

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.418/2003.

Monday this the 9th day of February 2004.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

N.Pookoya, S.S.Grade-II, (Watchman),
Minicoy Research Centre of Central Marine
Fisheries Research Institute, Minicoy,
U.T.of Lakshadweep. Applicant

(By Advocate M/s Sukumaran & Usha)

vs.

1. Union of India represented by Secretary to Government of India, Ministry of Finance, New Delhi.
2. Indian Council of Agricultural Research represented by its Director, Finance, Krishi Bhavan, New Delhi.
3. The Director, Central Marine Fisheries Research Institute, Post Box No.1603, Tatapuram, Kochi-14. Respondents

(By Advocate Shri P.Jacob Varghese)

The application having been heard on 9th February 2004, the Tribunal on the same day delivered the following:

O R D E R (ORAL)

HON'BLE MR. KV. SACHIDANANDAN, JUDICIAL MEMBER

The applicant was working as Watchman in the Minicoy Research Centre of Central Marine Fisheries Research institute, Minicoy, from 17.10.1978 onwards. By virtue of the O.M. dated 14.12.1983 the Central Government has issued orders granting Special Duty Allowance to the Central Government Civilian employees who have all India Transfer Liability on their posting to any station in the North Eastern Region. This was made applicable to the Central Government Employees posted to Lakshadweep vide order dated 30.3.1984. Further an order dated 24.5.98, the Central Government has clarified for Island Special

Allowance and is granted in Special Duty Allowance. The applicant approached this Tribunal by filing O.A.738/1990 for a declaration that the applicant is entitled to Special Duty Allowance (SDA for short) as per the above Government orders and the said O.A. was allowed by this Tribunal's order dated 7.1.1992(A1). Thereafter, the respondents have filed a Review Application No.22/92 on 2.6.92 which was dismissed by this Tribunal. An SLP No.16584/92 was filed by the respondents challenging the validity of A-1 judgement which was also dismissed as withdrawn by the Hon'ble Supreme Court by order dated 7.12.1992(A3) with liberty to file a Review Petition before this Tribunal. The RA filed by the 3rd respondent was also dismissed by this Tribunal by order dated 18.8.93 which is A-4. On 15.9.2001 the 3rd respondent has issued a notice to the department proposing to stop the grant of Special Duty Allowance being paid to the applicant with effect from October 2001 and to recover the SDA already paid. He has filed a reply to the above proposal on 5.10.2001(A5). On 28.2.2003 the ICAR issued a letter directing the Office-in-charge, Minicoy Research Centre of CMFRI to recover the SDA paid to the applicant and the applicant has now served with a letter on 3.5.2003 (A6 O.M. dated --4-2003) issued by the 2nd respondent for the proposed recovery. Aggrieved by this the applicant has filed this O.A. seeking the following reliefs.:

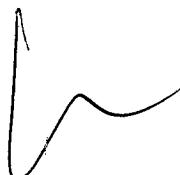
- "a) to set aside Annexure A6 letter issued by the 3rd respondent, since the same is issued ignoring the directions contained in Annexure A1 judgement of this Tribunal which has become final and binding between the parties.
- b) to direct the 2nd respondent to produce copy of letter No. 3-25/1996-IA-VI dated 28.2.2003, and to set aside the above letter since the same is issued ignoring the directions contained in A-1 judgment of this Hon'ble Tribunal which has become final and binding between the parties.

c) to direct the respondents to continue to pay Special (Duty) Allowance to the applicant so long as the direction contained in A-1 judgement of this Hon'ble Tribunal is not set aside by the appellate Court having jurisdiction in the matter."

2. The respondents have filed a reply statement contending that the conditions attached to the grant of special duty allowance sanctioned vide Government of India, Ministry of Finance O.M. dated 14.12.1983 are equally applicable to all the staff members working in the Minicoy Centre of CMFRI including the applicant. Although the applicant was not entitled to the special duty allowance, was granted the benefit by virtue of the order of this Tribunal in O.A.738/1990 and he was given the benefit uninterruptedly till 30.4.2003 and the policy regarding regulation of SDA has undergone a change after issue of a subsequent order dated 12.1.96, by the Government of India, Ministry of Finance, on the basis of the judgement delivered by the Hon'ble Supreme Court by order dated 20.9.94 in C.A. No.3251/1993. A decision was taken by the Ministry of Finance in consultation with the Ministry of Law based on the above judgement and the same was communicated to the concerned person including the applicant and the following dictum was laid down by the Hon'ble Supreme Court.

