

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 8008 of 2020

With

CAN 1 of 2022

Jayasish Ghosh

Vs.

Union of India

For the appellants	: Mr. Sagar Bandyapadhyay, Adv., Ms. Soma Ghosh, Adv., Ms. Suparna Pathak Adv.
For the respondent / Bose Institute	: Ms. Anirban Mitra, Adv., Mr. Sukanta Chakraborty, Adv., Ms. Anamika Pandey, Adv., Ms. Amrita Pandey Adv.,
For the Union of India	: Ms. Chandreyi Alam, Adv., Ms. Runu Mukherjee Adv.

WPA 3463 of 2020

With

CAN 2 of 2020 (Old CAN 3652 of 2020)

With

CAN 3 of 2021

Dr. Anandmay Adak & Ors.

Vs.

Union of India & ors

For the Appellants	: Mr. Subir Sanyal, Adv., Mr. Ratul Biswas, Adv., Mr. Rajdeep Bhattacharyya, Adv.,
For the added Respondent/Bose Institute	: Mr. Anirban Mitra, Adv., Mr. Sukanta Chakraborty, Adv., Ms. Anamika Pandey, Adv., Ms. Amrita Pandey, Adv.
For the Union of India	: Mr. Chandreyi Alam, Adv. Ms. Runu Mukherjee Adv.

Reserved on : 13.02.2025

Judgment on : 03.09.2025

Subhendu Samanta, J.

1. Bose Institute, Calcutta was founded by Acharya Jagadish Chandra Bose in the year 1917. Bose Institute is an autonomous Institute under grant-in-aid of the Ministry and Science and Technology, Government of India. The employees of Bose Institute are not treated as direct Central Government employees and their service conditions including promotions are governed by rules framed by Bose Institute.

2. Petitioners are all working as Junior Laboratory Assistant in technical cadre at Bose Institute, Kolkata.

3. Petitioners of WPA 8008 of 2022 were appointed as junior laboratory assistant at pay band Rs. 9,200/- to Rs. 34,800/- with grade pay of Rs 4,200/- as offered in the advertisement of the Bose Institute. Petitioners joined as Junior Level Assistant in the cadre of technical staff at the institute in the year 2010, by virtue of an appointment letter issued by Bose Institute. It is the further case of the petitioner that petitioners have punctually and with sincerely discharging their responsibilities providing technical assistant in performing a research

experiments and analysis various data in various scientific instruments etc. After continuous service they have acquired qualifying experience for 05 years and were fit to be applied for promotion as per applicable rules. The petitioner had underwent due selection process by the Bose institute and through viva voce and by grading through annual performance appraisal report (APAR) by the departmental promotion committee (DPC), they were promoted to senior laboratory assistant on the basis of the recommendation of promotion assessment committee. It is the further contention of the petitioners that the promotion of petitioners are not vacancy based promotion but the petitioners being technical officers are promoted time scale promotion following “MANAS” scheme.

4. It is the further case of the petitioner that Ministry of Finance Department of Expenditure, Government of India vide office memorandum dated 13th January 2017- in course of consideration of implementation of the recommendation of 7th Pay Commission to the employees of various organisation including autonomous organisation, directed as follows:

Office Memorandum

Dated- 13th January, 2017

Subject: Pay revision of employees of Quasi-Government Organizations, Autonomous Organizations, Statutory Bodies etc, set up by and funded/controlled by the Central Government Guidelines regarding.

The employees working in the Quasi-Government Organizations, Autonomous Organizations, Statutory Bodies etc. set up and funded/controlled by the Central Government, are not Central Government employees and, therefore, the benefits implemented by Central Government in respect of Central Government employees as part of their service conditions, are not directly applicable to the employees working in such autonomous organizations. The application of such benefits as given to Central Government employees in respect of employees of such autonomous organizations as well as the manner and conditions governing such application, including sharing of the additional financial implications arising thereon, requires specific approval of the Central Government. The autonomous organizations are expected to manage their affairs in such a fashion that their dependence on Central Government for financial support to meet the extra financial implications is minimal, as such autonomous organizations are expected to be financially self-sufficient so as not to cause any extra burden on the Central Exchequer.

