

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

T.A.NOS. 21 AND 23 OF 2013

New Delhi, this the 25th day of April, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
&
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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In TA No.21/13:

V.K.Mishra,
s/o late Shri Raghuvir Mishra,
R/o House No.1027, Sector-13,
Vasundhara, Distt. Ghaziabad, U.P. Applicant

(By Advocate: Mr. Rakesh Mishra for Mr.S.P.Sinha)
Vs.

1. Union of India,
through Secretary,
Ministry of Health & Family Welfare,
Department of ISM & Homoeopathy,
IRCS Building,
New Delhi 1

2. The Central Council of Indian Medicine,
through its Secretary,
61-65, Institutional Area,
Janakpuri,
New Delhi 110058 Respondents

(By Advocate: Ms.Avnish Kaur)

In TA No.23/13:

V.K.Mishra,
s/o late Shri Raghuvir Mishra,
R/o House No.1027, Sector-13,
Vasundhara, Distt. Ghaziabad, U.P. Applicant

(By Advocate: Mr. Rakesh Mishra for Mr.S.P.Sinha)

Vs.

Central Council of Indian Medicine,
61-65, Institutional Area,

Janakpuri, New Delhi-58,
through its Secretary Respondent

(By Advocate: Ms.Avnish Kaur)

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ORDER

Per Raj Vir Sharma, Member (J):

TA No.21 of 2013 corresponds to W.P. (C) No.6451 of 2004, and TA No.23 of 2013 corresponds to W.P. (C) No.16514 of 2006 on the file of the Hon'ble High Court of Delhi.

1.1 W.P. (C) No.6451 of 2004 was filed by the applicant before the Hon'ble High Court of Delhi, seeking the following reliefs:

- oI. Issue an appropriate writ, order/orders quashing the impugned office memorandum dated 06/04/2004 issued by respondent No.2 and;
- II. Issue an appropriate writ, order/orders directing the respondent No.1 and 2 to grant equal pay to the petitioner to what is being paid to officers on the similar post in the Medical Council of India (MCI) or Veterinary Council of India.
- III. And/or pass such other further order/orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the case.ö

1.2 W.P.(C) No. 16514 of 2006 was filed by the applicant before the Hon'ble High Court of Delhi, seeking the following reliefs:

- o(a) Issue a writ of mandamus or any other appropriate writ/writs, order/orders directing the Respondent to grant 2nd upgradation of pay scale to the Petitioner in view of O.M. dated 13/08/1999 of the Government of India, and/or

(b) Pass such other further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.ö

1.3 Both the aforesaid writ petitions, on being transferred to the Tribunal, have been registered as TA Nos.21 and 23 of 2013 on the file of the Tribunal.

2. The respondent-Ministry of Health & Family Welfare (Department of ISM & H) and respondent-CCIM have filed separate counter replies in TA No.21/13.

2.1 The sole respondent-CCIM has also filed a counter reply in TA No.23/13.

2.2 The applicant has also filed rejoinder replies.

3. We have perused the records and have heard Mr.S.P.Sinha and Mr. Rakesh Mishra, the learned counsel appearing for the applicant, and Ms. Avnish Kaur, the learned counsel appearing for the respondents. Both TA No.21 of 2013 and TA No. 23 of 2013 being intertwined, we deem it just and proper to consider and decide both the said TAs by passing a common order.

4. The Indian Medicine Central Council Act, 1970 (hereinafter referred to as the Act) was enacted to provide for the constitution of a Central Council of Indian Medicine (CCIM) and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. The respondent-CCIM was constituted by the Central Government under the Act. Under Section 6 of the Act, the CCIM is a body corporate. Under Section

10 of the Act, the CCIM constitutes such other Committees for general or special purposes as it deems necessary to carry out the purposes of the Act. Under Section 12 of the Act, the CCIM employs such other persons as it deems necessary to carry out the purposes of the Act, and, with the previous sanction of the Central Government, fix the remuneration and allowances to be paid to the President, Vice President and members of the CCIM and to the members of the committees thereof and determine the conditions of service of the employees of the CCIM.

5. The decisions of the Central Government in respect of its employees are made applicable to the employees of the CCIM only on issuance of separate orders by the Central Government.

6. In the year 1972, the Government of India had sanctioned one post of Technical Officer (Ayurved) and one post of Technical Officer (Unani), both in the pay scale of Rs.350-680/-(pre-revised).

6.1 The Government of India had also sanctioned one post of Assistant Secretary and one post of Assistant Registrar (Registration), both in the pay scale of Rs.650-1200/-, with effect from 12.5.1978 and 12.3.1986 respectively.

7. While the applicant was working as an Assistant with the University of Delhi, the respondent-CCIM, vide letter dated 14.2.1979, offered to him appointment on a temporary post of Office Superintendent (hereinafter referred to as 'O.S') in the CCIM's office at New Delhi on a pay of Rs.550/- in the pay scale of Rs.550-900/-. Accepting the offer of

appointment, the applicant joined as O.S. in the respondent-CCIM on 14.2.1979.

7.1 The respondent-CCIM, by Memo dated 4.12.1986, promoted the applicant to the post of Assistant Registrar (Registration) in the pay scale of Rs.650-1200/- with effect from 4.12.1986.

8. On the basis of the recommendation of the 4th Central Pay Commission, the Respondent-Ministry of Health & Family Welfare, Department of Health, vide order dated 17.2.1989, revised the pay scale of existing Physicians of Indian Systems of Medicine(ISM) and Homoeopathy working under the Central Government Health Scheme, and Research Officers of Indian System of Medicine and Homoeopathy working in the Ministry of Health & Family Welfare and in its subordinate offices, from Rs.650-1200/- to Rs.2200-4000/- with effect from 1.1.1986.

9. In view of the decision of the Executive Committee at its meeting held on 7.6.1990, the pay scale of the Assistant Registrar (Administration) and Assistant Registrar (Registration) in the CCIM, was revised from Rs.2000-3500/- to Rs.2200-4000/- with effect from 1.1.1986, vide office order dated 23/27.7.1990.

