

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/328/2017

Date of Reserve: 29.07.2019
Date of Order: 06.11.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

1. Anand.R, aged about 46 years, S/o. R.Rudran.
2. Manoj Kumar Patnaik, aged about 57 years, S/o. Late Sarat Chandra Patnaik.
3. Satya Narayan Acharya, aged about 56 years, S/o. Late Harekrishna Acharya.
4. Binod Chandra Mishro, aged about 55 years, S/o. Late Jagannath Mishro.
5. Rabi Narayan Sahu, aged about 58 years, S/o. Late Basudev Sahu.
6. Brundaban Mohapatra, aged about 55 years, S/o. Late Krushna Mohan Mohapatra.
7. Sunita Pradhan, aged about 54 years, D/o.Sankar Pradhan
8. Prasanta Kumar Patnaik, aged about 49 years, S/o. Kasinath Patnaik.

All are at present working as Civilian Education Instructor, Grade-I in the Education Department, INS, Chilka, District-Khurda, Odisha-752 027.

...Applicants

By the Advocate(s)M/s.N.R.Routray
T.K.Choudhury
S.K.Mohanty
Smt.J.Pradhan

-VESUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, South Block, New Delhi-110 001.
2. Chief of the Naval Staff, Integrated Headquarters of Ministry of Defence (Navy), Sena Bhawan, New Delhi-110 011.
3. Principal Director of Civil Personnel, Integrated Headquarter, Ministry of Defence (Navy), New Delhi-110 011.
4. Principal Director of Naval Education, Integrated Headquarter, Ministry of Defence (Navy), New Delhi-110 011.
5. Flag Officer, Commanding-in-Chief Headquarters, Eastern Naval Command, Naval Base, Vishakapatna, Andhra Pradesh-530 014.

6. Flag Officer, Commanding-n-Chief Headquarters, Southern Naval Command, Naval Base, Kochi-682 004, Kerala.
7. Commanding Officer, INS, Chilka, PO-Chilka, Dist-Khurda-752 037.
8. Flag Officer, Commanding-in-Chief (For CCPO), Headquarters, Eastern Naval Command, Visakhapatnam-530 014, Andhra Pradesh.

...Respondents

By the Advocate(s)-Mr.M.R.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicants, eight in number, are presently working as Civilian Education Instructor, Grade-I (in short CEI-I) in the Education Department, INS, Chilka. Having a common cause of action and on being permitted by this Tribunal to prosecute this O.A. jointly, they have joined to together. In this O.A. under Section 19 of the A.T.Act, 1985, the applicants have sought for the following reliefs:

- i) To quash the order dated 14.01.2015 under Annexure-A/9.
- ii) And to direct the Respondents to grant PGT scale i.e., Grade Pay of Rs.5400/- in PB-III for CEI-I w.e.f. August, 2007 and pay the arrears.

2. Brief facts leading to filing of this O.A. are that these applicants had earlier approached this Tribunal in O.A.No. 471 of 2011 challenging the legality of order dated 11.03.2011 of the Ministry of Finance, Government of India, whereby the proposal of the Ministry of Defence for granting TGT scale in their favour had been rejected on the ground that TGTs have B.Ed. as essential qualification whereas CEIs in Navy have B.Ed. as desirable qualification as per the revised Recruitment Rules, 2002. This

Tribunal after considering the matter at length, disposed of the said O.A. vide order dated 23.07.2013 as follows:

"25. There is no dispute that the Amended Recruitment Rules are having the prospective application, i.e., with effect from the date it was so notified in the year 2002. Therefore, the change of B.Ed. as an 'essential qualification' to that of 'desirable qualification' in the year 2002 has no impetus whatsoever in so far as applicants who are recruited in the years 1981-1997, i.e., prior to amendment of the Recruitment Rules are concerned. Therefore, by no stretch of imagination their service conditions can be governed under the amended Recruitment Rules which stand to their disadvantages. Therefore, the pay parity which was perpetuating at par with TGTs of Kendriya Vidyalaya in so far as applicants are concerned has to hold good as their service conditions are not governed by the amended Recruitment Rules, 2002.

26. In consideration of the above, we direct Respondent No.2, i.e., Secretary, Ministry of Finance, Government of India to look into the matter afresh having regard to what has been observed above and in the light of the proposal submitted by the Ministry of Defence vide letter dated 17.11.2011, as quoted above, and pass appropriate orders within a period of ninety days from the date of receipt of this order. In the circumstances, the impugned order dated 11.03.2011 in Annexure-A/9 is hereby quashed".

