

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01800/2018

DATED THIS THE 05th DAY OF DECEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri.K.H.Naik
S/o Late Hariyappa
Aged about 57 years
Working as Regional Director
Dattopant Thengadi National Board
For Workers' Education & Development
Ministry of Labour and Employment, Govt. of India
Office at No.48, 1st Floor
Karmik Kalyan Bhavan
Mathikere Main Road
Yashavanthpur, Bangalore-560 022.
Residing at House No.208
2nd floor, No.664/4/A
Thathaiah Nilaya, 7th Cross
Bandappa Street
Yeshawanthpura, Bengaluru-22.

....Applicant

(By Advocate Sri K.Ananda)
Vs.

1. The Chairman
Dattopant Thengadi National Board
For Workers' Education & Development
Room No.21, Jamnagar House
Man Singh Road, New Delhi-110011.
2. The Director
Dattopant Thengadi National Board
For Workers' Education & Development
North Ambazari Road
Near V.N.I.T.Gate
Nagpur-440033.
3. Union of India
Ministry of Labour & Employment
Shramashakthi Bhavan
Rafi Marg, New Delhi-110011.
Represented by its Secretary.

...Respondents

(By Advocate Sri Sayed S.Kazi, ACGSC)

ORDER(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was appointed as Education Officer (Training) on 20.2.1987 in the then Central Board for Workers' Education and now Dattopant Thengadi National Board for Workers Education & Development(DTNBWED). He came to be posted at Hassan, Karnataka on 3.8.1987 as Education Officer. He was promoted to the post of Education Officer (Selection Grade) w.e.f. 5.5.2006 and was posted to DTNBWED, Mangalore(Annexure-A1 & A2). As per the 5th CPC recommendation, the applicant opted for the revised scale w.e.f. 1.1.1996 and his pay was fixed at the stage of Rs.6550/- in the revised scale of Rs.5500-9000. When the Central Board for Workers' Education Officers Association filed OA.No.566/2007 before the Kolkata Bench of this Tribunal challenging non-implementation of the report of the sub-committee on pay scale, service conditions and allied matter of the employees of the respondent board (Dasgupta sub-committee) submitted on 28.1.1997 and also non-implementation of the direction given in OA.1123/1996 by the Mumbai Bench of this Tribunal, the Kolkata Bench of this Tribunal had allowed the OA.566/2007 vide order dtd.27.9.2007 with a direction to consider the implementation of Dasgupta Commission report in implementing the pay scales. Against the said order, the respondents filed W.P.C.T.No.85/2010 before the Hon'ble High Court of Kolkata. But in compliance of the order dtd.27.9.2007 passed in OA.No.566/2007, the respondents vide memorandum dtd.9.6.2008 revised the pay of the officers of Education Officers' cadre in the pay scale of Rs.8000-275-13500 on notional basis w.e.f. 1.1.1996 with actual payment being made from 9.7.2007(Annexure-A3). The respondents have prepared the pay

fixation proforma as per the provisions of proviso to the Rule 7(1) of CCS(Revised Pay) Rules 1997(Annexure-A4) and accordingly, the applicant was given the pay scale of Rs.8000-275-13500 by fixing his basic pay at Rs.8550 as on 1.1.1996 after giving the additional increment as per the bunching method. The applicant was promoted as Regional Director in CBWE and posted at DTNBWED, Mumbai vide office order dtd.30.3.2011(Annexure-A5). In the said promotion order, the clauses regarding exercising the option as per FR 22(I)(a)(1) are clearly mentioned. Based on the said clause, the applicant exercised his option on 26.4.2011 i.e. within one month from the date of taking of the promotional post requesting to fix his pay under FR 22(I)(a)(1) i.e. to fix the pay of the promotional post on the next date of increment in the pay scale i.e. on 1.7.2011. Accordingly, his pay was fixed on 1.7.2011(Annexure-A6) as evident in the pay slip for the month of November 2011(Annexure-A7). When the matter stood thus, the 2nd respondent vide letter dtd.6.1.2012(Annexure-A8) informed the applicant that the pay fixation statement in respect of Education Officers' Cadre has been reviewed and the salary for the month of December, 2011(Annexure-A10) disbursed based on the revised pay fixation statement(Annexure-A9). In the said order, the respondents have stopped one promotional increment granted from 2006 while the applicant was promoted to the post of Educational Officer(SG). Due to the said revision of pay scales, the pay of the applicant was reduced from Rs.27110/- to Rs.25160/- whereas his juniors are getting more basic pay than him. Before revising the pay scales, the 2nd respondent did not give an opportunity of hearing to the applicant. Then the applicant submitted representation on 11.1.2012(Annexure-A11) to the 2nd respondent seeking to rectify the error in fixation of his pay. He submitted his pay fixation statement at Annexure-A12. But the 2nd respondent issued a letter