9.1 In partial modification of the office order dated 23/27.7.1990 (ibid), the pay scale of Assistant Registrar (Administration) and Assistant Registrar (Registration) in the CCIM was revised from Rs.2000-3500/- to Rs.2200-4000/- w.e.f. 2.1.1986 and 1.1.1987 respectively (vide office order

dated 18.1.1991) as per the decision taken in the meeting of the Executive Committee held on 6.12.1990.

9.2 The respondent-CCIM, vide its letter dated 14.1.1994, requested the respondent-Ministry of Health & Family Welfare (Department of Health) to accord sanction of the Central Government to the change of designation of Assistant Registrar (Administration) and Assistant Registrar (Registration) to that of the Assistant Secretary (Administration) and Assistant Secretary (Registration) in the pay scale of Rs.2200-4000/-.

9.3 After protracted correspondence between the respondent-CCIM and respondent-Ministry of Health & Family Welfare (Department of I.S.M. & H) regarding change of nomenclature of the posts of Technical Officer (Ayurved) Technical Officer (Unani), Assistant Secretary and Assistant Registrar (Registration), and framing of Recruitment Rules for the said posts, the respondent-Ministry of Health & Family Welfare (Department of I.S.M. & H), vide its letter dated February 2002, required the respondent-CCIM to provide certain clarifications in the matter. The relevant portion of the said letter dated February 2012 of the respondent-Ministry of Health & Family Welfare (Department of I.S.M. & H) is reproduced below:

ðSubject: Irregular upgradation and change of nomenclature of the posts of Technical Officer (Ayu./Unani), Assistant Secretary and Assistant Registrar (Registration)-regarding.

Sir,

According to Section 12(d) of the Act, the Council with the previous sanction of the Central Government, fix the remuneration and allowance to be paid to the President, Vice-President and members of the Central Council and to the

members of the Committees thereof and determine the conditions of service of the employees of the Central Council.

2. It has been noted that this Department has approved creation of following posts with the scale of pay and date of creation as follows:

	Name of Post	No. of post	Scale of pay	Year of creation
i)	Technical Officer (Ay./Unani)	2	Rs.650-1200	1972
ii)	Assistant Secy.	1	Rs.650-1200	1978
iii)	Asstt. Registrar (Regn.)	1	Rs.650-3500	March, 1986

Subsequent to adoption of replacement scales, as recommended by the 5th Central Pay Commission, of the pay scales attached to all these posts, as per original scale of pay at the time of creation of these posts, is Rs.6500-10500/-.

3. The Executive Committee of the Council in its meeting held on 7.6.1990, recommended upgradation of scale of pay of Technical Officer (Ay./Unani) from Rs.2000-3500 to Rs.2200-4000 w.e.f 1.1.86 and it has been stated by the Council that pay scale of all the four posts, including two non-technical secretarial posts were upgraded from Rs.2000-3500 to Rs.2200-4000 in 1990 w.e.f. 1.1.86 in respect of posts indicated at 2(i) & 2(ii), above and w.e.f. 1.1.87 in respect of posts indicated at 2(iii), above, without knowledge and approval of the Govt. of India.

This is clear violation of provision of Section 12(d) of the IMCC Act, 1970.

4. The nomenclature of posts of Technical Officer (Ay./Unani), Asstt. Secy. and Asstt. Registrar (Regn.) have also been changed to that of Asstt. Registrar (Ay./Unani), Asstt. Secretary (Admn.) and Asstt. Secy. (Regn.), respectively, w.e.f. 1992, again without knowledge and approval of the Govt.

This is again a violation of the Section 12(d) of the IMCC Act, 1970.

5. The Audit report for the financial year 1990-91 has clearly indicated that upgradation of these posts, without knowledge and approval of the Govt., is irregular. The Audit Report for the financial year 1992-93 has again stated that upgradation is not in accordance with Section 12(d) of the IMCC Act and directed the Council to get these regularized.

6. These audit observations, about irregular upgradation of posts, were neither intimated to the Govt. nor the Govt. was approached by the Council with a request to regularize these acts of the Council or its employees. Instead, the Council, vide its letter dated 19.1.1994, approached the Govt. with a request for approval of revised Recruitment Rules, under Section 12(d) of the Act, without indicating that these revised Recruitment Rules are proposed to regularize act of the Council of upgrading pay scales of these four posts.

7. The Council has repeatedly insisted on approval of revised recruitment rules without making any reference either of the regular act of upgradation of scales of pay of these four posts or that of the audit objections in this regard for the financial year 1990-91 and 1992-93. It is only in response to this Ministry's letter dated 21.10.99, that the Council made a passing reference to audit objections in respect of the financial year 1992-93, still insisting on approval of revised recruitment rules without any request for Govt. approval for the irregular upgradation.

8. In response to this Ministry's letter dated 11.7.2001 and D.O. letter dated 2.8.2001 the Council has provided extracts of audit objections for the financial years 1990-91 and 1992-93 and the Council has stated that these objections were not settled by the Council, in absence of sanction of the Govt. of India, again referring to approval for revised recruitment rules.

9. From para 5 to 8 above, it is clear that the Council failed to provide full facts, regarding irregularities committed by the Council in granting upgraded scales to these posts, and instead tried to obfuscate facts by insisting on approval for revised recruitment rules.

In view of above, the Council is requested to explain:-

- i) How these posts continued to operate in the upgraded scale of pay when audit in its reports has clearly termed these as irregular upgradations in contravention of Section 12(d) of the IMCC Act, 1970.
- ii) Why not the Council took action to fix responsibility of overlooking this gross violation of Section 12(d) of the Act and allowing these irregularities to continue.
- iii) How the Council failed to inform full facts to the Govt. in respect of the two audit objections for the financial years 1990-91 and 1992-93 and failed to

intimate that the revised recruitment rules enclosed with their letter dated 19.1.94, for which approval of the Govt. is sought, are framed for settling audit objections and

iv) Why posts should not be stopped to operate in upgraded scale and irregular payment made as a result of these irregular upgradations be recovered.

