

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 17.11.2022

% **Judgment delivered on: 04.01.2023**

+ **W.P.(C) 2129/2007**

DR.ANIL KUMAR GUPTA

..... Petitioner

Through: Petitioner in person.

versus

UOI & ORS.

..... Respondents

Through: Ms. Arunima Dwivedi, CGSC wiithh
Ms. Pinky Pawar & Mr. Aakash
Pathak, Advocates for Respondent/
UOI.

Mr. Gagan Mathur, Mr. Varun Kumar
& Mr. Shitanshu, Advocates for
Respondent No.2.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Writ Petition is arising out of orders dated 04.01.2006 and 21.02.2006 of the Ld. Central Administrative Tribunal, Principal Bench, New Delhi (CAT) passed in O.A. No. 2376/2004 and R.A. No. 32/2006 respectively ("Impugned Orders").

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2. The Tribunal vide Impugned Orders dated 04.01.2006 & 21.02.2006 has declined to interfere with the orders dated 24.07.2003 & 15.10.2003 passed by the Respondents by which the pay of the Petitioner was fixed in the pay scale of Rs.6500-10500 w.e.f. 01.01.1996 and also declined to grant a pay scale of Rs.8000-13500 w.e.f. 01.01.1996 to the Petitioner.

3. The Petitioner before this Court has prayed that the Impugned Orders be quashed and set aside. Further, a writ/direction/order be issued to the Respondent to revise the pay of the Petitioner and place him in the Pay Scale of Rs.8000-13500 w.e.f. 01.01.1996 and to grant him all consequential benefits emanating from said revision of pay scale.

4. The Petitioner before this Court is a retired employee. He started his service career by joining Indian Council of Agricultural Research (ICAR) on 20.04.1981 as Technical Assistant (AH) T-II-3, in the pay scale of Rs.425-700. The Petitioner attained the age of superannuation on 06.01.2004.

5. The brief facts of the case relevant for adjudication of this present petition arise out of recommendations of the Central Pay Commissions and subsequent orders passed by governmental departments revising pay scales of several posts.

6. As per the recommendations of the 4th Central Pay Commission, the pay of the Petitioner was revised to Rs.2000-3500 w.e.f. 01.01.1986 by an Order dated 08.06.1987. However, the pay scale granted to the Petitioner was withdrawn by an order of the Respondents dated 10.03.1989.

7. The Petitioner being aggrieved by the withdrawal of pay scale of Rs.2000-3500 preferred an Original Application before the CAT, New Delhi. The CAT set aside the order passed by the Respondents vide judgment dated 26.05.1998, restoring the pay scale of the Petitioner to Rs.2000-3500 with all consequential benefits and continuance in pay scale w.e.f. 01.01.1986. The Respondents being aggrieved by the order passed by the CAT preferred W.P. (C.) No. 625/1998. The same was dismissed by the High Court on 18.01.1999. Thereafter, an SLP was also preferred and the same stood dismissed as withdrawn by an Order of the Hon'ble Supreme Court on 09.08.1999. The Department thereafter also preferred an application for review of the Judgement of this Court dated 18.01.1999 in W.P. (C) 625/ 1998, bearing No.100/1999. The same also stood dismissed by an order dated 03.12.1999.

8. The Respondents, after the aforesaid litigation attained finality, implemented the order passed by the CAT dated 26.05.1998 vide consequential orders dated 17.05.2000 and 31.08.2000.

9. In 1996, the 5th Central Pay Commission had made recommendations regarding veterinary posts' pay scales and Non-Practicing Allowance (NPA). Subsequently, 'Part B' of the Revised Pay Rules, 1997 had notified the pay scale of Rs. 8000-13500 as the entry grade for all posts requiring a degree of Bachelor of Veterinary Sciences and Animal Husbandry (B.V.Sc. & A.H) with registration in the Veterinary Council of India as the minimum essential qualification.

10. The Government of India, keeping in view the recommendations of the 5th Central Pay Commission in respect of Veterinary Doctors possessing B.V.Sc. & A.H. with registration in the Veterinary Council of India granted the pay scale Rs.8000-13500 w.e.f. 01.01.1996, however, the higher pay scale was granted to incumbents holding the veterinary posts having the qualification of B.V. Sc. & A.H. Degree or any other equivalent degree duly recognized by the Veterinary Council of India under the First Schedule to the Act and the posts which were placed in the pay scale of Rs. 2000-3500 subsequent to recommendations of the 4th Pay Commission. It is made clear that the Office Memorandum dated 04.05.1999 was for General Duty Medical Officers and not for persons holding technical post like the Petitioner who was holding the post of Technical Assistant in T-5 Grade.

11. On 09.10.1997, the governing body of the ICAR held its 175th Meeting. Therein, it was resolved to adopt the recommendations of the 5th Central Pay Commission as approved by the Government of India under provisions of Bye-Law 30(A) of the ICAR Society.

12. From the records available before this Court, it is made out that pursuant to the resolution passed by the governing body of the ICAR in its 175th Meeting, a revision of pay scale of the Non-Scientific Categories of the Council under the provisions of Bye-Law 30 (A) of the ICAR was brought into effect; and the Respondent No. 2 vide Order No. F. No.24(I)/97-Cdn. (A&A) dated 04.12.1997 adopted the corresponding revised pay scales of existing pay scales.