- (i) The amount already paid on account of SDA to the ineligible person on or before 20.9.94 will be waved.
- (ii) The amount paid on account of SDA to the ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94, but payments were made after this date i.e.20.9.94) will be recovered.

3. The Hon'ble Supreme Court in the judgement delivered on 20.9.94 upheld the contention of the Central Government and made it clear that the Central Government employees who have all India



Transfer Liability, are entitled to the grant of SDA on being posted to any station in the North Eastern Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to the All India Transfer Liability. The Apex Court further added that the grant of this allowance is only to the officers transferred from outside the region to this region would not be violative of the provision contained in Article 14 of the Constitution as well as the equal pay doctrine and directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned. The applicant is liable to be brought under the purview of the O.M. dated 12.1.96 of the Ministry of Finance and his claim for continued payment of SDA need to be reviewed afresh as there is a material change in the provision regarding regulation of SDA. It is submitted that the applicant is not entitled to draw SDA after 20.9.94 in view of the provisions contained in order dated 12.1.96. The SDA to the applicant is regulated prospectively and not retrospectively as per the provisions contained in O.M. dated 12.1.96 and therefore the applicant has no case and the O.A. is liable to be dismissed.

4. I have heard the counsel representing M/s Sukumaran and Usha appearing for the applicant and Shri P. Jacob Varghese appearing for respondents. Learned counsel of the parties have taken me to the pleadings, material and evidence on record and also enlightened the legal position. Learned counsel for the applicant has specifically argued that the Court orders and the binding judgements that have been pronounced by various Courts



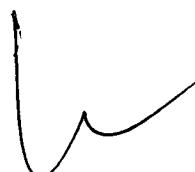
have crystallized the right of the applicant and therefore, the decision of the Apex Court in making certain instructions for not granting any more and withdrawing the allowances that were already paid is not applicable as far as the applicant is concerned and therefore, the recovery is faulted. He further argued that even otherwise since the applicant has not made any misrepresentation and the allowance was granted to him up to 30.4.03, was not the fault of his nor by virtue of any misrepresentation made by him. Therefore, as per the legal position the recovery cannot be e
proceeded with. Learned counsel for the respondents on the other hand submitted that the O.M. dated 14.12.83 and 24.5.87 was the subject matter in the Civil Appeal No.3251/93 which is reported in Union of India Vs. S.Vijayakumar and others (1995 SCC (L&S) 189 and positively there is a change in law which is binding the applicant as well.

5. The undisputed facts in this case is that the applicant was extended the benefit of SDA by virtue of the O.M.dated 14.12.83 and he was enjoying the same. By virtue of a clarification dated 24.5.87, the Central Government has clarified that the Island Special Allowance has granted in lieu of special duty allowance. When this was denied he has filed O.A.738/90 before this Tribunal which was finally decided in RA No.44/93 in favour of the applicant. Though the SLP was filed by the respondents before the Hon'ble Supreme Court against the said O.A. and the same was finally withdrawn with liberty to file a Review Petition which was also dismissed.



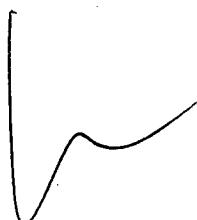
6. Learned counsel of the applicant cited the following decisions: Mr. Madan Mohan Pathak and another Vs. Union of India (AIR 1978 SC 803); Authorised Office (Land Reforms) Vs. MM Krishnamurthy Chetty (1998) 9 SCC 138); In the matter of Cavery Water Dispute Tribunal (AIR 1992 SC 522); 'Sathyapalan Vs. Deputy Director of Education (1998 (I) KLT 399) and Sukumaran Nair Vs. State of Kerala (2000(3) KLT S.N.27. He canvased the position that since the right has been crystallized in favour of the applicant that cannot be withdrawn without adopting the course of an Appeal by the respondents. But on going through the above judgements cited by the counsel I am of the view that it is not applicable in this case for the reason that these cases are dealing with a judgement erroneously passed by a Court which is tried to be corrected by virtue of a subsequent administrative order and only "adopting a course of filing a review/appeal" the respondents are entitled to reverse the benefit that has been granted by an earlier judgement. In my opinion since the Hon'ble Supreme Court had declared the law, the contrary orders of this Tribunal on the same issue, will not have legs to stand.

