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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.

O.A. No. 110/1997

Date of order: 27.03.2001

M.S. Kapoor S/o Late Shri S.S. Kapoor, aged about 55 years, Resident of Quarter No. H1A/ 131, Anuchhaya Colony, Post Office - Bhabha Nagar (Rawatbhatta), Via - Kota, District Chittorgarh (Rajasthan), presently working as a Pharmacist in the Rajasthan Atomic Power Station (R.A.P.S.), Rawatbhatta, Via Kota, District Chhitorgarh (Rajasthan).

...Applicant.

VERSUS



(1) Union of India, through the Secretary, Department of Atomic Energy, CSM, Marg, Bombay-39.

Additional Secretary, Department of Atomic Energy, CSM Marg, Bombay - 39.

(3) Managing Director (P), Nuclear Power Corporation of India Limited, VS Bhawan, Anushakti Nagar, Bombay.

(4) Assistant Personnel Officer (CE), Rajasthan Atomic Power Station 1 and 2, Post-Office- Anushakti Nagar, Vis-Kota, Dist. Chhitorgarh (Raj).

(5) The Dy. General Manager (P&IR), Rajasthan Atomic Power Station, Post Anushakti Via- Kota. Dist. Chhitorgarh (Rajasthan).

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...Respondents.

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Mr. Ashwini Kumar Swami, Adv. Brief holder for
Mr. R.S. Saluja, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents Nos. 1 and 2.
Mr. Arun Bhansali, Counsel for the Respondents No.s 3 to 5.

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Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.
Hon'ble Mr. Gopal Singh, Administrative Member.

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ORDER

(Per Hon'ble Mr. Gopal Singh, Admn. Member)

In this application under Section 19 of Central Administrative Tribunals Act, 1985, applicant M.S. Kapoor has prayed for quashing the impugned order dated 20.02.96 (Annexure A/1) and for direction to the respondents to fix the pay of the applicant in the revised pay scale of Rs. 1350-2200 as per recommendations of the 4th pay commission w.e.f. 01.01.1986 with all consequential benefits. The applicant has also prayed for payment of arrears on this account alongwith interest at the rate of 24% per annum.

2. Applicant's case is that he was initially appointed as a Compounder in the respondent department in the pay scale of Rs. 330-480 w.e.f. 20.10.1977. The post of Compounder was redesignated as Pharmacist vide respondents order dated 28.01.1985. The 4th pay commission had recommended the pay scale of Rs. 1350-2200 to the post of Pharmacist. The respondents have however, fixed the pay of the applicant in the scale of Rs. 1200-1800. It has also, been contended by the applicant that the pay scale given to Juniors to the applicant is Rs. 1350-2200. Some of the Juniors named are Shri L.D. Sharma, Shri R.K. Saini, Shri R.K. Sharma, Shri Afzal Hussain and Shri V.P. Singh etc. The applicant had earlier approached this Tribunal seeking revision of pay scale with reference to his Juniors vide

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O.A. No. 202/1995, the said O.A. was disposed of vide order dated 23.08.1995 and the respondents were directed to consider the applicant's representations. The applicant's representation in this regard has since been rejected vide order dated 20.02.1996 (Annexure A/1), hence this application.

3. In the counter, it has been stated by the respondents that the applicant is not Senior to the persons mentioned above and hence his case was rejected. It has also been pointed out that at the time of induction into the department, Shri L.D. Sharma had qualification of Pharmacist whereas Shri Kapoor (the applicant) did not possess any qualification for being registered as a Pharmacist under Section 31 and 32 of the Pharmacy Act, 1948. Accordingly, in the merit list prepared at the time of selection in the year 1977, Shri Sharma was senior to Shri Kapoor and since then Shri Sharma had continued to be senior and not Junior to the applicant. Subsequently, Shri Sharma being Senior to the applicant was brought to the pay scale of Rs. 1350-2200 w.e.f. 03.11.1987 vide order dated 11.09.1990. The applicant was entitled to the pay scale Rs. 1200-1800 and was accordingly given that scale w.e.f. 01.01.1986. It has therefore, been contended by the respondents that the applicant's case is not comparable with that of Shri L.D. Sharma and, therefore, the application is devoid of any merit and deserves dismissal.

4. For better appreciation of the case, we had directed the learned Counsel for the respondent to produce before this Tribunal the Government letter for implementing the recommendations of the 3rd pay commission. It is seen from para 125 page 16 volume 1 of the report of 3rd Central Pay Commission, 1973 that 3 scales were recommended for the post of Pharmacist. We consider it appropriate to extract below relevant paragraph of the report of the 3rd pay Commission.

"125. Having regard to all the relevant factors, we consider that it would be appropriate to have four grades for Pharmacists viz, Rs. 330-560 for 'fully qualified' Pharmacists, Rs. 330-480 and Rs. 260-350 for 'unqualified'

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Pharmacists and a 10% Selection Grade of Rs. 425-640. By "fully qualified" we mean those persons possessing the qualifications mentioned in Sections 31 and 32 of the Pharmacy Act, 1948, but excluding those covered by Clause (d) of Section 31 *ibid.* which lays down only 5 years' experience, without requiring the persons either to have passed the matriculation examination or any examination approved for this professional category by the Government of India or recognised as adequate by the State Government. The unqualified Pharmacists i.e. those who are registered or have registerable qualifications under clause (d) of Section 31 of the Pharmacy Act for whom we have recommended the scale of Rs. 330-480 may be considered eligible for the scale of Rs. 330-560 meant for fully qualified Pharmacists after 10 years' service. We accordingly recommend the following scales for Pharmacists:

Existing Scale Rs.	Proposed Scale Rs.
205-280	425-640.
(Selection Grade)	(Selection Grade)
(a) 130-300 (Pharmacist-cum-Clerk)	(i) 330-560 for fully qualified Pharmacists i.e. those possessing qualifications mentioned in Sections 31 and 32 of the Pharmacy Act, 1948, but excluding those covered by Clause (d) of Section 31 <i>ibid.</i>
(b) 130-240	(ii) 330-480 for unqualified Pharmacists i.e. those covered by Clause (d) of Section 31 of the Pharmacy Act or possessing registerable qualifications under this clause provided they are in the existing scales of (a) to (d).
(c) 131-180	
(d) 110-180	
(e) 110-155	
(f) 95-155	
(g) 80-110	(iii) 260-350 for unqualified Pharmacists who are the scales of (e) to (g).