13. It is the case of the Petitioner that though the Petitioner was granted NPA @ 25% of basic pay, he was placed in the pay scale of Rs.6500-10500 instead of the scale of Rs.8000-13500. The Petitioner being aggrieved by grant of pay scale of Rs.6500-10500 instead of Rs.8000-13500 protested the said revision, however, the ICAR rejected the Petitioner's representations vide Order dated 15.10.2003 on the ground that the higher pay scale of Rs.8000-13500 cannot be granted to him, since the same is not covered under the Technical Service Rules.

14. Aggrieved by the rejection of his representations for a grant of a higher pay scale of Rs. Rs.8000-13500, the Petitioner herein preferred Original Application No. 2376/ 2004 before the CAT. The same was dismissed by an order dated 04.01.2006. The Petitioner thereafter preferred a Review Petition i.e. RA. No.32/2006 in the aforesaid O.A. and the same also stood dismissed by the Ld. CAT on the ground that there was no error apparent on the face of the record and there was no new important material and evidence uncovered which was not in the knowledge of the Petitioner or could be produced by him with exercise of due diligence.

15. Against the Impugned Orders, the Petitioner has approached this Court expressing his grievance that the CAT has wrongly rejected the claim of the Petitioner for grant of higher pay scale i.e., Rs.8000-13500.

16. The Petitioner has submitted that Bye-Law 30(A) of the ICAR states that the Service and Financial rules of the government shall apply mutatis-mutandis to employees of the ICAR. Further, the decision of the Director of Finance of Respondent No. 2 contained in communication dated 04.12.1997

arbitrarily deviated from the original decision of the governing body's stand regarding revision of pay. It was submitted that the Director of Finance of the ICAR lacks the authority to take a stand in deviation from that of the governing body. Further, the governing body decided to implement the recommendations of the 5th Central Pay Commission in the same pattern as that of the Central Government.

17. It was submitted by the Petitioner that the action/ non-action of the Respondents denying to the Petitioner the revised Pay Scale of Rs. 8000-13500 w.e.f. 01.01.1996 is clearly a case of hostile discrimination since similarly situated persons in sister departments i.e., Department of Animal Husbandry and Dairying (DAHD) under the same Ministry i.e., the Ministry of Agriculture have already been granted a revised Pay Scale of Rs. 8000-13500. Further, the sole basis for granting the aforesaid Pay Scale was registration with the Veterinary Council of India and holding a degree of B.V.Sc. & AH.

18. It was submitted by the Petitioner that the Respondents vide their letters dated 13.03.2002 & 15.10.2003 wrongly and irrationally rejected the demand of the Petitioner for grant of Pay Scale of Rs. 8000-13500 on an erroneous assumption that the said scale has only been allowed by the Government of India to veterinary officers who work in different ministries. Further, it was submitted that it is wrong to reject the claims of the Petitioner on the premise that there is no post of veterinary officers in existence in the ICAR setup.

19. The Petitioner submitted that the CAT acted beyond its jurisdiction by re-adjudicating the issues regarding the Petitioner's educational qualifications and the post held by him. Further, the promotion policies of the Respondents were already decided and settled by the Hon'ble Delhi High Court while dismissing the Respondent's Writ bearing No. W.P. (C) 6253/ 1998. It was stated that the same had also attained finality subsequently.

20. It was further submitted by the Petitioner that Paragraph 3 of the Memo dated 04.05.1999 quoted by the CAT vide its Impugned Order in the O.A. in unequivocal terms mentioned that the incumbents of veterinary posts in respect of degrees of B.V.Sc./ B.Sc. (Vet.)/ B.V.Sc. & AH or any other equivalent degree which has been duly recognized by the Veterinary Council of India under the 1st Schedule of the Act have been prescribed as the minimum essential qualification for the posts that have been placed in the scale of Rs. 2000-3500 based on the recommendations of the 4th Central Pay Commission for veterinary posts. Subsequent to the 5th Central Pay Commission, these posts were granted the scale of Rs. 8000-13500.

21. It was submitted by the Petitioner that the CAT's observations in paragraph 10 of its Impugned Order in the O.A. states that the resolutions passed by the general body of the ICAR in its 175th meeting does not seem to have been adopted in the memorandum dated 04.05.1999 and the same is per se wrong. It was submitted that the meeting of the general body, ICAR, was held on 09.10.1997 whereas the Memo under reference was issued subsequently on 04.05.1999. Further, the observations in Paragraph 7 of the Impugned Order in the O.A. records that the revised/ replaced higher pay

scale of Rs.8000-13500 issued vide O.M. dated 04.05.1999 was extended to veterinary posts at the entry level only, is not correct. It was submitted that the same is contrary to the provisions of aforesaid O.M. and a cursory reading of paragraph 3 of the O.M. which is clearly explained in paragraph 6 of the CAT's Order clearly depicts that it is also applicable to those who are already holding veterinary posts.

22. It is submitted that if the aforesaid interpretation of the O.M. dated 04.05.1999 as given by the Ld. CAT is accepted then a discrepancy is bound to arise between the pay and pay scale of those already working and those who would be joining later as fresh recruits. It is submitted that such an interpretation would violate the fundamental rights of those who are already working on veterinary posts.

23. It is submitted by the Petitioner that the Impugned Order of the CAT in O.A. is erroneous to the extent that it has stated that there is no comparable post in the ICAR in respect of which a higher pay scale is ordered by the Government of India vide O.M. dated 04.05.1999. It is further submitted by the Petitioner that he is a B.V.Sc. & AH Degree holder and is also registered with the Veterinary Council of India. Further, he was in receipt of the pre-revised pay scale of Rs. 2000-3500 granted to him by the Respondents vide implementation of the 4th Central Pay Commission's recommendations along with NPA.