2. In the above background, the question of extension of the revised pay scales in terms of the CCS (RP) Rules, 2016 as notified on 25.7.2016 in respect of Central Government employees based on the recommendations of the 7th Central Pay Commission, to the employees of the Quasi-Government Organizations, Autonomous Organizations, Statutory Bodies, etc., set up and funded/controlled by the Central Government, where pattern of emolument structure, i.e. pay scales and allowances, in particular Dearness Allowance, House Rent Allowance and Transport Allowance, are identical to those in case of the Central Government employees, has been considered by the Government and it has been

decided that the revised pay scales as per the Pay Matrix, as contained in Part-A of the Schedule of the CCS(RP) Rules, 2016 as well as the principle of pay fixation as contained in the said rules, may be extended to the employees of such organizations, subject to the following stipulations:-

(i) The conditions of service of employees of these organizations. especially those relating to hours of work, payment of OTA etc. are exactly similar to those in case of the Central Government employees,

(ii) The revised pay structure shall be admissible to those employees who opt for the same in accordance with the extant Rules.

(iii) Deductions on account of Provident Fund, Contributory Provident Fund or National Pension System, as may be applicable, will have to be made on the basis of the revised pay w.e.f. the date an employee opts to elect the revised pay structure.

3. The revised pay scales contained in Parts B & Part C of the Schedule of the CCS(RP) Rules, 2016, shall not be automatically applicable to the employees of Autonomous Organizations. The concerned Administrative Ministry shall consider such cases keeping in view whether these pay scales are justified for the category of staff of Autonomous Organizations based on functional considerations, recruitment qualifications, as well as the applicable pre-revised pay scales. Based on such an examination by the concerned Administrative Ministry, appropriate proposals, if justified, would be submitted to the Ministry of Finance, Department of Expenditure, through their Integrated Finance.

4. In case of those categories of employees whose pattern of emoluments structure, i.e., pay scales and allowances and conditions of service are not similar to those of the Central Government employees, a separate 'Group of Officers in respect of each of the Autonomous Bodies may be constituted in the respective Ministry/Department. The Financial Adviser of the respective Ministry/Department will represent the Ministry of Finance on this Group. The Group would examine the proposals for revision of pay scales etc. taking into account the views, if any, expressed by the staff representatives of the concerned organizations. It would be necessary to ensure that the final package of benefits proposed

to be extended to the employees of these Autonomous Organizations etc. is not more beneficial than that admissible to the corresponding categories of the Central Government employees. The final package recommended by the 'Group of Officers will require the concurrence of the Ministry of Finance.

5. In regard to the additional financial impact arising out of the implementation of the revised pay scales, as provided above, the following parameters shall be kept in view:-

(i) In respect of those Autonomous Organizations, which have not been depending upon the Government Grants for their operations or for meeting the cost of salary, including those autonomous organisations which are in a position to meet the additional financial impact from their own internal resources, the additional financial impact shall be met by the concerned autonomous organizations without any financial support whatsoever from the Government. No financial support shall be given by the Central Government in such cases.

(ii) In respect of the other Autonomous Organizations, which are not in a position to meet the additional financial impact, either fully or partly, on account of the implementation of the revised pay scales, the concerned autonomous organization will take up the proposals with the Financial Advisers of the respective Administrative Ministry/Department, bringing out the extent to which the additional cost could be met internally, the shortfall to be made up and the reasons for the shortfall. While giving concurrence to the implementation of the revised pay scales, the Financial Advisers shall ensure that the extent of Government support is kept at the minimum, and in no case the Government support shall be more than 70% (seventy percent) of the additional financial impact.

(iii) In respect of Autonomous organisations set up under a specific Act of Parliament, not generating adequate internal resources to meet the additional financial impact, the extent of Government support may be more than 70% of the additional impact, provided in the opinion of the concerned Financial Adviser the nature of functions and the fund position of the organisations so warrant.

(iv) The mode of payment of arrears, as laid down in Rule 14 of the CCS(RP) Rules, 2016 shall be followed, subject to the overall financial impact and the capacity of the concerned autonomous organization to absorb the cost without putting any avoidable burden on the Governments finances, provided the conditions mentioned above are met.

6. The Central Government has not taken any decision so far in regard to various allowances based on the 7th Central Pay Commission in respect of Central Government employees and, therefore, until further orders the existing allowances in the autonomous organizations shall continue to be admissible as per the existing terms and conditions, irrespective of the revised pay scales having been adopted.

5. The Department of Science and Technology, by a letter dated February 7th 2019, informed the Bose Institute that they have found in some autonomous institute under Department of Science and Technology, non-technical/administrative staffs are enjoying better service conditions and promotional avenues than relevant cadre of Central Government Employees. Bose Institute was thereafter asked to submit undertaking duly signed by the Registrar that only vacancy based promotion is being granted to its non-technical/ administrative employees.

