[2023] 16 S.C.R. 888 : 2023 INSC 1048

DR. P.N. SHUKLA AND OTHERS
v.
UNION OF INDIA AND OTHERS

(Civil Appeal No.7747 of 2012)

NOVEMBER 30, 2023

[HIMA KOHLI AND RAJESH BINDAL*, JJ.]

Issue for consideration:

Matter pertains to the legality of the order passed by the High Court, rejecting the prayer made by the appellants-Assistant Scientific Officer for grant of the same pay-scale and perquisites as had been granted to the respondent No.4-Assistant Scientific Officer (Medicine).

Service Law – Pay scale – Single post of same cadre – One officer given higher pay scale than the other – Correctness:

Held: If governed by the same set of Rules, a single post of the same cadre could not have been isolated and granted a higher pay scale by merely considering the qualifications prescribed for the post – On facts, representations made by the appellants-Assistant Scientific Officer claiming that the respondent No. 4-Assistant Scientific Officer (Medicine) having been granted a higher pay scale along with Non Practicing Allowance-NPA, though not practising as a doctor, they were also entitled to the same as they were appointed on the same post, governed by the same Rules and were discharging the same duties – There is no justification to grant same scale-higher pay scale to the appellants as was generously and wrongly granted to the respondent No. 4 alongwith the NPA by treating him equal to the Medical Officer working in the Ministry of Health and Family Welfare – Authorities were hand in gloves with the respondent No. 4 to somehow grant him a higher pay scale and repeatedly action was taken in that direction – Favouritism shown to the respondent No. 4 is evident from the facts – There was no justification for grant of higher pay scale to the respondent No. 4 with effect from the date of his initial appointment – Same was illegal and cannot withstand in judicial scrutiny – Furthermore, without there being any amendment in

* Author

the Rules, the post of Assistant Scientific Officer (Medicine) was declared ex-cadre and the NPA granted to the respondent No. 4, though he was not practising as a doctor, was withdrawn – Thus, the order justifying the benefits granted to respondent No. 4 set aside – Appellants not entitled to higher pay scales as were granted to respondent No. 4 – Assistant Scientific Officer (Medicine) Rules, 2014 – Senior Scientific Officer (Medicine) Rules, 2014 – Central Hindi Directorate (Research Assistant) Recruitment Rules, 1980. [Para 42, 53-59].

Service law – Grant of undue benefits to the employee-Assistant Scientific Officer (Medicine) – Correctness:

Held: Respondent No. 4-Assistant Scientific Officer (Medicine) was unjustifiably paid salary in the higher pay scale - One option could be that whatever had been paid to him till date, be left as such and his pay could be directed to be re-fixed from a future date, however, having regard to the level of the post and the manner in which he was extended special treatment at every step and was granted higher pay scale, said course is not adopted as this is not a case of any bonafide error – It was a well-planned and deliberate infraction – Thus, issuance of direction for recovery of the excess amount paid to the respondent No. 4, and/or from the officer(s), directly involved in the decision-making process of granting undue benefit to the respondent No.4 – Both to be made equally liable to reimburse the exchequer for the amount illegally disbursed to the respondent No.4 – Exchequer should not be made to suffer on that account and either of two have to make good that loss of undue benefit granted to the respondent No. 4. [Para 60]

D.S. Parvathamma v. A. Srinivasan **(2003) 4 SCC 705 : [2003] 3 SCR 197;** *A.K. Dass v. National Federation of Cooperative Sugar Factories Ltd. and others* **(1994) 2 SCC 520;** *Union of India and others v. M.V. Mohanan Nair* **(2020) 5 SCC 421 : [2020] 7 SCR 851;** *Punjab State Power Corporation Limited and another v. Bal Krishan Sharma and others* **(2022) 1 SCC 322;** *Ajit Kumar Bhuyan and others v. Debajit Das and others* **(2019) 12 SCC 275 : [2018] 13 SCR 1012 – referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7747 of 2012.

From the Judgment and Order dated 15.07.2011 of the High Court of Delhi at New Delhi in WP No.3791 of 2011.

Ms. V. Mohana, Sr. Adv., Somesh Chandra Jha, Ms. Yashika Sharma, Ms. Madhu Sharan, Somesh Chandra Jha, Ms. Pyoli, Amartya A. Sharan, Ms. Bhavya Pande, Mayank Gautam, Advs. for the Appellants.

Balbir Singh, ASG, Ms. Seema Bengani, Gurmeet Singh Makker, K Parameshwaran, Ms. Priyanka Das, Gautam Bharadwaj, Pratyush Shrivastava, Amitesh Kumar, Ms. Priti Kumari, Mritunjay Kumar Sinha, Advs. for the Respondents.

The Judgment of the Court was delivered by

RAJESH BINDAL, J.

1. The present appeal questions the legality of the order[1] passed by the High Court[2], *vide* which the orders[3] passed by the Tribunal[4] were upheld by the Division Bench of the High Court.

FACTS

2. The appellant No.1 joined the Commission for Scientific and Technical Terminology[5] as a Research Assistant (later redesignated as Assistant Scientific Officer) on 03.01.1990. The recruitment was made in terms of the Central Hindi Directorate (Research Assistant) Recruitment Rules, 1980[6].

3. The 1980 Rules were amended in the year 1993 providing for educational qualifications and experience required for the post of Research Assistant in different subjects including medicine.

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1 Dated 15.07.2011 in Writ Petition (Civil) No.3791 of 2011
2 High Court of Delhi
3 Dated 01.06.2010 in O.A.No.1762/2010 and Dated 03.08.2010 in Review Application No.203/2010
4 The Central Administrative Tribunal, Principal Bench, New Delhi
5 Hereinafter referred to as 'CSTT'.
6 Hereinafter referred to as 'the 1980 Rules'

4. On 02.12.1994, an advertisement was issued by the Union Public Service Commission for recruitment to the post of Research Assistants (Economics), (Medicine) and (Electronics) in CSTT. The advertisement clearly provided the duties of the post namely: the evolution of terminology, preparation of definitional dictionaries and allied work.