24. It was further submitted by the Petitioner that the Respondents did not issue any notice and did not give the Petitioner an opportunity to put forth his case before going ahead and issuing Order dated 24.07.2003. It has been

submitted that vide the Order the Respondents withdrew the Pay Scale of Rs. 2000-3500 and refixed the old Pay Scale of Rs. 1400-2300 w.e.f. 01.01.1996 and ordered that the Petitioner would continue to avail a higher pay scale of Rs. 2000-3500 w.e.f. 01.01.1996 on 'Personal Basis'. It is the Petitioner's case that this action of the Respondents was not only arbitrary but was also against the findings and observations of the Ld. CAT vide its Order dated 26.05.1998 in O.A. 1317/1991. It was submitted that it is settled law that an administrative order cannot override the effect of a Judgement/Judicial Order.

25. Lastly, it has been submitted by the Petitioner that denying the Petitioner the pay scale of Rs. 8000-13500 is a gross violation of his Fundamental Rights guaranteed under the Constitution.

26. Against the submissions of the Petitioner, the Respondents have filed a detailed reply before CAT as well as before this Court. At the outset it has been submitted that the present Petition is not maintainable, and the Petitioner would not be entitled to any relief from this Court. Further, the Impugned Order passed by the CAT is a speaking and reasoned Order vide which the Application of the Petitioner stood dismissed.

27. It has been submitted that the O.M. dated 04.05.1999 issued by the Ministry of Finance, Government of India would not be applicable to the Petitioner as the same was effectuated in relation to veterinary posts. It has been brought to the notice of this Court that the Petitioner was in the service of the ICAR as a Technical Employee and was not posted in any veterinary post in the services of ICAR.

28. It was submitted that the ICAR being a society registered under the Societies Registration Act, 1860, though funded by the Government of India, has its own rules and regulations for governance. Further, in the case of the Petitioner, him being a technical employee of the ICAR, his pay scales are determined by the Technical Service Rules of the ICAR. It was submitted that the same have a unique Career Advancement Scheme in accordance with which an employee gains promotion to the next grade after every five years irrespective of the availability of a post in the higher grade. It has been submitted that the ICAR Career Advancement Scheme provides for advancement to its employees under merit promotion to the next higher grade and scale of pay irrespective of the occurrence of vacancy in the higher grade/ scale of pay based on a flexible complimentary system. It has been stated that as per the Career Advancement Scheme of the ICAR, promotion is granted to an employee irrespective of availability of a vacancy and the same cannot be compared to veterinary posts of other departments of the Government of India. Therefore, the post and service to which the Office Memorandum dated 04.05.1999 would apply to in the absence of a conscious decision of the Respondent No. 2 i.e., ICAR Society, would not apply to its Technical Employees.

29. The Respondent No. 2 further submitted that the ICAR being a society registered under the Societies Registration Act, 1860 have adopted the corresponding pay scale only as per the recommendations of the 5th Central Pay Commission, although the ICAR was not bound to accept all of these recommendations. The Respondent No. 2 relied on Bye-Law 30(A) to this extent to state that, except in regard to matters for which specific and

financial rules are framed by the Government of India from time to time, it shall apply mutatis mutandis to the employees of the ICAR with regard to the matters concerning their service conditions.

30. It was submitted that the technical service of the Petitioner herein is in no manner comparable to that of a veterinary post in another government department as the technical service of the ICAR proposes a much better Career Advancement Scheme. Further, there is no post of a veterinary officer in the ICAR. The minimum eligibility criteria to be selected to the post of the Petitioner also differs from the eligibility criteria asserted by him. According to the Hand Book on Technical Service Rules of the ICAR, the essential qualification for a category II post is a three year Diploma/ Bachelor's Degree in the relevant field and not solely a Bachelor's Degree, as alleged by the Petitioner. It was stated that the Petitioner is a Technical Assistant (A.H.) for all intents and purposes. Further, his existing grade in the technical service is T-5 in the revised pay scale of Rs. 6500-10500. The Respondents have further stated that the entry grade of Technical Assistant/ Senior Technical Assistant in ICAR is T-3 in the revised pay scale of Rs.4500-7000 which was as per the recommendation of the 5th Pay Commission and the Technical Officers serving in ICAR are certainly not serving on veterinary posts. The Petitioner was selected for the post of Technical Assistant under Category II and as per the Hand Book on Technical Service Rules (Edition I), the essential qualification for category II post was 3 years Diploma/ Bachelor's degree in the relevant field and not the Bachelor's degree in Veterinary Sciences and Animal Husbandry as claimed by the Petitioner.

31. It was submitted that the Petitioner is not similarly situated to other employees in departments of the Government of India as alleged by him. Specifically, the Department of Animal Husbandry and Dairying under the Ministry of Agriculture, Government of India. It was stated that the aforesaid department is governed vide separate rules whereas the ICAR has its own rules for governance of Technical Employees.

32. It was submitted by the Respondent that the Petitioner was a Technical Employee of the ICAR availing a Pay Scale of Rs. 2000-3500 and its revision as per the recommendations of the 5th Central Pay Commission placed him in the scale of Rs. 6500-10500. The same has duly been granted to him.

33. It has been further submitted by the Respondent that the Petitioner is a Technical Assistant (AH) for all purposes and his existing grade in the Technical Service is T-5, in the revised pay scale of Rs.6500-11500 and, therefore, the Petitioner can by no stretch of imagination claim the higher pay scale as prayed by him.