6. It is the further case of the petitioner that thereafter a Group of Officers (GOO) was formed in respect of Bose Institute. One meeting was held by the GOO on 24th June, 2019 wherein the Bose Institute was asked to justify regarding revise pay scale for respective posts in 6

CPC and 7 CPC along with details justification for consideration of group of officers.

7. It is the further case of the petitioners that the Group of Officers (GOO) were entrusted that while making such proposals, it shall ensure that the final package of benefits proposed for the employees of Bose Institute shall not more than that of admissible to the corresponding categories of the Central Government Employees as per G.O. of Department of Science and Technology issued from time to time, however mapping in tabular statement may be submitted showing the pay structures and the post (duties and responsibilities) prevailing in Bose Institute with that of structure of pay etc prevailing in any Government of India lab/organizations such as DRDO/DAE, separately for technical and administrative staff.

8. Petitioners were not aware about the proposal submitted by Bose Institute and they are also not communicated with the final decisions of Group of Officers. The petitioners suddenly came to know from a letter dated 16.10.2019 (impugned) issued by respondent No 2 address to the Bose Institute which stated that office memorandum dated 08.04.2008 and 15.04.2008 were illegal arbitrary and without approval of the competent authority and hence was declared as null and void. The respondent No. 2 had further observed in the impugned letter that the

designation, pay and allowance of the employees granted on the basis of those two orders shall be restored back to its original position as of 21.12.2005 with immediate effect along with grant of telescopic/retrospective fixation and disbursement as per 6th Central pay commission and 7th Central pay commission.

9. The Registrar Bose Institute, respondent No. 5, subsequently issued circular on 4th December 2019 whereby it was communicated that pursuant to the letter dated 7th February 2019 and 16th October 2019 of respondent No. 2, the competent authority of respondent No. 3 though is continuing with the payment of salary/pension as per 7th Central Pay Commission (70% of the 7th CPC) till date, excess payment, if any, to the non-academic staff(both administrative and technical) shall be recovered from the salary subsequently.

10. It is the further case of the petitioner that they came to learn that pursuant to the communication of respondent No. 2 dated 16.10.2019 (impugned), the respondent No. 3 subsequently by letter dated 26th February 2020 informed that a due drawn statement of all 173 existing employees had been prepared who have been granted promotion and pay scales based on the memorandum dated 08.04.2008 and 15.04.2008. It was further informed that upon completion of the entire exercise, the respondent authorities had found that a cumulative

amount of Rs. 13,18,78,625/- have been paid in excess from the date of joining of all the employees till December 2019.

11. It is the case of the petitioner that because of the said directives the petitioners were deprived of their promotion and reverted back to a status which was lower than their status at the time of initial /appointment to Bose Institute in the year 2010.

12. Hence this writ, challenging this order dated 04.12.2019 and also a letter dated 16.10.2019 issued by the respondent No. 2.

13. Mr Subir Sanyal Learned Sr. Counsel appearing on behalf of the petitioners submits that the policy of Bose Institute need to be verified regarding staff position. There are two types of non-academic staff one is administrative and another is technical staffs. Petitioners are the technical staffs of Bose Institute, their terms and conditions of service are separate from the other administrative staff of the Bose Institute. They all joined in the post of Junior Library Assistant in Bose Institute at the pay band of Rs. 9,300/- --34,800 with grade pay of Rs 4,200. He submits that Bose Institute has issued advertisement in the year 2010 inviting the applications from the citizen of India for the post of Junior Library Assistant, while the vacancy notification itself stated the pay band with grade pay; on such offer of advertisement, the present petitioners applied and as successful, appointment letter was issued in

their favour with a initial basic pay of Rs 13,500 (pay 9,300+ grade pay 4,200) in the pay band PB2 of Rs 9,300- 34,800 with grade pay of Rs 4,200.

14. It is the further contention of Mr. Sanyal that the technical staffs in Bose Institute are promoted following the “*MANAS*” scheme. The said scheme was approved by the Department of Science and Technology by its different letters and orders. The present petitioner are not automatically promoted under the “*MANAS*” scheme but there is a existing policy for promotion in the Bose Institute by forming a Departmental-Promotion- Committee who shall verify the appraisal report of the petitioners and after successful interview they being promoted. It is the contention of Mr Sanyal that the time scale permission under the “*MANAS*” scheme was approved and continued for long period. The technical staff can go in the zone of consideration for promotion after a particular period, and then promotion was not automatic.