We may reiterate that a fully qualified Pharmacists, irrespective of his existing scale, should be allotted the scale of Rs. 330-560."

5. Further for implementation of these recommendations the Ministry of Finance had issued necessary instructions

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vide their letter dated 22 July, 1975, relevant portion of which are extracted below:

"2. The above recommendations of the Third Pay Commission having been considered by the Government, the President is now pleased to decide that unqualified Pharmacists may be allowed (i) revised scale of Rs. 330-480 after ten years of service in the revised scale of 260-350 (including service in the corresponding pre-revised scales of Rs. 110-155, Rs. 96-155 and Rs. 80-110), (i) the revised scale of Rs. 330-560 (sanctioned for fully qualified Pharmacists) after rendering 10 years service in the revised scale of Rs. 330-480 including service in the corresponding pre-revised scales of Rs. 130-300, Rs. 130-240, Rs. 131-180 and 110-180."



6. It is not disputed that the applicant as also Shri L.D. Sharma were appointed as Pharmacist/compounder in the year 1977 in the pay scale of Rs. 330-480. It is also not disputed that Shri Sharma was extended the benefit of the scale of Rs. 1350-2200 w.e.f. 03.11.1987 on the grounds that he had the qualification of Pharmacist at the time of his induction into service. It is clear from para 125 of the 3rd Central Pay Commission report (*supra*) that the pay scale of Rs. 330-480 was meant for unqualified Pharmacists i.e. those covered by Clause (d) of Section 31 of the Pharmacy Act or possessing registerable qualification under this clause. Thus in all probability Shri L.D. Sharma was also not a qualified Pharmacist at the time of his induction into service. The respondents have not produced any record before us to substantiate their contention that Shri L.D. Sharma was a qualified Pharmacist at the time of his induction into service. Both the applicant as also Shri Sharma were on the same footings when they had joined the service as Compounder/Pharmacist. Third Pay Commission recommended the pay scale of Rs. 330-560 for fully qualified Pharmacist and the recommendations of the 3rd Pay Commission were implemented w.e.f. 01.03.1973. Had Shri L.D. Sharma been a qualified Pharmacist at the time of his induction into service, he should have been granted the pay scale of Rs. 330-560 right from the very beginning. However, he was only granted the scale of Rs. 330-480 applicable

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to unqualified Pharmacists. It is also not disputed that the applicant had acquired the requisite qualification by the year 1982 and by that time Shri L.D. Sharma also became a qualified Pharmacist. In terms of Government of India letter dated 22 July 1975 (supra) the revised scale of Rs. 330-560 (Sanctioned for fully qualified Pharmacists) after rendering 10 years service in the revised scale of Rs. 330-480 was to be allowed both to Shri L.D. Sharma and the applicant as both of them had rendered 10 years service in the scale of Rs. 330-480 in the year 1987. The respondents had extended the benefit of the scale of Rs. 330-560 (Rs. 1350-2200 as recommended by 4th Pay Commission) to Shri L.D. Sharma w.e.f. 03.11.1987 vide respondents order dated 11.09.1990 but the applicant was granted the scale of Rs. 1200-1800 w.e.f. 01.01.1986. The 4th Pay Commission had recommended the following replacement scales for the scales recommended by 3rd Pay Commission.

3rd Pay Commission

330-480

330-560

4th Pay Commission

1200-1800

1350-2200

It is seem that the applicant was considered for grant of normal replacement scale of Rs. 1200-1800 recommended by the 4th Pay Commission while Shri L.D. Sharma was considered for grant of higher scale of Rs. 1350-2200 considering him as a qualified Pharmacist. In our opinion, the respondent department was in error in granting lower scale to the applicant. The applicant had already put in more than 10 years service in the scale of Rs. 330-480 and in terms of Government of India circular dated 22.07.1975, he was entitled to be placed in the scale of Rs. 1350-2200 on completion of 10 years service in the scale of Rs. 330-480.

7. In the light of above discussions, we find much merit in this application and the same deserves to be allowed. Accordingly we pass the order as under: -

"The O.A. is allowed. The applicant would be entitled to the scale of Rs. 1350-2200 from the date he completes 10 years of

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service in the scale of Rs. 330-480. The respondents are accordingly directed to grant the scale of Rs. 1350-2200 to the applicant from the date he completes 10 years service in the scale of Rs. 330-480 with all consequential benefits like arrears of pay and allowances etc. Impugned order dated 20.02.1996 (Annex. A/1) is quashed to the extent it denies the pay scale of Rs. 1350-2200 to the applicant. No costs.

Goopal Singh

(GOPAL SINGH)
Admn. Member

HFF

(B.S. RAIKOTE)
Vice Chairman

Copy is sent along with MA order
to Command for Affidavit
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Part II and III destroyed
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under the supervision of
section officer (J) as per
order dated 17-12-2001

Section officer (Record)

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