

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00345/2017

With

Miscellaneous Application No. 290/00250/2017

Reserved on : 24.10.2019

Jodhpur, this the 7th November, 2019

CORAM

**Hon'ble Smt Hina P. Shah, Judicial Member
Hon'ble Ms Archana Nigam, Administrative Member**

Sudha Chauhan W/o Sh. Vipin Kumar, Aged 61 years, R/o H. No. 6, Old Pali Road, Near MES Power House, Air Force Area, Jodhpur.

.....Applicant

By Advocate : Mr K.K. Shah.

Versus

1. Kendriya Vidyalaya Sangathan through Commissioner, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi – 110016.
2. Dy. Commissioner, Kendriya Vidyalaya Sangathan (Regional Office), 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015 .

.....Respondents

By Advocate : Mr Avinash Acharya.

ORDER

Per Smt. Hina P. Shah

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:

In view of above submissions, the applicant most respectfully prays that this Original application may kindly be allowed with costs and by issuance of an appropriate order or direction her pay as on 01.01.1996 be stepped up from Rs 6,900/- to Rs 7,100/-. It is further

prayed that the entire arrear of revised pay may kindly be directed to be paid with interest @15% per annum. It is also prayed that a fresh PPO after revision of pay scale may kindly be directed to be issued in favour of the applicant.

2. Necessary facts for adjudication of the present matter are that the applicant joined services of the respondent-KVS on 27.08.1981 as Physical Education Teacher/TGT and superannuated w.e.f. 30.09.2016. As stated by applicant, on implementation of recommendations of 5th Central Pay Commission (CPC) her pay was erroneously fixed at Rs 6900/- w.e.f. 01.07.1996. Other TGT's working in the different Kendriya Vidyalayas, their pay was fixed at Rs 6900/- w.e.f. 01.01.1996. However, those other TGTs raised the issue before competent authority and their pay was stepped up and fixed at Rs 7100/- as on 01.01.1996 (Annex. A/1). One Shri B.N. Gehlot, TGT (Maths) was also fixed at Rs 6900/- whose date of appointment was 19.07.1981, but he approached this Tribunal by filing OA No. 347/2010. This Tribunal allowed the OA filed by Shri B.N. Gehlot vide order dated 03.09.2012 (Annex. A/2). In pursuance of the said order, pay of Shri B.N. Gehlot was stepped up from Rs 6,900/- to Rs 7,100/- w.e.f. 01.01.1996. When applicant came to know about the order of this Tribunal passed in OA No. 347/2010, she made representation to the respondents on 29.04.2015 (Annex. A/3) for stepping up of her pay from Rs 6900/- to 7100/- w.e.f. 01.01.1996 stating therein that her junior TGTs pay had been

stepped up. Applicant's representation dated 29.04.2015 (Annex. A/3) had been forwarded by the Principal of KV (AFS), Jaislmer on 30.04.2015 (Annex. A/4) to respondent No. 2 but the same was of no avail. Since she had retired on 30.09.2016, she had no option but to approach this Tribunal.

3. The applicant filed Miscellaneous Application No. 290/00250/2017 for condonation of delay, stating therein that applicant came to know about disparity when she came across the judgment of this Tribunal passed in B.N. Gehlot's case. She promptly made representation to the respondents but the same was of no avail. She further stated that delay in filing the present OA is bonafide as she retired and got busy with settlement at her native place.

4. Respondents filed reply to the OA, inter-alia stating therein that the applicant was holding the post of Physical Education Teacher [Later on re-designated as TGT (Physical & Health Education)], whereas she has submitted the list/details of different subject TGTs viz. Biology, Hindi, Maths etc. whose pay have been stepped up as per 5th CPC which do not belong to the same cadre and the posts, i.e. PET post. The seniority list of TGTs and PET are maintained separately in KVS. KVS (Hqrs) New Delhi vide letters dated 10/24.06.2004 and 17/19.12.2012 clarified that the anomaly of pay of TGTs may be removed subject wise only as one cadre as the seniority number of TGTs is subject wise. Condition for

removal of anomaly by stepping up of pay is that both junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre. The post of PET and TGTs does not belong to the same cadre and the posts and seniority list of TGTs and PET are also maintained separately in KVS. Hence, the anomaly of pay of the applicant cannot be removed/stepped up with other cadre/post of employees in terms of rule position/clarification applicable on all such cases in KVS. Thus, the respondents denied the claim of the applicant for stepping up of pay.

