CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos. 1287/2000,128/2002 &
448/2002

Wednesday this the 4th day of December,2002.

CORAM:
HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRAATIVE MEMBER

O.A.1287/2000

A.P.Bader,
Assistant Surveyor of Works(ASW),
Lakshadweep Public Works Department,
Division Office, Amini Island,
Lakshadweep.

.. Applicant

(By Advocate Sri Shafik M.A.)

vs.

1. Union of India,
Represented by Secretary,
Ministry of Home Affairs,
New Delhi.

2. The Administrator,
U.T. of Lakshadweep,
Kavaratti.

3. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavaratti.

4. The Executive Engineer,
Lakshadweep Public Works Department,
Aminidivi Division, Amini Island,
U.T. of Lakshadweep.

.. Respondents

(By Advocate Shri R.Madanan Pillai,ACGSC(R1)
By Advocate Sri P.R.R.Menon (R2-4)

O.A.No.128/2002

K.M.Sayed Mohamed,
Assistant Engineer, Lakshadweep Public Works
Department Sub Division, Agatti Island,
Lakshadweep.

.. Applicant

(By Advocate Sri Shafik M.A.)

vs.

1. Union of India,
Represented by Secretary,
Ministry of Home Affairs,
New Delhi.

2. The Administrator,
U.T. of Lakshadweep,
Kavaratti.

3. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavaratti.
.. Respondents

(By Advocate Sri C.Rajendran, SCGSC(R1)
By Advocate Sri S.Radhakrishnan (R2-3)

O.A.No.448/2002

K.K.Othenan,
Executive Engineer, Lakshadweep Public
Works Department, Kochi.
.. Applicant

(By Advocate Sri Shafik M.A.)

vs.

1. Union of India
Represented by Secretary,
Ministry of Home Affairs,
New Delhi.

2. The Administrator,
U.T. of Lakshadweep,
Kavaratti.

3. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavaratti.
.. Respondents

(By Advocate Sri S.Radhakrishnan (R2-3)

The Applications having been heard on 12.11.2002, the Tribunal on 4.12.2002 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The facts of these three cases are so closely interlinked and the question of law is the same. Therefore these three cases are being disposed of by this common order.

2. The factual backdrop in which the cases came to be filed is being stated first.

3. One Sri V.Mohandas who was working as Workcharged Maistry at Chetlat Island under the Lakshadweep Public Works

Department was to be retired on superannuation on the afternoon of 31.12.95 on completion of 58 years of age. However alleging that he was by oversight allowed to continue beyond the date of his superannuation , he was relieved from service on 4 .9.96 by the Assistant Engineer, Lakshadweep Public Works Department, Chetlat. Sri Mohandas filed O.A.No.1117/96 seeking to set aside the order by which he was relieved and for a direction to allow him to continue in service till 31.12.97 when he would attain the age of 60 years on the ground that as a workman he was entitled to continue in service upto 60 years. The respondents in that O.A. contended that Sri Mohandas was not a workman entitled to continue till 60 years, that he should have retired with effect from 31.12.95 at the age of 58 years in terms of FR 56A, but due to an oversight the concerned Engineer failed to relieve him on 31.12.95. The Tribunal had passed an interim order permitting the applicant to continue to work in the post held by him until further orders. Sri Mohandas was therefore again taken back to duty on 9.11.96. After considering the rival contentions of the parties, a Single Member of the Tribunal vide its order dated 4.6.97 dismissed the O.A. However adverting to the case of the respondents that Sri Mohandas was allowed to continue in service beyond 31.12.95 due to an oversight, it was observed by the Tribunal that it was not easy to believe and take it for granted that Sri Mohandas was allowed to continue in service after 31.12.95 merely due to an oversight and therefore the Executive Engineer, Lakshadweep Public Works Department,Amini was directed to hold a detailed enquiry as

to person/persons who was/were responsible for allowing Sri Mohandas to continue in service after 31.12.95 and to recover from him/ them the pay and allowances paid to Sri Mohandas after 31.12.95 and credit to the exchequer. In obedience to the above direction , an enquiry was conducted by the Executive Engineer and a report was submitted. It was observed in the report that the responsibility for allowing continuance of Sri Mohandas beyond 31.12.95 and payment of salary and allowances till the date of his final relief amounting to Rs.73454/-was on Sri E.P.Hamzakoya, Assistant Engineer(Road), Chetlat as he was the Head of Office at the time of retirement of Sri Mohandas. The third respondent ,Superintending Engineer, Lakshadweep Public Works Department, Kavaratti on the basis of the enquiry report as also considering the provisions of the CPWD Manual Vol.III for Workcharged establishment and of the CCS Pension Rules 1972 by order dated 25.7.1998(Annexure A2 in O.A.1287/2000 and 128/2002 and Annexure A3 in O.A.448/2002) found that the Executive Engineer,PWD, Amini, the Assistant Engineer, PWD,Chetlat,Superintendent, PWD Division, Amini, Dealing Assistant of WC Estt. in PWD Division, Amini and Dealing Assistant of A.E. PWD Office, Chetlat , were responsible for the irregularity and considering the incumbency in the posts during the relevant period directed recovery of the entire amount from the persons responsible.A sum of Rs.13773/- each were to be recovered from the pay and allowances of Sri A.P.Bader, A.E., the applicant in O.A.1287/2000, Sri K.M.Sayed Mohammed, A.E.,Amini, the

applicant in O.A.No.128/2002 and of Sri K.K.Othenan, E.E., the applicant in O.A.448/2002. When the amounts were sought to be recovered from these persons, they have filed these applications challenging the action. The facts of the individual cases are stated as follows.