5. The appellants No.2 to 6 joined CSTT as Research Assistants on various dates as detailed below:

Sr. No.	Name of the Officer/Discipline	Date of Joining
2	M.L. Meena (Civil Engg.)	30.11.1995
3	A.N. Selwatkar (Zoology)	01.01.1996
4	Dr. B.K. Singh (Physics)	21.12.1995
5	Deepak Kumar (Comp. Sc.)	28.11.1996
6	S.K. Chaudhary (Eix.Engg.)	06.02.1997

6. On 20.05.1997, the appellant No.1 was promoted to the post of Scientific Officer.

7. The respondent No.4 joined CSTT as a Research Assistant (Medicine) on 18.01.1999. Both the appellants as well as the respondent No.4 belong to the same cadre. A common seniority list of Research Assistants, as on 28.02.1999 was prepared and circulated on 23.03.1999. In the aforesaid seniority list, the appellants No.2 to 6 were shown at Serial No(s). 3, 5, 6, 8 and 9, respectively, whereas respondent no.4 was shown at Serial No.13. The name of appellant no.1 was not in the seniority list of Research Assistants as he had already been promoted to the post of Scientific Officer on 20.05.1997.

8. *Vide* order dated 20.07.2000, various posts in the CSTT were redesignated. As a result, the post of Research Assistant was redesignated as Assistant Scientific Officer, whereas the post of Assistant Education Officer was redesignated as Scientific Officer.

9. On 18.10.2000, the respondent No.4 submitted representation for upgradation of his pay-scale. However, the same was rejected vide order dated 26.06.2001/03.07.2001.

10. On different dates from 2002 to 2006, the appellants No.2 to 6 were promoted as Assistant Scientific Officers.

11. On 12.06.2005, the respondent No.4 left CSTT to join as Ayurvedic Physician, in the Directorate of Indian Systems of Medicine & Homeopathy, Puducherry. On 06.09.2005, he joined as Medical Officer (Ayurveda) in the Directorate of Daman and Diu Medical & Health Services and thereafter on 30.01.2006, he joined the Central Council for Research in Ayurveda and Siddha[7], New Delhi, an autonomous body. All these posts were in the pay scale of ₹8000-13500.

12. On 13.12.2006 an order was issued by the Directorate[8] upgrading the scale of pay of the respondent No.4 from ₹6500-10500 to ₹8000-13500. In the aforesaid order, reference was made to para 52.33 of the report of the Commission[9], which dealt with the pay scales of doctors. The post of Assistant Scientific Officer (Medicine) was equated with that of a doctor. Even though the respondent No.4 was not practising as a doctor in CSTT, he was granted higher pay-scale. He also got Non-Practising Allowance ('NPA'). Revision of pay was made w.e.f. 18.01.1999, i.e., the date of his joining.

13. Immediately after passing of the aforesaid order and finding that it may be illegal to grant higher pay-scale to one of the officers belonging to the same cadre, governed by the same Rules another order was passed by the Directorate on 20.04.2007, declaring the post of Assistant Scientific Officer (Medicine) to be an ex-cadre post, in view of the grant of upgraded pay-scale to the respondent No.4.

14. Representations were made by the appellants for grant of the same pay-scale and perquisites as had been granted to the respondent No.4, in view of the fact that they were governed by the same set of Rules and discharging the same duties. As the prayer made by them was not accepted, an Original Application[10] was filed by the

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7 Hereinafter referred to as CCRAS.
8 Central Hindi Directorate, Ministry of Human Resource Development, Department of Secondary and Higher Education.
9 Fifth Central Pay Commission Report.
10 O.A. No.2443 of 2008

appellants before the Tribunal[11]. However, the same was permitted to be withdrawn by the Tribunal on 10.08.2009 with liberty to the appellants to file a comprehensive representation before the competent authority.

15. On 04.09.2009 a comprehensive representation was filed by the appellant No.1, which was rejected by the Chairman, CSTT *vide* order dated 04.01.2010, on the ground that the post in-question, namely, Assistant Scientific Officer (Medicine) had been declared as an ex-cadre post, thus there could not be any equation of pay-scale.

16. Another application[12] was filed by the appellants before the Tribunal. However, the same was dismissed as withdrawn on 17.03.2010, with liberty to file a fresh application challenging the order dated 04.01.2010 because the same was not impugned in the aforesaid application.

17. Yet another Original Application[13] was filed by the appellants impugning the order dated 04.01.2010. The aforesaid application was dismissed by the Tribunal on 01.06.2010. Thereafter, the Review Application[14] in the same Original Application filed by the appellants was also dismissed by the Tribunal on 03.08.2010.

18. Being aggrieved, Writ Petition was filed by the appellants before the High Court. However, the same was dismissed by the Division Bench of the High Court. The aforesaid order is impugned before this Court.

ARGUMENTS

19. The argument raised by the learned senior counsel for the appellants is that the initial recruitment of the appellants as well as the respondent No.4 was made under the 1980 Rules. It was in terms of the qualifications prescribed in the 1980 Rules. It is not a matter of dispute that the respondent No.4 was also recruited as a Research Assistant (later redesignated as Assistant Scientific

11 Central Administrative Tribunal, Principal Bench, New Delhi
12 O.A.No.874 of 2010
13 O.A. No.1762 of 2010.
14 R. A.No.203 of 2010 in O.A.1762 of 2010

Officer), just as the appellants were. It is also not a matter of dispute that all the Assistant Scientific Officers were discharging the same duties. They had qualifications in different subjects corresponding to their posts. The respondent No.4 was not practising medicine. The Commission made recommendations for revision of pay scales of various categories of employees working in the Government Sector. Para 52.33 of the report of the Commission, reliance on which was placed upon by the Directorate in its order dated 13.12.2006, was pertaining to doctors working with Indian Systems of Medicine & Homeopathy[15]. The respondent No.4 was given parity with General Duty Officer (GDO) of Central Health Services. In fact, the pay scales of employees working in CSTT was dealt with in paras 71.15 to 71.17 thereof.

