

Fit for Reporting

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH,
NEW DELHI.

(11)

Date of Decision: 13 March 1992

REGN. NO. OA 490/90

M.L. DHUSIA & ORS. ... APPLICANTS.

VERSUS

UNION OF INDIA & ANR. ... RESPONDENTS.

For the Applicants ... Shri P.P. Khurana,
Counsel.

For the Respondents ... Shri T.K. Sinha,
Counsel.

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH...VICE CHAIRMAN(J).
THE HON'BLE MR. D.K. CHAKRAVORTY..... MEMBER (A).

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Member (A).)

This application filed by 19 Assistant Archivists Grade-II in the National Archives of India is directed against the inaction of the Respondents in not according to the applicants the pay scale of Rs.1640-2900 by merging the two pay scales of Rs.1400-2300 and Rs.1640-2900 as per the recommendations of the Fourth Pay Commission. The applicants have prayed for implementation of the merged scale with effect from 1.1.86 along with consequential benefits.

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2. The applicants joined the National Archives of India as Assistant Archivist Grade-II in the pay scale of Rs.425-700 as direct recruits. The Department of Culture has under it, two attached offices, namely, the Archaeological Survey of India (ASI) and the National Archives of India (NAI). Besides, there are six subordinate offices, namely, National Museum, National Gallery of Modern Art, Anthropological Survey of India, National Library, Central Reference Library and National Research Laboratory for Conservation of Cultural Property. For the offices under the Department of Culture, the Fourth Pay Commission made the following recommendations in regard to the pay scales :-

" The Department of Culture has proposed the merger of the Pay Scales of Rs.425-700 and Rs.550/- Rs.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/- Rs.900/- and suitably redesignated. The revised scale of Rs.1640-2900 will apply to these posts."

3. Despite the acceptance of these recommendations of the Fourth Pay Commission, the respondents did not implement the same. Certain employees working on analogous posts in the Archaeological Survey of India moved the Hyderabad Bench of the Central Administrative Tribunal under OA No.80/87 (Dr. S.V.P. Halakatti Vs. Union of India and others) praying for grant of the merged pay scale of Rs.1640-2900. In its judgement dated 6.1.89 the Hyderabad Bench allowed the reliefs claimed therein, the relevant portion of which reads

✓ as under :-

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"6.A. From a reading of the report of the Pay Commission, it is clear that the Pay Commission has proceeded on the assumption that the Archaeological Survey of India (ASI) and the National Archives and six other offices constitute a part of the Department of Culture. 6.B. The Pay Commission has dealt with ASI and other organisations as common organisations for the purpose of determination of pay. It was in that context that it has recommended that the Director General, ASI and the Director of National Museum should be given the same pay, vide para 10.287.

Further, in dealing with the posts of Technical Assistants, the Pay Commission has considered all Technical Assistants in the Department of Culture as being common, and proceeded to recommend merger of the pay scales of Technical Assistants and Senior Technical Assistants. In doing so, the Pay Commission never sought to distinguish ASI and the other organisations attached to the Department of Culture. It is to be noted that the reason for the Pay Commission to make such a recommendation was that a higher educational qualification is prescribed for both categories of posts. Again, while discussing posts of Chief Epigraphists in ASI and Deputy Director in the National Archives of India, the Pay Commission treated the two as equivalent posts and directed fixation of a common higher scale of pay of Rs.3700-6000. Thus, viewed in the context of the recommendations of the Pay Commission, it is clear that posts in the ASI were examined in common with other posts in the Department of Culture and the recommendations consequently would apply to posts, both in regard to ASI and the other offices in the Department of Culture. The Government having accepted the recommendations of the Pay Commission, have sought to make a departure in the case of Technical Assistants in the 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, 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 have consequently directed that they be given the revised scale of pay of Rs.1400-2300. This is despite the recruitment rule for Technical Assistants in the ASI requiring higher educational qualification, 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.40/9/86-Admn.II dt. 7.1.87 to treat these Technical Assistants in the ASI as different from Technical Assistants in analogous organisation 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 Assistant will

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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."

4. The applicants contend that their prayer is fully covered by the judgement of the Hyderabad Bench. Their counterparts in the Archaeological Survey of India were designated as Technical Assistants and Senior Technical Assistants but the recruitment rules, qualifications prescribed for the Assistant Archivist Grade-I and their job contents are practically identical. Further, prior to redesignation of posts under Ministry of Education letter dated 19.1.1952, these posts were also designated as Technical Assistants and Senior Technical Assistants. It is their further contention that in the judgement of the Hyderabad Bench, the entire matter relating to sanction of the merged scale for all the attached and subordinate offices under the Ministry of Culture had been discussed and a direction was issued that the of Technical Assistants will be merged with the pay scales/¹ pay scales of Senior Technical Assistants. They averred that this judgement directly covers the case of the applicants. In fact, Department of Culture OM dated 16.1.90 (Annexure E) establishes that the respondents had already initiated steps for implementing the decision of the Hyderabad Bench in respect of all their offices but apparently this was rejected by the Ministry of Finance.

5. The applicants have contended that non-implementation of the recommendations of the Fourth Pay Commission and the judgement of the Hyderabad Bench of the Tribunal is discriminatory as the applicants are entitled to/^{equal} pay for equal work. In support of the principle of equal pay for equal work, the applicants have sought protection

of Articles 14, 16, 38(2) and 39(d) of the Constitution. They have also cited some rulings of the Hon'ble Supreme Court* which we have duly considered.

6. The application has been contested by the respondents. They have contended that although the scales of pay for the posts of Assistant Archivists Grade-II and Grade-I are similar to those of Technical Assistants and Senior Technical Assistants in the other organisations under the Department of Culture, there are major differences in the nature of work performed, experience and the qualification required for the job. Even in the same organisation there can be vital differences in the prescribed qualifications and job contents for persons drawing the same scale of pay. The learned counsel for the respondents, as an illustration explained that Assistant Archivists Grade-II in the Oriental record Section are required to have knowledge of Persian whereas for those engaged in general duty experience of research/teaching in Modern History is essential. He further contended that the recommendations of the Fourth Pay Commission were in respect of the Technical Assistants in the Ministry only and that the same cannot be adopted in the case of Assistant Archivist Grade-II and other categories of employees in various other organisations under the Department of Culture.

7. We have heard the learned counsel for both parties and have gone through the records of the case carefully.

*Randhir Singh Vs. UOI, AIR 1982 SC 879, P. Savita Vs. UOI, AIR 1985 SC 1127 and Minerva Mills case, AIR 1980 SC 1969.

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8. We are not impressed by the arguments advanced by the respondents. In our opinion a perusal of the report of the Fourth Pay Commission clearly shows that they had recommended the merger of the scale of Rs. 425-700 and Rs. 550-900 not only for the posts of Technical Assistant in the Archaeological Survey of India but for all analogous posts carrying the same scales of pay in the Department of Culture and in all its subordinate and attached offices after taking into consideration and the high educational qualifications prescribed the duties and responsibilities entrusted to the incumbents. These aspects have been discussed at considerable length in the judgement of the Hyderabad Bench with which we are in full agreement.

9. In the light of the above discussion, we allow the application and direct the respondents to merge the posts of Assistant Archivists Grade-II with the post of Assistant Archivist Grade-I and grant the revised scale of Rs. 1640-2900 with effect from the date of implementation of the recommendations of the Fourth Pay Commission, namely, 1.1.86. The applicants shall also be entitled to arrears of pay and all consequential benefits.

10. The respondents are directed to implement this order within a period of three months from the date of its communication.

No costs.

D. K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)

13/3/1992

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN