

Date of order: 25-11-1999

OA No.331/97

Smt. Phoolwati Maheswari W/o Shri S.C.Maheswari, presently working as Upper Division Clerk in the office of Assistant Commissioner, Income Tax, Ward No.III, Ajmer.

.. Applicant

Versus

1. The Union of India through the Secretary, Ministry of Personnel & Public Grievances & Pensions, Department of Personnel & Training (Surplus Cell), New Delhi.
2. The Secretary to the Government of India, Ministry of Energy (Department of Power), Shram Shakti Bhawan, New Delhi.
3. The Director (SR), Central Surplus Stall Cell) Department of Personnel and Training, Lok Nayak Bhawan, Khan Market, New Delhi.
4. The Commissioner of Income Tax, Central Revenue Building, Statue Circle, Jaipur.
5. The General Manager, Beas Project, BBMB Office Complex, Madhya Marg, Sector 19-D, Chandigarh, Punjab.

.. Respondents

Mr. Mr. R.C.Joshi, counsel for the applicant

Mr. K.N.Shrimal, counsel for respondent No.2 and 5

Mr. N.K.Jain, counsel for respondent No.4

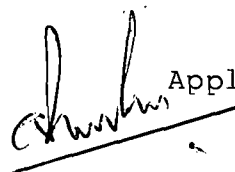
CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

O R D E R

Per Hon'ble Mr. N.P.Nawani, Administrative Member

 Applicant, in this Original Application filed under

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Section 19 of the Administrative Tribunals Act, 1985 prays for the following main reliefs:

- (i) fix the applicant in pay scale 2000-3500 w.e.f. 1.1.86. The respondents be directed to modify the order dated 23.1.90 showing her pay scale 2000-3500 and they be further directed to absorb the applicant on a post having pay scale 2000-3500 w.e.f. 23.1.90 in the Income Tax Department;
- (ii) the Hon'ble Tribunal may be pleased to declare that the last line of the order dated 22.2.95 treating the applicant working on the post of Music Mistress w.e.f. 9.10.75 is illegal and the respondents be directed to treat the applicant as Music Mistress w.e.f. 21.8.67 and she be fixed in pay scale 2000-3500 on 1.1.86 as she has completed 18 years of service on 1.1.86.
- (iii) the respondent No.1 and 4 be directed to appoint the applicant in the cadre of 2000-3500 in Income Tax Department w.e.f. 23.1.90 and give her consequential promotions and financial benefits;
- (iv) the respondent No.4 be directed to prepare her arrear bill and make payment of her arrears upto date;
- (v) the respondent No.4 be directed to make payment of 18% interest on the amount of arrear from the day it fell due to the applicant;
- (vi) the respondent No.4 be directed to regularise the period from 19.7.90 to 30.8.90 i.e. 42 days as joining and journey time and they be further directed to grant

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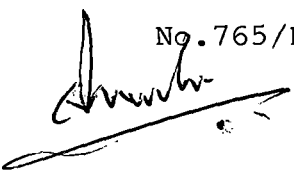
21 days extension in joining time or alternatively be directed to grant 21 days appropriate leave for this period and make payment for this period;

2. Facts as stated by the applicant are as mentioned hereinafter. The applicant has Masters Degree in Music as well in Political Science and has also passed B.Ed. examination. She was appointed as Music Mistress after due process of selection as direct recruit vide order dated 21.7.1967 (Ann.A2) and joined Beas Satlaj Link Project (for short, BSLP). All employees of the said project were governed by project pay scales in conformity with the pay scales in Government of Punjab. The pay scales were revised w.e.f. 1.1.78 and the applicant's pay scale was revised to Rs. 620-1200 (Ann.A3). She was continuously working as Music Mistress but for reasons best known to the authorities, a day's break has been entered in her service book on 21.2.68, 21.8.68, 22.2.69 and 23.2.69. The applicant actually discharged duty on these days. There has been no break even in her service book thereafter. The applicant and hundreds of employees of BSLP on being threatened with retrenchment, jointly moved a petition before Hon'ble the Supreme Court and it was decided with a direction to the Union of India to treat all the employees including the applicant of BSLP as temporary Central Government employees. The case was reported in AIR 1980 SC 115. The post held by the applicant was redesignated as Master/Mistress purely personal to the applicant vide order dated 24.11.1982 (Ann.A4). She was declared semi permanent w.e.f. 31.7.1978 (Ann.A5). At this stage the teachers of the BSLP, including the applicant had filed a Writ Petition before the Himachal Pradesh High Court which was subsequently transferred to Chandigarh Bench of the