The clarification of the Council must be forwarded to us within 15 days.ö

10. With reference to the above letter dated February, 2002, the respondent-CCIM, vide its letter dated 15.4.2002, explained as follows:

öI&II In this connection, it is stated that the proposal of revision of pay scale and change of Designation was submitted separately by the Central Council vide its letter of even No.10-13/93-Accounts dated 14.1.94 (copy enclosed) to regularize the same this letter was followed by sending reminder of even number dated 19.8.94, 20.10.94, 30.3.95 & 22.8.95 (copy enclosed). In response to the same the Government of India vide letter No.A.11014/1/94-AE(Pt.II) dated Nil (copy enclosed) received in this Council on 08.12.95 and a letter of the even number dated Nil received in this Council on 4.4.96 had asked to submit required information relating to the issues. Copies of the same are enclosed herewith for your ready reference. In response of the same the required information was sent to the ministry vide this office letter No.1-26/96-Estt. dated 06.5.96(copy enclosed). This letter was followed by sending reminders No.1-26/97-Estt. dated 01.7.97 & 16.1.98.

In addition to the above all, the Government of India continuously asked the Central Council to submit one or other information from time to time and Central Council continuously submitted required information to the Ministry (copies enclosed) to settle the issue.

III. The Inspection/Audit Report is always sent to the Ministry by the Director General of Audit, Central Revenue, New Delhi and copy is enclosed to the Council.

IV. During the last more than 08 years of correspondence the Ministry had never asked the Central Council to discontinue to operate the upgraded Scale of Pay. On the other hand, the Department of ISM&H vide their letter No.V.26019/2/97-P&C, dated 3.2.98 had granted sanction to the revised pay scale in Rs.8000-13500 to these posts in response to this office letter No.1-40/97 dated 3.11.97 (copy enclosed). Besides, these posts are in the pay scale of Rs.10,000-15,000/- in the Medical Council of India.

Keeping the above facts in view and that some of the incumbents who held these posts have already left services of the Council and retired as early as in 1992. You are requested to kindly grant ex post facto sanction. However, in future such matters will be done only after prior sanction of the Department of ISM & H.ö

11. The respondent-Ministry of Health & Family Welfare (Department of ISM & H) considered the above reply of the respondent-CCIM, and, vide its letter dated 1.10.2002, advised the respondent-CCIM to:

- ða) Restore the posts of Technical Officer (Ayurveda/Unani), Assistant Secretary, Assistant Registrar (Registration), to their normal replacement scale of Rs.6500-10500/-. Recover the excess payments made as result of irregular upgradation, together with 6% penal interest.
- b) Conduct an internal enquiry to fix responsibility for irregular upgradation and its continuation despite two clear objections of the CAG, and send report to this Ministry within three months.ö

The Council is advised to initiate action as indicated above.

The Council is however free to send a fresh proposal, with full justification and background, for upgradation of the posts indicated at para 1, above, for sanction of the Ministry, as per provisions of the Section 12(d) of the IMCC Act 1970.ö

12. Instead of acting on the above advice, the respondent-CCIM, vide its letter dated 22.11.2002, requested the respondent-Ministry of Health & Family Welfare (Department of I.S.M. & H) to take a sympathetic view in the matter and to grant *ex post facto* sanction for re-designation and revision of scales of pay. The relevant portion of the letter dated 22.11.2002 of the respondent-CCIM is reproduced below:

ðSubject: Irregular upgradation and change of nomenclature of the posts of Technical Officer (Ayurved/Unani), Assistant secretary and Assistant Registrar (Registration)-Regarding.

Madam,

With reference to your letter No.V.27016/2/99-Ay.Desk dated 1.10.2002 and subsequent letter No.G.20011/21/2002-AY.Desk dated 30.10.2002, I am directed to place before the Ministry following facts for sympathetic consideration:-

1. The Central Council of Indian Medicine is a Statutory Body constituted/established under the Indian Medicine Central Council Act, 1970 by the Ministry of Health & Family Welfare, New Delhi. The Ministry had sanctioned two posts of Technical Officer to (Ayurved/Unani) in the scale of Rs.350-680 in 1972 (Annexure-A).
2. Thereafter, one post of Asstt. Secretary for looking after the administrative work was sanctioned by the Ministry vide their letter No.V210025/1/Ay.Desk dated 12.5.1978 in the pay scale of Rs.650-1200 (Annexure B).
3. Thereafter, another post of Asstt. Registrar (Registration) in the pay scale of Rs.650-1200 was sanctioned by the Ministry vide their letter No.V.26025/24/84-AE dated 12.3.86 (Annexure-C).
4. The Central Council of Indian Medicine in its meeting held on 16-17th April 1979 had decided that since there is one post in administration side with designation as Asstt. Secretary who is doing basically administrative work so this post should be designated as Asstt. Registrar (Admn.) and also decided that the post of Technical Officer (Ayurved) and Technical Officer (Unani) should be re-designated as Asstt. Registrar. (Annexure-D).

5. I am of the opinion that the approval of re-designation of these posts should have been obtained from the Ministry but at that time, perhaps, the Council felt that as no financial expenditure is involved in this re-designation so they did not refer the case to the Ministry for prior approval.
6. The recommendations of the Fourth Pay Commission in respect of various posts of the Council was implemented w.e.f. 1.1.86. There was a general circular in respect of pay scales of Research Officer of ISM&H working in the Ministry of Health & Family Welfare and its subordinate offices which was pre-revised as Rs.650-1200 should be revised in the pay scale of Rs.2200-4000 w.e.f. 1.1.86 vide Ministry of Health & Family Welfare, New Delhi letter No.A.160011/3/81-ISM dated 17.2.89. (Annexure E).
7. The Executive Committee of the CCIM in its meeting held on 11th September 1989 considered the revision of pay scale of Asstt. Registrar (Ayurved/Unani) and decided that on the analogy of the Ministry of Health & Family Welfare the pay scale of Asstt. Registrar (Ayurved) and Asstt. Registrar (Unani) in the Council should be revised as Rs.2200-4000. The Executive Committee also felt that in view of maintaining parity between similar scale of technical and administrative posts, the pay scale of the posts of Asstt. Secretaries and Asstt. Registrars should also be revised in the pay scale of Rs.2200-4000 w.e.f. 1.1.86. The decision taken by the Executive Committee was ratified by the Council in its meeting held on 14-16th February 1990 (Annexure F).
8. It was necessary for the Council to send these recommendations of the Council to the Ministry of Health & Family Welfare, New Delhi for prior approval as per provisions of the IMCC Act, 1970. However, this was a mistake on the part of then Registrar-cum-Secretary of the Council who implemented these decision without prior approval of the Ministry.
9. It is true that the Auditor of AGCR during 1991 while auditing the accounts of the Central Council had observed that scale of pay revised by the Central Council required the approval of the Ministry therefore the same may be forwarded to the Government for sanction under Section 12(d) of the IMCC Act, 1970 (Annexure G).
10. The audit objection was placed before the 71st meeting of the Executive Committee of the CCIM held on 28th February 1992 at New Delhi. The Executive Committee considered the matter in detail and observed that the CCIM Standing Orders which