dtd.20.1.2012 informing the applicant the revised statement forwarded to the applicant on 6.1.2012 is in order. Being aggrieved by the same, the applicant filed OA.No.136/2012 before the Mumbai Bench of this Tribunal. During the pendency of the said OA, the Principal Director of Audit(Central) Hyderabad by his communication dtd.16.7.2012(Annexure-A14) issued a clarification stating that 'Para-A of the Inspection report may be treated as settled subject to regulation of pay fixation allowing bunching in Rs.8000-13500 and subsequent verification as per pay fixation by audit'. On production of this communication, the OA.136/2012 was disposed of on 19.3.2013(Annexure-A15) with a direction to consider the case of the applicant in the light of the above communication dtd.16.7.2012. The applicant submitted representations dtd.11.9.2012(Annexure-A16)(during pendency of OA.136/2012) and dtd.26.4.2013(Annexure-A17) after disposal of the OA.136/2012 with a request to grant the bunching increments in view of the communication dtd.16.7.2012. As the respondents did not comply with the order in OA.136/2012, the applicant filed Contempt Petition No.44/2013. Then the respondents filed compliance report on 9.7.2014(Annexure-A18) stating that in view of the applicant not exercising the option at the time of promotion to the post of Education Officer(SG), he is not entitled for pay fixation benefit i.e. one promotional increment as per FR 22(I)(a)(1). Based on the said compliance report, the CP.44/2013 was closed vide order dtd.10.12.2014(Annexure-A19).

2. The applicant submits that the office of the Principal Director of Audit(Central) Hyderabad issued a letter to the applicant on 24.6.2013(Annexure-A20) stating that 'the objections of Para A in respect of the regulation of pay fixation allowing bunching in Rs.8000-13500 scale of the Inspection Audit report for the year 2010-11 of the Regional Directorate of Central Board of Workers' Education,

Hyderabad is treated as settled subject to pay fixation allowing bunching in Rs.8000-13500 scale and subsequent verification of pay fixation of Audit'. Thus it is clear that the Audit objections raised regarding sanction of bunching benefit in the scale of Rs.8000-13500 is settled and therefore, the applicant is entitled for the bunching benefits. Therefore, the applicant filed one more representation on 29.7.2015(Annexure-A21) requesting for granting of bunching benefits. The applicant filed a separate OA.No.853/2015 in respect of non-granting of promotional increment. The said OA was also allowed on 9.3.2018 directing the respondents to grant promotional increment to the applicant within 2 months. But the respondents did not comply with the said order in OA.853/2015.

3. The applicant further submits that the basic pay of the persons who were appointed in the year 1996 in Batch No.18 and that of the applicant who joined the service during 1987 in Batch No.14 is one and the same as per pay fixation orders at Annexure-A25 & A26. He submits that when one Sri Prabhudan Mondal along with others have filed an OA.No.91/2012 before the Kolkata Bench of this Tribunal, the respondents No.1 & 2 by their letter dtd.5.8.2015(Annexure-A27) have granted the bunching benefit to the said persons. Though the applicant is similarly situated person, the respondents have not granted the bunching benefits. In another OA.No.641/2012 also, the Ernakulam Bench of this Tribunal had categorically held that the officers in Education Officers cadre are entitled to the revised pay scales as per the order passed by the Kolkata Bench of this Tribunal in OA.No.566/2007. In spite of several orders passed by the various Benches of this Tribunal, the respondents are not granting the bunching benefits to the applicant. As such the respondents have violated Article 14 of Constitution of India. The applicant made one more representation on 2.8.2018(Annexure-

A22) regarding bunching benefits which was duly served on the 2nd respondent on 6.8.2018(Annexure-A23&A24). But the respondents have failed to consider the said representation and also failed to grant the bunching benefits. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

“Issue a writ of Mandamus or any other writ directing the respondents to consider the representation dtd.29.7.2015 and reminder dtd.2.8.2018 submitted by the applicant before the 2nd respondent at Annexure-A21 & A22 and direct the respondents 1 & 2 to grant the bunching benefits to the applicant in pay scale of Rs.8000-13500 retrospectively w.e.f. 01.01.1996 and to order to pay the arrears thereon”.

4. On the contrary, the respondents have submitted in their reply statement that the applicant was appointed as Education Officer(Trainee) by the Central Board of Workers Education. The issue regarding granting of bunching benefit and increments was already settled in compliance to the order dtd.19.3.2013 passed in OA.136/2012 by the Mumbai Bench of this Tribunal. Accordingly, the CP.44/2013 was also dropped. Eventually, the order of this Tribunal dtd.9.3.2018 passed in OA.853/2015 was also complied by the Board. Thus the issue of granting bunching benefits and release of increment are settled and accordingly, the OA attracts the principle of resjudicata. Therefore, the OA is liable to be rejected with costs.
5. The respondents submit that the order of the Kolkata Bench of this Tribunal in OA.No.566/2007 was implemented by the respondents by restoring the pay scale of the Education Officer as was recommended in the Dasgupta Committee report notionally w.e.f. 1.1.1996 vide their order dtd.28.5.2008. The applicant is harping on the point that he should be granted bunching benefit. The Office of the Principal Accountant General (Audit-I), Hyderabad had conducted Audit of the office of the Regional Directorate, DTNBWED (CBWE) Hyderabad from 5.7.2010 to 9.7.2010 for the period from 2006-2007 to 2009-2010(Annexure-R1). It is

submitted in the letter of CAG, Hyderabad that the "Para 'A' of the Inspection Report may be treated as settled subject to regulation of the Pay Fixation allowing bunching in Rs.8000-13500 scale and subsequent verification of Pay Fixation by Audit". Audit in its Inspection Report at Para Part-B(A) had pointed out about erroneous pay fixation in regard to allowing bunching w.e.f. 1.1.1996 in respect of Smt.T.Kalyani and Smt.P.Vanaja in the cadre of Education Officers. It has also pointed out excess payment to both the officers. Hence, as per the Audit objection in Para Part-B(A), the respondents had recovered the amount of Rs.68229/- & Rs.73071/- respectively from Smt.T.Kalyani and Smt.P.Vanaja and thereby disallowed bunching in scale of pay Rs.8000-13500 from 1.1.1996 in respect of above two Education Officers. Accordingly, it is submitted that as the requirement of Audit has been fulfilled, the Audit para has been dropped and settled in these particular cases only. The matter of allowing bunching benefits to the applicant is absolutely an issue if he gets less pay than his junior. In the present OA, no such issue of pay fixation raised stating that his junior is getting higher pay than him. The applicant has also filed OA.No.853/2015 which was decided on 9.3.2018(Annexure-R3) for the same pay fixation being aggrieved since 6.1.2012(Annexure-A8). Thus the relief has already been granted to the applicant by order dtd.30.11.2018(Annexure-R2) in accordance with the orders of this Tribunal dtd.19.3.2013 in OA.No.136/2012(Mumbai Bench) & dtd.9.3.2018 in OA.No.853/2015(Bangalore Bench) pertaining to pay fixation allowing bunching. The issue regarding the applicant being senior getting less pay than his junior Sri S.P.More is also settled by way of Audit objection in the matter of junior T.Kalyani who is getting more pay than her Senior Smt.P.Vanaja. Sri S.P.More, EO(SG) is drawing pay i.e. Band Pay Rs.25870/- as on 1.7.2011 whereas the applicant is drawing at Band Pay Rs.27050 as on 1.7.2011(Annexure-R2) in 6th CPC.

Therefore, the applicant is not entitled for any relief and the OA is liable to be dismissed.

6. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that since the respondents No.1 & 2 have illegally reduced the pay of the applicant vide their order dtd.6.1.2012, the applicant filed OA.136/2012 before the Mumbai Bench of this Tribunal. The said OA was disposed of with direction to consider the applicant's case in the light of the communication dtd.16.7.2012(Annexure-A14) and to take necessary fresh decision in accordance with law. As per Annexure-R2 in the reply statement, the applicant was granted 2 bunching benefits at the rate of Rs.175/- but he is entitled for the bunching benefits in the pay scale of Rs.8000-275-13500. If the said pay scale is taken into consideration, the applicant is entitled for 2 bunching benefits at the rate of Rs.275/- each and hence, whatever, the bunching benefits stated to have been granted is in the old pay scale i.e. Rs.5500-175-9000 and not under the new pay scale Rs.8000-275-13500 which the applicant is entitled to. In pursuance of the order dtd.27.9.2007 passed in OA.No.566/2007 by the Kolkata Bench of this Tribunal regarding the revised pay scales as recommended in the Dasgupta report, the respondents have issued a memorandum dtd.9.6.2008 (Annexure-A3) as per which the Education Officer is entitled for the revised pay scale of Rs.8000-275-13500 w.e.f. 1.1.1996 notionally and actual financial benefits will accrue from 9.7.2007. In view of the said orders, the applicant is entitled for the pay scale of Rs.8000-275-13500 and also automatically entitled for bunching benefits i.e. by way of 2 increments at the rate of Rs.275/- each. Whatever objections raised by the Principal Director of the Audit(Central), Hyderabad is in so far as Smt.T.Kalyani and Smt.P.Vanaja are concerned only and later on, as per the audit objections they have recovered the excess amount