15. During the course of argument Mr. Sanyal has placed a memo dated 1st August 2001 of Ministry of Science and Technology regarding promotion policy of non-academic staff. The relevant portion of the memo is set out as follows:-

No. A1/B1/007/2000

Dated 1" August, 2001

To
Prof. M. H. Engineer,
Director,
Bose Institute,
Kolkata-700054

Sub: Promotion Policy of non-academic staff

Sir,

In pursuance of the decision taken on agenda item No. 10 in the 150 Meeting of the Bose Institute Council held on 20.09.97, a promotion policy was formulated by the Bose Institute in respect of non-academic staff (both administrative & technical) of the Institute. The promotion rules of non-academic staff were referred to DST for final approval.

2. The above promotion rules were discussed in a meeting held in DST on 16th & 17th July, 2001, when Prof. M. H. Engineer, Director and Prof. B. N. Singh, Registrar were present. In the meeting the following broad conclusions were arrived at:

(a) Promotions of administrative staff will be vacancy oriented. In other words, such promotions have to be against vacancies arising against sanctioned posts and cannot be made on time-bound or interim or supernumerary basis. In this regard the principles evolved in the meetings held in DST on 5th July 199x & 26th Feb 1996. regarding promotion & other matters of non-academic staff should be kept in view (copy enclosed)

Contd. 2/

(b) There is no objection to the ACP Scheme for the Central Govt. Civilian employees as introduced in DP&T OM No. 35034/ 1/ 97-Estt.(D) dated 9th August 1999 being introduced in Bose Institute.

(c) The promotion of technical staff may be done on the pattern of CSIR MANAS scheme. The Qualifications, experience & the level upto which an employee can rise in a particular group may be reviewed in the light of the above scheme.

3. *The promotion scheme may please be reviewed in the light of the forgoing and the matter placed before the Governing Council again for re-consideration.*

Yours faithfully,

(M. N. Kalra) DIRECTOR

16. Mr. Sanyal has also placed his reliance upon a minutes of 164th meeting in the council of Bose Institute held on Sunday, 20th March, 2004. The said meeting was cheered by Sri Ramamurthy, the then Secretary DST in such meeting agenda item 164.11 has mentioned about the approval of non-academic promotion of Bose Institute as follows:-

Agenda Item-164.11: Approval of the Non-Academic Promotion of Bose Institute.

The Director apprised the House that in the 163 meeting of the Bose Institute Council held on 29-07-2003, the matter of promotion of Non-Academic staff was placed in detail with an advance copy to DST for approval. The Bose Institute Non-Academic staff do not have a well-defined Promotion Scheme. However, after several years of discussion and efforts, the DST had finally recommended 3 promotional modes for Administrative/Technical Staff at Bose Institute viz:- (1) Vacancy-based promotion, (2) A.C.P. Scheme introduced by the Government of India, and (3) Promotion of Technical Staff on the pattern of MANAS Scheme of CSIR.

In consideration of the long-pending cases of promotion of Non-Academic staff, the Director allowed only those cases who did not get any promotion or only one promotion during their uninterrupted service in Bose Institute for consideration by the duly constituted Assessment Committee in conformity with the Service & Recruitment Rules/DST guidelines in early 2003.

The total number of recommended cases for promotion was 47. The DST, after due process of examination, apparently cleared 34 cases but expressed reservation about 13 cases. It was mentioned that no formal

approval of the above cases was received from the DST and no objection was raised either.

17. Mr. Sanyal further argued that one Structural Revised Committee of Bose Institute has formed to give a concrete shape to the overall up gradation of Bose Institute including fixation of pay structure, recruitment policy of the staff of Bose Institute. It has been observed in that final recommendation of such Structural Revised Committee that the pay structure and other service condition as being amended in IACS, of sister concerned founded by DST, Government of India, completely at per with IACS shall be adopted in Bose Institute also.

18. Mr. Sanyal further argued that Bose Institute following the reference of DST Government of India and in order to maintain parity of pay structure between Bose Institute and IACS and other similar DST aided institutions have issued pay revision order on 08.04.2008 and thereby implemented identical revised pay scale and carrier advance scheme of IACS, Calcutta for non-academic staff both technical and non-technical of the institute provisionally with effect from 22.12.2005. On the basis of such memo dated 08.04.2008, Bose Institute has again issued a separate memo dated 15.04.2008 allowing revised pay structure carrier advance scheme for all non- academic staff (both administrative and technical) of Bose Institute at per with IACS, Calcutta.