O.A.No.1287/2000

4. Sri A.P. Bader, the applicant, who was posted as Assistant Engineer, Chetlat from 17.12.93 to 5.4.95 has challenged the order dated 25.7.1998 of the 3rd respondent by which inter alia the applicant has been made liable to make good the loss to the extent of Rs.13772/on account of the alleged overpayment of pay and allowances to Sri Mohandas from 1.1.96 to 11.6.97 , as also the order dated 29th July, 2000 of the 4th respondent directing recovery of a sum of Rs.13,772/- from his pay and allowances in 5 instalments commencing from the salary of July ,2000 onwards. The applicant has challenged these orders on the ground that he was in no way responsible for retention in service of Sri Mohandas beyond 31.12.95 , that in any case there is absolutely no justification for recovering the amount of Rs.13,772/- from his pay and allowances without giving him any notice and an opportunity to prove his innocence and non-involvement in the alleged overpayment.

5. The respondents in their reply statement seek to justify the action on the ground that the finding of the Executive Engineer in his report that Sri E.P.Hamzakoya was

alone responsible for the continuance of Sri Mohandas beyond 31.12.95 could not be accepted and that the applicant and others who had failed to discharge their functions under the Civil Service Pension Rules as also provisions of the CPWD Manual , are liable to make good the loss to the State exchequer.

O.A.No. 128/2002

6. Sri K.M.Sayed Mohamed who had worked as Assistant Engineer, Chetlat from 23.5.95 to 18.9.96 has filed this application impugning the order dated 25.7.98 of the third respondent in which a sum of Rs.13,773/- was ordered to be recovered from his pay and allowances on his alleged proportionate liability towards overpayment made to Sri Mohandas(Annexure A2) and the order dated 8.1.2002 where a direction was given to recover the amount from his pay and allowances. It is alleged in the application that the applicant is not responsible for any overpayment, that without holding an enquiry and giving the applicant an opportunity to indicate his innocence and non-involvement, the impugned orders could not have been validly issued. The applicant, therefore , seeks to set aside the impugned orders.

7. The respondents in their reply statement seek to justify the action on the ground that had the applicant acted in accordance with the provisions of the Civil

Services Pension Rules as also the provisions of CPWD Manual , the continuance of Sri Mohandas beyond the age of 58 years would have been avoided and that therefore the decision taken to recover the amount from his pay and allowances is perfectly justified.

O.A.No.448/2002

8. The applicant who was the Executive Engineer, Lakshadweep Public Works Department, Amini till 21.4.95 has filed this application challenging the order dated 25.7.98(Annexure A3) of the third respondent in which recovery of a sum of Rs.13773/- from his pay and allowances have been ordered as also the orders at Annexures A1 and A2 that it was ordered to recover the entire amount from the pay and allowances of the applicant. It is alleged in the application that as the applicant was no way responsible for either the continuance of Sri Mohandas in service beyond 31.12.95 or for any overpayment and as no opportunity has been given to the applicant to indicate his innocence, the order which is punitive are liable to be set aside.

9. We have heard Sri Shafik, the learned counsel appearing for the applicants in all these cases and Sri S.Radhakrishnan, the learned counsel appearing for the respondents.

10. It is evident from the pleadings in all these cases that the recoveries are being made from the pay and allowances of the applicants in these cases on the basis of

a direction in the order of the Tribunal in O.A.No.1117/96 . The Tribunal in its order in O.A. No.1117/96 rejected the claim of the applicant in that case that he was a workman entitled to retire at the age of 60 years and therefore dismissed the application. However, adverting to the contention of the respondents that the continuance of Sri Mohandas beyond 31.12.95 was a result of an oversight , the Tribunal observed as follows:-

> "It is not easy to believe and take it granted that the applicant was allowed to continue in service after 31.12.95 due to an oversight. First respondent shall conduct a detailed inquiry as to the person/persons who is/are responsible for allowing the applicant to continue in service after 31.12.95 and recover from him/them the pay and allowances paid to the applicant after 31.12.95 and credit to the exchequer."