20. It was submitted that the aforesaid order was passed, when the respondent no.4 was not even in service with CSTT, as he was on deputation to CCRAS, New Delhi. Immediately, after the aforesaid order was passed, the respondent No.4 joined back CSTT on 23.01.2007. The Commission recommended grant of parity to physicians of ISM&H/GDOs. In fact, they were all working as medical officers, which had no comparison with the duties being discharged by the respondent no.4.

21. In support of the argument that the appellants as well as the respondent No.4 were discharging the same duties and their job profile was inter-changeable, reference was made to the order dated 08.09.2021 issued by CSTT whereby the respondent No.4 was assigned the duty to prepare separate glossary in 'engineering graphics'. Whereas by the same order, the appellants no.1 to 6 were also assigned duties to prepare separate glossaries i.e. 'workshop practice lab manual'; 'engineering environmental science'; Physics-1; Physics-2; 'programme of problem solving' and 'basic electrical engineering' respectively. Reference was also made to the order dated 01.11.2021 passed by CSTT. The same is extracted below:

15 Hereinafter referred to as 'ISM&H'.

Sr. No.	Name	Name of the State	English- Hindi- Regional Language	Time
2.	Dr.P.N.Shukla, A.D	Andhra Pradesh	Telugu	Will submit Work Progress Report in the last week of every month
3.	Shri Mohan Lal Veena A.D.	Tamil Nadu/ Puducherry	Tamil	-do-
5.	Dr. Ashok N. Selvetkar, A. D.	Punjab	Punjabi	-do-
6.	Dr. Brajesh Kumar Singh, A.D.	West Bengal	Bangla	-do-
7.	Shri Deepak Kumar A.D.	Orissa	Oriya	-do-
8.	Shri Shiv Kumar Choudhary, A.D.	Gujarat	Gujarati	-do-
10.	Dr. BhimSen Behera, Sr. Sc. Officer (Medical Science)	Uttar Pradesh	Urdu	-do-

22. On 07.07.2017, an Office Memorandum was issued by the Department of Expenditure, Ministry of Finance, whereby it was stated that NPA was to be granted only to the employees holding a clinical post. It was argued that the illegality in grant of scale especially, the non-practicing allowance (NPA) granted to the respondent No.4 having come to the notice of the authorities, an order was passed by Chairman, CSTT

in compliance of the aforesaid OM on 26.07.2017, withdrawing the NPA given to the respondent No. 4 w.e.f. 01.07.2017. Being aggrieved by the aforesaid order, respondent No. 4 had submitted a representation to Chairman, CSTT on 27.07.2017, response whereto was given by the Chairman, CSTT on 21.08.2017. The same was challenged by the respondent No.4 by filing an Original Application[16], which was dismissed by the Tribunal vide order dated 31.07.2019. The stand taken by the Government in the aforesaid case was that the respondent No.4 was working on the post of Senior Scientific Officer (Medicine) in CSTT and the duties assigned were evolution of Technical Terminology and related work only and no clinical duties were assigned to him. As for the doctors working in the Ministry of Health and Ministry of AYUSH, they were discharging clinical duties and since they were barred from private practice, NPA was granted to them. As regards further status of the case, learned counsel for the respondent No.4 submitted that the same was challenged by filing W.P.(C) No.12660 of 2019 in the High Court, which was disposed of as withdrawn vide order dated 15.03.2023 with liberty to the respondent No.4 to file a representation before the competent authority.

23. In the aforesaid factual matrix, the arguments raised by the learned senior counsel for the appellants are that the respondent no.4 could not have been taken back in service in CSTT, after he had served on different posts in various departments in the Directorate of Medical and Health Services, Daman and Diu, followed by the Directorate of ISM&H, Puducherry and thereafter in the CCRAS, New Delhi, an autonomous body, as his lien on the post had already been lost. Secondly, grant of higher pay-scale to the respondent no.4 was totally illegal. The post of which the pay-scale was granted to the respondent No.4, was of doctors, who were discharging clinical duties in hospitals. The case of the respondent No.4 was not similar. In fact, a wrong paragraph from the recommendations of the Commission was relied upon to grant him benefit. Thirdly, one of the officers recruited and working in the same cadre and governed by the same Rules, was made ex-cadre without there being any legal justification therefor and without following the due process of law. Even in the

16 O.A. No.3062 of 2017

order creating a separate cadre for the respondent No.4, the only reason assigned was that he had been granted a higher pay-scale. The prayer made by the appellants is that the orders passed by the High Court and the Tribunal be set aside, the prayers made by the appellants in the Application[17] filed before the Tribunal be granted and as a consequence thereof, orders dated 13.12.2006 and 20.04.2007 issued by the Directorate be set aside or in the alternative, the appellants being governed by the same set of Rules and discharging the same functions, be granted the same pay-scales and allowances as has been granted to the respondent No.4.

24. Learned counsel appearing for the Union of India, submitted that after being selected as an Ayurvedic Physician in Directorate of ISM&H, Government of Puducherry, in the pay scale of ₹8000-13500, the respondent No.4 was relieved from CSTT w.e.f. 10.06.2005. However, his lien was maintained. After being relieved from the Directorate of ISM&H, Puducherry on 21.07.2005, respondent NO. 4 joined back in CSTT on 22.07.2005. He was again relieved on 05.09.2005 as he was selected as a Medical Officer (Ayurveda) in the Directorate of Daman and Diu, Medical and Health Services in the pay scale of ₹8000-13500. Even at that time, his lien was maintained in the CSTT. While in service in the Administration of Daman and Diu, the respondent no.4 applied for a No Objection Certificate and the same was granted to him on 18.11.2005 by CSTT to appear in the interview to be held on 19.11.2005, for the post of Research Officer in CCRAS, New Delhi. At that time, he was serving with the Administration of Daman and Diu. After he was selected as a Research Officer in the CCRAS, he sought permission from CSTT to join CCRAS by 30.01.2006. He was relieved from the post of Medical Officer (Ayurveda) in the Administration of Daman and Diu w.e.f. 30.01.2006 and on the same day he joined in CSTT. Further, he was relieved on the same day forenoon to join as Research Officer in CCRAS in the pay scale of ₹8000-13500. On the very same day, he made a request for maintenance of his lien in the CSTT. Pertinently, respondent No.4 got himself relieved from CCRAS in the afternoon on 17.01.2007 and joined at CSTT on 23.01.2007, in the forenoon.