19. Mr. Sanyal further argued that the present petitioners being the technical staffs are always enjoying time scale promotion according to Merit and Normal Assessment Scheme (MANAS). The scheme was introduced in the year 1994 by the Central Government it shall appear in the CS service Rules 1994 by implementation of such rule earlier merit assessment scheme has been replaced CSIR letter dated 29.09.1994. From 01.04.1992 onwards the revised provisions for MANAS scheme is be applicable with effect from 01.04.1992 i.e. for assessment year 1992-93 and onwards.

20. Mr. Sanyal argued that the MANAS scheme is a scheme for specified scientists and technical staffs who in their ACRs/APARs has secured a particular mark and may come under the zone of promotion. After completion of particular year in an existing grade.

21. Mr. Sanyal further argued that time scale promotion was not available to the other staffs apart from the technical staff of the Bose Institute. He further argued that such time scale promotion was also available in the other autonomous institution of DST.

22. Mr. Sanyal further argued that on 7th February, 2019 DST issued a letter to all the autonomous institutions under DST, with a view that as per department of expenditure the non-technical/ administrative staff of autonomous institutions are enjoying better service conditions and

promotional avenues that of similar to those Central Government Employees. The Bose Institute was advised by the said memo to submit and undertaking duly assigned by Registrar of the institute that only in the year based promotion is being granted to its non-technical/administrative employees. It has also been clarified by the said memo that to justify the said issued a group of officers in respect of each autonomous body would be constituted by the respective Ministry/department.

23. Mr. Sanyal further submits that department of Science and Technology always consider the promotion of technical staff on the pattern of CSIR Manas scheme. He refers memorandum dated 1st August 2021 as well as minutes of 164 meetings of the council of Bose Institute held on Sunday, the 28th of March 2004,

24. Mr. Sanyal further argued that the department of Science and Technology while considering the pattern of emoluments structure that is the pay scale allowance and condition of service of Central employee visa-vis the autonomous bodies under the said department found that some of the autonomous institute of DST, non-technique with administrative staffs are enjoying better service conditions and promotional avenues. Vide letter dated 7th of February, 2019 DST has informed Bose Institute that only vacancy based promotion is being

granted to its non-technical and administrative employees. Mr. Sanyal submits such memo never include the technical employees but Bose Institute in letter dated 20nd February, 2019 has included technical staff under the same category. Mr. Sanyal submits that the action of Bose Institute cannot be accepted, while DST has categorically mentioned that the emoluments/pay structures of non-technical and administrative staffs are not similar to that of the Central Government employees.

25. Mr. Sanyal further submits that the office memorandum of Ministry of Finance dated 13th January 2017 has categorically provides for appointment of group of officers to verify whether at the time of recommendation of 7th Central Pay Commission to the employees of autonomous organization, statutory body etc. whether they are enjoying of the same pattern of benefits and all promotions to that of the Central Government employees. Mr. Sanyal further submits that there were no evidence before the group of officers to hold that the technical staffs of Bose Institutes are given more benefit than other institutes of Central Government of similar nature. He submits that the finding of group of officers are perverse.

26. Mr. Sagar Bandopadhyay Learned Senior Counsel appearing on behalf of the other petitioners submits that petitioners are junior

Library Assistant who appointed after 2010. He submits that promotional order as well as the orders of every emoluments were passed by the Bose Institute according to their service.

27. Mr. Bandopadhyay further submits that Bose Institute being an autonomous body have got powers to frame terms and conditions of the service of its employees and the benefits to be made available to them and the employees to the autonomous organizations are not governed by Article 309 or Article 311 and therefore there was no illegality in the office memorandum dated 08.04.2008 and 15.04.2008 and the promotion dated 05.12.2013. even if, those give some additional benefits to the employees of the Bose Institute than the employees of the Central Government. In support of his contention he cited a decision of Hon'ble Apex Court passed in **Punjab State Electricity Power Vs. Thana Singh and Ors.** reported in (2019) 4 SCC 113

18. The appellant Board being an autonomous body governed by its own regulations, it was for the Board to classify its employees/posts on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, the Board would be justified in prescribing different pay scales. Article 14 of the Constitution of India would be applicable only when a discrimination is made out between the persons who

are similarly situated and not otherwise. It is the duty of an employee seeking parity of pay to prove and establish that they have been discriminated. In State of Haryana v. Tilak Rajis, this Court held that:

C p. 127, para 11)

"11.... To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination."

