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**(1998) 09 SC CK 0005**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 5424 of 1993**

Bimal Kumar Banerji

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 16-09-1998**

**Acts Referred:**

**Citation : (2001) 10 SCC 550**

**Hon'ble Judges : S. Saghir Ahmad, J; S. Rajendra Babu, J**

**Bench : Division Bench**

**Final Decision : Allowed**

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## **Judgement**

1. The appellant is a Technical Assistant in the National Library at Calcutta, which is a part of the Department of Culture under the Ministry of Human Resource Development, Government of India. With regard to the scale of pay for this post, the Fourth Pay Commission, in its report submitted to the Government of India, made the following recommendations:

"10, 290. The Department of Culture has proposed the merger of the pay scales of Rs 425-700 and Rs 500-900 of the posts of Technical Assistants and Senior Technical Assistants in the Department of Culture in view of the high educational qualifications prescribed for them. Technical Assistants and Senior Technical Assistants both assist higher officers in their work and their duties and responsibilities are quite similar. Considering their qualifications, responsibilities and duties, we feel that posts in the scale of Rs 425-700 may be upgraded and merged with the posts in the scale of Rs 550-900 and suitably redesignated. The revised scale of Rs 1640-2900 will apply to these posts."

2. This recommendation was accepted by the Union of India and in the First Schedule of the Central Civil Services (Revised Pay) Amendment Rules, 1986, Part C containing revised scales of pay for certain posts in the Ministries, Departments and Union Territories, was added in which the following was indicated:

"X -- MINISTRY OF HUMAN RESOURCE DEVELOPMENT (Department of Culture)

1. Technical Assistant 425-15-500-EB 15-560-20-700 1640-60-2600-EB-75-2900 (to be suitably designated).

2. Senior Technical Assistant 550-20-650-25-750-EB-30-900 The post of Technical Assistant in the present scale of Rs 425-700 has been upgraded and merged with the post in the present scale of Rs 500-20-650-25-750-EB-30-900."

3. The Government of India subsequently fixed the salary for Technical Assistants in the scale of Rs 1640-2900, but by letter dated 27-8-1987 the Government of India directed that their salary shall be fixed in the scale of Rs 1400-2300, instead of Rs 1640-2900. It was further directed that the overdrawn amount on account of their fixation of pay in the higher scale of Rs 1640-2900 from 1-1-1986 to 31-8-1987 will not be recovered from them as a final determination of the pay scale was still under active consideration of the Government.

4. It was at this stage that the petitioner approached the Central Administrative Tribunal, Calcutta for the salary being paid to him in the scale of Rs 1640-2900 but the Tribunal by its impugned judgment dated 4-2-1988 rejected the claim petition necessitating the appellant to approach this Court.

5. On 19-7-1993 this Court passed the following order:

"Under the impugned order of 4-2-1988, the Tribunal concludes that the final determination of the pay scale of the Technical Assistants is still under active consideration of the Government. The learned counsel for the petitioner states that he had already been placed in the revised pay scale and was given that scale and hence there was no question of the Government reconsidering it. Since, the Tribunal has mentioned that the matter is under the active consideration of the Government, we called upon the learned counsel for the Government to inform us as to its outcome. The learned counsel is unable to state what developments have taken place from 4-2-1988 till today. We, therefore, direct the counsel to file an affidavit clarifying the position and stating what decision, if any, has been taken in regard to the pay scale of Technical Assistants in the National Library. This should be done without fail within four weeks from today having regard to the time that has since elapsed. Let the matter come up thereafter."

6. The respondents in their counter-affidavit dated 19-8-1993 which was filed in response to the above order have stated in para 7 as under;

"Regarding para 7 of the said petition, it is stated that Letter No. F. 12-15/87-Lib, dated 27-8-1987 was issued after obtaining clarification from the Implementation Cell of the Fourth Pay Commission, Ministry of Finance, who is the authority to decide all such matters. The Implementation Cell has been still examining the question and till their decision comes, this Department is not in a position to merge the scale of Technical Assistant in the National Library with that of Senior Technical Assistant in the Department of Culture and give the former the higher

scale of Rs 1640-2900. On the basis of the orders of the Government of India in their Department of Culture, vide Letter No. F. 12-15/86-Lib. dated 27-8-1987 (xerox copy enclosed as Annexure D) as office order (No. 503 of 1987-88) dated 8-9-1987 was issued to the Technical Assistants of the National Library, Calcutta stating that the pay attached to the Technical Assistants of the library will be in the scale of Rs 1400 2300 and the pay of all Technical Assistants of the library may be fixed anew on the above scale right from January 1986 (xerox copy of the said office order enclosed as Annexure E)."