17 O.A.No.874 of 2010

25. As regards grant of higher pay scale to the respondent No.4, it was submitted that a representation was made by him relying upon the recommendations of the Commission with reference to the qualification held by him and the duties being discharged. The matter was examined by the competent authority at different levels. It was granted approval by the Ministry of Finance as well. Considering the merit in the representation made by the respondent No.4, vide order dated 13.12.2006, the Directorate granted him the pay scale of ₹8000-13500 w.e.f. 18.01.1999. Subsequently, considering the fact that there was some error in the order, a later order was passed by the Directorate on 20.04.2007, in continuation to the earlier order dated 13.12.2006, as a result whereof the post on which the respondent no.4 was working, was declared ex-cadre. It was submitted that grant of a higher pay scale or declaration of a post as ex cadre could be done by way of an executive order which was passed with the approval of the competent authority. Learned counsel further submitted that the post on which the respondent No.4 is working, or the qualification required for the same are not equal to the qualifications required for the other post of Assistant Scientific Officer/Scientific Officer. This was the reason for grant of a higher pay scale to the respondent No.4.

26. In support of her arguments, learned counsel for the Union of India relied upon the judgment of this Court in **D.S. Parvathamma v. A. Srinivasan**[18]**.**

27. On his part, learned counsel for the respondent No.4 referred to the 1980 Rules as amended by the Notification F. No. 2-2/89-Admn., to Central Hindi Directorate, (Research Assistant) Recruitment Amendment Rules 1993. He submitted that in the schedule attached to the 1980 Rules, there are 74 posts of Research Assistants which were bifurcated as 45 for Hindi, 4 for regional languages, 25 for different subjects including Medicine. Essential qualifications for different posts have been prescribed in the aforesaid Rules. For some posts Master's Degree in subjects is required, whereas for the post requiring knowledge of engineering, the qualification required is only Diploma. For the post of Research Assistant (Medicine)

18 (2003) 4 SCC 705

degree in integrated system of Indian Medicine (Bachelor of Indian Medicine & Surgery/ Bachelor of Ayurvedic Medicine & Surgery) or Ayurveda/Pharmacy or equivalent from a recognized university or board is required. It is only the post of Research Assistant (Medicine) that a professional degree was required and that was not so for any other post. Hence, the argument advanced was that all these posts could not possibly be equated. As injustice had been caused to the respondent No. 4, it was corrected.

28. Learned counsel for the respondent No. 4 referred to the recommendations made by the Commission to submit that the pay scale to which the respondent No.4 is entitled, has to be the same as granted to the other officers working with the Central Government, having the professional qualification of a degree in ISM&H. He further submitted that the aforesaid recommendations mentioned that in the Fourth Central Pay Commission, the scale of pay of doctors shall be taken as ₹2200-4000 and a corresponding pay scale recommended by the Commission should have been granted to the respondent No.4. In terms of the Central Civil Services Rules 1997, as per the First Schedule, Part-A, the corresponding scale of ₹2200-4000 was 8000-13500. A representation dated 18.10.2000 was made by the respondent No.4 for grant of higher pay scale. The matter was examined at different levels and finally it was recommended that the respondent No.4 should be granted the same.

29. *Vide* order dated 20.07.2000, issued by the Directorate, the posts of Research Assistant and Assistant Education Officer in the CSTT were redesignated and upgraded scale of pay was granted. The post of Research Assistant was redesignated as Assistant Scientific Officer with pay scale of ₹6500-200-10500; Assistant Education Officer was redesignated as Scientific Officer with pay scale of ₹7500-250-12000. Scales were given effect from 01.01.1996. Vide order dated 13.12.2006, pay scale of ₹8000-13500 was granted to the Assistant Scientific Officer (Medicine) plus NPA w.e.f. 18.01.1999 as against the existing pay-scale ₹6500-10500. It was specifically mentioned therein that a degree in ISM&H is an essential qualification for the post of Assistant Scientific Officer (Medicine). As the respondent No.4 was the only Assistant Scientific Officer (Medicine) working in CSTT, a copy thereof was endorsed to him as well.

30. Learned counsel referred to an order of the Directorate dated 20.04.2007, issued in continuation of the earlier order dated 13.12.2006, clarifying *inter-alia* that the post of Assistant Scientific Officer (Medicine) in CSTT which was granted the upgraded pay scale of ₹8000-13500 plus NPA, will be an ex-cadre post.

31. Learned counsel for the respondent no.4 then referred to the report of the Sixth Central Pay Commission submitted in March 2008 with reference to the post of Assistant Scientific Officer (Medicine) in CSTT. He pointed out that as there were no promotional avenues for the post in question, Assured Career Promotion Scheme was recommended to alleviate the problem of stagnation. The post in future was recommended to be filled on a contractual basis. It was also recommended that the administrative machinery may consider revising the designation of the post appropriately to avoid any confusion vis-à-vis other similarly designated posts. The recommendations made by the Sixth Central Pay Commission were accepted by the Government.

32. *Vide* two separate Notifications issued by the Ministry of Human Resource Development dated 17.02.2014, two sets of Rules were notified by the Government. The first being titled as 'The Assistant Scientific Officer (Medicine) Rules, 2014[19] providing for 24 posts in different subjects with a pay scale of ₹9300-34800 plus Grade Pay ₹4600. *Vide* separate Notification, Rules titled as 'The Senior Scientific Officer (Medicine) Rules, 2014[20] were notified providing for a single post of Senior Medical Officer (Medicine) in the pay scale ₹15600-39100 plus Grade Pay ₹5400.

33. Learned counsel for the respondent No. 4 further referred to an order dated 26.08.2013, issued by the Department of Higher Education, MHRD, Government of India directing redesignation of the post of Assistant Scientific Officer (Medicine) in the pay scale ₹8000-13500 plus NPA as that of Senior Scientific Officer (Medicine).

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19 Assistant Scientific Officer (Medicine), Commission for Scientific and Technical Terminology, New Delhi, Recruitment Rules, 2014.

