

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR**

Date of Decision : 22-7-2003

**O.A. No.189/2002.**

Smt. Aloka Kar, W/o of Shri H. M. Kar, aged about 54 years, R/o C-10, Panchwati Colony, Jodhpur, presently posted as Senior Tax Assistant in the office of Joint commissioner of Income Tax, Range-3, Jodhpur.

... APPLICANT.

**V e r s u s**



1. Union of India through Secretary, Ministry of Finance, Department of Revenues, New Delhi.
2. the Chief commissioner of Income Tax, Central Revenue Building, Bhagwan Dass Road, Jaipur.
3. The Commissioner of Income Tax, Income Tax Office, Jodhpur.

... RESPONDENTS.

Mr. S. K. Malik counsel for the applicant.  
Mr. Vinit Mathur, counsel for the respondents.

**CORAM**

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.  
Hon'ble Mr. G. C. Srivastava, Administrative Member.

**: O R D E R :**

**(per Hon'ble Mr. G. C. Srivastava)**

The applicant who is working as Senior Tax Assistant in the office of the Joint Commissioner of Income Tax Range-3, Jodhpur,

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is aggrieved by the rejection of her application for up gradation in the ACP Scheme conveyed to her vide Memo dated 16.07.2002 (annexure A-1) and has inter alia prayed that the same be quashed and set aside and the respondents be directed to extend to her the benefit of financial up gradation in the pay scale of Rs.5500-9000 w.e.f. 9.8.99 along with arrears and consequential benefits.

2. The case of the applicant is that while she was working as a Graduate Teacher in the Government Higher Secondary School Mana Camp Raipur (M.P.) in the pay scale of Rs. 150-290 (revised Rs. 330-560) she became surplus and joined the Income Tax Department as U.D.C. on 3.10.1977 in the same pay scale. From 1.1.1973, the pay of Graduate Teachers in her parent department was revised from Rs.330-560 to Rs.440-750 and on joining the Income Tax Department as UDC w.e.f. 3.10.1997 she was permitted to carry for old scale of Rs.440-750 as personal and accordingly her pay was fixed at Rs.525. With effect from 1.1.1986 as per orders of 4<sup>th</sup> Pay Commission her pay was fixed at Rs.2200 in the pay scale of Rs.1400-2600 which was corresponding to her old scale of Rs.440-750. As per 5<sup>th</sup> Pay Commission, her pay was fixed at Rs.8000/- w.e.f. 1.1.96 in the pay scale of Rs.5000-8000. After 1.1.96 she has been granted stagnation increment after every two years. Thereafter the ACP scheme has been issued and she has been given the upgraded scale vide order dated 13.12.2001 (Annexure A-2) in the pay

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scale of Rs.5000-8000 from the pay scale of Rs.4000-6000 which she never got in her entire service in the Income Tax department. Aggrieved by this, she filed representations which have been finally rejected vide order dated 16.7.2002. She has challenged the above order in this OA.

3. The respondents have contested the OA and have filed detailed reply stating inter alia that while working as UDC in the pay scale of Rs.330-560 the applicant was erroneously allowed the revised pay scale of Rs.440-750 applicable to Graduate Teachers while the same was only personal to her and in her erstwhile parent cadre. According to them her pay was required to be fixed in the scale of Rs.330-560 and the higher pay in the scale of Rs.440-750 was to be termed as personal pay to her. As per the clarification received from the Board UDCs including Tax Assistant may be allowed financial up gradation in the normal hierarchical grade of Assistant /Head Clerk in the pay scale of Rs.5000-8000 subject to fulfillment of conditions of ACP Scheme and therefore, the applicant was correctly granted the benefit of the said scheme by promoting her as Sr. Tax Assistant.

4. We have heard Mr. S. K. Malik and Mr. Vinit Mathur the learned counsel for the applicant and the respondents respectively and with their consent we are disposing of the matter at the admission stage.

5. The main ground advanced by Mr. Malik for the applicant is that the applicant was drawing the pay scale of Rs.440-750 since her joining as UDC in the Income Tax Department w.e.f.

