this case as well.

6. After hearing both sides we feel that, in order to maintain uniformity of the decisions of the various Benches of this Tribunal, we are bound to follow the decisions rendered by the co-ordinate Benches in identical cases. It has been brought to our attention that the Principal Bench of this Tribunal has passed a similar order in OA No. 825 of 2016 and connected cases on 5.1.2018 directing to re-fix the pay of the applicants therein at the minimum prescribed in CCS (Revised Pay) Rules, 2008 for the respective posts vis-a-vis the pay fixed for an entrant who joined on or after 1.1.2006 with all consequential benefits.

7. In the above circumstances we direct the respondents to fix the pay of the applicants at Rs. 12,540/- and thereafter add Grade Pay of Rs. 4,600/- with effect from 1.1.2006 and to regulate payments accordingly with all consequential benefits. The respondents shall complete this exercise within three months from the date of receipt of a copy of this order.

8. The Original Application is disposed of as above. Parties shall suffer their own costs."

12. The issue is squarely covered by various orders of the co-ordinate Benches as quoted by the learned counsel for the applicants and we follow those orders in these cases as well.

13. In view of the above, we hold and direct the respondents to fix the pay of the applicants in O.A.No. 180/597/2017 and 180/741/ 17 at Rs. 12,540/- and thereafter add Grade Pay of Rs. 4600/- which would come to Rs.17,140/- with effect from 1.1.2006 and to regulate payments accordingly with all consequential benefits. In so far as the applicants in O.A.No.180/395/2018 are concerned we direct the respondents to fix the pay of the applicants at Rs. 13350/ + GP 4800 which would come to Rs.18150/- with effect from 1.1.2006. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

14. All the three Original Applications are allowed as above. No order as to costs.

(Ashish Kalia)
Member (J)

(E.K. Bharat Bhushan)
Member (A)

sj*

List of Annexures

O.A 180/597/2017

Applicant's Annexures

- | | | |
|----------------|---|---|
| Annexure A1 | - | True copy of the relevant portion of the CCS (RP) Rules, 2008 |
| Annexure A2 | - | True copy of the order dated 7.5.2014 in O.A No.3679/2012 of the Hon'ble Central Administrative Tribunal, Delhi |
| Annexure A3 | - | True copy of the order dated 21.11.2014 in O.A No.1162/HR/2013 of the Chandigarh Bench of the Central Administrative Tribunal |
| Annexure A3(a) | - | True copy of the order in O.A No.1163/HR/2013 of the Chandigarh Bench of the Central Administrative Tribunal |
| Annexure A4 | - | True copy of the order No. F.92-15(46)/NVS-JR/RF/OP/TGT.S.St. Dated 4.9.2015 issued by the NVS |
| Annexure A5 | - | True copy of the communication No.F.No.3-27/JNV/PGT/2015-16/Pers/781 dated 12.12.2015 issued by the Principal, JNV Palakkad to the 3 rd respondent |
| Annexure A5(a) | - | True copy of the representation dated 5.8.2016 submitted by applicant to the 2 nd respondent |
| Annexure A5(b) | - | True copy of the communication No.3-27/JNV/PGT/Pers/2016-17/433 dated 10.8.2016 issued by the Principal, JNV Palakkad to the 3 rd respondent |
| Annexure A-6 | - | True copy of the order dated 21.6.2017 in O.A No.170/00143/2017 of the Hon'ble Central Administrative Tribunal Bangalore Bench |
| Annexure A-7 | - | True copy of the Office Order No.1-171/NVS(HR)/(Estt.II)/2017/3752 dated 1.2.2018 issued by the JNV |
| Annexure A-8 | - | True copy of the order dated 11.4.2018 in O.A No.180/00766/2016 of this Hon'ble Tribunal |
| Annexure A-9 | - | True copy of the order No.F.No.1-171/NVS/HR/(Estt.II)/2018 dated 14.6.2018 issued by the JNV |