20 Senior Scientific Officer (Medicine), Commission for Scientific and Technical Terminology, New Delhi, Recruitment Rules, 2014.

34. In support of his arguments, learned counsel for the respondent no.4 relied upon the judgments of this Court in **A.K. Dass v. National Federation of Cooperative Sugar Factories Ltd. and others**[21], **Union of India and others v. M.V. Mohanan Nair**[22], **and Punjab State Power Corporation Limited and another v. Bal Krishan Sharma and others**[23].

35. In response, learned senior counsel for the appellants submitted that para 52 of the recommendations made by the Commission pertained to the officers possessing a degree in ISM&H and working with the Ministry of Health and Family Welfare on Group 'B' and 'C' posts. Respondent No.4 may have the same qualification, but he was not in the Health Department, practicing as a doctor. She further submitted that before the representation made by the respondent No.4 was accepted, earlier thereto, similar representations made by him were rejected. She further referred to the stand taken by the Union of India before the Tribunal in a challenge made by the respondent No.4 to the withdrawal of non-practicing allowance granted to him earlier. It was stated that the respondent No.4 is not governed by the (Senior Scientific Officer (Medicine), Commission for Scientific and Technical Terminology, New Delhi, Recruitment Rules, 2014) as those Rules are meant for fresh direct recruitment. Further, the stand was that the Office Memorandum dated 07.07.2017 is not applicable to the respondent No. 4 and therefore, the subsequent order of the Chairman, CSTT dated 26.07.2017 withdrawing NPA granted to the respondent No. 4 was non-est in the eyes of law. She referred to the judgment of this Court in **Ajit Kumar Bhuyan and others v. Debajit Das and others**[24], in support of her arguments.

36. We have heard learned counsel for the parties and perused the relevant referred record.

37. Before we proceed to deal with the respective arguments raised by learned counsel for the parties, we deem it appropriate to sum up the facts of the case in a chronological order.

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21 (1994) 2 SCC 520.
22 (2020) 5 SCC 421.
23 (2022) 1 SCC 322
24 (2019) 12 SCC 275

37.1 The appellants No.2 to 6 joined CSTT as Research Assistants on various dates as detailed below:

Sl. No.	Name of the Officer/Discipline	Date of Joining
2	M.L. Meena (Civil Engg.)	30.11.1995
3	A.N. Selwatkar (Zoology)	01.01.1996
4	Dr. B.K. Singh (Physics)	21.12.1995
5	Deepak Kumar (Comp. Sc.)	28.11.1996
6	S.K. Chaudhary (Eix.Engg.)	06.02.1997

37.2	18.01.1999	Respondent No. 4 joined CSTT as a Research Assistant in the pay scale of ₹6500-10500.
37.3	20.7.2000	The post of Research Assistant was re-designated as that of Assistant Scientific Officer.
37.4	18.10.2000	Respondent No. 4 submitted a representation for upgradation of his pay, which was rejected. Subsequent representations filed by the respondent No. 4 for upgradation of his pay were also rejected.
37.5	08.06.2005	Respondent No. 4 was relieved by the CSTT to enable him to join the Directorate of ISM&H, Puducherry as a Ayurvedic Physician.
37.6	12.6.2005	Respondent No. 4 joined the Directorate of ISM&H, Puducherry as a Ayurvedic Physician in the pay scale of 8000-275-13500.
37.7	21.07.2005	Respondent No.4 was relieved by the Directorate of ISM&H, Puduchery.
37.8	22.07.2005	Respondent No. 4 joined back in CSTT, Delhi.

37.9	05.09.2005	Respondent No. 4 was relieved by the CSTT, Delhi.
37.10	06.09.2005	Respondent No. 4 joined as a Medical Officer (Ayurveda) in the Directorate of Daman & Diu, Medical and Health Services in the pay scale of ₹8000-275-13500.
37.11	28.01.2006	Respondent No. 4 was relieved by the Directorate of Daman & Diu, Medical & Health Services as Medical Officer (Ayurveda) in the pay scale of 8000-275-13500.
37.12	30.01.2006.	Respondent No. 4 rejoined CSTT, Delhi. On the same day, respondent No. 4 was relieved by the CSTT and he joined CCRAS, Delhi as a Research Officer (Ayurveda) in the afternoon in the pay scale of 8000-275-13500.
37.13	13.12.2006	Upgradation of pay was granted to the respondent No. 4. w.e.f. 18.01.1999. The pay scale of the respondent No. 4 was upgraded from 6,500-10,500 to 8,000-13,500 plus NPA.
37.14	17.01.2007	Respondent No. 4 was relieved from the CCRAS, Delhi.
37.15	23.01.2007	Respondent No. 4 joined the CCST as Assistant Scientific Officer (Medicine).
37.16	20.04.2007	Post of Assistant Scientific Officer (Medicine) was declared as an ex-cadre post.

37.17	14.08.2008	Representation was made by the appellants for grant of the same pay scale as was granted to the respondent No. 4, as they belonged to the same cadre.
37.18	2008	The representation filed by the appellants was not accepted. OA No. 2443 of 2008 was filed by the appellants seeking direction to the official respondents for grant of the same pay scale, as was granted to the respondent No. 4.
37.19	10.08.2009	The OA filed by the appellants was withdrawn with liberty to them to file a representation before the competent authority.
37.20	04.09.2009	A comprehensive representation was made by the appellant No. 1. OA No. 874 of 2010 was filed by the appellants.
37.21	04.01.2010	The aforesaid representation was rejected stating that the post of the respondent No. 4 had been declared as an ex-cadre post, hence, equation of pay is not possible.
37.22	17.03.2010.	The aforesaid OA was dismissed as withdrawn with liberty to the appellants to file a fresh application challenging the order dated 04.01.2010.
37.23	2010	OA No. 1762 of 2010 was filed by the appellants impugning the order dated 4.01.2010.
37.24	01.06.2010	The aforesaid OA was dismissed by the Tribunal.