from the said officials and hence, the requirement of the audit has been fulfilled and the Audit para has been dropped and settled in these particular cases only and not in the case of the applicant. If that is so, as to why the respondents reduced the pay of the applicant as per Annexure-A8 based on the said audit objection when the same is applicable to the above officials only. Therefore, the contention of the respondents that they have already granted the bunching benefits to the applicant is incorrect. Since the respondents have illegally withheld the promotional increment on the ground that he has not opted for the promotional increment at the time of promotion, the applicant had filed OA.No.853/2015 which was allowed directing the respondents to pay the promotional increments. The respondents have complied with the said order. But by mere complying the said order, the respondents cannot take the contention that they have already sanctioned bunching benefits also.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The case of the applicant is that instead of giving him two bunching benefits at the rate of Rs.275/- in the new pay scale of Rs.8000-275-13500, the respondents have given him two bunching benefits only at the rate of Rs.175/- in the pay scale of Rs.5500-175-9000. The respondents have produced Annexure-R2 wherein in the first page at Sl.No.14, they have mentioned the revised pay w.e.f. 1.1.1996 (as per rule FR 22 (1) & (2)) as Rs.6550/- in the proposed scale of pay of Rs.5500-175-9000. The number of increments to be allowed on account of bunching is also mentioned as 2(Two increments @ 175) whereas in column-18, they have mentioned very clearly the upgraded pay scale of Rs.8000-275-13500 w.e.f. 1.1.1996 and apparently the increment is given only w.e.f. 1.1.1997. Therefore, it appears that the request of the applicant has not been considered. Inasmuch as vide Annexure-R2, the

respondents themselves have indicated that the upgraded pay scale is Rs.8000-275-13500 w.e.f. 1.1.1996, it is obvious that the two bunchings should be only at the rate of Rs.275 and it should be applicable only 1.1.1996 as requested by the applicant vide Annexure-A22. Accordingly, the respondents are directed to re-fix the pay of the applicant with two bunching benefits at the rate of Rs.275/- with upgraded scale of Rs.8000-13500 w.e.f. 1.1.1996 within a period of next two(2) months from the date of issue of this order.

8. The OA is allowed with the above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01800/2018

Annexure-A1: Copy of the appointment order
Annexure-A2: Copy of promotional order dtd.3/4.5.06 issued by the 2nd respondent
Annexure-A3: Copy of the Memorandum dtd.9.6.2008
Annexure-A4: Copy of the Pay Fixation Statement of the applicant
Annexure-A5: Copy of the Promotional Order dtd.30.3.2011
Annexure-A6: Copy of the Pay Fixation statement of the applicant
Annexure-A7: Copy of the Pay slip of the applicant for the month of November 2011
Annexure-A8: Copy of the order dtd.6.1.2012 issued by the 2nd respondent
Annexure-A9: Copy of the pay fixation statement of the applicant
Annexure-A10: Copy of the pay slip of the applicant for the month of December, 2011
Annexure-A11: Copy of representation dtd.11.1.12 submitted by the applicant to R2

- Annexure-A12: Copy of the statement of pay fixation of the applicant
Annexure-A13: Copy of the Endorsement/letter dtd.20.1.2012 issued by R2
Annexure-A14: Copy of the communication dtd.16.7.2012 issued by the Principal Director of Audit (Central)
Annexure-A15: Copy of the order passed by Hon'ble CAT, Mumbai Bench in OA.136/2012
Annexure-A16: Copy of the representation submitted by the applicant to R2
Annexure-A17: Copy of the representation dtd.26.4.2013
Annexure-A18: Copy of the order dtd.9.7.2014 issued by the officials of the respondents
Annexure-A19: Copy of the order dtd.10.12.2014 passed in CP.44/2013
Annexure-A20: Copy of the letter dtd.24.6.2013 issued by the Director, Prl.Director of Audit
Annexure-A21: Copy of representation dtd.29.7.2015 submitted by the applicant to R2
Annexure-A22: Copy of the representation/reminder dtd.2.8.2018 submitted by the applicant to the 2nd respondent
Annexure-A23: Copy of the Postal Receipt for having sent the said representation to the 2nd respondent
Annexure-A24: Copy of the Online Postal Track Report for having served the said representation on the 2nd respondent
Annexure-A25: Copy of the statement of Pay Fixation of Education Officer Sri R.V.Wadeyar
Annexure-A26: Copy of the statement of Pay Fixation of Education Officer Sri H.M.Shivaboraiah
Annexure-A27: Copy of the order dtd.5.8.2015 issued by the 2nd respondent

Annexures with reply statement:

- Annexure-R1: Inspection report of the Accounts of the Regional Director, CBWE, Hyderabad
Annexure-R2: Revised pay fixation statement
Annexure-R3: Order dtd.9.3.2018 of this Tribunal in OA.No.853/2015

Annexures with rejoinder:

-NIL-
