

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-1841/2004

New Delhi this the 11<sup>th</sup> day of April, 2005.

**Hon'ble Sh. Shaker Raju, Member(J)  
Hon'ble Sh. S.K. Malhotra, Member(A)**

Smt. K.K. Kharbanda,  
W/o Sh. K.S. Kharbanda,  
R/o 29, Silver Park,  
Shiv Puri, Delhi-51.

..... Applicant

(through Sh. C.B. Pillai, Advocate)

Versus

1. Union of India through  
the Secretary to the Govt. of India,  
Department of Agriculture & Co-operation,  
Ministry of Agriculture,  
Krishi Bhavan,  
New Delhi-1.
2. The Secretary to the Govt. of India,  
Department of Personnel and Training,  
Ministry of Personnel, Public Grievances  
And Pensions, North Block,  
New Delhi-1.

..... Respondents

(through Ms. Meenu Mainee, Advocate)

O R D E R

**Hon'ble Shri Shaker Raju, Member(J)**

Applicant impugns respondents' order dated 07.07.2004 denying him financial upgradation under the Assured Career Progression Scheme in the post of Assistant Library Information Officer in the pay scale of Rs. 10000-15200/-.

2. Applicant joined as Librarian Grade-III on 14.5.1974. On the recommendation of Fourth CPC and keeping in view the overall policy, Ministry of Finance vide its OM dated 24.07.1990 decided to introduce the pay structure for Library Staff and the Library Department of Agriculture was placed in category-II and Library Incharge was given designation as Assistant Library and Information Officer in the pay scale of Rs. 2000-3500/-.

3. As the applicant has possessed qualification of graduation in Library Science, she was promoted as ALIO in the pay scale of Rs. 2000-3500/- w.e.f. 10.11.1997.

4. On the introduction of ACP w.e.f. 9.8.1999 and as the post of LIO does not exist with the Ministry without any recruitment rules as per O.M. dated 24.7.1990 the applicant was not possessing the qualification of post graduation in language and 8 years service in the pay scale of Rs. 6500-10500/-, she was, therefore, denied upgradation.

5. Learned counsel of the applicant states that the aforesaid decision is discriminatory as in the Planning Commission with the same qualification one Mohan Lal Hans, who was only B.A. with B.Lib., was accorded A.C.P. in the pay scale of Rs. 6500-10500/- and also in the Ministry of Tourism and Culture, Department of Culture one Smt. Manju Bala was accorded the benefit of ACP in the pay scale of Rs. 10000-15200/-.

6. It is also stated that while Ministry of Home Affairs in the Employment News dated 22 – 28 November, 2003 advertised the post of Chief Librarian in the pay scale of Rs. 10000-15200/- with a qualification of Bachelor degree in Library Science. In the above view of the matter, it is stated that as per O.M. dated 10.2.2000 the next pay scale for ACP is Rs. 10000-15200/. Further relying upon clarification No.19 of ACP issued on 10.2.2000, it is stated that grant of higher pay scale under ACP would be as per Condition No.-6, which would not stipulate any educational qualification. Furthermore, relying upon clarification No. 35, it is stated that appointment in higher scale as per recommendations of the Pay Commission whereby in para 55.162, post of LIO has been a promotional post and without insistence of direct recruitment, qualification rationalization of cadre would not be counted as a promotion for grant of ACP, when such placements are made without any requirement of new qualification.

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7. On the other hand, respondents' counsel vehemently opposed the contentions and stated that on clarification sought from DoP&T vide letter dated 29.6.2004, it has been suggested that recruitment rules are to be followed and for financial upgradation one has to possess the educational qualification as well.

8. We have carefully considered the rival contentions of the parties and perused the material placed on record.

9. In our considered view, Condition No.6 of the ACP does not prescribe educational qualification. Moreover, as per Fifth CPC recommendation, placement of the post of LIO is a promotional post and requirement of rules, which are required in the Department of Agriculture, cannot be imposed. In so far as O.M. of 1990 relating to restructuring is concerned, the same cannot be insisted as per Clarification No.35 of the ACP Scheme.

10. Be that may so, Union of India with different Ministries is a single entity. When Post Graduation qualification is not a pre-requisite for grant of upgradation to other Ministries and Departments in the pay scale of Rs. 10000-15200/- under ACP, rejecting the claim of the applicant would be invidious discrimination and violative of Article 14 of the Constitution of India.

11. Though the applicant in her representation has highlighted the above aspect of the matter to the respondents, the respondents has not taken into consideration the said fact while passing the impugned order. It suffers from the vice of non-application of mind.

12. In the result, O.A. is partly allowed. Impugned order is set aside. Matter is remanded back to the respondents for reconsideration for grant of financial upgradation to the applicant in the pay scale of Rs. 10000-15200/. Having regard to the observations made above, a reasoned order shall be passed within a period of two months from the date of receipt of a copy of this order. No costs.

  
(S.K. Malhotra)  
Member(A)

  
(Shanker Raju)  
Member(J)