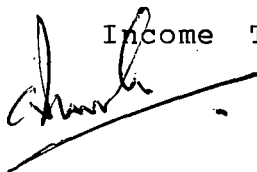
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Tribunal. This was decided by the Tribunal on 18.2.1987 (Ann.A6) holding that pay scales of Beas Construction Board (for short, BCB) shall be deemed to be the Central Pay Scales and the applicants were also found entitled for selection grade per eligibility and rules. They had also filed a Misc. Application which was decided on 28.7.87, a copy of which is enclosed at Ann.A7. Subsequent to the above mentioned decision dated 28.7.87 of the Tribunal, the applicant, along with others was called upon to submit option if she wanted to join Bhakra Beas Management Board (for short, BBMB). Subsequently pay scale of Rs. 620-1200 was changed to three different scales on the basis of length of service, as can be observed in the order issued by the Education Department for the teaching staff (Ann.A9). The applicant was declared surplus by order dated 23.8.89 (Ann.A10). It was the duty of the respondents to fix the applicant in the revised pay scale w.e.f. 1.1.86 before declaring her surplus but this exercise was not done. The applicant ought to have been fixed in the pay scale of Rs. 2000-3500 in view of the fact that she had completed 18 years of service. On account of this lapse, the applicant had to suffer grave injustice. By an order dated 23.1.90, the respondent No.1 directed the Commissioner of Income Tax, Jaipur to absorb the applicant on the post of UDC (Ann.A11). In this order it has been incorrectly shown that the applicant was getting the pay scale of Rs. 1350-2200 w.e.f. 1.1.86. Consequently, the applicant was wrongly deployed/absorbed in the scale of UDC whereas she should have been redeployed/absorbed on a post carrying pay scale of Rs. 2000-3500 in the Income Tax Department.

The applicant challenged her redeployment through OA No.765/HP/90. During the pendency of the OA the applicant was



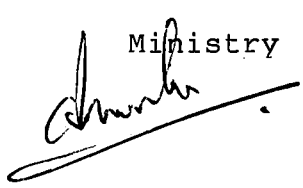
relieved and compelled to join as UDC in the Income Tax Department (for short, ITD) in Rajasthan and posted at Jaipur and the applicant joined on 29.8.90. Her grievance was not removed during the pendency of the aforesaid OA on the plea that she has approached the Court of law. The aforesaid OA was decided on 14.11.94 and a copy of the judgment is at Ann.A12. It would be evident from the same that the contention of the applicant with regard to redeployment was rejected but her another grievance about fixation in revised scale w.e.f. 1.1.86 was allowed. Consequent to the aforesaid judgment, the applicant was fixed in the pay scale of Rs. 1800-3200 w.e.f. 1.1.86 and her basic pay was fixed at Rs. 2100 per month (Ann.A13). The applicant had given her option for new pay scale w.e.f. 1.10.86 because it is provided in the rules that an employee can opt for the revised pay scale from any future date also and the applicant did so in order to avail such benefit of one grade increment on this date. A copy of her option is at Ann.A14. It is evident from the order dated 22.2.95 that the applicant was treated as Music Mistress w.e.f. 9.10.75 which is factually incorrect as can be seen from the appointment order dated 21.7.67 that she has been working as Music Mistress from 1967 when she reported for duty for compliance of the appointment order. Because of this mistake by the respondents, she was not given benefit of fixation in the selection scale, having completed 18 years of service, i.e. Rs. 2000-3500. Aggrieved by the incorrect implementation of the order of the Tribunal, the applicant filed a Contempt Petition which was disposed of by order dated 28.2.96, a copy of which is filed at Ann.A15. In the meanwhile vide letter dated 25.2.95 revised Bio-data and particulars of the applicant were sent to the Commissioner of Income Tax (marked collectively as Ann.A16), a perusal of