have prior approval of the Ministry of Health & Family Welfare, New Delhi vide their letter No.V.26012/2/82-AE dated 10.3.86 under clause 59 provides as below:

“The Executive Committee shall create posts for the office of the Central Council in the approved pay scales applicable to the corresponding posts in the offices of the Central Government under Section 12(d) of the Indian Medicine Central Council Act, 1970.”

The Executive Committee felt that the decision taken by them at the meeting held on 6.2.90 was within its competence. The Committee also felt that the Registrar should prepare a detailed note and submit to the Committee at its next meeting for its consideration. (Annexure H).

11. The CCIM in its meeting held on 28-29th March 1993 justified and ratified these decisions of the Executive Committee.
12. The decision of the Council was placed before the auditors of the AGCR while auditing the accounts of the Council for the year 1992-93. The auditors reiterated that the Council had sanctioned a higher scale of Rs.2200-4000 to the incumbents without concurrence of the Ministry as referred in the section 12(d) of IMCC Act, 1970. In this connection, audit objection raised by the previous audit may also be referred. Instead of adopting corrective measures, the Council had acted in an arbitrary manner to benefit the individuals at its own by providing scale of Rs.2200-4000 which was not due to him.
13. Based on the observations of the Audit of AGCR, the secretary of the Council vide its letter No.10-13/93-Accts. dated 14.1.94 requested the Ministry of Health & Family Welfare to accord the sanction of the Central Government to change the designation of Asstt. Registrar to Asstt. Secretary and approval of their scales as Rs.2200-4000 (Annexure I).
14. Since there was no sanction received by the Council so reminders were sent to the Ministry vide letter No.10-13/93-Estt. dated 19.8.94, 17.10.94, 29.3.95 and 22.8.95 (Annexure-J).
15. The First communication in this regard was received from the Ministry of Health & Family Welfare vide letter No.A.11014/1/94-AE (Pt.II) dated nil asking this Council to furnish a copy of the proposal of the Council along with all enclosures urgently to process the case further (Annexure K).

16. In response to above letter Council had submitted all details required vide this office letter No.1-20/92-Estt. dated 6.5.96 (Annexure L).
17. Since no sanction was received even thereafter, the Council sent reminders to the Ministry for approval vide letter No.1-26/97-Desst. dated 1.7.97. (Annexure M).
18. The Secretary and other officers of the Council met concerned officers of the Ministry from time to time and whatever information asked by the Ministry have been furnished. The Council received letter No.A.11014/1/94-AE (Pt.) P&C dated 2.12.97 which was replied promptly by the Council vide letter No.1-2/97-Estt. dated 16.1.98. (Annexure N).
19. After the recommendation of Fifth Pay Commission, the Council sent a letter No.2-5/97-PC dated 9.1.98 for sanctioning implementation of scales of pay to the employees of the CCIM along with details of pay scales of Groups AØ employees of CCIM (Annexure-O).
20. In response to our request, the Ministry of Health & Family Welfare conveyed to this Council concurrence of the Integrated Finance Division of the Ministry for adoption of the Central revised pay rules 1997 to the employees of the CCIM subject to the following conditions:
 - a) that there would be no payment of arrears till such time that additional funds are made available to the Department of ISM&H.
 - b) allowances, such as NPA and other allowances would continue to be paid at the old rates till decisions on them are communicated to the autonomous organization concerned.
 - c) Only revised pay scales incorporated in Para AØ of the first schedule to the Central Revised Pay Rules,1997 are to be adopted and
 - d) The payment of salaries in the revised pay scales to the employees of CCIM are strictly subject to availability of necessary funds with the Council. (Annexure P).

The decision of the Ministry was followed in toto by the Council.

21. The Council received letter No.A.14019/4/96-P&C dated 8th October 1998, in which further information in respect of enhancement of pay scale for these posts were asked.

The Council sent detailed reply vide letter No.12-4/96-RR dated 5.11.98 (Annexure Q).

22. The Council received a letter No.A.11011/1/99-APC dated March 1999 from the Ministry in respect of framing RR for the post of Asstt. Registrar (Ayurved), Asstt. Registrar (Unani), Asstt. Registrar (Admn.) and Asstt. Registrar (Regn.) which was replied with all required information vide letter No.12-4/96-RR dated 14.5.99. (Annexure R).
23. In this connection, the Council received a further letter No.27016/2/99-Ay. Desk dated 21.10.99 which was also replied by the Council with all required information vide our letter No.12-4/96-RR dated 3.11.99. (Annexure S).
24. Thereafter, the Council received letter No.V.17016/1/99-Ay. Desk dated 7.1.2000 from the Ministry asking further information in respect of RR which was replied vide our letter No.12-4/96-RR dated 13.1.2000. (Annexure T).
25. The Council received a DO letter No.V.27016/2/99-Ay. Desk dated 30th March 2001 from Shri O.S.Veerwal, Director, asking the date since when the ex post facto approval of the Central Government is sought. This was replied vide letter No.12-4/96-RR dated 12.4.2001 by the Secretary of the Council with all relevant details. (Annexure U).
26. The Council further received letter No.V.27016/2/99-Ay. Desk dated 11.7.2001 from the Ministry asking details of audit objection and pay scales of similar posts in Government departments. This letter was written to the Council in reference to queries made by the Ministry of Finance, Department of Expenditure which was promptly replied by the Council vide letter No.12-4/96-RR dated 13.8.2001 (Annexure V).
27. The Ministry prepared the RR for the post of Asstt. Registrar (Ayurved/Unani) and Asstt. Secretary (Admn./Regn.) and sent to this Council vide letter No.V.27016/2/99-Ay. Desk dated 29.8.2001 for information and confirmation of the Council in the scale of Rs.8000-275-13500 for all the above posts which was considered by the Council and confirmed as proposed by the Ministry vide decision of the Executive Committee in its meeting held on 21.9.2001 (Annexure W).
28. Since Ministry has framed new RR in the scale of Rs.8000-13500 for these posts which was confirmed by the Council and communicated to the Ministry vide letter No.12-4/96-RR dated 3.10.2001 so we were expecting ex post facto sanction of the Ministry for the revision of scale of pay of these posts.