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3.10.1977 which was revised to Rs.1400-2600 w.e.f. 1.1.96 in the 4<sup>th</sup> Pay commission and now revised to Rs.5000-8000 w.e.f. 1.1.1996 in the 5<sup>th</sup> Pay commission and her pay has been fixed at Rs.8000 and thereafter she has been getting the stagnation increments from time to time and hence placement of her in the pay scale of Rs.5000-8000 under the ACP Scheme is clearly against the said scheme and ex facie, illegal as this is a denial of the benefit there under. He has also contended that similarly selected persons who were declared surplus along with her in Mana Camp and joined the Income Tax Department as UDC were also getting the same pay scale as she was getting. However, their pay scale has been fixed at Rs.5500-9000 in CCIT Calcutta office but she has been deprived of the similar treatment, which is violative of Article 14 and 16 of the Constitution of India. Her request for grant of scale of Rs.5500-9000 has been rejected without any application of mind and giving any reason and therefore the same deserves to be quashed and set aside.

6. On the contrary, Mr. Mathur for the respondents has contended that the pay of the applicant had been wrongly fixed in the scale of Rs.440-750 instead of fixing her pay in the pay scale of Rs.330-560 with higher pay to be termed as personal to her. According to him, since she was drawing more than Rs.6000 i.e. the maximum of the pay scale of the UDC the excess amount was simply in the nature of personal pay which could not have the effect of changing the scale of the post on which she was actually working i.e. UDC under the ACP Scheme. She was, therefore,

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entitled to the pay scale of Rs.5000-8000 with the benefit of personal pay as drawn in the lower scale. He has submitted that under the Scheme any jump from the scale of Rs.4500-7500 to the scale of Rs. 5000-9000 ignoring the intermediary scale of Rs.5000-8000 is not permissible and therefore her request was not accepted. According to him wrong action of CCIT Calcutta in allowing the UDC a higher scale than the UDC does not confer any legal right on the applicant.

7. We have examined the rival contentions. It is not in dispute that the pay scale of Graduate Teachers in the erstwhile cadre of the applicant was revised from Rs.330-560 to Rs.450-750 and the pay of the applicant on her joining in the Income Tax Department was fixed in the scale of Rs.440-750. It is also not in dispute that the scale of Rs.440-750 was revised to Rs.1400-2600 w.e.f. 1.1.1986 and that the same was revised to Rs.5000-8000 w.e.f. 1.1.1996. It is also not in dispute that her counterparts who were declared surplus in the Mana Camp had been given the scale of Rs.440-750 which was raised to Rs.1400-2600 w.e.f. 1.1.1986 and again to Rs. 5000-8000 w.e.f. 1.1.96. It is also not in dispute that the applicant never drew her pay and allowances in the intermediary scale of Rs.4500-7000 and therefore there is no question of ignoring the same for the purpose of ACP Scheme promotion. It is also not in dispute that her counter parts at Sl. No. 2, 4, 5 and 15 of order dated 14.08.2000 were extended the pay scale of Rs.5500-9000 w.e.f. 9.8.99 under ACP Scheme vide order no. 7676 of the same date.

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Therefore, the only question to be answered here is why she has been denied similar benefits. The respondents have stated that fixation of her pay done by CCIT was erroneous at the time when her pay was fixed in the Income Tax Department with reference to her revised pay scale as Graduate Teacher. It is, however, not understood why similar benefits of the scale of Rs.5500-9000 have not been extended to her by the CCIT Calcutta as has been done in respect of the above employees. There is nothing on record to show if any steps have been taken to correct the so called erroneous fixation. We are unable to understand why similar benefits cannot be extended to her. In our considered view denial of the scale of Rs.5500-9000 to her at par with her counterparts is clear violation of Article 14 and 16 of the Constitution of India and deserves to be quashed and set aside.

8. In the facts and circumstances, we allow the OA and quash and set aside the rejection of her claim for up gradation in the scale of Rs.5500-9000 conveyed vide Memo dated 16.07.2002 (Annexure A-1), the order dated 13.12.2001 (Annexure A-2) and direct the respondents to grant similar benefits of up gradation in the scale of Rs.5500-9000 under ACP Scheme w.e.f. the due date along with arrears and consequential benefits. The above exercise shall be completed within one month from the date of receipt of a copy of this order. The above fixation would however be without prejudice to whatever action the respondents may choose to take for rectifying the earlier

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erroneous pay fixation in her case after following due process of law.

9. Parties would bear their own costs.

  
(G. C. SRIVASTAVA)  
MEMBER (A)

  
(G. L. GUPTA)  
VICE CHAIRMAN

Part II and III destroyed  
in my presence on 24-3-09  
under the supervision of  
Section officer (J) as per  
order dated 13/2/09

Section officer (Record)

R/C  
on 28/1/09  
for DATA ENTRY  
by

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