



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 30.08.2022

% **Judgment delivered on: 05.09.2022**

+ **W.P.(C) 5586/2003**

PREM SINGH

..... Petitioner

Through: **Mr. Anil Singhal, Advocate**

versus

GOVT. OF N.C.T. OF DELHI & ORS

..... Respondents

Through: **Mr. Avnish Ahlawat, Standing Counsel for GNCTD with Ms. Tania Ahlawat, Ms. Palak Rohmetra, Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Alize Alam, Advocates**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioner before this Court has filed the present Writ Petition being aggrieved by the order dated 27.12.2002 passed by the Central Administrative Tribunal (“CAT”) in O. A. No. 2506/1999, by which the CAT dismissed the claim of the Petitioner in the matter of fixation of pension and grant of pensionary dues. The undisputed facts of the case



reveal that the Petitioner before this Court, was serving on the post of Physical Education Teacher in the Pay-Scale of Rs. 1400-2600, and on account of recommendations of the Pay Commission, he was entitled to a Pay-Scale of Rs. 1640-2900.

2. After the 4th Pay Commission, he was entitled to Pay-Scale of Rs. 1400-2600. However, on account of a mistake, Physical Education Teachers working in the Directorate of Education were assigned in the Pay-Scale meant for Graduate Teacher/ Lecturers.

3. After the recommendation of 5th Pay Commission, the Replacement Scale of Physical Teachers was fixed at Rs. 7500-12000 (for Lecturers and PGTs). However, the correct Pay-Scale in respect of Physical Education Teachers was Rs. 6500-10500.

4. The Respondent State rectified the mistake by fixing the Petitioner's and all other Physical Education Teachers' pay in the Pay-Scale of Rs. 6500-10500 by issuing order dated 20.07.1996, and 04.01.1999.

5. A number of Petitions were preferred against the aforesaid rectification. The present Petitioner also preferred a Petition i.e. O. A. No. 219/1999, and during the pendency of the Original Application, the Petitioner had attained the age of superannuation.

6. The Original Application preferred by the Petitioner along with all other Original Applications stood dismissed, and the issue regarding the entitlement of Petitioner to the grant of Pay-Scale has attained finality. The order passed by the CAT has not been set aside, and, in fact, in all other



identical cases, the Court has arrived at a conclusion that Physical Education Teachers are entitled to the Pay-Scale of Rs. 1400-2600 with effect from 01.01.1986, and Rs. 5590-9000 with effect from 01.01.1996, and only the Senior NDSIS are entitled to a Pay-Scale of Rs. 6500-10500.

7. The order passed by CAT denied the higher Pay-Scale to the Petitioner as claimed by him . Thus, in short, the Petitioner was entitled to a Pay-Scale of Rs. 1400-2600 with effect from 01.01.1986 and Rs. 5500-9000 with effect from 01.01.1996.

8. The Petitioner, who during the pendency of the Original Application before the CAT attained the age of superannuation, preferred another Original Application claiming fixation of pension and retiral dues keeping in view the last pay drawn by him. The CAT dismissed this Original Application vide order dated 27.12.2002. The operative Paragraphs of the order dated 27.12.2002 , passed by the Tribunal, read as under:

“8. I have carefully considered the matter. The applicant in this OA has claimed that the respondents action in placing him in the replacement scale of Rs.6500-10500, bringing him down from the scale of Rs.7500-12000, working out the pensionary benefits at the reduced level and ordering recovery of alleged excess payment as wrong. On the other hand, the respondents point out that the applicant was given the higher replacement scale wrongly but the rectification thereof/recovery of excess amount paid were stayed by the interim order of the Tribunal in OA-219/1999 and the said OA having been dismissed, the applicant had no case at all on consideration of the issue. I was convinced that the applicant has no case at all on merits. The applicant aPET was drawing the senior scale of Rs. 1640-