29. Thereafter, the Council received letter No.V.27016/2/99-Ay.Desk dated February 2002 which was replied by the Council vide letter No.1-26/2001-Estt. dated 15.4.2002. (Annexure X).

30. Now, the Council received letter No.G.20011/21/2002-Ay.Desk dated 30.10.2002 and also letter addressed to the President of the Council vide letter No.V.27016/2/2002-Ay.Desk dated 1.10.2002 while advising the Council:

- a) Restore the posts of Technical Officer (Ayurveda/Unani), Assistant Secretary, Assistant Registrar (Registration), to their normal replacement scale of Rs.6500-10500/-. Recover the excess payments made as result of irregular upgradation, together with 6% penal interest.
- b) Conduct an internal enquiry to fix responsibility for irregular upgradation and its continuation despite two clear objections of the CAG, and send report to this Ministry within three months.

31. The Council however has been asked to submit a fresh proposal with full justification and background for upgradation of the posts indicated at Para-I above for sanction of the ministry under section 12(d) of the IMCC Act, 1970.

32. In view of the above, the Council is requesting the Ministry of Health & Family Welfare for ex post facto sanction under provision of Section 12(d) for these posts as under:-

- (i) Re-designating post of Technical Officer (Ayurved), Technical Officer (Unani) as Asstt. Registrar (Ayurved), Asstt. Registrar (Unani) w.e.f. 1979 to maintain the similarity with the designation of HOD as usual.
- (ii) Re-designating of post of Asst. Secretary and Asstt. Registrar (Regn.) as Asstt. Secretary (Admn.) and Asstt. Secretary (Regn.) with effect from 1.1.1986.
- (iii) Revising the pay scale of Asstt. Registrar (Ayurved) and Asstt. Registrar (Unani) from Rs.2000-3500 to Rs.2200-4000 with effect from 1.1.1986.
- (iv) Revising the pay scale of Asstt. Secretary (Admn.)/Asstt. Secretary (Regn.) from Rs.2000-3500 to Rs.2200-4000 w.e.f. 1.1.86. While requesting this revision, the following points are submitted for sympathetic consideration of the Ministry:

- a) There had been no intention of the Council to overlook the powers vested with the Ministry. The present Council was constituted by the Ministry in 1995. Prior to that the

Council which was in existence, they felt that upgrading scales of employees as per duties and responsibilities are vested with the Council vide Standing Orders. Therefore, without referring the matter to the Ministry and obtaining prior approval, they have implemented the revised scale of pay. However, we feel that this was not a correct decision and prior approval of the Ministry should have been obtained before implementing the revision of scale of pay.

- b) The Registrar-cum-Secretary of the Council who implemented these revised scales has retired from the Council on 31.10.96.
- c) The present Council which came into existence in March, 1995 has promptly replied every letter of the Ministry and have been furnishing all details required by the Ministry. Nothing have been hidden by the Council from the Ministry.
- d) The revised scale of Rs.8000-13500 to the present incumbents of the post of Asstt. Registrar (Ayurved), Asstt. Registrar (Unani) and Asstt. Secretary (Admn.) and Asstt. Secretary (Regn.) have been communicated by the Ministry, then only these scales were allowed to the incumbents.
- e) Out of our posts of Asstt. Registrar and Asstt. Secretary, only two posts are not in operation and entire work of the Council are being looked by them. The post of Asstt. Secretary (Admn.) is not filled since July 1992 after retirement of Mr.S.K.Singh who was holding this post. Then Asstt. Registrar (Ayurved) Dr.P.R.Sharma was appointed as Registrar of the Council w.e.f. 16.4.98 and since then the post of Asstt. Registrar (Ayurved) is vacant.

These posts have not been filled so far due to non-approval of the Recruitment Rules by the Ministry and orders that these posts should not be filled till the Recruitment Rules are approved by the Government of India. (Annexure Y).

- f) This Council is dealing with three systems of Medicine namely Ayurved/Unani/Sidha and there are about 213 colleges of Ayurved, 38 colleges of Unani and 06 colleges of Sidha. The entire work is being looked after by these officers.
- g) The scale of pay of almost all Government/Semi-Government organizations of Administrative Officer is not less than the pay scale of Rs.8000-13500.

- h) The scale of pay of Asstt. Secretary of Medical Council of India, a sister concern, is Rs.10,000-15500/-. Even the scale of pay of Asstt. Secretary of Veterinary Council of India is Rs.10,000-15,500(Annexure Z).
- i) Since the incumbents of the Council working in these scales are in the Council for longer duration so extra expenditure involved is minimal.
- j) The case of revision of the scale of pay is pending since many years and there is no intention of the present Council to conceal any information and to act against the provision of the IMCC Act, 1970.
- k) It is assured that nothing will be done by the Council in future without prior approval of the Government of India regarding matter which require prior sanction and approval of Government.
- l) Any decision for reverting these officers to their old scales may create many hardships and complications because they have been provided these scales by the Council. This will result a punishment to them for no fault on their part.

