

**Central Administrative Tribunal
Principal Bench**

OA No.794/2018
MA No.865/2018

Orders Reserved on 25.02.2019

Pronounced on: 11.03.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

1. Dinesh Kumar Mishra,
S/o late Satya Narayan Mishra,
Aged about 52 years,
TGT, Eng.
2. Ram Kunwar Singh,
S/o Late Shyam Bihari Singh
Aged about 52 years,
TGT, Natural Science.
3. Braj Kishore Singh
S/o late Mahanth Singh,
Aged about 52 years,
TGT, Sanskrit.

(All posted in SKV, Sarvodaya Kanya Vidyalaya under the
DOE, NCT, Delhi.)

4. Om Prakash
S/o Late Bhagwana Singh,
Aged about 58 years,
TGT, Social Science,
Posted in GBSSS,
K-Block, Jahangir Puri
Delhi-33.

-Applicants

(Applicant in person)

-Versus-

1. The Govt. of Delhi
Through the Principal Secretary,
Department of Education,
Old Secretariat, Delhi-54.
2. Director of Education,
Govt. of NCT Delhi,

At Old Secretariat, Delhi-54.

3. Head of School (HOS),
GBSSS K-Block Jahangir Puri,
Delhi-110033
School ID-1309259.

-Respondents

(By Advocate –None)

O R D E R

The applicants are working as TGTs since 2003 in various schools under GNCTD. The 6th Central Pay Commission (CPC) was implemented w.e.f. 01.01.2006. It was pleaded that as per 6th CPC, the fixation of initial pay in the revised pay structure is governed by Rule 7 (i)(A)(i)&(ii) in the following manner:

- a) the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 1-4-2006 by a factor of 1.86 and rounding off the resulting figure to the next multiple of 10.
- b) 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.

Accordingly, it was pleaded that as per the recommendations of the 6th Pay Commission and the R.P. Rules, 2008, the TGTs have been placed in PB2 in the Pay Band Rs.9300-34800 plus GP Rs.4600. The entry pay in respect of TGTs in GP Rs.4600/- has been fixed at Rs.17140/- (Rs.12540/- plus GP Rs.4600/-).

This works to Rs.12540/- as basic and grade pay Rs.4600/- for all as on 01.01.2006. This scale was already granted to the applicants by way of removal of discrimination vis-a-vis direct recruits TGTs, as per court orders in some similar cases. However, the respondents vide their letter dated 17.01.2018 to applicant nos.1, 2 and 3 and vide letter dated 03.11.2016 to applicant no.4, reduced their salary. With this, the discrimination has been restored in their pay fixation with respect of those who were direct recruits and had joined after 01.01.2006.

2. This issue of discrimination was earlier raised in OA No.1733/2015 by some other candidates who were similarly placed. The Tribunal quoted their decision in another OA No.3217/2014 (**Somvir Rana & Ors. v. GNCTD**) in similar cases, and allowed OA No.1733/2015.

3. In OA-3217/2014 the Tribunal had earlier considered the issue in detail. Certain discrimination had occurred in the payment of TGTs who were direct recruits and who were given Rs.17140/- as compared to those who were promoted as TGTs who were given a lower pay. The Tribunal directed to give same salary of Rs.17140/- to all TGTs.

3.1 This was challenged by the respondents in Hon'ble High Court of Delhi in W.P. (C) No.2634/2014. This was decided

on 23.03.2017. The Hon'ble High Court relied upon their decision dated 04.11.2016 in another W.P. (C) 8058/2015 and thereafter upheld the decision given by the Tribunal in OA No.3217/2014.

3.2 This decision by Hon'ble High Court of Delhi was challenged by the respondents in Hon'ble Apex Court in SLP Diary No.23663/2017. This was decided by the Hon'ble Apex Court on 01.09.2017 and the decision by the Hon'ble High Court was upheld.

Thus not only the decision by Tribunal in OA-3217/2014 attained finality but the Hon'ble Apex Court also gave direction to implement it in similar cases.

3.3 Thereafter the same was implemented by GNCTD vide their orders dated 08.09.2017. The relevant part of these orders is reproduced below:

“Now, therefore, the pay in respect of all the petitioners as referred to OA No.3217/2014 has to be refixed @17140/- (Basic Pay 12450 plus Grade Pay of Rs.4600) as on or after 01.01.2006 with Date of next increment as applicable from time to time, as per Section II of Part A of the first schedule of the Revised Pay Rules, 2006 accordingly.”

4. The applicants, therefore, plead that the above basic principle that there cannot be a discrimination between the direct recruits and the promotees in fixation of their salary at Rs.17140/- w.e.f. 1.1.2006, has been settled at the level of

Hon'ble Apex Court (para 3.2 supra). Thereafter, orders have also been passed by GNCTD on 08.09.2017 to implement the same (para 3.3 supra). Even then the applicants' salary, which was already fixed at Rs.17140/- as of 1.1.2006, has now been revised at a lower level vide orders dated 03.01.2018 and 03.11.2016.

With this reduction, the respondents have also worked out that certain excess payment had also taken place and the same is required to be recovered. The amount of recovery, as calculated, comes to Rs.316341/- in respect of applicant no.1, Rs.336702 for applicant no.2, Rs.346691/- for applicant no.3 and Rs.90672/- for applicant no.4. These recoveries orders were stayed by the Tribunal on 19.02.2018.