3. Complying with the above direction of this Tribunal, the respondents granted TGT scale to the applicants. Grievance of the applicants in this O.A. is that although a recommendation was made by the Directorate of Naval Education vide letter dated 12.08.2011 (A/6) to the Chief of Naval Staff (for PDCP), Integrated Headquarters/MoD(Navy, New Delhi to revise the pay structure and nomenclature in respect of Civilian Education Instructors (in short CEIs) cadre to the 7th CPC in response to DCP note CP(P) 8416/VII CPC dated 1.8.2014 for onward submission to pay commission, a

contradictory recommendation was forwarded to the VII CPC by arbitrarily overruling the recommendation of DNE which is inconsequential in nature, inequitable and discriminatory in the eyes of law. For the sake of clarity, the proposed recommendation made by the Directorate of Naval Education, reads as under:

Existing Post	Existing Pay Scale and Grade Pay	Recommended Designations	Recommended Scale and Grade Pay
Civilian Education Instructor-II (entry Grade)	Rs.9300-34800 GP 4200	CEI-II	Rs.9300-34800 GP 4800
Civilian Education Instructor-I (50% Promotion)	Rs.9300-34800 GP 4600	CEI-I(100% Promotion)	Rs.15600-39100 GP 5400
Civilian Education Officer (10% of CEI-I)	Rs.9300-34800 GP 4800	CEO(33% of CEI-I)	Rs.15600-39100 GP 6600

4. This led to issuance of A/9 dated 14.01.2016 having the effect of denial of GP of Rs.5400/- to the applicants at par with PGTs of Kendraiya Vidyalaya, which is impugned and called in question in the instant O.A. For the sake of clarity, the relevant part of A/9 is reproduced hereunder:

"Recommendation on Pay Review in respect of Civilian Education Instructions to the 7th CPC

1. Refer to your letter 802/CEI dated 17 Dec. 15.
2. IHQ Mod (N)/DPC vide letter CP(P)/84-16/VII CPC/CEIs dated 23 Dec 15 (copy enclosed) has examined the representation submitted by Smt.Mamata Pattnaik, CEO directly to IHQ MoD(N) and intimated the following:
 - (a) IHS MoD(N) had forwarded the same recommendations to the VII CPC, as was

received from DNE vide letter CP(FP)/8416/VII CPC dated 09 Sept 14.

- (b) After submission of above recommendation, GOI MoD vide letter CP(P)/8416/VICPC/CEI779/US(MP)/D(N-II)/2014 dated 30 Sep 2014 revised the pay scales of CEIs at par with TGTs of KVs w.e.f. 01 Jan 2006, as a result of implementation of CA (Cuttack Bench) order dated 23 Jul 13 in O.A.No.471/2011.
- (c) It is observed that position brought out at Para 11.12.52 of the VII CPC report could be due to mistaken identify by the Commission. However, recommendations made at Para 11.12.53 to 11.12.55 is in consonance with the above Court Orders and the Commission finally opined that matter stands resolved".

5. The grounds urged in the relevant Paragraphs of O.A. on which the applicants have based their claims, are as follows:

"5.B. For that, it is humbly and respectfully submitted here that from the order dtd. 14.01.2016 it is cleared that the IHQ MoD(N) has forwarded the exact recommendation to 7th Pay Commission and observed that position brought out at Para-11.12.52 of the 7th Pay Commission report could be due to mistaken identity by the Commission. It is further respectfully submitted here that through it is observed by the Respondent that the position brought at Para-11.12.52 of the 7th Pay Commission report is a mistaken identity, but no further steps taken by the ministry soumoto nor even after receiving the application of the applicants for necessary amendment/change and to brought out the exact recommendation to the resolved the grievance. Hence, the action fo the Respondents is not to resolve the long pending grievance but to deny the right which is not sustainable in the eye of law".

6. Opposing the prayer of the applicant, respondents have filed a detailed counter. According to respondents, the 5th CPC had

equated the Civil Education Instructions (CEIs) to the Naval Trainees upto Class-XII with Trained Graduate Teachers (TGTs) in Kendriya Vidyalaya in consequence of which, the CEIs were granted higher pay scales in line with the TGTs with effect from 01.01.2996 vide Ministry of Defence letters dated 22.05.1998 and 26.02.1999. During 6th CPC, although higher pay scales at par with TGTs had been recommended, but later on, CEIs were granted lower pay scales with effect from 01.01.2006 on the decision taken by the Ministry of Finance to the effect that B.Ed is an essential qualification in the Recruitment Rules in respect of TGTs, whereas in case of CEIs of Navy, it is desirable qualification. This formed the subject matter of dispute before this Tribunal in O.A.No.471/2011. This Tribunal having decided the matter in favour of the applicants and consequently, they were granted the pay scales at par with TGTs with effect from 01.01.2006. On the request made by CEIs, IHQ-MoD(N) submitted a proposal to the Commission on 9th September, 2014 to review the pay scales of CEIs in view of the higher duties and responsibilities of the cadre due to change in scenario in terms of training pattern and enhanced entry level qualification of sailor to 10 + 2 (PCM) passed etc. The Commission recommended as follows:

"Other Defence Civilians under Indian Navy:
Civilian Education Instructions and Officers (CEIs and CEOs)

11.12.52. The Commission has received representations for upgrading the pay scales of various posts and creation of cadre structures for Civilian Education Instructors/Civilian Education Officer Cadres in MOD as below:

Existing Designation and Grade Pay	Designation, Cadre Structure and Grade Pay sought
Civilian Education Officer, GP 4600	Senior Civilian Education officer-1 with GP 5400 (PB-3) Civilian Education Officer with GP 5400 (PB-2)
Civilian Education Instructor, GP 4200	Lecturer I with GP 4800 Lecturer II with GP 4200

Analysis and Recommendations:

11.12.53: The views of the Ministry of Defence have been taken on board. Since the Civilian Education Instructors (CEIs) of the Indian Navy are teachers imparting training up to the level of Class XII, to Navy cadets, the designations of Lecturer I and II as has been proposed are not appropriate. The Commission has been informed that they have historically been treated similar to Trained Graduate Teachers (TGTs) of Kendriya Vidyalayas. There was however a hiatus, caused by a lowering of the educational requirements stipulated for them. The Ministry of Defence has informed that post V CPC, the requirement of Degree/Diploma in teaching was, in their case, made a 'desirable' qualification instead of an 'essential' one. This caused their pay levels to be fixed below that of the TGTs by the VI Pay Commission. However, in September, 2014, based on the orders of the Central Appellate Tribunal (Cuttack Bench), a new pay structure has been notified as under:

- I. Civilian Education Officer GP 5400 (PB-3)
- II. Civilian Education Instructor-I GP 4800
- III. Civilian Education Instructor-II GP 4600

11.12.54: The revised pay structure is subject to the condition that Recruitment Rules would be amended forthwith to include B.Ed as an essential qualification. Therefore, the matter stands resolved".

11.12.55. In view of foregoing, the Commission does not any further changes in the pay structure for Civilian Education Instructors".

7. Heard the learned counsels for both the sides and perused the records including the rejoinder and written notes of submission filed by the applicants. In the written notes of submission, the

applicants have furnished the decision of Hon'ble Supreme Court in State of Punjab & Anr. Vs. Dharam Pal in Civil Appeal No.1549 of 2011 reported in [2017 (II) ILR-CUT-728 (SC) in which it has been laid down that if a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. However, by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position.

8. Admittedly, when the applicants were not granted the pay scale at par with TGTs in pursuance of the recommendations made by the 6th CPC, they had approached this Tribunal in O.A.No.471/2011 and this Tribunal having decided the said O.A. in favour of the applicants, respondents granted GP of Rs.4800/- in PB-2, which was pat par with TGT, Gr.II of Kendriya Vidyalaya. According to applicants, since August, 2007, they have been discharging higher nature of duties and responsibilities, i.e., imparting instruction to Senior Secondary Recruits(SSR) and as such, and as such, they are entitled to get GP of Rs.5400 in PB-II at par with PGT, Gr.II of Kendriya Vidyalaya.

9. We have considered the rival submissions and examined the materials on record. In the instant O.A., the claim of the applicants is for grant of GP Rs.5400/- at par with PGT of Kendriya Vidyalaya. It is not a fact that the Commission has not considered the proposal forwarded by the functionary of the Department for grant of pay at par with the PGT in favour of the applicants. The Commission, apparently, after considering the ins and outs of the matter, did not

recommend any change in the pay structure for Civilian Education Instructors, as mentioned in Paragraphs-11.12.55 above. It is the settled principle of law that the matter regarding determination of pay in respect of class, grade or category of posts of the employees in connection with the affairs of the Union, is within the domain of the Pay Commission, which is an Expert Body and in this context, its decision/recommendation is unfettered irrevocable, which of course is subject to elimination of pay anomaly under some a particular fact and circumstances and in pursuance of the recommendations of the Anomaly Committee. This being the position, the Tribunal cannot substitute its decision to the recommendations made by the 7th CPC in so far as applicants are concerned. Besides the above, it is not a case of equal pay for equal work, as pointed out by the applicants in their written notes of submission. To make it more clear, it is to be noted that PGT in Kendriya Vidyalaya is a promotional post, TGT being the feeder grade. Similarly, in order to get the PGT scale, an incumbent holding the post of TGT is required to get promoted. Therefore, grant of PGT scale is not on the basis of an automatic mechanism and thus, it is evident that, there is an upward movement consequent upon promotion having regard to the relevant Recruitment Rules, which is not the case herein.

10. For the discussions held in the preceding paragraphs, this O.A. is dismissed being devoid of merit. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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