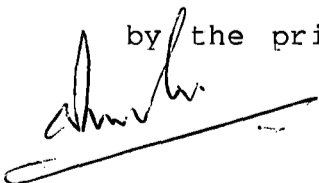
which would indicate that the applicant's date of appointment as Music Mistress has been shown from 21.8.1967 to 19.7.1990. The applicant submitted her option for revised pay scale w.e.f. 1.10.86 on 30.1.95 (Ann.A18) on receipt of the letter dated 27.1.95 from the Assistant Income Tax Commissioner, Ajmer (Ann.A17). The respondents No.1, the Department of Personnel and Training (for short DOPT) through its letter of November, 95 had clarified the position regarding refixation of the pay of Shri Ashok Kumar Parashar and others as a consequence to the order dated 19.7.94 of the Chandigarh Bench of the Tribunal. Thereafter the applicant was called upon to fill forms and Bio-data for readjustment, a copy of which was received by the applicant and accordingly she submitted her Bio-data, as desired, on 19.2.96 (Ann.A21). No action, however was taken by the respondents for long time and she had to submit a notice for demand of justice on 6.2.67 (Ann.A1) and having got no response from the respondents, the applicant had to file this Original Application, so that she could get justice before her retirement which is fast approaching.

3. Notices of the Original Application were given to the respondents. Replies have been filed on behalf of respondents Nos. 2 and 5 i.e. DOPT and General Manager, BSLP and respondent No.4, the Commissioner of Income Tax, Jaipur. The applicant has filed rejoinder to the reply filed by respondent No. 2 and 5 to which the respondents Nos. 2 and 5 have filed a reply to sur-rejoinder. The applicant has also filed a rejoinder to the reply of respondent No.4.

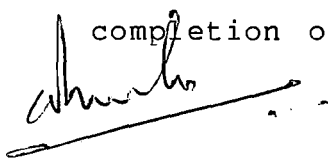
4. In their reply, respondents No.2 i.e. Secretary, Ministry of Personnel etc. (Department of Personnel and



Training) and respondent No.5 i.e. the General Manager, Beas Project, BBMB Office Complex have raised a preliminary objection to the effect that the applicant had filed OA No. 765/HP/90 before the Chandigarh Bench of the Tribunal for reliefs similar to those in this OA, which was disposed of by order dated 14.11.1994. The applicant also filed a Contempt Petition stating that compliance of the above mentioned order had not been done. The said Contempt Petition was dismissed with the observation that the applicant has been working as Music Mistress w.e.f. 1.10.1975 vide the office order dated 22.2.95 and she was to be paid project pay scale upto 23.8.89 as per directions of the Tribunal given in the order dated 14.11.1994. Thus it was clear that the applicant cannot be said to have become eligible for higher grade by having put in 18 years of service. It has also been stated, it can be seen from the order dated 14.11.1994 of the Hon'ble Tribunal, that the applicant in the said OA prayed for quashing of orders dated 23.8.89 and 23.1.90 which were Ann. A1 and Ann.A2 in that OA. It was also prayed that respondents Nos. 4 and 5 be directed to give the revised pay scales of Master/Mistress of the Punjab State and fix her pay retrospectively w.e.f. 1.1.1986, first in the pay scale of Rs. 1640-2925, then in the senior pay scale of Rs. 1800-3200 and thereafter in the selection grade of Rs. 2000-3500 and finally that the respondents be directed to redeploy the applicant on a post of the status and rank having matching pay scales as provided in the Redeployment Rules, 1986, only after revising her pay scale w.e.f. 1.1.86. It has been emphasised that the applicant in the present OA has claimed that she should be fixed in the equivalent post in the ITD and was thus reagitating the same claim which stands barred by the principles of res-judicata. Even if it is held that