34. In light of the aforesaid, the Respondents have made a prayer for the dismissal of the writ petition.

35. This Court has heard learned counsel for the parties at length and perused the record. The undisputed facts of the case make it very clear that the Petitioner before this Court was inducted in the services of ICAR on 20.04.1981 as a Technical Assistant (AH) T-II-3 Grade in the pay scale of Rs.425-700. His services came to an end on account of voluntary retirement w.e.f. 06.01.2004. It is also an undisputed fact that the Petitioner was never

appointed to a veterinary post in the services of ICAR. He was appointed as a Technical Assistant i.e., in the technical cadre.

36. The Petitioner was granted a pay scale of Rs.2000-3500 w.e.f. 01.01.1986 by an order dated 08.06.1987, however, the same was withdrawn by the Respondents vide an order dated 10.03.1989. The withdrawal of higher pay scale to the Petitioner was subjected to judicial scrutiny and the Original Application preferred by him i.e. O.A. No. 1317/1991 was allowed by an order dated 26.05.1998. The aforesaid order has also subsequently attained finality.

37. Pursuant to the recommendations of the 5th Central Pay Commission, the Petitioner was granted the pay scale of Rs.6500-10500 by the ICAR in accordance with the revised pay scale applicable to the T-5 Grade of Technical Service, not on that of any veterinary post.

38. The Petitioner before this Court is claiming placement in the grade of Rs.8000-13500 which is T-6 Grade for technical services i.e., one grade higher.

39. The Petitioner has heavily relied on an Office Memorandum issued by the Department of Expenditure, Ministry of Finance, Government of India dated 04.05.1999 to substantiate his case. The same is however with regards to revision of pay scale and NPA for veterinary posts. The Office Memorandum issued by the Government of India dated 04.05.1999 reads as under:

*“F.No.7(22) / E. III/99
Government of India*

*Ministry of Finance
Department of Expenditure
E.III Desk*

.....

New Delhi, dated the 4.5.1999

OFFICE MEMORANDUM

Sub: Revision of pay scale and revision of Non-Practising Allowance to Veterinary posts.

The undersigned is directed to say that the Fifth Central Pay Commission had recommended that posts requiring a degree in B.V.Sc. & A.H. with registration in the Veterinary Council of India as the minimum essential qualification may be placed in a common entry grade corresponding to the existing entry scale applicable to General Duty Medical Officers and Dental Doctors under the Government of India (Para 55.291 of the Report). Pursuant to this vide Part 'B' of Revised Pay Rules, 1997 the pay scale of Rs.8000-13,500 has been notified as the entry grade of all posts requiring a degree of B.V.Sc. & A.H. with registration in the Veterinary Council of India as the minimum essential qualification.

2. The Veterinary Council of India have clarified that Bachelor of Veterinary Science (B.V.Sc.)/B.V.Sc. A.H./B.Sc.(Vet.) were being awarded by various Universities in India and are recognised veterinary degree qualification included in the first Schedule to the Indian Veterinary Council Act, 1984. All these degrees are comparable and equal. However, after the approval of Minimum Standards of Veterinary Education Degree Course (B.V.Sc. & A.H.) Regulations, 1993, all Universities are awarding a uniform degree namely B.V.Sc.(Bachelor's Degree in Veterinary Science & Animal Husbandry).

3. A number of references have been received by this Ministry about the applicability of the revised scale of pay of Rs.8000-13,500 to veterinary posts in respect of which the minimum qualifications prescribed in the relevant recruitment rules are different from those mentioned in the Notification dated 30.9.1997. The Government have considered the matter and it has been decided that the administrative ministries concerned will modify the recruitment rules of veterinary posts which presently prescribe degrees of B.V.Sc. / B.V.Sc. & A.H. / B.Sc. (Vet) as the minimum essential qualification so that these conform to the qualification prescribed in the Notification dated 30.9.1997, all future recruitments being made only on the basis of the revised recruitment rules. In the meantime, incumbents of 'veterinary' posts in respect of which degrees of B.V.Sc. / B.Sc. (Vet) / B.V.Sc. & A.H. or any other equivalent degree which has been duly recognised by the Veterinary Council of India under the First Schedule to the Act have been prescribed as the minimum essential qualification and the posts have been placed in the scale of Rs.2000-3500 based on the recommendations of the Fourth Pay Commission for veterinary posts may be extended the scale of Rs.8000-13,500 subject to their being registered with the Veterinary Council of India.

4. Separate orders have also been issued by this Ministry vide O.M.No.No.7(25)/E.III(A)/97 dated 15.4.1998 regarding revised rates of Non-Practising Allowance attached to Veterinary posts. Para 3 of these orders stipulate that Non-Practising Allowance at the revised rate will be admissible only in respect of those veterinary posts requiring a degree of B.V.Sc. and A.H. with registration in the Veterinary Council of India as the minimum essential qualifications. In conformity with the decision taken in respect of the pay scale, NPA at the revised rate may also be granted w.e.f. 1.1.1996 to those incumbents holding veterinary posts and possessing the qualifications recognised under the First Schedule of the Act by the Veterinary Council of India, who were in receipt of NPA prior to 1.1.1996 and have now been rendered ineligible due to the above stipulation, provided they are registered with the Veterinary Council of India.

*Sd/-
(Madhulika P. Sukul)
Director”*

40. The case of the Petitioner is that since he was granted the pay scale of Rs.2000-3500 based upon the recommendations of the 4th Pay Commission, he is entitled for revision of pay scale in the grade of Rs.8000-13500 keeping in view the recommendations of the 5th Pay Commission and the afore produced Office Memorandum.