37.25	03.08.2010	Review Application No. 203 of 2010 against the order of the Tribunal dated 01.06.2010 was also dismissed.
37.26	17.05.2011	A writ petition was filed before the High Court of Delhi challenging the orders dated 01.06.2010 and 03.08.2010.
37.27	15.07.2011	The said writ petition was dismissed by the High Court. It is the aforesaid order that has been impugned before this Court.

38. Following were the developments during the pendency of the matter before this Court:

38.1	26.07.2017	NPA granted to the respondent No. 4 was withdrawn. OA No. 3062 of 2017 was filed by respondent No. 4 impugning the order of withdrawal of NPA.
38.2	31.07.2019	The aforesaid OA filed by the respondent No. 4 was dismissed by the Tribunal.
38.3	2019	Writ Petition No. 12260 of 2019 was filed by the respondent No. 4 challenging the order dated 31.7.2019, passed by the Tribunal.
38.4	15.02.2023	The aforesaid writ petition was disposed of granting liberty to the respondent No. 4 to make a representation against withdrawal of NPA.

39. From a perusal of the aforesaid facts, it is evident that immediately after joining as a Research Assistant, the respondent No. 4 started making representations for upgradation of his pay scale, which

was rejected a number of times. Apparently, being a favourite employee, he started the process of going on deputation to different organisations. On three occasions, he was granted NOC and was selected also. While working at the CSTT, the respondent No. 4 was getting pay in the scale of ₹6500-10500, but on deputation, the pay scale was ₹8000-13500. It appears that the sole object of going on deputation was to get a higher pay scale.

40. From the aforesaid conduct of the respondent No. 4, it is evident that despite being selected as a Research Assistant [re-designated as Assistant Scientific Officer (Medicine)], he was not interested to serve his parent organisation but was more interested in getting a higher pay scale while going on deputation. He came back to his parent department on 23.01.2007, only after the post on which he was working with the CSTT was granted a higher pay scale of ₹8,000-13,500, from the date of his appointment. Even the recommendations of the Commission which were relied upon to give a higher pay scale to the respondent No. 4, were not strictly applicable to him.

41. The chain of events which happened thereafter is more interesting. Representations were made by the appellants claiming that the respondent No. 4 having been granted a higher pay scale along with NPA, though not practising as a doctor, they were also entitled to the same as they were appointed on the same post, governed by the same Rules and were discharging the same duties. The nomenclature of the post and the duties were different only with reference to the subjects they were dealing with. Respondent No. 4 had joined the service as a Research Assistant (Medicine) in pursuance of an advertisement issued, defining the qualifications, duties and the scale for the post. The result of grant of higher pay scale to him from the date he joined service would mean that even for the intermittent period when he remained in service with CSTT, though he remained on deputation for quite some time in a higher pay scale, he also got a higher pay.

42. The favouritism shown to the respondent No. 4 is evident from the fact that a portion of recommendations made by the Commission which were relied upon to grant him a higher pay scale, were with

reference to the Indian System of Medicines and Homeopathy for the Medical Officers working at different levels. Admittedly, respondent No. 4 was neither appointed nor was he working as a Medical Officer, though his qualification may have been the same. Non-application of mind by the respondent No. 1-Union of India is evident from the fact that though he was not practising in Medicine, respondent No. 4 was even granted NPA which is granted to doctors who are not allowed to carry on private practice while working as Medical Officer.

43. Para 52.32 to 52.34 of the report of Commission is extracted below:

"PHYSICIANS OF INDIAN SYSTEMS OF MEDICINE & Homeopathy (ISM&H)

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OUR RECOMMENDATIONS

Central Indigenous & Homoeo Medical Service	52.32. The Tikku Committee recommended a separate organised service for ISM&H. The Consultancy Study has suggested integration of ISM&H doctors in the CHS with equal opportunity for high level posts. The Administrative Ministry has underline the need for building organised career management at par with GDOs of the CHS. To carry through the objectives of a separate Department of ISM&H, we recommend that an organised service, called the Central Indigenous & Homoeo Medical Service, may be constituted to include the 182 practitioners, and other physicians of these systems in the Ministry of Labour, Deptt. Of Coal, Armed Forces Ayurveda Dispensary and the Pharmacopoeia Labs of Indian Medicine and Homoeopathy, carrying medical qualifications

Parity with GDMOs

52.33 ISM&H Physicians have parity at entry level with Allopathic doctors. But for career progression they have to wait for vacancies. The Fourth CPC recommended parity of Physicians of ISM&H with GDOs of CHS, by upgrading existing post in the scale of Rs.650-1200 to Rs.2200-4000, provided that the incumbents possess degrees. The Tikku Committee also recommended similarly. But both were silent regarding career progression. The Consultancy Study as well as administrative Ministry have recommended that parity of ISM&H Physicians with Allopathic doctors. As specialisations are yet to emerge with concrete foundation in ISM&H, we recommend a general parity with GDOs as follows:

Level	Designation	Scale	Residency
3rd ACP	Chief Medical Officer (Selection Grade)	Rs.4500-5700	-
2nd ACP	Chief Medical Officer	Rs.3700-5000	4 yrs.
1st ACP	Senior Medical Officer	Rs.3000-4500	5 yrs.
Entry	Medical Officer	Rs.2200-4000	4 yrs.

Career progression beyond the selection grade will continue to be based on vacancies. Fourth CPC upgraded only

those degree holders who were in the scale of Rs.650-1200 (pre-revised). The administrative Ministry has supported the demand for a general upgradation as was done by Third CPC for Allopathic Doctors and Fourth CPC for Veterinarians. As the educational requirement of the post are the same for MBBS doctors, we may recommend that all posts requiring medical practice in ISM&H and a degree in ISM&H as the minimum qualification be placed in the entry scale of Rs.200-4000 and all the posts except those in Delhi Admn. be merged in the Central Indigenous & Homoeo Medical Service.

Allowances

52.34. The Third CPC had recommended withdrawal of NPA from the ISM&H Doctors. However, the Fourth CPC granted it at rates at par with Allopathic Doctors. As the Physicians of ISM&H are equally concerned with Medical practices teaching and research, we recommend that allowances and facilities granted to GDOs of Allopathic stream should also be granted to Physicians of the ISM&H on the same terms and conditions."