In view of above, it is prayed that the Ministry may kindly take a sympathetic view in the matter and ex post facto sanction of the Ministry for redesignation and revision of scales of pay may kindly be granted to this Council.ö

13. In reply to the respondent-CCIM& above letter dated 22.11.2002, the respondent-Ministry of Health & Family Welfare (Department of ISM & H), vide its letter dated 24.4.2003, informed the respondent-CCIM that the upgradation in contravention of the statutory rule (Section 12(d) of the IMCC Act, 1970) is illegal and void *ab initio*. Accordingly, the respondent-Ministry of Health & Family Welfare (Department of ISM & H) advised the respondent-CCIM to fully comply with the directions contained in the letter dated 1.10.2002 (*ibid*).

14. Thereafter, the respondent-CCIM issued the impugned Office Memorandum dated 6.4.2004 which is reproduced below:

öIn pursuance of the letter No.V.27016/2/99-Ay.Desk dated 1.10.2002 and letter No.V.27020/2/99-Ay.Desk dated 2.1.2004 of Government of India by suppressing this office order No.23-3/90-Estt. dated 27.7.90, and dated 18.1.1991 and 23-3/92-Estt. dated 13.4.1992 and any other order if any, the post of Assistant Secretary (Registration) upgraded in the pay scale of Rs.8000-275-13500 (revised) is restored to the post of Assistant Registrar (Registration) to its normal replacement scale of Rs.6500-200-10500 (revised) w.e.f. 1.1.1987. Resulting Shri V.K.Mishra, Asstt. Registrar (Registration) will draw the basic pay of Rs.10,300/- w.e.f. 1.4.2004.ö

15. In the aforesaid context, it is the contention of the applicant that he was duly promoted to the post of Assistant Registrar (Registration) with effect from 4.12.1986, and the pay scale of the said post was revised from Rs.6500-10500/- to that of Rs.8000-13500/- with effect from 1.1.1987, on the basis of the orders issued by the respondent-CCIM. The said post of Assistant Registrar (Registration) was also re-designated as Assistant Secretary (Registration) on the basis of the lawful decision taken by the respondent-CCIM. Placing him in the post of Assistant Registrar (Administration) in the pay scale of Rs.6500-200-10,500/- by superseding the orders dated 27.7.1990, 18.1.1991 and 13.4.1992(ibid) amounts to his reduction in rank within the meaning of Article 311(2) of the Constitution of India. The impugned office memorandum dated 6.4.2004 was issued by the respondent-CCIM without affording him an opportunity of showing cause and/or of being heard. Therefore, the impugned office memorandum dated 6.4.2004, being violative of Article 311(2) of the Constitution of India, is bad, illegal and liable to be quashed. The second contention of the applicant is that in the Medical Council of India functioning under the respondent- Ministry of Health &Family Welfare, the post of Assistant Secretary carries

higher pay scale than that of the upgradaded pay scale of Rs.8000-13500/- for the post of Assistant Registrar (Registration) and/or Assistant Secretary (Registration) in the CCIM. The duties and responsibilities attached to the post of Assistant Registrar (Registration)/Assistant Secretary (Registration) in the respondent-CCIM are same as that of the Assistant Secretary in the Medical Council of India. Thus, the decisions taken by the respondent-CCIM for re-designation of the post held by him as Assistant Secretary (Registration) and revision of the pay scale to Rs.8000-13500/- for the said post ought to have been appreciated and sanction, as sought by the respondent-CCIM, ought to have been granted by the respondent-Ministry of Health & Family Welfare. Therefore, the decision of the respondent-Ministry of Health &Family Welfare, as contained in their letter dated 1.10.2002, being violative of Articles 14 and 16 of the Constitution of India, is unsustainable, and the Tribunal should issue appropriate direction to the respondents to grant the same pay scale as granted to his counterpart-Assistant Secretary in the Medical Council of India or the Veterinary Council of India.

16. After having given our thoughtful consideration to the facts and circumstances of the case, we have found no substance in any of the contentions of the applicant.

17. Admittedly, at the relevant of point of time, there was only one post of Assistant Registrar (Registration) in the respondent-CCIM. The respondent-Ministry of Health & Family Welfare had sanctioned the said

post of Assistant Registrar (Registration) on temporary basis. The applicant was promoted from the post of Office Superintendent [Rs.550-900 (pre-revised)] to the post of Assistant Registrar (Registration) [Rs.650-1200 (pre-revised)] w.e.f. 4.12.1986, vide order dated 4.12.1986. The respondent-CCIM revised the pay scale of Rs.650-1200/- for the post of Assistant Registrar (Registration) to that of Rs.8000-13500, and also re-designated the said post as Assistant Secretary (Registration), without obtaining prior sanction from the respondent-Ministry of Health & Family Welfare, as required under Section 12(d) of the Act. After granting the said revised pay scale of Rs.8000-13500/- to the applicant holding the post of Assistant Registrar (Registration), and re-designating the said post as Assistant Secretary (Registration), the respondent-CCIM moved the respondent-Ministry of Health & Family Welfare to accord sanction thereto under Section 12(d) of the Act. After protracted correspondence between them, the respondent-Ministry of Health & Family Welfare negatived the said request of the respondent-CCIM, and, vide letter dated 1.10.2002, advised the respondent-CCIM to restore the post of Assistant Registrar (Registration) to its normal replacement scale of Rs.6500-10,500 (revised) and to recover the excess payments made as a result of irregular upgradation together with 6% penal interest. The respondent-Ministry of Health & Family Welfare also directed the respondent-CCIM to conduct an internal enquiry to fix responsibility for irregular upgradation and its continuation despite two clear objections of the Comptroller & Auditor General of India and to send report