41. This Court has carefully gone through the aforesaid office memorandum and as stated on affidavit, the ICAR is a society registered under the Societies Registration Act and is governed by its own recruitment rules. It is apparent that the Petitioner is a Technical Employee of ICAR and is governed by its Technical Service Rules. Under the same, Technical Service Employees' careers are governed by its Career Advancement Scheme which entitles an employee to the next higher grade after every five years irrespective of availability of vacancy or a post in the higher grade. The Petitioner joined in the Technical Service of ICAR in Grade T-II-3 and was placed in Grade T-5 by virtue of this scheme. He has been rightly granted the pay scale of Rs.6500-10500 which is the revised corresponding pay scale for technical service T-5. He is claiming the grade of Rs.8000-13500 which is in the pay scale of grade T-6 and, therefore, the Ld. CAT was justified in arriving at a conclusion that the Petitioner is not entitled to the same.

42. Further, this Court is in agreement with the submissions of the Respondent that the Office Memorandum dated 04.05.1999 does not apply

to the Technical Employees of ICAR as the same has been issued for veterinary posts. The ICAR at no point of time has resolved to adopt the Office Memorandum of the Department of Expenditure, Ministry of Finance, Government of India, dated 04.05.1999.

43. The Petitioner also cannot be permitted to compare the employees working in other Ministries and Departments of the Government of India to his position as the ICAR society has an entirely different set up altogether. The promotional avenues are different and undisputedly, the Petitioner is not on any veterinary post working in the ICAR, he is a Technical Employee.

44. The ICAR in the 175th meeting of the governing body which was held on 09.10.1997 did resolve for revision of pay scales in the ICAR as per the recommendations of the 5th Pay Commission but at no point of time did it intend to adopt the Office Memorandum dated 04.05.1999.

45. The CAT, after considering the contentions raised by the parties has arrived at a conclusion that the Petitioner is not entitled for a higher pay scale as prayed by him. In the opinion of this Court, the Ld. CAT after perusing and considering the contentions of the Petitioner, proceeded to pass a speaking Order. The operative paragraphs of the order passed by the Ld. CAT read as under:

“8. The applicant joined this Technical service of ICAR in grade T-3 and presently he is in grade T-5 by virtue of career advancement scheme. He has already been placed in a higher grade of Rs.2000-3500 w.e.f. 1.1.1986 by virtue of his being a holder of a Bachelor degree/ BVSc. And AH T.5 is admittedly not the entry grade of the Technical Service of ICAR.

9. The respondent has placed on record the copy of the proceeding of 175 meeting of the governing body of ICAR Society held on 9.10.97 along with his written arguments which has stated as under:-

“Item” No.S-1: Revision of Pay Scales in the ICAR

The attention of SFC was drawn towards the fact that the Government has recently revised pay scales of the posts of Group A,B,C & D categories of staff w.e.f. 1.1.96. In terms of Bye-law 30(A) of the ICAR Society whereby the service and financial rules of the Government apply mutatis mutandis to the employees of the ICAR Society, the SFC agreed to the revision of the pay scales of the staff of the Non Scientific categories of the Council with effect from the same date and on the same pattern as in the Government. In case, it is found later that scales of pay that exist either at the Headquarters or in the Institutes which do not exist in the Govt. or any other anomaly observed during the course of its implementation, a view regarding them may be taken subsequently after the concurrence of SFC and GB. It was desired that the Council would work out the appropriate amount required for both the pay and allowances and the arrears to be paid and approach the Ministry of Finance for allocation of additional funds needed to implement the pay package, especially for paying the arrears to the employees.

The meeting ended with a vote of Thanks to the Chair.”

10. The resolution is passed for grant of replacement scales to the staff of the ICAR as per the recommendation of the 5th Pay Commission, on the basis of which the Government had revised the pay scale of its employees, was in accord with the

byelaws which had already been referred. It does not say that the Government order contained in office memorandum dated 4.5.99 has been adopted by the respondent to be applied to its employees also. Firstly, there is no comparable post in the ICAR in respect of which higher pay scales have been ordered by the Government of India vide office memorandum dated 4.5.99. Secondly, there is no decision of the ICAR Society that the office memorandum dated 4.5.99 would be applicable to the officers in technical services of the society. Thirdly the higher scale of Rs.8000-13500 was granted for the posts requiring a degree in B.V.Sc. and A.H. with registration in Veterinary Council of India as an entry grade to bring at par with entry grade of General Duty Medical Officers and the applicant, who is in the grade T-5, can by no stretch of reasoning be said to be holding a comparable post, particularly when grade T-5 is not the entry grade of the Technical Service of ICAR. The contention of the applicant that he was entitled to be given the benefit of office memorandum dated 4.5.99 is devoid of any merit.

11. Applicant has relied upon the judgment of the Hon'ble Supreme Court in P.K Ramachandra Iyer and others vs. Union of India and others etc. reported as 1984 SCC (L&S) 214 wherein it was held that ICAR was an instrumentality of the Central Government, and therefore, was amenable to writ jurisdiction under Article 32 of the Constitution of India. It is not a case here. The provision of Administrative Tribunal Act has been extended to cover the employees of ICAR and there is no dispute about it. The judgment, therefore, does not advance contention of the applicant.

12. Counsel for applicant then relied on Purshottam Lal vs. Union of India AIR 1973 SC 1088 wherein it was held that the implementation of the revised pay scales in a particular category of service from a date later than that recommended by the Pay Commission and thus non-implementation of its report only in respect of these persons amounted to violation of Article 14 & 16 of the Constitution of India. It also does not come to

the rescue of the applicant since the principle of law laid down was on distinguishable fact.