5. Heard learned counsels for the parties.

6. Mr K.K. Shah, learned counsel for the applicant submitted that applicant in the present OA has assailed non-grant of parity in her pay scale with other similarly situated persons and also those who were junior to her. The issue involved in the present OA is whether seniority of the TGTs is to be approached subject wise or through a combined list of seniority and the same has already been settled by this Tribunal in OA No. 347/2010 with MA 194/2020 (Badri Narayan Gehlot Vs The Commissioner, KVS & Anr.) vide order dated 03.09.2012 (Annex. A/2). The applicant's case is similar to the case of Badri Narayan Gehlot. The applicant after delivery of said judgment by this Tribunal, made

representation to the respondents but which was of no avail. In the meantime, the applicant got retired in the year 2016 and remained committed in settling her at native place, therefore, she could not file the OA within limitation period. Learned counsel for the applicant further submitted that fixation of pay is a recurring cause of action and case of the applicant is similar to Badri Narayan Gehlot's case wherein this Tribunal had already been dealt with the issue of limitation in favour of the applicant therein. He further submitted that the respondents have also not opposed the OA on the issue of limitation in their reply. The contentions raised by the respondents with regard to merits of the issue had already been dealt with by this Tribunal in the case of Badri Narayan Gehlot's case. The respondents in their reply have not denied or uttered a single word to the fact of pronouncement of this Tribunal in Badri Narayan Gehlot's case. Learned counsel for the applicant thus prayed that similar reliefs may be granted to the applicant herein.

7. On the other hand, Mr Avinash Acharya, learned counsel for the respondents submitted that the decision in Badri Narayan Gehlot's case was pronounced by this Tribunal on 03.09.2012 but the applicant chose to file the present OA in the year 2017. Although in Badri Narayan Gehlot's case this Tribunal had condoned the delay but it took almost 5 years to the applicant to

approach this Tribunal and there is no justifiable reasons for the applicant to condone the delay.

8. We have considered the arguments advanced by learned counsels for the parties and perused the record.

9. On perusal of reply filed by the respondents, it is clear that respondent's stand to oppose the present OA on the ground anomaly of pay of TGTs may be examined and removed with reference to seniority in subject wise seniority and other contentions on merits had already been considered by this Tribunal in Badri Narayan Gehlot's case (Annex. A/2). This Tribunal in para 8 of the said judgment dated 03.09.2012 took note of the fact that till 01.01.1996 there was a combined seniority list of these employees/TGTs. While deciding the said issue whether seniority of the TGTs is to be approached subject wise or through a combined list of seniority, this Tribunal in para 9 observed that "We do concede that where there is a contest between a patent error of law and the risk of reopening issue we unequivocally hold that it is much better to correct patent error even at the risk of unsettling some of the issues. To think of it a step up provided to the applicant is not likely to unsettle many issues albeit that is a fair risk that the process of justice has to run." We are in respectful agreement with the observations made by this Tribunal in Badri Narayan Gehlot's case (supra). The claim of the applicant

is that his case is similar to the Badri Narayan Gehlot's case. We find that similar contentions on merits of the case have been raised by the respondents in their reply and also they did not come up with anything in their reply with regard to distinguish Badri Narayan Gehlot's case from the present case in hand. Accordingly, issue involved in the present case is fully covered by the judgment pronounced by this Tribunal in Badri Narayan's case on 03.09.2012 (Annex. A/2).

10. Though respondents have not come up with any reply opposing MA for condonation of delay by the applicant, but it is pertinent to note that issue of limitation was also considered by this Tribunal in Badri Narayan Gehlot's case and this Tribunal condoned the delay observing in para 6 of the said judgment that "Moreover, it is to be considered that the grievance of the applicant is a continuing one as he continues to sustain losses on its account and therefore, it cannot be hit by "a one time dispensation clause". Hence we hold that the objection of the respondents over the issue of limitation is not sustained by facts of by law." However, Mr Avinash Acharya, learned counsel for the respondents submitted during course of the arguments that judgment of Badri Narayan Gehlot's case was pronounced in the year 2012 yet applicant filed the present OA in the year 2017, i.e. almost after 5 years. We note that applicant in her OA stated that

when she came to know of the judgment dated 03.09.2012 (Annex. A/2) passed by this Tribunal, she made representation to the respondents for stepping up of her pay but respondents neither denied nor accepted her claim and sat over the matter. It was the duty of the respondents to decide representation of the applicant either way and not to keep the same pending but respondents failed to decide the same. In the meantime, applicant superannuated w.e.f. 30.09.2016 and we accept and understand that she could have been occupied in settling herself at her native place after retirement. Accordingly, oral objections raised by counsel for the respondents cannot be accepted and MA for condonation of delay filed by the applicant is allowed.

11. In our view, present case is fully covered by judgment of this Tribunal dated 03.09.2012 (Annex. A/2) pronounced in the case of Badri Narayan Gehlot (OA No. 347/2010 with MA 194/2010). Accordingly, present OA is allowed with the directions to the respondents to step up pay of the applicant with respect to her junior as per judgment of this Tribunal rendered in Badri Narayan Gehlot's case (Supra) with all consequential benefits including pay fixation, arrears of pay, pension, pensionary benefits etc., i.e. all the benefits which are consequential to one another. The respondents shall revise pay, pension of the applicant and pay arrears of pay, pension,

pensionary benefits etc. within 06 months from the date of receipt of a copy of this order.

12. In terms of above directions, OA is allowed with no order as to costs.

**[Archana Nigam]
Administrative Member**

**[Hina P. Shah]
Judicial Member**

Ss/-