7. The question in this case is that even though the O.M.dated 24.5.87 was directed to press into service in the RA filed by the respondents which was dismissed by this Tribunal, in the decision reported and cited by the respondents the Hon'ble Supreme Court considered 1987 O.M. and declared that "Central Government Civilian employees who, have all India transfer liability are entitled to the grant of SDA, on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer liability. The



Apex Court further added that the grant of this allowance is applicable only to the officers transferred from outside the region to this region, would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned."

8. Here is a case where the respondents have not succeeded in challenging the 87 order before the Tribunal and in this R.A. The Hon'ble Supreme Court has sit on judgement on the same O.M. in a different case and decided that certain category of persons are not eligible to receive the same. Based on the said judgement the O.M. dated 12.1.96 issued by the respondents and subsequently the impugned orders A-6 and R-2 were issued. On going through the said decision of the Hon'ble Supreme Court and the further OMs and directions given by the respondents, I am of the view that the very basis of the O.M. through which the applicant is seeking the benefit has been modified and restricted by the Supreme Court and made applicable to certain categories of persons like the applicant. But the fact remains that by virtue of the order of this Tribunal in O.A. No 738/90 the applicant is declared to be eligible for such allowance. On going through A-6 and R-2 orders, though specific reason is not shown for denial of such benefit to applicant, it is understood that it is based on the decision of the Hon'ble Supreme Court. Learned counsel of the applicant pointed out that the Supreme Court has not laid down its directions in a case where the Court orders has been obtained by the applicant separately which is binding



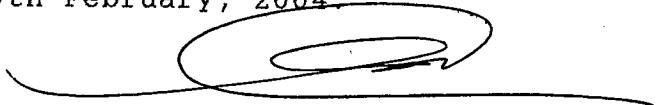
inter-parties relations. This is a case where the applicant had obtained court orders with reference to his claim and on the basis of which the benefit was granted to the applicant. It goes without saying that the decision of the Hon'ble Supreme Court is binding as per Article 141 of the Constitution since it has become the law of the land. The applicant's case is also has no exception.

9. Learned counsel for the applicant submitted that even assuming that the applicant is not entitled to get the benefit since he has not made any mis-representation to get the benefit and it was on the basis of the Court orders, no recovery can be effected and the impugned orders of recovery to be set aside. The legal position is fortified by the following decisions of the Apex Court reported in Union of India and others Vs. Rekha Majhi (AIR 2000 SC 1562) and State of Haryana Vs. Haryana Civil Secretariat Personal Staff Association (JT 2002(5)SC 189).

10. Even going through the decision of the Apex Court that has been cited by the respondents [1995 SCC (L&S) 189] which has culminated in issuing the impugned order ~~xxxxxxxxxxxxxx~~, the Supreme Court has made it clear that the amount already paid on account of SDA to the ineligible persons would be waived. Therefore, I am of the view that though the contention of the applicant that he must be granted continued payment of SDA on the strength of the judgement cannot be accepted for the reason that the very extension of the OM has been given a wide interpretation by the Hon'ble Supreme Court, it would be too hard on the part of the applicant, if recovery is made. The impugned orders which are meant for

recovering the alleged excess payment made to the applicant will have to be set aside. In view of the legal position discussed above, even though he may not be entitled for continued payment till he was paid, I set aside the Annexures A6 and R-2 and direct that no recovery whatsoever will be made from the applicant. O.A. is allowed as above. In the circumstances no order as to costs.

Dated the 9th February, 2004


K. V. SACHIDANANDAN
JUDICIAL MEMBER

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