it was not decided specifically then also it also barred by sub clause 4 of Section 11 of C.P.C. At page 8 of the judgment of the Tribunal, the Chandigarh Bench has held "The question of giving her a fresh option after refixation of her pay in the revised scale at this stage does not arise." Order 2 Rule 2 of the C.P.C. also bars such a claim. The applicant had also filed a Review Application against the orders passed by the Tribunal in the Contempt Petition, which was dismissed by the Chandigarh Bench of the Tribunal vide order dated 18.3.1998. It has also been stated on behalf of respondents Nos. 2 and 5 that inadvertently, through an error of writing/typing, the applicant was appointed as Music Mistress on 21.8.1967, even though the sanctioned post was that of Music Teacher, notification for recruitment was also sent to the Press for the post of Music Teacher and she had herself applied for the post of Music Teacher. The aforesaid error was pointed out by the Audit in 1981 and the error had to be rectified and her appointment was regularised accordingly. It is also relevant to point out that the applicant had passed MA (Political Science) in 1963 at the time of her appointment. Thereafter she passed MA (Music Vocal) examination during April, 1971 and B.Ed. during 1975. Thus requisite qualification for being appointed as Music Mistress was acquired by her in 1975 and in 1967 she could not have been appointed on the post of Music Mistress because she did not hold the requisite minimum qualification. Since it was not possible to revert her back to the post of Music Teacher after expiry of 15 years, the post of Music Teacher was upgraded to the post of Master/Mistress, with the stipulation that the redesignation/upgradation would be purely personal to the applicant. The applicant was declared surplus on completion of the Beas project and the surplus staff was to



be adjusted to the extent of 50 % in BBMB and remaining 50% was to be redeployed in other Central Government service and positions through the Surplus Staff Cell. The applicant was offered an opportunity to join BBMB which she did not and was accordingly declared surplus and was subsequently absorbed as UDC in the Income Tax Department at Jaipur in the pay scale of Rs. 1200-2040 through the Central Surplus Staff Cell in the DOPT. It has also been stated that there was no specific rule to consider employees of Beas project as governed by the pay scales of Punjab Government and the same were not automatically applicable until and unless adopted by the Beas Construction Project. The applicant was rightly placed in the pay scale of Rs. 620-1200 and she was rightly treated in the pay scale of Rs. 1350-2200 on 23.1.90 and on redeployment as UDC, was correctly given the pay scale of Rs. 1200-2040 with protection of pay and scale of pay while being directed to be absorbed with ITD, Jaipur vide Ann.All.

5. The applicant filed a rejoinder to the reply of respondent Nos. 2 and 5. It basically reiterates the averments made by the applicant in the OA and stresses the point that her services from 1967 to 1975 should be computed for fixation in the revised pay scale, an issue which was neither agitated nor adjudicated by the Chandigarh Bench of this Tribunal in her earlier OA. The issue categorically raised in this OA is that before the redeployment of the applicant in the ITD, her pay should have been correctly fixed and she should have been absorbed on the equivalent post. Absorption in the equivalent post was never a subject matter before the Chandigarh Bench of the Tribunal.

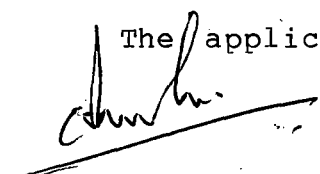
6. In their reply against the rejoinder, respondents Nos.

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2 and 5 have reasserted their case emphasising that the controversy sought to be raised by the applicant in the present OA was hit by the law of res-judicata and constructive res-judicata, as the same issue already stands decided by the Chandigarh Bench of the Tribunal vide its order dated 14.11.1994 in OA No. 765/HP/90. It is clear that identical issues/controversies were raised by the applicant in the above mentioned OA. Appointment of the applicant as Music Mistress was a mistake and wrong nomenclature of the post would not create any right and the appointing authority has inherent right to correct a mistake when it comes to its notice. The case of the applicant was completely closed vide order of the Chandigarh Bench of the Tribunal in OA No. 765/HP/90 dated 14.11.1994 and dismissal of the Contempt Petition filed for non-implementation of the said order as also dismissal of the Review Application filed against the order passed in the Contempt Petition.