(emphasis supplied)

28. Mr. Bandopadhyay further argued that the petitioner joined in the service in the year 2010 pursuant to the selection process conducted by the Bose Institute and were getting emoluments by virtue of memorandum dated 08.04.2008 and 15.04.2008 which was much prior to their appointment in the service. He further submits that Bose Institute by circular dated 05.05.2020 sought to revert of the petitioner to the possession which was not even the status of the petitioner at the time of their appointment. Pay of the petitioner was fixed showing the revision, lower than joining cadre and that not to under any disciplinary proceedings which is not at all permissible in law.

29. Mr. Bandopadhyay further argued that the petitioners have received payments by the order of the Bose Institute even assuming that excess has been made to the petitioner from their respective dated of attaining promotion, even then since that was not due to any fault or suppression at the instance of the petitioner or on the basis of any fraud, decision of BI for recovery of overdrawal amount cannot be made.

30. In support of his contention Mr. Bandopadhyay relied upon a judgment of Hon'ble Supreme Court in the case of **State of Punjab Vs. Rafique Masih and Ors.** reported in **(2015) 4 SCC 344**

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law: (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five

years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

31. Ms. Chandreyi Alam Learned Counsel appearing on behalf of **Union of India** submits that by virtue of office memorandum dated 13.01.2017 by Finance Department, the DST has taken the correctional measures. She further submits that the staff of Bose Institute are getting more financial benefit and promotional avenue than other Central Government employees. Ms. Alam shows memo dated 08th August 1978 of Department of Science and Technology and submits that the said memo was issued for DST prior to the absorption of Bose Institute by DST, at the time of Bose Institute was attached with Calcutta University.

32. Ms. Alam further submits that Manas Scheme, is a scheme applicable prior to the ACP; after inclusion of ACP, Manas Scheme became obsolete and not approved by the Central Government. She

further submits that Central Government made no discrepancy between technical and non-technical staffs, while it appears to DST that staffs of BI are getting more benefit, the Central Government is authorized to take correctional measures as Bose Institute, being an autonomous body, fully founded by the Central Government.

33. Mrs. Alam further submits that time bound promotion is unknown to the Central Government there is a specific policy for promotion but the technical staff of Bose Institute are getting time bound promotion by such they are getting more promotion in a few span of service which is not applicable or according to the rules of DST. Mrs. Alam further submits the group of officers after due deliberation, in view of the finance memo dated 13th January, 2017 has considered of documents/representations of the petitioners and forwarded their opinion that staffs of Bose Institute are getting more promotional avenues than that of other Central Government employees.

34. She further submits that the writ court under Article 226 of the Constitution can not interfered with the policy decision of the Central Government that too, in cases of financial discrepancies. She further submits that Bose Institute has already found that a huge amount of money has been overdrawn by the employees. Thus, the same benefit

which was given excess to their entitlement required to be refunded back.

35. Mr. Chakrabarty Learned Counsel on behalf the Bose Institute submits that the policy of the then Administrative Committee of Bose Institute had done wrong. He submits that the minutes of emergency meeting of dated April 8th, 2008 had never received approval from the Department of Science and Technology. Moreover, on the same day that is on April 8th, 2008. A office memorandum was issued wherein it has been specifically mentioned that if any payment is made inconsequent to an otherwise decision of the competent authority such shall be recovered from the employees in suitable manner. He further submits on plain perusal and realm of office memorandum dated 8th April 2018 it would be revealed that such memo was issued in anticipation of formal approval of the DST. He further submits that such approval was never reached of the Bose Institute but Bose Institute has further issued office memorandum dated 18th April 2008 regarding reforms pay structure carriers advancement scheme of the staff of Bose Institute. He further submits that the said memos were issued without a concurrence to the Central Government thus, they are not their required to be set aside.

36. Mr. Chakrabarty further argued that recruitment rules of the Bose Institute has categorically framed regarding 10 years residency period of technical staff. Now the petitioner cannot claim 05 years residency period on the basis of Mana Scheme. He further submits that the group of officers were appointed by virtue of finance memo dated 13/01/2017. They have authority to verify whether staff of Bose Institute are getting more promotional avenues than that of other Central Government employees. He submits that by calculation it appears to them that huge amount excess money was received by the employees. Thus the excess amount has to be refunded. He submits that impugned memos issued by the DST as well as Bose Institute are legal tenable.

