

**Central Administrative Tribunal Lucknow Bench Lucknow**

**Original Application No. 198/2009**

**This, the 23rd day of December, 2009.**

**Hon'ble Ms. Sadhna Srivastava, Member (A)**  
**Hon'ble Dr. A. K. Mishra, Member (A)**

Neelima Pandey, aged about 52 years, who Late Shri P.K. Pandey at present resident of D-123, Sector-p, Aliganj, Lucknow.

**Applicant**

By Advocate Sri Praveen Kumar.

**Versus**

1. Union of India, through the Secretary (SRA), Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution Krishi Bhawan, New Delhi.
2. The Assistant Regional Director (Storage & Research), Quality Controlling Cell, Lucknow.

**Respondents**

By Advocate Sri S.K. Singh.

**Order**

**By Hon'ble Dr. A. K. Mishra, Member (A)**

The applicant has challenged the order dated 16.7.2007 of Respondent No. 1 in which her representation against the action of the respondents cancelling the financial up-gradation granted to her earlier in the pay scale of Rs. 4500-7000 and modifying it to the scale of Rs. 4000-6000 was rejected.

2. The applicant is working as Lower Division Clerk (LDC) under Respondent No. 3. After completion of 12 years of service, she was entitled to 1<sup>st</sup> financial up-gradation under the Assured Career Progression Scheme (ACP) of the Government covered by the circular dated 9.8.99 of the Department of Personnel & Training (DOP&T). The department, where she was working, i.e. the office of Save Grain Campaign, the next higher promotional



post is of Stores Assistant carrying the pay scale of Rs. 4500-7000. Accordingly, she was granted this scale which was available in the hierarchy of her department.

3. The respondents have cancelled this order on the strength of the clarification issued by the DOP&T in their O.M. dated 18.7.2001 which states that for employees working in posts which belong to a common category, the uniform standard hierarchical structure should be made applicable while granting ACP. The phrase 'existing hierarchy' should be understood to mean standard hierarchy as approved by the government in respect of common category posts rather than the specific hierarchy obtaining in that particular office/department.

4. This issue was specifically examined by the Full Bench of CAT -Principal Bench at New Delhi in O.A. No. 557/2004 decided on 16.2.2005. It was held that the clarification No. 56 dated 18.7.2001 of the DOP&T could not render nugatory the paragraph 7 of the original ACP Scheme. Although ACP Scheme was not statutory, nevertheless it has confirmed certain rights by granting specific benefits. Once such benefits have been granted, those could not be withdrawn by issuing a clarification until the government amended the scheme in accordance with law. Relying on the ratio of this judgment, the coordinate bench of this Tribunal at Allahabad has decided O.A. No. 717/2006 on 8.10.2009 in which similar action of the respondent authorities modifying the grant of higher scale of Rs. 4500-7000 to that of Rs. 4000-6000 was set aside. The facts of the present case are fully covered by the judgment of the co-ordinate bench which has followed the ratio laid down by the full bench of this Tribunal. Since, the law has been settled, we are bound by the ratio of the full bench in the matter.

5. The learned counsel for the respondents brought to our notice the office memorandum dated 9<sup>th</sup> May 2009 in which the



DOP&T has circulated a modified Assured Career Progression Scheme for the Central Government civilian employees. Needless to say that this scheme has been issued keeping in view the pay structures which have come into effect after introduction of the recommendations of the 6<sup>th</sup> Pay Commission. The modified scheme has primarily elaborated on the application of the ACP in the context of grade pay and pay bands introduced in the latest pay revision. This O.M., in no way, affects the ratio of the judgments referred to earlier.

6. In the circumstances, we allow the application and set aside the impugned order dated 16.7.2007 on the basis of which the pay scale granted to her earlier was modified. She will be eligible to the pay scale of Rs. 4500-7000 from the date it was granted to her. The recovery made from her salary, should also be refunded.

7. Accordingly, the O.A. is allowed. No costs.

  
(Dr. A.K. Mishra)  
Member (A)

  
(Ms. Sadhna Srivastava)  
Member (J)

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