5. The applicants have relied upon the judgements quoted in para-2 to 3.2 supra as well as another judgment by Hon'ble High Court of Delhi in W.P. (C) No.8922/2017 on the same subject decided on 17.01.2018.

5.1 This question was considered by the Hon'ble High Court in this W.P. (C) 8922/2017 also. The Hon'ble High Court had mentioned the decision by the Tribunal in OA No.2835/2011 and OA No.3217/2014 and subsequent decisions by the Hon'ble High Court as well as Hon'ble Apex Court (para 3 to 3.2 supra). The Hon'ble High Court had reproduced the

decision by the Hon'ble Apex Court in SLP Diary No.23663/2017 also which reads as under:

"Delay condoned.

We find that there are several matters in which the aggrieved employees have been going to the Tribunal, then to the High Court and thereafter those matters are brought before this court at the instance of the Union of India/NCT of Delhi.

One the question, in principle, has been settled, it is only appropriate on the part of the Government of India to issue a Circular so that it will save the time of the court and the Administrative Departments apart from avoiding unnecessary and avoidable expenditure.

The present situation is that the stepping up is available only to those who have approached the court. But since the issue has otherwise become final, we direct the Government of India to immediately look into the matter and issue appropriate orders for granting the pay- scale so that people need not unnecessarily travel either to the Tribunal or the High Court or this Court.

With the above observations and directions, the special leave petitions are dismissed."

(Emphasis supplied)"

The other observations by the Hon'ble High Court and the decision thereupon are reproduced below:

1. This writ petition has been filed by a registered body of Teachers in Delhi, in public interest, complaining that trained graduate teachers (TGTs) under the Directorate of Education are entitled to minimum pay of Rs.17,140/- per month in terms of the Pay Fixation Rules, 2008. However, the respondents are interpreting the rules to mean that only teachers who were appointed on or after 1 st January, 2006 are entitled to this minimum pay. So far as the teachers who were appointed prior to 1st January, 2006 are concerned, their pay was fixed on implementation of the VIth Central Pay Commission by multiplying their basic pay as on 1st January, 2006 with 1.86 plus the grade pay which came to less than Rs.17,140/-.

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10. In view of the above, it is directed that the respondents shall ensure that the benefits of the order dated 23rd March,

2017 in **WP(C)No.2634/2017 Government of NCT of Delhi & Anr v. Somvir Rana & Ors.** and confirmed by the Supreme Court of India by its order dated 1st September, 2017 is granted to all trained graduate teachers (TGTs) who were appointed prior to 1st January, 2006 by fixing their pay at Rs.17,140/- on that date. Such orders shall be passed within a period of three months from today and arrears in terms thereof shall be released positively within a further period of three months thereafter.”

6. In view of the foregoing, the applicants pleaded that they are required to be fixed at Rs.17140/- w.e.f. 1.1.2006 at par with direct recruits and recoveries are required to be quashed.

7. MA No.865/2015 filed under Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987 for joining together in single application is allowed in the interest of justice.

8. On behalf of the respondents Shri Romesh Shukla, learned counsel appeared on 07.09.2018 and took notice. However, neither the counter-reply was filed nor were the respondents represented in subsequent hearings. In one of the hearing on 22.10.2018, Shri G.D. Chawla was directed to take instructions from the respondents. Since the respondents were not represented in the next hearing on 29.11.2018 and neither was a counter reply filed, one more last opportunity was given to the respondents to make their presence along with observation that if they still fail, their right to file counter reply shall stand forfeited. However, even

thereafter the respondents were unrepresented in the hearings on 11.02.2019 as well as 25.02.2019. Thus, counter reply was never filed on behalf of the respondents.

The case has accordingly been decided based upon the pleadings available in the file by the applicants and the various courts judgments.

9. The Tribunal notes that the question of pay fixation for TGTs as per 6th CPC, was decided by the Tribunal in OA-3217/2014. This was challenged in Hon'ble High Court of Delhi in W.P. (C) No.2634/2014, wherein the Tribunal's decision was upheld. Thereafter the challenge in Hon'ble Apex Court in SLP Diary No.23663/2017 also did not succeed. The Apex Court have upheld the decision by the Hon'ble High Court of Delhi. Thus the orders by the Tribunal attained finality. In compliance thereof, GNCTD also issued orders on 08.09.2017 (para 3.3 supra).

In view of the principle having been settled at the level of Hon'ble Apex Court, the other similarly placed persons are required to be dealt with in a similar way, as was also observed by the Hon'ble Apex Court (para-3.2 & 5.1 supra).

10. In view of the foregoing, there is no reason to reduce the salary of applicants w.e.f. 01.01.2006. The OA is allowed. The re-fixation order issued for applicant nos.1, 2 & 3 on

03.01.2018, and for applicant no.4 on 03.11.2016, are quashed. With this, the recoveries are also quashed. The salary in respect of all four applicants shall be restored within a period 08 weeks from the date of receipt of a certified copy of this order. All arrears, if any are due, shall also be paid in this period, and if not paid in this time period, the arrears shall carry interest at GPF rate till they are paid.

11. The respondents are also directed to appreciate that once a principle has been laid down at the level of Hon'ble Apex Court (para 5.1 supra), it should not be necessary for other similarly placed employees to approach the Tribunal/Courts as that leads to avoidable and unnecessary litigation and expenditure. The respondents may consider to issue appropriate directions.

12. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

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