13. Applicant has also referred to *Baldev Singh vs. State of Punjab and others* 2004 (3) SCT 310 wherein Court was dealing with the case in which higher pay scale was granted to the petitioner only after intervention of the High Court and during the pendency of earlier writ petition recommendation of Third Pay Commissions were implemented but the higher pay scale as per these recommendations were denied to the petitioners on the ground that higher pay scale was ordered to be granted by the High Court after the issuance of the recommendation of the Commission. On these facts the Hon'ble High Court held that once the petitioners' claim for grant of selection grade was accepted by the High Court with retrospective effect it would be deemed to have been in pre-revised higher scale and therefore he was entitled to next higher pay scale as per Third Pay Commission's recommendations and he should not be deprived of the placement in the next higher scale on the ground that his claim was granted for grant of selection grade after the issuance of the recommendation of the Pay Commission. The facts as well as the law laid down are not applicable to the fact of the present case. The judgment therefore, is also of no help to the applicant.

14. The applicant also cited *Pawan Kumar vs. State of Haryana and others* 2003 (1) SCT 286 wherein it was held that once there was conscious decision for equation of pay scale by the Government or the competent authority, different pay scales cannot be prescribed for such posts at the time of subsequent revision of pay scales as it would be arbitrary and violation of Article 14 & 16 of the Constitution of India. It is not understood how the principles of law laid down in the judgment advance the contention of the applicant. The facts of the case in hand are totally different.

15. Lastly, the applicant has cited *Adminstrator of U.T. of Lakshadweep vs. Kunnashada Muthukoya* 2001 (1) ATJ 81

where a division bench of the Kerala High Court held that the revised pay scale on the recommendation of the 4th Pay Commission are to be fixed on the basis of the old pay scale drawn by an employee. It is not a case here. Applicant in fact has already been granted replacement scale as per the recommendation of the 5th Pay Commission.

16. As such none of the judgment cited by the applicant apply to the fact of the present case.

17. Conversely counsel for respondents had referred to the judgment of the Hon'ble Supreme Court in ICAR vs. Satish Kumar JT 1998 (3) SC 9. Respondent in the case was Scientist S-1 in the grade of Rs.700-1300 and the Service Rule provided for assessment and promotion etc. on the basis of the five years assessment. The respondent would have become eligible for next higher grade of Scientist-II in 1987. He was asked to submit his five years assessment for the year 1982-87. In the meantime revised pay scale of Scientist was introduced replacing the old scheme of assessment by new Career Assessment Scheme of the UGC w.e.f. 1.1.1986. Old scheme ceased to operate after 31.12.85. Not only the pay scales were revised but the Scientists were also given new designation and were brought at par of UGC as given in the judgment. OA was filed before the Tribunal and the question which fell for consideration was whether the respondent had acquired vested right for promotion under old scheme i.e., placing him in the higher grade of Scientist in the year 1987 under the rules which existed at that time or amended rules given effect retrospectively and take away the vested right already conferred on the respondent. The Tribunal stated that the applicant had acquired vested right under the old rules which could not be taken away by making amendment with retrospective effect. After examining the entire gamut of case law and the facts of the case, the Hon'ble Supreme Court held that the ICAR Society could frame rules laying down service conditions of certain employees and those rules were not statutory rules and could be amended by a resolution of statutory body. It was further held that when a decision was

taken by various committees and in consultation with the Ministry of Finance and UGC scale was granted from 1.1.1986, the challenge to such decision could not be entertained. Furthermore it was observed that no question of promotion was involved and any Scientist of S-1 grade having 12 years of service could go to the next higher grade irrespective of the fact if there was any vacancy in the higher grade or not. Though grant of such promotion was not automatic on completion of 12 years service, but it was further observed that it was not pleaded that any Scientist has been treated differently than the respondent after 1.1.86 and that the amended rules were applied to the entire Scientist without discrimination. So it was held that the action of the ICAR cannot be said to be violative of Article 14 & 16 of the Constitution of India. The order of the Tribunal was accordingly set aside. In the instant case also the ICAR has not adopted the OM dated 4.5.1999 to be applied to its Technical employees. Conversely it has rejected the claim of the applicant by a conscious decision. It is not stated that any other member of Technical Service had been granted higher scale in terms of OM dated 4.5.1999 and the applicant is discriminated against and Articles 14 and 16 of the Constitution of India have been infringed.

18. Having regard to the above discussion, we are of the considered view that the claim of the applicant has no merit. Accordingly, OA is dismissed but parties are left to bear their own costs.”

46. This Court has carefully gone through the order passed by the Ld. CAT and the documents on record. The Petitioner is trying to make an attempt to compare his case to that of veterinary posts. He was at no point of time appointed to a veterinary post. He was appointed as a technical assistant and at the relevant point of time he was working as technical assistant (AH), T-5 Grade. The corresponding higher pay scale based upon the recommendations of the 5th Central Pay Commission has already been

granted to him and his claim before this Court is for grant of higher pay scale of Rs.8000-13500 which is, in fact, the pay scale of the post of technical assistant of T-6 Grade.

47. Further, the Petitioner had even sought voluntary retirement on 06.01.2004 while he was holding the post of technical assistant (T-5 Grade) and, therefore, by no stretch of imagination can he be granted the pay scale of higher post i.e., Technical Assistant (T-6 Grade) as prayed for.

48. To substantiate his case for grant of a higher pay scale in the category of Rs. 8000 – 13500, the Petitioner had placed reliance on a catena of Judgements. Reliance has been placed on the Judgements of the Hon'ble Supreme Court in the case of *Union of India v. P.V. Hariharan & Anr.* (1997) 3 SCC 568 and *Union of India & Ors. v. N Murugesan Etc., Civil Appeal Nos. 2491-2492 of 2021, Judgement dated 07.10.2021*. In the considered opinion of this Court, the aforesaid Judgements would be of no use to the Petitioner. The case of *P.V. Hariharan (Supra)* was one wherein the Apex Court had in fact made observations against interference in Pay Scales without proper reasons. It was observed by the Hon'ble Supreme Court that interfering with Pay Scales is a serious matter and could have a cascading effect. It was held therein that unless a serious case of hostile discrimination was made out, Ld. Tribunals should refrain from delving into and revising pay scales which have been set. Orders which lead to interference have a serious impact on the public exchequer. In the opinion of this Court, the Petitioner has by no stretch of imagination been able to make out a case of hostile discrimination. Further, the case of *N. Murugesan Etc.(supra)* was one wherein the Respondent was aggrieved by the fact that

his tenure as Director General of the Central Power Research Institute was not extended, and the appeal was allowed *inter alia* on the ground of delay, laches and acquiescence. On the ground of approbation and reprobation too, it was held that the Respondent therein should not have been granted any relief by invoking Article 226 of the Constitution. In the opinion of this Court, the Judgement in the case of **N. Murugesan Etc.(supra)** is clearly distinguishable from the facts of the instant case. The dispute therein pertained to the extension of tenure of the Director General of the Central Power Research Institute, whereas herein the Petitioner is demanding a higher pay scale.

49. The Petitioner has further placed reliance on the Judgement of this Court dated 30.05.2011 in the case of **Union of India & Anr. v. Sh. Ram Kumar & Ors., W.P. (C) 4033/ 2011**. The same was a case wherein the Petitioners, while implementing the recommendations of the 5th Central Pay Commission, had allocated Diploma Holders and Non-Diploma Holder Radio Technicians in the Directorate of Coordination Police Wireless (“DCPW”) the same Pay Scale. Before the CAT, it was the contention of the Respondents in the case of **Sh. Ram Kumar (supra)** that the Pay Commission had in fact identified a distinction in Pay Scales for the aforesaid classes, however, the Petitioners had ignored the same. Further, they had been placed in a higher Pay Scale prior to the implementation of the 5th Central Pay Commission recommendations on account of them holding a Diploma/ Degree. The Ld. CAT therein had allowed the Application of the Respondents, directing the Petitioners to place the Respondents in the higher pay scale of Rs. 5000-8000/-. In the opinion of

this Court, the facts and proposition of law emanating out of the case of **Sh. Ram Kumar** (*supra*) are in no manner applicable to the instant case. The present case is one wherein the Petitioner is demanding a Pay Scale which he was not eligible to be granted in the first place. The Office Memorandum dated 04.05.1999 was never applicable to technical posts in the ICAR. Moreover, the Petitioner never attained T-6 Grade in his technical service and the ICAR is not even a department of the government.

50. The Petitioner has placed reliance on the case of **State of Haryana & Anr. v. Tilak Raj & Ors. (2003) 6 SCC 123**, contending that the findings in the said Judgement would be applicable to the instant dispute. In the opinion of this Court, this contention also stands devoid of any merits. The case was regarding daily wage helpers' plea for regularization of their services on account of services rendered over a long period of time. The Hon'ble Supreme Court in the aforesaid circumstances had laid down observations relating to the principle of 'equal work equal pay'. In the opinion of this Court, the case of **Tilak Raj** (*supra*) is clearly distinguishable on facts and the aforesaid principle of 'equal work equal pay' would also be inapplicable in the facts and circumstances of the present case.

51. Now we come to the submission of the Petitioner regarding the applicability of the Judgements in the cases of **Indian Council of Agricultural Research & Anr. v. Duryodhan Hiranman Ingole & Ors, 2010 SCC OnLine Bom 1771** and the case of **Indian Council of Agricultural Research v. Prem Dureja & Ors., 2012 SCC OnLine Del 3802**.

52. The case of ***Duryodhan Hiranman*** (*supra*) was one in relation to agricultural labourers who were employed for agricultural work in the farm of the National Research Center for Citrus, a body under the administrative and financial control of the ICAR. The services of the Respondents were terminated, and they challenged the same in a complaint before the Ld. Labour Court. The main question of law before the Division Bench of the Bombay High Court in the case of ***Duryodhan Hiranman*** (*supra*) was with regards to the jurisdiction of the Labour Court and Industrial Court under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“MRTU & PULP Act, 1971”). It was held therein that the MRTU & PULP Act, 1971 is applicable to industries in relation to which the appropriate government is the State Government. Prior to the LPA reaching the Division Bench, the Appellants had resisted the complaint on the ground that the appropriate government in relation to the Appellants was the Central Government, therefore, the Ld. Labour Court had no jurisdiction to entertain the complaint. It was in this backdrop that the Division Bench had laid down findings regarding the character of the ICAR. The Division Bench had held in favour of the ICAR and set aside the Judgement of the Ld. Single Judge in W.P. (C) 1434/1997 dated 17.04.2009. The findings and factual scenario in the case of ***Duryodhan Hiranman*** (*supra*) has no applicability to the questions and disputes raised in the instant Petition. The case herein is solely with regards to the eligibility of the Petitioner for grant of a higher pay scale.

