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Central Administrative Tribunal, Principal Bench

Original Application No.692 of 2002

M.A.No.595/2002

New Delhi, this the 11th day of December, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.P. Singh, Member(A)

1. Shri Itbar Singh,
Daftry,
NSSO (FOD),
East Block 6, Level 6-7,
R.K.Puram, New Delhi-66
2. All India Association of Class-IV Staff
Thro' its General Secretary,
Ministry of Statistics &
Programme Implementation,
NSSO (FOD),
East Block 6, Level 6-7,
R.K.Puram, New Delhi-66

....Applicants

(By Advocate: Shri V.K. Rao)

Versus

1. Union of India
through its Secretary,
Min. of Personnel, Public Grievances
and Pensions,
North Block, New Delhi.
2. Secretary,
Ministry of Statistics &
Programme Implementation,
Sardar Patel Bhawan,
New Delhi.
3. Deputy Director General,
National Sample Survey Organisation,
(Field Operations Division)
East Block 6, Level 6-7,
R.K.Puram, New Delhi

....Respondents

(By Advocate: Shri Rajeev Bansal)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

By virtue of the present application, the applicants seek a direction that they should be granted the scale of 3050-4590. The said scale is being claimed in pursuance of the Assured Career Progression Scheme (ACP Scheme) in the form of second upgradation.



2. The applicants are working in the National Sample Survey Organisation. There were five grades of Class-IV employees in different pay scales. Subsequently certain grades were merged into each other and according to the applicants, there were only three pay scales existing in their department namely 2550-3200, 2610-4000 and 3050-4590. The applicants claim that as a result of the second upgradation, they have been granted the scale of 2750-4400 only while, in fact, they are entitled to the scale of 3050-4590.

3. The respondents have contested the petition.

4. Learned counsel for the respondents has drawn our attention to Annexure R-II appended to the Scheme, referred to above. On the strength of the same, it had been urged that there is a scale of 2750-4400 which has been awarded to the applicants and the impugned order, therefore, must be sustained. For the sake of convenience, we reproduce the relevant extract of the same:

"S.No."		Revised pay-scales (Rs.)
1.	S-1	2550-55-2660-60-3200
2.	S-2	2610-60-3150-65-3540
3.	S-3	2650-65-3300-70-4000
4.	S-4	2750-70-3800-75-4400
5.	S-5	3050-75-3950-80-4590"

5. However what is material is that there should be such a scale available in the department/ministry. In the reply filed by the respondents, they themselves admit that there are only three grades of group 'D' employees in the



division. Their hierarchy has been mentioned to be -

- "1. Pay Scale of Rs. 2550-55-2660-60-3200(S-1)
2. Pay Scale of Rs. 2610-60-2910-65-3300-70-4000(S-2)
3. Pay Scale of Rs. 3050-75-3950-80-4590 (S-4)"

6. Once it is so, indeed the scale awarded to the applicants has no place in the division of the applicants and as such, they could not have been thrust to such a non-existent scale.

7. Learned counsel for the respondents had further urged relying on the instructions of the DOPT that such a scale has been recommended to group 'D' employees in the Central Government and only those who are matriculates, have to be awarded a higher pay scale. The relevant portion of the said instructions are -

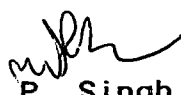
"The second financial upgradation on completion of 24 years of regular service shall be allowed at least to the pay scale of Rs. 2750-70-3800-75-4400 (S-4). However, where Group 'D' civilian employees of the Central Government are Matriculates and are eligible for promotion to the post of Lower Division Clerk (LDC), the second financial upgradation in their case shall be allowed at least to the pay scale of Rs. 3050-75-3950-80-4590(S-5)."


8. What is ignored herein is that even in the instructions of the Ministry of Personnel, Public Grievances and Pensions, the non-matriculates have been awarded the scale of 2750-4400 with a rider "at least". In other words, it leaves scope for any other higher scale. No fetters have been placed on the powers of the department to award a higher scale.

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9. What is the position herein? The facts reveal that in the ministry/department, there were only three scales which have been mentioned above. The third scale which would be falling to the share of the applicants as a result of the ACP Scheme would be 3050-4590. The instructions of the Ministry of Personnel and Public Grievances referred to above, will not place embargo because it left a scope for awarding of the higher scale which we have already reproduced above.

10. As a necessary corollary, it must follow that the present application is liable to be allowed. Accordingly it is directed that respondents would grant the scale of 3050-4590 from the date the applicants complete the prescribed number of years in service. The arrears should preferably be paid within six months from the receipt of the certified copy of the present order.


(M.P. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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