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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. No.1687 OF 2004

New Delhi, this the 2<sup>nd</sup> day of May 2005

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)  
HON'BLE SHRI S.K. MALHOTRA, MEMBER (A)**

Sumitra Mihani  
Library and Information Assistant,  
National Agency for ISPN  
Department of Secondary and Higher Education,  
A-2/W4, Curzon Road Baracks,  
New Delhi.

.....Applicant.

(By Advocate : Shri S. Rajan)

versus

1. Union of India  
through Secretary,  
Department of Culture,  
Shastri Bhavan,  
New Delhi.

2. The Secretary,  
Department of Secondary and Higher Education,  
Ministry of Human Resources Development,  
Shastri Bhawan,  
New Delhi.

.....Respondents.

(By Advocate : Shri R.N. Singh)

**O R D E R**

**SHRI SHANKER RAJU, MEMBER (J) :**

Applicant impugns respondents' orders dated 29.7.2003, 5.8.2003, 2.6.2004 and 30.6.2004 wherein ACP granted to the applicant in the pay scale of Rs.10,000-15,200 has been reduced to the pay scale of Rs.5000-8000 with consequent recovery and rejection of request for waiving of such recovery. The overpayment of Rs.89,857/- is ordered to be recovered in lump sum and Rs.1,59,140/- in suitable instalments.

2. Brief facts of the case are that Applicant joined with qualification of Degree and certificate in Library Science as Librarian Grade-III the Central Secretariat Library in October, 1973. The hierarchy of Librarian grade is Librarian Grade-III,

Librarian Grade-II, Senior Library Information Assistant (in short 'SLIA') and Assistant Library and Information Officer (in short 'ALIO'). Due to restructuring in Librarian grade, Librarian Grade-III and Librarian Grade-II merged and re-designated as Library and Information Assistant (in short 'LIA'). This post of LIA carries the pay scale of Rs.1400-2300. The post of SLIA was tenable by LIA while in respect of LIA, the report recommended promotion from Library Clerk and in case of direct recruits the qualification should be B.A./B.Sc./B.Com + B. of Library Science. Insofar as ALIO is concerned, in case of promotion five years of experience in the grade of Rs.1640-2900 and eight years of experience in the grade of Rs. 1400-2600 was required and in case of Subject Specialist post, Master's Degree was required.

3. DOP&T vide OM dated 9.8.1999 promulgated Assured Career Progression Scheme where due to stagnation upgradation in higher pay scale after 12 and 24 years of service was stipulated.

4. An order passed by the respondents on 23.6.2000 accorded two financial upgradation from the pay scale of Rs.5000-8000 to Rs.5500-9000 and thereafter to Rs.6500-10500. Respondent no.2 with the advise of DOP&T revised the pay scale of the applicant to Rs.10,000-15,200 vide order dated 15.5.2001 w.e.f. 9.8.1999, as applicant has completed 24 years of service and consequently payment of arrears of Rs.88,857/- was made to the applicant. However, an order passed on 12.2.2002 superceding the order dated 15.5.2001 whereby claim of the applicant for second ACP benefit though on completion of 24 years was negated due to lack of educational qualification for the grade of ALIO and the applicant was placed in the pay scale of Rs.5500-9000. A representation preferred has not been responded to, in the meanwhile Ministry of Finance's Memorandum dated 21.2.2002 decided that entry pay scale of departmental Librarians possessing minimum qualifications of B. Lib. with a graduation degree w.e.f. 1.1.1996 be raised to Rs.5500-9000 and for AILO to Rs.6500-10500. By an order passed on 5.8.2003, the pay of the applicant was reduced in the pay scale of Rs.5500-8000. Applicant who has been brought down from the pay scale of

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Rs.10000-15200 to Rs.7250 in the pay scale of Rs.5000-8000. This has been represented to which ultimately rejected and a decision has been taken not to waive off recovery.

5. Learned counsel of the applicant Shri Rajan contended that with the impugned order, the applicant pay scale has restricted to Rs.5000-8000 for last 30 years. In this conspectus, it is stated that as per Recruitment Rules in respect of promotion of Librarian Assistant Grade II, the only qualification is matriculation whereas B.Lib. is necessary for direct recruitment. As such denial of pay scale of Rs.10000-15200 is not legal.