7. In para 15 it is stated as under:

"The deponent craves leave of this Hon"ble Court to make further appropriate legal submission at the appropriate stage, if so, advised.

The National Library, Calcutta and the Central Reference Library, Calcutta are two sister organisations under the Department of Culture, Ministry of Human Resource Development, Government of India. They are situated in the same campus at Belvedere, Calcutta. The post of Technical Assistant at the National Library and the post of Sub-Editor at the Central Reference Library are similar having the same revised scale of pay (which was Rs 425-700 pre-revised) Rs 1400-2300. The minimum qualification for entry into the service in the posts of Technical Assistant in the National Library and Sub-Editor in the Central Reference Library are the same as per the respective recruitment rules of the two organisations. Thus it is evident that the nomenclature of the designations of the posts are not the guiding factor in determining the pay scales or any increased pay scale to any staff of a library under the Government of India."

8. While the matter was pending here, another claim petition involving a similar question came to be decided by the Central Administrative Tribunal, Hyderabad Bench, which by its judgment dated 6-1-1989 allowed the revised and higher scale of pay to the Technical Assistants by observing as under:

"The Government having accepted the recommendations of the Pay Commission, has sought to make a departure in the case of Technical Assistants in ASI by not merging them and equating them to the revised scale of pay admissible to the common category of Technical Assistants and Senior Technical Assistants. Instead, the Government has sought to treat Technical Assistants in ASI alone as belonging to the pre-revised scale of Rs 425-700 without merging them with Senior Technical Assistants in the scale of Rs 550-900 and has consequently directed that they be given the revised scale of Rs 1400-2300. This is despite the recruitment rules for Technical Assistants in ASI requiring higher educational qualifications, which was the criterion accepted by the Pay Commission. In the circumstances, it is clear that the decision of the Government by the impugned Order No. 48/86-Admn. II dated 7-1-1987 to treat these Technical Assistants in ASI as different from Technical Assistants in analogous organisations in the Department of Culture is arbitrary and without any basis. The said impugned order is, therefore, set aside and the application is allowed with a direction that

the pay scale of Technical Assistants will be merged with the pay scales of Senior Technical Assistants and they will be entitled to the revised pay scale of Rs 1640-2900 as recommended by the Pay Commission."

9. This judgment has been accepted by the Government of India by its letter dated 16-7-1990 in which it is, inter alia, stated as under:

"The undersigned is directed to say that the Ministry of Finance has agreed to the implementation of the judgment of the Central Administrative Tribunal, Hyderabad to the upgradation of the posts of Technical Assistants in the Archaeological Survey of India in the pre-revised scale of Rs 425-700 and merging them with the posts of Senior Technical Assistants in ASI in the pre-revised scale of Rs 550-900 and revising the pay scale of the merged grade to Rs 1640-2900. On the same analogy the pay scales of TAs/Sr TAs designated differently and holding higher educational qualifications in the following offices are also required to be upgraded and merged in the pay scale of Rs 1640-2900:

Name of the attached sub-office Administratively controlled by

National Museum Cr-5 Section

Central Reference Library Library Section

National Library Library Section

National Archives of India Library Section

NGMA Cr-4 Section

CEFC FC Cell"

10. In view of the decision contained in the above letter, it is not open to the Government now to contend that this benefit shall not be extended to the appellant.

11. The appeal is, consequently, allowed and the impugned judgment dated 4-2-1988 passed by the Central Administrative Tribunal, Calcutta Bench is set aside. The claim of the appellant is allowed with the direction that his salary shall be fixed in the pay scale of Rs 1640-60-2600-EB-75- 2900 with effect from 1-1-1986 and the arrears, minus the amount, if any already paid, shall be paid to the appellant within three months. There will be no order as to costs.