to them within a stipulated period. It was also observed by the respondent-Ministry of Health & Family Welfare that the respondent-CCIM would be free to send a fresh proposal, with full justification and background, for upgradation of the post of Assistant Registrar (Registration) for sanction of the Ministry under Section 12(d) of the Act. It is pertinent to mention here that the respondent-Ministry of Health & Family Welfare also declared that the revision of the pay scale to Rs.8000-13500/- for the posts of Technical Officer (Ayurved), Technical Officer (Unani), and Assistant Secretary and re-designation of those posts as Assistant Registrar (Ayurved), Assistant Registrar (Unani), and Assistant Secretary (Administration) respectively, being violative of Section 12(d) of the Act, were irregular and similar advice, as in the case of the Assistant Registrar (Registration), was also issued to the respondent-CCIM. In the absence of prior sanction of the respondent-Ministry of Health & Family Welfare under Section 12(d) of the Act, the decisions taken by the respondent-CCIM regarding the aforesaid revision and re-designation were illegal and void *ab initio*. Therefore, such void orders can by no stretch of imagination be said to have conferred on the applicant any right, far less any enforceable and legal right, to claim the upgraded pay scale of Rs.8000-13,500/- and re-designation of his post as Assistant Secretary (Registration). The provisions of Article 311(2) of the Constitution of India are not attracted in his case. Acceptance of the claim of the applicant would amount to giving stamp of approval to the illegal, irregular, and void decisions taken by the respondent-CCIM. Furthermore,

on the facts and in the circumstances of the case, no prejudice is seen to have been caused to the applicant on account of not affording an opportunity to him to make representation. The applicant has also not demonstrated before this Tribunal as to how non-grant of an opportunity to him of showing cause and/or of being heard, by the respondent-CCIM, has caused any prejudice to him. Therefore, we find no scope to interfere with the impugned order dated 6.4.2004 on account of non-affording of any opportunity to the applicant to make representation. This view of ours is fortified by the decision of the Hon'ble Supreme Court in **State of Karnataka Vs. Mangalore University Non-teaching Employees Association and others**, AIR 2002 SC 1223, wherein it has been held by the Hon'ble Supreme Court that in all cases of violation of principles of natural justice the Court exercising jurisdiction under Article 226 of the Constitution of India need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the Court in considering the effect of violation of principles of natural justice. When indisputably the action taken is within the parameters of the Rules, it is difficult to visualize any real prejudice to the employees on account of not affording the opportunity to make representation. In the above view of the matter, we do not perceive any illegality or infirmity in the impugned office memorandum dated 6.4.2004. Therefore, the impugned office memorandum dated 6.4.2004 remains unassailable.

18. The second contention of the applicant is regarding grant of equal pay for equal work. It has been asserted by him that both the respondent-CCIM and the Medical Council of India function under the respondent-Ministry of Health & Family Welfare. The duties and responsibilities attached to the post of Assistant Registrar (Registration)/Assistant Secretary (Registration) in the respondent-CCIM are same as that of the post of Assistant Secretary in the Medical Council of India which carries the pay scale of Rs.10,000-15,200/- (revised). Therefore, the denial of pay scale of Rs.10,000-15,200/- to him as Assistant Registrar (Registration)/Assistant Secretary (Registration) being discriminatory is violative of Articles 14 & 16 of the Constitution of India. Therefore, the respondents should be directed by the Tribunal to grant him pay scale equal to what is being paid to officers on the similar post in the Medical Council of India or Veterinary Council of India.

19. It is an established law that whatever benefit is granted to one category of staff, need not automatically be granted to another category of staff. Job content, kind of responsibility, and kind of organization where employees are working, also play role in determination of pay structure.

20. **In Director General of Geological Survey of India Vs. R. Yadaiah**, AIR 2000 SC3551, the Hon'ble Apex Court, considering a case of upgradation of pay scale, observed:

"Ordinarily, the Courts or Tribunal should not go into the question of fitment of the officers in a particular group or the pay-scale thereto, and leave the matter to the discretion and

expertise of the Special Commission like Pay Commission, unless the Court finds on materials produced that there is some apparent error".

21. **In S.C. Chandra and Ors. Versus State of Jharkhand & Ors,**(2007) 8 SCC 182, the Hon'ble Supreme Court observed as follows:

"For finding out whether there is complete and wholesale identity, the proper forum is an expert body and not the writ court, as this requires extensive evidence. A mechanical interpretation of the principle of equal pay for equal work creates great practical difficulties. The courts must realize that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex matter which is for the executive to discharge. Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences."

22. **In Associate Bank Officers' Association v. State Bank of India,** (1998) 1 SCC 428, the Hon'ble Supreme Court has held that differential pay structure can be fixed within the same organization even.

23. **In State of Haryana v. Haryana Civil Secretariat Personal Staff Association,** (2002) 6 SCC 72, it has been held by the Hon'ble Supreme Court that determination of pay structure does not depend on one factor only and that P.As. working in State are not entitled to parity with P.As. working in Central Secretariat.

24. **In Federation of All India Customs and Central Excise Stenographers(Recognized) and others v. Union of India,** (1988) 3 SCC 91, it has been held that pay structure depends, *inter alia*, on degree of responsibility, reliability, confidentiality, etc.

25. In **K.Vasudevan Nair v. Union of India**, 1991 Suppl.(2) SCC 134, the claim of the Section Officers working in the Indian Audit & Accounts Department for the same pay scale as drawn by the Section Officers in the Central Secretariat has been negated.

26. In **State of M.P. v. Pramod Bhartiya**, (1993) 1 SCC 539, it has been held that the principle of equal pay for equal work is inapplicable where distinction is based on qualitative difference in functions and responsibilities.

27. In **Municipal Commissioner v. Pijush Kanti Das**, (1996) 7 SCC 266, it has been held that mere designation of claimant is not conclusive for granting parity.

28. In **Union Territory, Chandigarh v. Krishna Bhandari**, (1996) 11 SCC 348, it has been held that principle of equal pay for equal work is not applicable between the employees who work in different posts.

29. In **Garhwal Jal Sansthan Karmachari Union of India v. State of U.P.**, (1997) 4 SCC 24, it has been held that some similarity in duties and functions is not enough for pay parity if there is qualitative difference in duties, functions and responsibilities in two organizations.

30. In **State Bank of India v. M.R.Ganesh Babu**, (2002) 4 SCC 556, it has been held that even where functions are same, the degree of responsibility and reliability expected might be different.

31. In **Govt. of A.P. v. P.Hari Hara Prasad**, (2002) 7 SCC 707, it has been held that employees of subordinate courts are not entitled to parity with employees of Secretariat.