7. Respondent No.4, the Commissioner of Income Tax, Jaipur in his reply also raised similar preliminary objections as raised by the respondents Nos. 2 and 5 and stressed that the present OA is fully barred by the principles of res-judicata under Order 11 of the C.P.C. and also by the provisions of Order 2 Rule 2 of the C.P.C. It has also been stated that the applicant had already been absorbed and appointed as UDC in the ITD, she was given pay scale of UDC for which she was eligible. The applicant was not entitled for the pay scale of Rs. 2000-3500. The applicant had already got the relief in her OA No. 765/HP/90 decided on 14.11.94 and has already been granted the revised pay scale w.e.f. 1.10.86 and has also been paid all arrears due to her by the concerned Department.

The applicant filed a Contempt Petition seeking relief for



grant of higher pay scale on account of having put in 18 years of service but the said Contempt Petition was dismissed and later on a Review Application filed against the order in the Contempt Petition was also dismissed.

8. The applicant also filed a rejoinder to the reply given by respondent No.4 which has been perused and found to contain more or less the same averments as in the OA and rejoinder filed against the reply of respondents Nos.2 and 5.

10. We have heard at length the learned counsel for the parties and have also gone through the case file.

10. The contention of the applicant essentially is that she should be considered as working on the post of Music Mistress w.e.f. 21.8.1967 and not 1.10.1975 and having completed 18 years of service, the pay of the applicant should be fixed in the scale of Rs. 2000-3500 w.e.f. 1.1.86 and not in the pay scale of Rs. 1200-2040 as the respondents had done and on her absorption in the Income Tax Department w.e.f. 31.1.90, she should be accordingly absorbed on a post carrying the pay scale of Rs. 2000-3200 and not on the post of UDC. It has been further contended that even after the order issued by the authorities of the Beas Satlaj Link Administration dated 22.2.95 (Ann.A13) sanctioning her the pay scale of Rs. 1800-3200 w.e.f. 1.10.86, the respondents on her absorption in the ITD have not even granted her the said pay scale and have instead shown her pay scale as Rs. 1350-2200 (Ann.A11). The applicant, therefore, suffered on two counts, first non-revision of her pay scale to Rs. 2000-3500 considering that she had put in 18 years of service as Music Mistress and then on her being declared surplus and having been absorbed in ITD

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giving her a pay scale of only Rs. 1300-2200, ignoring the fact that she had already been sanctioned the pay scale of Rs. 1800-3200.

11. The learned counsel for respondents Nos. 2 and 5 argued, as detailed in their reply, that all the prayers of the applicant made in this OA have already been adjudicated upon either directly or indirectly by the Chandigarh Bench of this Tribunal in OA No.765/HP/90. Her Contempt Petition as well as Review Application regarding non-implementation of the relief given in the said OA have also been dismissed. In view of this, the case is completely covered under the principles of res-judicata and she is not entitled to reagitate the same issues. Her application is also hit by the limitation as provided in Section 21 of the Administrative Tribunals Act. He further argued that the Beas administration was well within their right to correct the mistake about wrong mentioning of her being appointed as Music Mistress in 1967. In any case, she acquired the necessary qualification for the said post only in 1975 and she cannot, therefore, claim that she had already rendered 18 years of service as Music Mistress and was, therefore, entitled to the pay scale of Rs. 2000-3500. He asserted that the applicant was correctly given the pay scale of Rs. 1350-2200 and, therefore, when the DOPT issued the order dated 23.1.1990 (Ann.All) directing her absorption in ITD, Jaipur, she was correctly given the pay scale of Rs. 1200-2040 with protection of pay.

12. The learned Advocate for respondent No.4, the ITD, Jaipur also reiterated that the relief being sought by the applicant are hit by the principles of res-judicata. The

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competent authority on deciding her case on the basis of the relevant rules for redeployment of surplus staff had issued the order dated 23.1.1990 (Ann.All) and respondent No.4 was only required to carry out the directions given by the competent authority vide their order dated 23.1.1990 (Ann.All) and the respondent No.4 accordingly absorbed the applicant in the post of UDC in the pay scale of Rs. 1200-2040 with protection of pay as provided in column 4 of the said order. He also stated that the applicant, instead of making a representation to respondent No.4, should have represented to the competent authority viz. DOPT at the proper time.