37. Having heard the Learned Counsel for the parties and considering the materials, it appears that issue involved herein whether the technical staff of Bose Institute are getting more benefit than the Central employees. It is the case of the petitioner that they are enjoying of the promotional avenues according to the Manas Scheme. On perusal of 163rd, 164th and 165th meetings minutes of Bose Institute, it appears that in those meetings, representative of Bose Institute were present, more so Chairman-cum-Secretary of DST was also present in one 165 meeting. It appears from the resolution of such meeting that in 164th meeting of council of Bose Institute held on Sunday, 28th March 2004. In agenda Item No. 164.11 there were an approval of non-academic

promotion of Bose Institute. He further submits that in page 7 of the said resolution the council further resolved that

The Council further resolved that:

(a) the recommendations of the incumbents under MANAS Scheme be reviewed by the above-mentioned Committee in line with the foregoing paras and the recommendations of the Committee be implemented.

38. It further appears from minutes of meeting of Bose Institute financial committee held on 28th February 2019 wherein the miscellaneous agenda is read as follows:-

Miscellaneous

Director (Officiating), Bose Institute pointed out that, a D.O. Letter No. A1/5/1/2019 dated 07.02.2019 has been received from Department of Science & Technology, Government of India, asking for a declaration from the Registrar, Bose Institute that only vacancy based promotion are being followed for Non-technical/Administrative staffs of the Institute. The Ministry has further advised to withhold 7 CPC benefits to its Non-technical/Administrative staffs where vacancy based promotion are not followed. The Chairman stressed to strictly follow the Government of India rules and regulations in this respect and the instructions given by Department of Science Technology for this purpose. The Chairman advised to take up the remaining agenda items in the next newly constituted FC Meeting.

The meeting ended with vote of thanks to the Chair.

39. To justify the appointment of the Group of Officers (GOO) by virtue of Finance Department the memo dated 13th January 2017, Paragraph 4 of the said memo very relevant (already set out)

40. On meticulous clear perusal of said paragraph it appears that a separate group of officers in respect of autonomous body may be

constituted in respect each Departments/ Ministry, in case it appears to that the category of employees whose pattern of emolument structure that is pay scale and allowance and condition of service are not similar to those of the Central Government employees. It further appears that a group of officers was entrusted to examine the revision of pay scales etc. taking into account the views, if any, expressed by the staff representative of the concerned organization. The Group of Officers was also entrusted to ensure that final package of benefits under 7th pay commission proposed to be extended to the employees of autonomous organizations is not more beneficial than that permissible to correspondent categories of Central Government employees. Thus it is clear from the memo that group of officers may be formed by the Central Government where it appears that employees of concerned autonomous bodies are getting more pay scale/ allowance of service than the Central Government employees. Following the said memo DST vide its letter dated 7th February 2018 informed Bose Institute that non-technical and administrative staff of the Bose Institutes are getting/enjoying better service conditions, pecuniary benefits than the Central Government employees; but while considering the memo, Bose Institute in terms of the said memo has issued a separate memo on 22.02.2019, included technical staff in the same category DST never informed BI that technical staff of Bose Institute are getting more

beneficial pay structure or promotional avenue than that of the other Central Government employees of similar nature. However, the group of officers are framed to justify the final package of 7th pay commission in respect of the Bose Institute.

41. It further appears that the Group of Officers held a meeting on 24 June, 2019 wherein they asked Bose Institute to submit necessary documents for better appreciation of pay structure of the employees of Bose Institute and also asked employees to submit detail representation and also instructed to submit mapping in tabular form showing pay structure and promotional avenue (with duties and responsibilities) prevailing in Bose Institute with that of the structure of pay etc prevailing in any Government of India Organization such as DRDO, DAC separately for technical staff and administrative staffs. In terms of such directions of Group of Officers the present petitioner being technical cadre has submitted tabular statement regarding the designation, residency period, job responsibility, pay structure of Bose Institute as well as DRDO. It appears from the said tabular statement that Bose Institute and DRDO, that is, other autonomous organization of Central Government are also enjoying the same pay structure and residue period in the promotional process. It further appears that after such meeting, the group of officers never sat in any meeting but only a draft report was submitted, though all the persons containing the

Group of Officers do not sign the draft report. However, on perusal the draft report it appears that the group of officers has examined of the policy recommendations of Structure Reforms Committee of DST, and also perused office memorandum and minutes of meeting of governing council of Bose Institute and is of opinion that the staff of Bose Institute are getting better pay structure and promotional avenue than that of the other Central Government employees of similar nature.

42. It further appears that the group of officers has recommended for take necessary steps of DST. It appears that in pursuance to the said draft report of group of officers the department of Science and Technology has issued impugned memo on 16th October 2019. In the said memo it has been observed that after consideration of the entire memo dated 11th October 2019 it appears that on the recommendation of the group of officers the department science and technology issue memo thereby is of opinion that the present petitioners being the technical employees of Bose Institute are getting more benefit than Central Government employees on similar status.