32. In **Union of India v. Tarit Ranjan Das**, (2003) 11 SCC 658, it has been held that parity cannot be applied merely on the basis of designation or nature of work.

33. In **State of Punjab v. Surinder Singh**, (2007) 13 SCC 231, it has been held that parity has to be complete and total.

34. In **Official Liquidator v. Dayanand**, (2008) 10 SCC 1, it has been held that similarity in designation and quantum of work are not determinative factors.

35. In **State of M.P. v. Ramesh Chandra Bajpai**, (2009) 13 SCC 635, it has been held that similarity in designation, or nature or quantum of work are not determinative factors for pay parity.

36. In **State of W.B. v. W.B. Minimum Wages Inspectors Association**, (2010) 5 SCC 225, it has been held that if there was pay parity on an earlier occasion, it does not mean that it must be maintained after pay revision.

37. In **Asif Hameed & others v. State of J&K and others**, 1989 SCC Suppl. (2) 364, the Hon'ble Supreme Court has held that when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the

executive has acted within the powers and functions assigned under the Constitution, and if not, the Court must strike down the action. While doing so, the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a coordinate Branch of the Government. While exercising power of judicial review of administrative action, the Court is not appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive.

38. In **Mallikarjuna Rao v. State of A.P.**, (1990) 2 SCC 707, the Hon'ble Supreme Court has held that Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule-making power of the executive under Article 309 of the Constitution of India.

39. The Hon'ble Supreme Court in **Technical Executive (Anti-Pollution) Welfare Association v. Commissioner of Transport Department and another**, (1997) 9 SCC 38, has held that it would be for the appropriate Government to take policy decision. The Tribunal is not competent to give any direction to the Government to lay down any policy. Such a direction would amount to entrenching upon area of policy-making which is exclusively within the purview of the Government.

40. Having considered the contention of the applicant on the touchstone of the legal principles adumbrated hereinabove, we have found no substance therein. Therefore, we are not inclined to issue a direction to the respondents to grant him pay scale equal to what is being paid to officers on the similar post in the Medical Council of India or Veterinary Council of India.

41. Consequently, TA No.21 of 2013 (W.P. (C) No.6451/04) being devoid of merit is dismissed. The interim orders stand vacated.

42. In WP (C) No.16514 of 2006 = TA No.23 of 2013, it is the case of the applicant that he was due to be granted 2nd financial upgradation in the pay scale of Rs.10,000-15,200/- under the ACP Scheme with effect from 1.3.2003 when he completed 24 years of service without being granted two promotions. The operation of the office memorandum dated 6.4.2004, which was impugned by him in WP (C) No.6451/2004 = TA No.21 of 2013, was stayed by the Hon'ble High Court of Delhi, and he was continuing as Assistant Secretary (Registration) in the pay scale of Rs.8000-13,500/- as on 1.3.2003. Therefore, the Central Council in its 37th Special Meeting held on 24.8.2005, decided to grant 2nd financial upgradation to him in the pay scale of Rs.10,000-15,200/- subject to his furnishing an undertaking to abide by the final decision of the Court in WP (C) No.6541/2004 = TA No.21/2013. The Central Council in its 38th Special Meeting held on 25.2.2006 ratified its earlier decision as taken in its 37th meeting. In spite of the above decisions of the Central Council, and his representations dated 25.5.2006, 18.6.2006

and 5.7.2006, the respondent-CCIM acting through its Secretary has failed to implement the decisions of the Central Council to grant him 2nd financial upgradation in the pay scale of Rs.10,000-15,200/- with effect from 1.3.2003 subject to his furnishing an undertaking to abide by the final decision of the Court in WP (C) No. 6451/2004 = TA No.21/2013. Therefore, he filed WP (C) No.16514/2003 = TA No.23 of 2013 praying for a direction to the respondent-CCIM to grant him 2nd upgradation in accordance with the O.M. dated 13.8.1999 of the Government of India.

43. It is the case of the respondent-CCIM that the issue of grant of 2nd ACP to the applicant was submitted to the Government of India for their opinion, The Government of India, vide letter dated 29.6.2006, informed them as follows:

öthe issue was taken up with the Deptt. Of Personnel & Training which has observed that Shri V.K.Mishra joined the Central Council at post of Office Superintendent in the scale of pay of Rs.5500-9000/- (revised), obtained promotion to the post of Assistant Registrar (Registration) in the scale of pay of Rs.6500-10500/- (revised). Shri Mishra is receiving, under the stay granted by the Hon^{ble} High Court, financial upgradation to the scale of Rs.8000-13500/-. As such he has already earned two promotions/financial upgradations, as envisaged under the ACP Scheme, and is not entitled to any further financial upgradation under the scheme.ö

The respondent-CCIM have also stated that the applicant has retired on attaining the age of superannuation on 31.1.2007. There is a recovery outstanding against him to the tune of Rs.4,69,411/- as on 31.1.2007. In view of the order passed by the Hon^{ble} High Court of Delhi staying the

operation of the order dated 6.4.2004(ibid), the pension of the applicant has been fixed by taking into account the pay received by him in the pay scale of Rs.8000-13500/-.

44. As we have dismissed T.A.No.21 of 2013 (W.P. (C) No. 6451 of 2004) as being devoid of merit, the re-designated post of Assistant Secretary (Registration) in the upgraded pay scale of Rs.8000-275-13500 (revised) stands restored to the post of Assistant Registrar (Registration) in the pay scale of Rs.6500-200-10500 (revised) with effect from 1.1.1987. In view of this, the question of grant of 2nd financial upgradation in the pay scale of Rs.10,000-15,200/- to the applicant subject to his furnishing an undertaking to abide by the final decision of the Court in WP (C) No. 6451/2004 = TA No.21/2013, in compliance with the decisions of the Central Council, does not arise. The question of grant or otherwise of the 2nd financial upgradation to the applicant in terms of the ACP Scheme will have to be considered by the respondent-CCIM only after fully implementing the office order dated 6.4.2004 (ibid) and after effecting recovery of the entire dues outstanding against the applicant.

45. Resultantly, both TA Nos. 21 and 23 of 2013 are dismissed. The interim orders stand vacated. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