2900 for which the correct replacement scale was Rs. 6500-10500 but had wrongly drawn the replacement scale of Rs. 7500-12000 which was for PGTs. This had arisen on account of wrong application of parity with NDSIS. However, when the respondents sought to rectify the error, the procedure got impeded by the filing of OA-219/1999 and stay ordered therein on 29.01.1999. The applicant's retirement on superannuation came on 30.04.1999, when the stay was still operating. Respondents directed the release of the pensionary dues on the higher scale, and advised the applicant to file an affidavit that he would refund the excess receipts if the OA was dismissed, which he declined to do. Ultimately the OA was dismissed and the respondent have moved to re-fix the pensionary dues leading to this OA. This cannot be faulted. I further find that the decision of the Tribunal denying the benefits of higher pay scale to the applicant has been duly endorsed by the Delhi High Court, while dismissing among others, CWP No. 100/2001 on 23.08.2002 with the following observation:

"After examining the issue involved and after considering the arguments of various counsel appearing on either side and perusing the material on record, we are of the opinion that these PETs are not entitled to the pay scales as claimed by par with the pay scales given to Senior NDSIS."

The order of the Hon 'ble Delhi High Court had set the seal of approval on the Tribunal's decision rejecting the claim of the applicant for being placed in the higher scale and consequently in the higher replacement scale of Rs.7500-12000.

The applicant cannot agitate further on that. The learned counsel for the applicant has relied upon the last portion of the decision of the Hon 'ble High Court referred to above which reads as follows:



“However, while doing the same. we make it clear that in view of the peculiar facts and circumstances of this case, more particularly when such a situation is the creation of the Government, it shall not be entitled to recover the amount already paid to such persons.” (Emphasis supplied)

It is doubtful whether the applicant can gain any benefit from the above decision as well. While the higher pay scale enjoyed by him and the pay drawn accordingly till his retirement on superannuation in April, 1999 would be protected against any recovery, the same would not apply to the pensionary benefits which had been worked out but not in fact released on account of the disinclination/ reluctance of the applicant to file an affidavit to the effect that excess amount paid would be refunded in case OA-219/1999 failed. The position would have been different if the amount had already been received by him and the department was seeking to recover the same. The same is not the case and the applicant, therefore, cannot gain any benefit from the above decision.

9. Interestingly, I observe that the applicant has not anywhere in his OA made any mention of the previous OA filed by him but has conveniently omitted the same, as to give an impression that his was a case of wrong denial of pensionary benefits, retrospectively, while in fact the same was only implementation of the Tribunal's order in the earlier OA-219/1999.

10. In view of the above, the applicant's plea that pension once fixed and released cannot be revised except for clerical mistakes also does not come to his help. This was a case where a wrong order of pay fixation was issued keeping in mind the stay granted by the Tribunal on a pending matter. The respondents also had desired the applicant to file an affidavit



that he would refund the excess amount if the OA failed and as he had not filed the said affidavit, the order giving wrong higher scale of pay had not been given effect to. The applicant cannot take any advantage of the situation which is his own creation.”

9. The order passed by the Tribunal makes it very clear that the denial of benefit of higher Pay-Scale to the Petitioner as claimed in the earlier round of litigation by the CAT was duly affirmed by the Delhi High Court in W.P.(C.) No. 100/2001 vide judgement dated 23.08.2002. Notably, the Tribunal has arrived at a conclusion that the Petitioner is not entitled for higher pension keeping in view that the corresponding higher Pay-Scale, granted to him erroneously, and especially when the Original Application claiming a higher Pay-Scale was dismissed. Therefore, this Court is of the considered opinion that the Petitioner is certainly not at all entitled to for grant of higher Pay-Scale based upon the fact that he has attained the age of superannuation in the Pay-Scale of Rs. 7500-12000 instead of Rs. 6500-10500.

10. The Petitioner has already been given protection in the matter of recovery. However, no right accrues in favour of the Petitioner in the matter of fixation of pension based upon the higher Pay-Scale, which was erroneously granted to him. Such a measure would amount to extension of a wrong.

11. This Court is of the considered opinion that the judgement delivered by the CAT does not warrant any interference and the Petitioner shall be



entitled to all pensionary dues in accordance with the Pay-Scale for which he was entitled i.e. Rs. 6500-10500.

12. Accordingly, finding no reason to interfere with the order passed by the Tribunal, the Writ Petition stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

SEPTEMBER 05, 2022