53. The case of ***Prem Dureja*** (*supra*) relied upon by the Petitioner was a case wherein a judgement had been passed *ex-parte* against the

Respondents. The main issue before this Court was whether scientists working under the ICAR and particularly within the Indian Agricultural Research Institute (IARI) can be given the benefit of a letter issued by the Ministry of Human Resource Development, Government of India whereby the age of superannuation of centrally funded institutes in higher and technical education falling under the aforesaid ministry was increased from 62 to 65 years of age. The factual situation or the question before the Court in the case of *Prem Dureja (supra)* is in no manner related to the present case as the present case is concerned with an increase in Pay Scale.

54. Next we come to the case of *Union of India v. Sh. Dharam Singh & Ors.*, W.P. (C) No. 3225/2007, Judgement dated 29.07.2011. The Petitioner has placed reliance on this case to put forth his contentions for grant of a higher pay scale. The question before this Court in the case of *Dharam Singh (supra)* was a case wherein the Respondents were working as packers in the foreign post office, Kotla Road, New Delhi. The same falls under the Department of Post, Ministry of Communication. The 4th Pay Commission had declared packers in other departments as skilled labourers and granted them the pay scale of Rs.950-1500. However, the Respondents were denied the same pay scale and were placed in the scale of Rs. 750-940. Since the pay scales granted to packers in other departments was denied to the Respondents, they had preferred an Original Application before the CAT. The CAT, vide Order dated 2724/1992 had held that the Petitioner therein had no option but to implement the recommendations of the 4th Central Pay Commission in respect of the applicants in O.A. 2724/1992 and all other similarly placed packers. Respondents in the case of *Dharam*

Singh (supra) before the CAT in another O.A. filed subsequently had alleged that they were also packers and were discharging the same duties as the Applicants in O.A. 2724/1992, so they should be granted the benefits as granted to the said Applicants on account of being similarly placed persons. The Ld. CAT, considering the representations of the Applicants, granted the same benefits given to the Applicants in O.A. 2724/1992 vide Order dated 20.11.2006. When the case came before this Court, the Petition filed by the Union was dismissed on the ground that the Petitioner has not been able to urge any ground on the basis of which it can be held that the Order of the CAT dated 20.11.2006 passed in O.A. No. 164/ 2005 suffers from any illegality. The case history as elucidated by this Court in the case of **Dharam Singh (supra)** brings to light that it concerned persons who were similarly placed, but were not granted the same pay scale. In the case of **Dharam Singh (supra)**, all the Applicants concerned were packers in Departments of the Government. Thus, the facts of the case are distinguishable from the present case as the Petitioner in the instant case was a Technical Assistant and he is claiming the applicability of an Office Memorandum which has been issued for veterinary posts. Thus, it cannot be stated that the Petitioner is similarly placed. Moreover, the ICAR is not a department of the government.

55. Regarding reliance placed by the Petitioner on the case of **P.K. Ramachandra Iyer & Ors. v. Union of India & Ors., (1984) 2 SCC 141**, this Court is in agreement with the CAT's finding on the same and on the basis of the aforesaid Judgment the Petitioner is not entitled for any relief as he was a technical employee and not a Doctor.

56. The case of *Dalip Singh v. State of Uttar Pradesh & Ors.*, Civil Appeal No. 5239/2002, Judgement dated 03.12.2009 is in no manner applicable to the instant case as canvassed by the Petitioner. The same was a case before the Hon'ble Supreme Court in relation to implementation of provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

57. The case of *State of Mysore v. C.R. Seshadri & Ors.*, (1974) 4 SCC 308, was a case wherein the Order of a High Court was challenged before the Hon'ble Supreme Court on the ground that the direction to give the Petitioner therein notional promotion as Deputy Secretary with effect from the date when a person below him in rank secured the same, and for payment of excess salary beyond the powers of the Court. Observations were laid down by Justice Krishna Iyer, as he was then, regarding the power of the judiciary in directing the aforesaid acts. The Appeal stood partly allowed. There is no dispute regarding the findings laid down by the Hon'ble Supreme Court, however, the same would be of no help to the Petitioner to put forth his case as the afore stated factual circumstances do not exist in the instant litigation and there is no dispute regarding the power of this Court to issue certain directions.

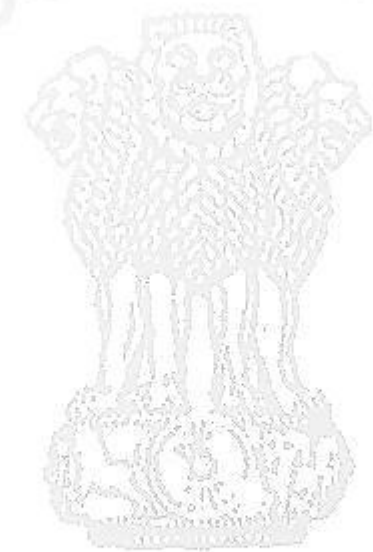
58. In the opinion of this Court, the Ld. CAT was correct in accepting the reliance placed by the Respondent on the case of *ICAR v. Satish Kumar*, JT 1998 (3) SC 9. The same would be squarely applicable to the instant dispute as herein, the ICAR has not adopted the Office Memorandum dated 04.05.1999 for its technical employees and the Petitioner cannot claim parity with the Doctors working in other Departments.

59. In light of the aforesaid, we find no merit in the submissions of the Petitioner. The Petition is dismissed accordingly.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

JANUARY 04, 2023



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