44. It will not be out of place to mention here that in the recommendations made by the Commission, there was a separate paragraph 71.16 that dealt with employees working in CSTT. However, the same was ignored by the respondent No. 1-Union of India.

45. Further, paras 71.15 to 71.17 of the report of the Commission are extracted below:

"COMMISSION FOR SCIENTIFIC AND TECHNICAL TERMINOLOGY AND CENTRAL HINDI DIRECTORATE

Organisation and functions

71.15 The main task of the Commission for Scientific and Technical Terminology (CSTT) is the evolution of scientific and technical terminology in Hindi and other Indian languages, whereas for Central Hindi Directorate, it is compilation of bilingual and trilingual dictionaries. The nature of the work in the two organisations is basically academic and research oriented. We therefore recommend that the two organisations should be converted into autonomous institutions. The pay scales and promotion prospects of research staff in both the organisations have suffered over a period of time. Department of Education appointed various expert Committees from time to time but the recommendations have not been implemented so far. In this context, we have reviewed the entire cadre structure of the two organisations.

Our Recommendations CSTT

71.16. We feel that the cadre structure of the technical post in the Commission for Scientific & Technical Terminology needs to be re-arranged. The post of Research Assistant (Rs.1640-2900) should be redesignated as Assistant Scientific Officer in the pay scale of Rs.2000-3500, in view of the nature of their work and the fact that the recruitment qualification is a post graduate degree. The pay scale of Assistant Education Office/ Scientific Officer may be revised to the

replacement scale of Rs.2500-4000, while Assistant Director (Rs.2200-4000) will continue in the same pay scale and will be given the corresponding replacement scale. While the initial recruitment at Research Assistant level shall be made by direct recruitment, the posts of Assistant Education Officer and Scientific Officer should be filled by promotion. The post of Assistant Education Officer will also then be redesignated as Scientific Officer. For the grade of Asstt. Director, the method of recruitment should be made 50% by promotion and 50% by direct recruitment.

Central Hindi Directorate

71.17 The cadre of research posts in the Central Hindi Directorate needs a similar re-organisation. The pay scales and designation of Research Assistant (Rs.1640-2900) and Assistant Education Officer (Rs.2000-3200) should be changed to Assistant Research Officer and Research Officer in the scales of Rs.2000-3500 and Rs.2500-4000 respectively. It is also recommended that the pay scale of General Editor (Hindi) should be revised to Rs.3700-5000, but it should continue to be filled by direct recruitment. The initial recruitment at Research Assistant level should be made 100% by direct recruitment and those at Research Officer and Deputy Director/Regional Director level should be by promotion. The method of recruitment at Assistant Director level should be changed to 50% by promotion and 50% by direct recruitment."

46. However, when the authorities realised their mistake, to cover up the same, order dated 20.04.2007 was issued and the post of Assistant Scientific Officer (Medicine), the only one in the cadre manned by the respondent No. 4, was declared to be an ex-cadre post. The reason assigned was that higher pay scale had been granted to the respondent No. 4. There was no corresponding amendment in the Rules or otherwise as the post of Assistant Scientific Officer (Medicine) was still governed by the 1980 Rules which govern the parties. No justification for this action was offered by the respondents at the time of hearing of the matter.

47. Still further, the authorities realised that the post on which respondent No. 4 was working was not that of a Medical Officer with which his pay scale was equated and he was granted NPA. The order dated 26.07.2017 vide which higher pay scale and NPA was granted to the respondent No. 4, was withdrawn to the extent of grant of NPA. The said order was challenged by the respondent No. 4 by filing an Original Application before the Tribunal. The same was dismissed by the Tribunal on 31.7.2019. The stand taken therein by the official respondents was that the respondent No. 4 was working on the post of Assistant Scientific Officer (Medicine) in CSTT, where his duties could not be equated with the doctors working in the Ministry of Health and Ministry of AYUSH. As they are barred from private practice, they were granted NPA. The writ petition challenging the aforesaid order of the Tribunal was dismissed as withdrawn with liberty to move a representation before the competent authority. The matter remains here as none of the counsel pointed out any subsequent development.

48. Apparently, the authorities favouring the respondent No. 4 and the respondent No. 4 together were not able to achieve the objective of granting a higher status and pay scale to him. By every action, the respondent No. 4 generated litigation and planned new devices to steal a march over other similarly situated as him.

49. At the time of recruitment of the appellants as well as the respondent No. 4, they were governed by the 1980 Rules. The post was designated as that of a Research Assistant. It provided for different subjects including Medicine. *Vide* order dated 20.07.2000, the Government re-designated the post of Research Assistant to that of

Assistant Scientific Officer. As is evident from the notification dated 19.11.1993, the mode of recruitment provided for the post was 75% by way of direct recruitment/transfer and 25% by way of transfer on deputation. There was no other post.

50. *Vide* order dated 26.08.2013, issued by the Government of India, Ministry of Human Resources Development, the post of Assistant Scientific Officer (Medicine) was re-designated as Senior Scientific Officer (Medicine). Needless to add that the post of Assistant Scientific Officer (Medicine) was still governed by the 1980 Rules, where no designation of Senior Scientific Officer (Medicine) was available. No other set of Rules were referred to as on the date of issuance of the aforesaid order, by which the new post would be governed.

51. The intention of the authorities who went out and out to favour the respondent No. 4 so as to grant him higher pay scale, was now sought to be achieved by notifying a separate set of Rules for him. Two set of Rules were notified on 17.02.2014, namely, Assistant Scientific Officer (Medicine) Rules 2014 and Senior Scientific Officer (Medicine) Rules, 2014. There is nothing provided in the Assistant Scientific Officer (Medicine) Rules, 2014, notified on 17.02.2014 to show that till the framing of the aforesaid Rules, any earlier Rules governing the post had been repealed. Rule 2 thereof provided for the number of posts with classification as per Schedule attached therewith. In the Schedule, the name of the post was mentioned as Assistant Scientific Officer[25]. The only difference between the 1980 Rules and Assistant Scientific Officer (Medicine) Rules, 2014 was that in the earlier Rules, in the column of post, subjects such as Biochemistry, Biotechnology and Microbiology and the words *'or any other subject as per the requirement'* were not there. The classification of the post was same. The method of recruitment was provided as direct recruitment. Only the subject of Medicine was deleted but the title of the Rule was Assistant Scientific Officer (Medicine) Rules, 2014.