43. However I find nothing in the documents to justify the said stand of Central Government or group of officers. There are no evidence before the group of officers that the technical staff of BI are getting better service benefit and promotion avenue than that of the other Central

Government employees of similar nature. It further appears that Group of Officers has recommended to take necessary steps of DST. It appears that in pursuance to the said draft report of group of officers the Department of Science and Technology had issued the impugned memo on 16th September, 2019. consideration of the entire memo dated 16th October, 2019 it appears that on the basis of recommendation and report of Group of Officers the Department of Science and Technology issued the memo and thereby is of opinion that the present petitioner being the technical employees of Bose Institute are getting more benefit than Central Government employees of similar status. However, I find nothing in the papers and documents to justify the said stand of DST as well as the Group of Officers. There are no evidence of group officers that the technical staffs Bose Institutes are getting better benefit than other Central Government employees.

44. It further appears the group of officers in their report has not stated anything regarding the tabular statement submitted by the representative of the petitioner before them. It further appears that by such impugned memo dated 16th October, 2019, the service condition was restored back to its original possession as on 21.12.2005, it appears that some of the employees who were appointed in the year 2010 were getting benefits as per the norms of the advertisement regarding the scale of pay of impugned office memo. The department of

Science and Technology cannot resort back to deny their right to pay structure back to the original possession as on 21.12.2005.

45. It further appears that impugned office memo dated 16th October 2019 was issued without taking any comments or giving any reasonable opportunity of being heard to the petitioners. Thus, the memo dated 16th October, 2019 is appears to me issued violating the principal of natural justice. The petitioner being the technical employees has received pay and emoluments and promotion from Bose Institute as per orders of the Bose Institute time to time by following the specific provisions of Manas scheme which was applicable to them from time to time and in all time the said scheme and payment to the employees were well know to the DST, now, suddenly DST by their own accord without giving a reasonable opportunity of being heard to the petitioner cannot deny entire benefit of the petitioners.

46. I can understand that, High Court in exercising its writ jurisdiction ordinarily would not interfere the policy discussion of State when financial implication is involved, but in the present case, impugned decision of DST (through Memo dated 16.10.2019) has revert back the employees in a place, lower than their initial pay structure at the time of appointment through the regular process of appointment employees/petitioners have selected and received pay and emoluments,

by such they accrued a right of pay scale, which cannot be taken away without giving them a reasonable opportunity of being heard.

47. Under the above observation it appears to me that impugned memo dated 16th October, 2016 issued by the DST as well as the circular by Bose Institute dated 4th December , 2018 appears to me not justified under the principal of Natural Justice. Hence, both the memo as well as the circular are quashed in respect of present petitioners. The Department of Science and Technology shall form a specific Finance Committee to examine the issue again, and if it appears to the Committee that the petitioners are getting better service benefit than the other Central Government employees of similar nature, they can take proper measures according to law and Rules and shall pass such necessary order after giving reasonable opportunity of being heard to the petitioners, on that score petitioners will be allowed to submit their statements as well as the documents according to their wish.

48. It appears that Bose Institute has recovered some amount of money from petitioners with the ground of overdrawl. Hon'ble Supreme Court in **Rafique Masih (Supra)** has deprecated the practice. It appears the recovery made by BI is a harse action. In terms of direction of Hon'ble Supreme Court in **Rafique Masih (Supra)** recovery of alleged

overdrawn amount by Bose Institute from the petitioners shall be refunded within 04 weeks from the date of passing of this order.

49. Under the above observation the instant writ petitions considered and allowed.

50. Connected applications if pending are also disposed of.

51. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)

Later:

Mr. Chakraborty, learned Advocate appearing on behalf of the Bose Institute submits that the Bose Institute shall prefer an appeal against the direction upon the Bose Institute to refund the overdrawal amount within four weeks.

He prayed for necessary order of stay of operation of that order.

Mr. Bhattacharyya, learned counsel appearing on behalf of the petitioner as well as Mr. Bandhopadhyay, learned counsel

appearing on behalf of the other petitioners raised strong objection.

Having heard the learned counsel for the parties and considering the entire matter, it appears to me that this court has decided the issue of refund of alleged overdrawl amount by virtue of decision of Hon'ble Apex court in **Rafiq Masih (Supra)**.

Accordingly, I find no justification to allow the prayer as made on behalf of the Bose Institute.

Accordingly the prayer for interim stay is consider and rejected.

(Subhendu Samanta, J)