13. We have given our serious considerations to the pleadings/arguments made by the parties. We do feel that the reliefs sought by the applicant in the present OA being more or less similar to the relief she had sought at the Chandigarh Bench of the Tribunal in OA No. 705/HP/90, are hit by the principles of res-judicata to a great extent in this case. As regards considering her services as Music Mistress w.e.f. 21.8.1967, Chandigarh Bench of this Tribunal had, no doubt, not adjudicated this issue. We, however, feel that there was clearly a bonafide mistake in typing "Music Mistress" on her appointment letter, especially when the post was advertised as "Music Teacher" and the applicant had also applied for the post of "Music Teacher". When the mistake was discovered in 1981, it was corrected and she was given the grade of Master/Mistress w.e.f. 1.10.1975 when she had acquired all the necessary qualifications. This issue has been well settled and, if at all, the applicant should have raised it, within the limitation, starting from the date when her designation was changed from that of the Music Mistress or from when she was paid salary in the scale of Music

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Teacher which must have occurred way back in 1967. Apart from correction of a bonafide mistake, which is permissible, the issue is hopelessly barred by limitation. However, we also find that the Chandigarh Bench of this Tribunal had while disposing of the said OA in their direction (ii) stated that "The terms and conditions of her redeployment under the Central Government after being formally declared surplus shall be regulated in accordance with the provisions of "Redeployment of Surplus Staff in the Central Civil Services and Posts (Supplementary) Rules, 1989", and for this purpose her revised scale and the pay in that scale in pursuance of the directions in (i) above shall be kept in view in accordance with the provisions of the Rules *ibid.* " We notice that subsequent to the said order dated 14.11.1994 of the Tribunal, the Superintending Engineer, BSL Administration issued an office order dated 22.2.1995 (Ann.A13), in which sanction has been accorded for placement of the applicant in the senior pay scale of Rs. 1800-3200 w.e.f. 1.10.1986 and the same authority has enclosed a copy of revised L.P.C. to the Commissioner of Income Tax, Jaipur vide letter dated 22.5.1995. The L.P.C. shows against item No.5, the pay scale of Rs. 620-1200 w.e.f. 1.1.1978, Rs. 1640-2925 w.e.f. 1.1.1986 and Rs. 1800-3200 (Sr. Scale after 8 years). In the body of this L.P.C. itself it has also been mentioned that "on completion of 8 years of service as, Music Teacher". Having stated all this in clear terms, it appears incongruous that the same L.P.C. against item No.10, column (ii) titled Designation and Pay scale shows "Music Mistress (1640-2925)". In any case, it does appear that the applicant's pay scale stands revised to Rs. 1800-3200 w.e.f. 1.10.1986 and it has been mentioned by the respondent No.4 in his reply that she appears to have even been paid the arrears on account of such



revision. We would, therefore, like the respondent No.1 to reconsider the case of the applicant and examine whether she is eligible for readjustment in view of Para 2(1) of the Instructions issued vide D.P.T. OM No.1/4/90-CS.III dated 9.4.1991 and 28.6.1991 which, as reproduced in Swamy's Annual 1991 reads as follows:

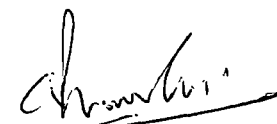
**"Cases of surplus employees eligible for readjustment-2**

The surplus employees shall be eligible for readjustment also in the cases specified below -

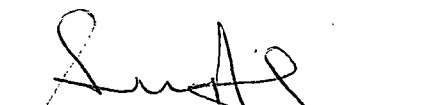
(1) Where an employee has been placed in a higher pay-scale, whether due to revision of scale of pay of his post or grant of promotion, than that attached to the post held by him before redeployment through the surplus cell, retrospectively from a date preceding the date of his joining the new post of redeployment:"

14. In the result, we dispose of this Original Application with a direction to respondent No.1 to consider the case of the applicant for readjustment, keeping in view the discussions recorded in this order, the provisions of Redeployment of Surplus Staff in the Central Civil Services and Posts (Supplementary) Rules, 1989, the instructions cited in the preceding paragraph and any other relevant rules/regulations or instructions including its letter of November, 1995 in this regard. This exercise may be completed within four months of the receipt of a copy of this order.

15. There will be no order as to costs.

  
(N.P. NAWANI)

Adm. Member

  
(S.K. AGARWAL)

Judl. Member