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25 Assistant Scientific Officer (Agriculture, Anthropology, Archaeology, Biochemistry, Biotechnology, Botany, Chemistry, Commerce, Drawing and Painting, Economics, Education, Engineering (Civil, Electrical, Computer Science, Mechanical, Electronics, Textile, Mineral, Leather Technology), Geography, Geology, Home Science, Journalism, Library Science, Linguistics, Management, Mathematics, Philosophy, Physics, Political Science, Psychology, Public Administration, Sociology, Zoology or any other subject as per the requirement.

52. As far as Senior Scientific Officer (Medicine) Rules, 2014 are concerned, the same were notified only for one post with higher pay scale as compared to the Assistant Scientific Officer (Medicine) Rules, 2014. The qualification prescribed therein for the post was the same, as was provided for in the 1980 Rules that governed the post of Assistant Scientific Officer, which included the subject Medicine also. The method of recruitment provided in the above Rules was by way of direct recruitment.

53. Notification of Senior Scientific Officer (Medicine) Rules, 2014 dated 17.02.2014 issued only to deal with a single post of Senior Scientific Officer (Medicine) amply demonstrates that the preparation for granting undue benefit to the respondent No. 4 had started well in advance. Firstly, the post of Assistant Scientific Officer (Medicine) was re-designated as Senior Scientific Officer (Medicine) and thereafter, separate Rules were notified for that post.

54. As has already been noticed in the preceding paragraphs, immediately after joining as a Research Assistant (later on re-designated as Assistant Scientific Officer), the respondent No. 4 started making representations for granting him higher pay scale. However, when his request was not accepted, he went on deputation thrice to different places in the higher pay scale. Finally, his request for grant of higher pay scale was accepted. How a single person in the same cadre on the same post governed by the same set of Rules was granted a higher pay scale solely by relying upon the recommendations made by the Commission, which were not applicable. The other members of the cadre (appellants) had raised objections to this.

55. Then the case took a new turn. Without there being any amendment in the Rules, firstly the post of Assistant Scientific Officer (Medicine) was declared ex-cadre on 20.04.2007 and secondly, the NPA granted to the respondent No. 4, though he was not practising as a doctor, which was withdrawn on 26.07.2017. Though the appellants had not got any relief either from the Tribunal or the High Court, but still there was a sword hanging on the head of the respondent No. 4 on account of getting undue benefit. Firstly, the post of Assistant Scientific Officer (Medicine) was re-designated as Senior Scientific Officer (Medicine) vide order dated 26.08.2013 and thereafter, Senior Scientific Officer (Medicine) Rules, 2014 were framed for a single post of Senior Scientific Officer (Medicine) in CSTT. There is no

document referred to from the record that the respondent No. 4 was ever appointed as a Senior Scientific Officer (Medicine) in terms of the Senior Scientific Officer (Medicine) Rules, 2014, which provided only direct recruitment as a mode of recruitment. Even the stand taken by the Government in the Original Application filed by the respondent No. 4 before the Tribunal challenging the withdrawal of NPA was that the post under the Senior Scientific Officer (Medicine) Rules, 2014 could be filled by way of direct recruitment only. It was the specific stand of the Government that Senior Scientific Officer (Medicine) Rules, 2014 are not applicable to respondent No. 4. It is so evident from the order passed by the Tribunal.

56. If the Senior Scientific Officer (Medicine) Rules, 2014 are not applicable to the respondent No. 4, the post of the respondent No. 4 with the notification of Assistant Scientific Officer (Medicine) Rules, 2014 goes in vacuum, as this subject is not mentioned in the Assistant Scientific Officer (Medicine) Rules, 2014. As a result, he may be governed by the 1980 Rules. There was nothing pointed out or referred to at the time of the hearing regarding promotional avenues from the post of Assistant Scientific Officer (Medicine).

57. From the facts, as have been noticed above, in our opinion, the authorities were hand in gloves with the respondent No. 4 to somehow grant him a higher pay scale and repeatedly action was taken in that direction. If governed by the same set of Rules, a single post of the same cadre could not have been isolated and granted a higher pay scale by merely considering the qualifications prescribed for the post. There was no challenge laid down by the respondent No. 4 to the Rules under which he was recruited. He had accepted his appointment letter under the 1980 Rules and had joined service accordingly.

58. We do not find any justification to grant same scale to the appellants as was generously and wrongly granted to the respondent No. 4 by treating him equal to the Medical Officer working in the Ministry of Health and Family Welfare. As even that scale was wrongly granted to him, there was no justification for grant of higher pay scale to the respondent No. 4 vide order dated 13.12.2006, with effect from 18.01.1999, i.e., the date of his initial appointment. The same was certainly illegal and cannot withstand in judicial scrutiny.

59. As a consequence, the impugned orders passed by the Tribunal and the High Court are quashed. The order dated 04.01.2010 justifying the benefits granted to respondent No. 4 is set aside. As a result, even the appellants are not held entitled to higher pay scales as were granted to respondent No. 4.

60. Since during the interregnum, the respondent No. 4 had been unjustifiably paid salary in the higher pay scale, one option could be that whatever had been paid to him till date, be left as such and his pay could be directed to be re-fixed from a future date. However, having regard to the level of the post of the respondent No. 4 and the manner in which he was extended special treatment at every step and was granted higher pay scale, we do not propose to adopt that course as this is not a case of any bonafide error. It was a well-planned and deliberate infraction. We therefore direct recovery of the excess amount paid to the respondent No. 4, though in instalments and/or from the officer(s), who were directly involved in the decision-making process of granting undue benefit to the respondent No.4. Both should be made equally liable to reimburse the exchequer for the amount illegally disbursed to the respondent No.4. The exchequer should not be made to suffer on that account and either of two shall have to make good that loss of undue benefit granted to the respondent No. 4.

61. The appeal is allowed in the aforesaid terms.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.