6. Learned counsel further stated that before reducing the pay and consequent recovery, which ensues civil consequences, principles of natural justice have been violated by not putting the applicant to notice.

7. Shri Rajan further stated that ACP Scheme is to remove any hardship due to inadequate promotional avenues and the applicant was accorded upgradation without any fraud or misrepresentation played by her. Accordingly, the applicant being directly recruited to the post of Librarian Grade-III, which was merged with Librarian Grade-II has neither feeder cadre nor promotional avenues. As per clause 7 of the ACP Scheme and Annexure II, her pay from 5000-8000 should have been upgraded to Rs.5500-9000 and Rs.6500-10500 thereafter.

8. Learned counsel stated that whereas the Library Clerks with matriculation are eligible for promotion to the post of Librarian Grade-III and Librarian Grade-II and ALIO.

9. On the other hand, on non-promotion ACP to the pay scale of Rs.5500-9000 and Rs.6500-10500 is admissible, which has been denied to the applicant.

10. Learned counsel stated that while conducting review of Librarian Grades, report suggested that those existing incumbent did not fulfill the educational qualification will continue in existing grade on personal basis and as and when post fall vacant, which would be filled as per the Recruitment Rules. As such it is stated that being holder of an isolated post, the applicant is entitled to the benefits of Annexure II of the ACP Scheme.

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11. Learned counsel for applicant further contends that as the pay scale of the applicant has been reduced with consequent recovery by not following the due process of law and thereby civil consequences are ensued would not be in consonance of natural justice because before the action, no show cause notice was issued.

12. On the other hand, respondents' counsel Shri R.N. Singh vehemently opposed the contentions and stated that the Government's action was on an inadvertent mistake, as such grant of financial upgradation would not confer any claim on the applicant. The applicant was not entitled to the upgradation and as such the recovery is in consonance with law and requires no opportunity to show cause notice. Moreover, it is stated that the decision of the Apex Court in Canara Bank & Ors. v. Shri Debasis Das and Ors {JT 2003 (3) SC 183} and Aligarh Muslim University and Others v. Mansoor Ali Khan {2000 SCC (L&S) 965}, when no prejudice is caused, violation of principles of natural justice would not vitiate the action.

13. On careful consideration of the rival contentions of the parties, without dealing on other grounds, we are of the considered view that the applicant, who has been accorded pay scale of Rs.5, 500-9,000/- and thereafter Rs.10, 000-15,200/- and the subsequent recovery of the same on account of non-entitlement without affording a reasonable opportunity to the applicant is illegal. This has greatly prejudiced the applicant and denied her an opportunity to substantiate her claim for grant of the upgradations.

14. In D.K. Yadav v. J.M.A. Industries Limited {1993 SCC (L&S) 723} the decision of the Apex Court by 3 Judges Bench, it has been held that as civil consequences ensues, it is incumbent upon the authority to follow the principles of natural justice and to afford a reasonable opportunity to show cause as it is inbuilt as a principle of fairness to duty to act fairly.

15. In Bhagwan Shukla v. Union of India & Others { 1995 (2) SLJ SC 30}, the Apex Court has also ruled that recovery without affording an opportunity in nullity in law.

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16. In the result, for the aforesaid reasons we are satisfied that before the pay scale has been withdrawn and recovery has been effected, non-putting the applicant to show cause notice is indeed an infraction of the principles of natural justice which has not only caused grave prejudice to the applicant but also denied her a reasonable opportunity to show cause which cannot be countenanced in the wake of duty of the State to act fairly and in violation of the principles of natural justice. In the result, the OA is partly allowed. Impugned orders are set aside. Respondents are directed to afford a reasonable opportunity to the applicant to show cause and thereafter to take a final decision after taking into consideration the claim of the applicant by issuing a speaking order. Recovery, if any, already effected shall be restored to the applicant. Other legal grounds are left open. The directions shall be complied with within a period of three months from the date of receipt of a copy of this order.

  
(S.K. MALHOTRA)  
MEMBER (A)

S. Raju  
(SHANKER RAJU)  
MEMBER (J)  
2/5/05

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