Respondents' Annexures

- Annexure R2(a) - True copy of the circular No.F.No.20-1/2008-NVS (Admn)/312 dated 26.3.2009
- Annexure R2(b) - True copy of Section II of Part A of first schedule of the CCS (RP) Rules, 2008
- Annexure R2(c) - True copy of the letter F.No.2-95/99/NVS(Estt.) dated 8.6.2004

O.A 180/741/2017**Applicant's Annexures**

- Annexure A1 - True copy of the relevant portion of the CCS (RP) Rules, 2008
- Annexure A2 - True copy of the order dated 7.5.2014 in O.A No.3679/2012 of the Hon'ble Central Administrative Tribunal, Delhi
- Annexure A3 - True copy of the order dated 21.11.2014 in O.A No.1162/HR/2013 of the Chandigarh Bench of the Central Administrative Tribunal
- Annexure A3(a) - True copy of the order in O.A No.1163/HR/2013 of the Chandigarh Bench of the Central Administrative Tribunal
- Annexure A4 - True copy of the order No.F.92-15(46)/NVS-JR/RF/OP/TGT.S.St. Dated 4.9.2015 issued by the NVS
- Annexure A5 - True copy of the represented submitted by the applicant to the 3rd respondent
- Annexure A6 - True copy of the order dated 27.10.2016 in O.A No.060/00008/2016 of the Central Administrative Tribunal, Chandigarh Bench
- Annexure A-7 - True copy of the order dated 14.2.2017 in O.A No.846/2013 of the Central Administrative Tribunal, Principal Bench
- Annexure A-8 - True copy of the order dated 21.6.2017 in O.A No.170/00143/2017 of the Central Administrative Tribunal, Bangalore Bench

- Annexure A-9 - True copy of the Office Order No. 1-171/NVS(HR)/(Estt.II)/2017/3752 dated 01.02.2018 issued by the JNV
- Annexure A-10 - True copy of the order dated 11.04.2018 in OA No. 180/00766/2016 of this Hon'ble Tribunal
- Annexure A-11 - True copy of the Order No.F.No.1-171/NVS/HR/(Estt.II)/2018 dated 14.6.2018 issued by the JNV

Respondents' Annexures

- Annexure R2(a) - True copy of the Circular No.F.No.20-1/2008-NVS(Admn)/312 dated 26.3.2009
- Annexure R2(b) - True copy of Section II of Part A of first Schedule of the CCS (RP) Rules, 2008
- Annexure R2(c) - True copy of the letter F.No.2-95/99/NVS(Estt.), dated 8.6.2004

O/A No.180/00395/2018

Applicants' Annexures

- Annexure A1 - True copy of Section II of Part A of the First Schedule to the CCS (RP) Rules, 2008
- Annexure A2 - A true copy of the office order bearing F.No.36 (A/c)/JNVN/2011-2012 dated 3.1.2012 issued by the Principal of the applicants 1 and 2, re-fixing the applicants' pay to a lower level
- Annexure A3 - A true copy of the representation submitted by the first applicant dated 10.2.2017 before the 3rd respondent
- Annexure A4 - A true copy of the representation submitted by the first applicant dated 15.6.2017 before the 3rd respondent
- Annexure A5 - A true copy of the office order bearing F.No.12-4/2017-NVS (BPL)/Admn./CC/6924 dated 12/22/3/2018 issued by the Deputy Commissioner of the Bhopal Regional Office of the Navodaya Vidyalaya Samiti
- Annexure A6 - A true copy of the common order of the Hon'ble CAT, Jabalpur Bench dated 8.12.2017, in O.A

No.200/00380/2016 and connected cases.

- Annexure A7 - A true copy of the office order F.No.I-171/NVS(HR)/
(Estt.II)/2017/3752 dated 1.2.2018
- Annexure A8 series - A true copies the representations submitted by the
applicants before the 3rd respondent.

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