A reading of the above observation in the order of the Tribunal makes it clear that the Tribunal was of the opinion that the retention of Sri Mohandas in service beyond 31.12.95 was not the result of a mere oversight,but something more than that . It was therefore that a detailed enquiry was directed to be held as to the person/persons who was/were responsible for allowing Sri Mohandas to continue in service beyond 31.12.95 and to recover from him or them the pay and allowances paid to Sri Mohandas beyond 31.12.95. The learned counsel of the respondents had made available to us a copy of the enquiry report submitted by the Executive Engineer. In paragraph 10 of his report, the Executive Engineer, Amini, had stated as follows:-

> "10. In the light of the facts mentioned in the forgoing paras, it is observed that the whole responsibility for allowing continuance of Sri

V.Mohandas after 31.12.95 and payment of salary and allowances as Rs.73454(G) thereon wholly lies up on Sri E.P.Hamzakoya, Assistant Engineer(Road) Chetlat, since he is the Head of office in the last stage of retirement period."

The Superintending Engineer in his order dated 25.7.98 which is impugned in all these cases purportedly on the basis of the report of the Executive Engineer as also as per the provision of CPWD Manual,Vol.III and CCS Pension Rules, 1972 made an apportionment of the total pay and allowances paid to Sri Mohandas from 1.1.96 to 11.6.97 i.e. Rs.73,454/-into different moieties among various officers.The amount recoverable from the applicants have been worked out to Rs.13,772/- each. While the Executive Engineer in his report has stated that E.P.Hamza Koya , Assistant Engineer(Roads),Chetlat, alone was responsible for payment of salary and allowances amounting to Rs.73454/- and liability rests wholly on him, we do not find any reason how the Superintending Engineer could make the applicants' liable. Further Sri Mohandas was relieved from service on 4.9.96 . He was reinstated in service with effect from 9.11.96 only on the basis of an interim order passed by the Tribunal in O.A.No.1117/96 and he continued in service thereafter till 11.6.97 accordingly. Therefore as none of the applicants in these cases or any other officer of the Lakshadweep Public Works Department was responsible for the continuance of Sri Mohandas in service beyond 4.9.96, the order for recovery of the salary and allowances paid to Sri Mohandas from 4.9.96 to 11.6.97 too is unjustified.Further no opportunity has been given to any of the applicants to establish their innocence and non-involvement in the

continuance of Sri Mohandas in service and for making payment to him for the period beyond the date of his superannuation. If any of the applicants had been guilty of non-performance of any duties in accordance with the provisions contained in the Civil Services Pension Rules, CPWD Manual or any other rules, the penalty of recovery of pecuniary loss if that has been a direct result of the non-performance of the duties as per rules could have been imposed on the applicants only after informing them of the charges and holding an enquiry in accordance with the procedure prescribed. That having not been done in these cases, we are of the considered view that the action of the respondents in ordering recovery from the salary and allowances of these applicants any amount on the ground that payment of salaries and allowances had been made to Shri Mohandas beyond the date of his superannuation, is unjust, illegal and violative of principles of natural justice.

11. In the light of what is stated above, we find that these applicants are bound to succeed and therefore these three applications are allowed. The impugned orders in these cases are set aside . No order as to costs.

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

APPENDIX

O.A.1287/2000
Applicant's Annexures:

1. A-1: True copy of the Note F.No.8/8/97-Ce/1226 dated 29.7.2000 issued by the 4th respondent.
2. A-2: True copy of the OM F.No.4/6/956/97-C3 dated 25.7.98 issued by the 2nd respondent.
3. A-3: True copy of the representation dated 19.9.98 submitted before the 2nd respondent.
4. A-4: True copy of the OM F.No.4/6/935/97-C3 dated 21.10.98 issued by the 3rd respondent.
5. A-5: True copy of the representation dated 11.1.1999 submitted before the 2nd respondent.
6. A-6: True copy of the OM F.No.8/8/1634/97-C3 dated 12.11.98 issued by the 4th respondent.
7. A-7: True copy of the representation dated 19.3.99 submitted before the 2nd respondent.
8. A-8: True copy of the OM F.No.4/6/1793/97-C3 dated 28.1.2000 issued by the 3rd respondent.
9. A-9: True copy of the representation dated 6.2.2000 submitted before the 3rd respondent.
10. A-10: True copy of the representation dated 16.11.2000 submitted before the 2nd respondent.

Respondents' Annexure:

1. R-1: True copy of the Final Order dated 4.6.97 passed by this Hon'ble Tribunal in OA 1117/96.

O.A.128/2002
Applicant's Annexures:

1. A-1: True copy of the Note F.No.4/6/46/97 C3 dated 8/11.1.2002 issued by the 3rd respondent.
2. A-2: True copy of the OM F.No.4/6/956/97-C3 dated 25.7.98 issued by the 2nd respondent.
3. A-3: True copy of the representation dated 25.9.98 submitted before the 2nd respondent.
4. A-4: True copy of the OM F.No.4/6/1775/97-C3 dated 4.12.98 issued by the 3rd respondent.
5. A-5: True copy of the representation dated 30.12.98 submitted before the 2nd respondent.
6. A-6: True copy of the OM F.No.8/8/97-CB3(1)/368 dated 17.3.99 issued by the 3rd respondent.
7. A-7: True copy of the OM F.No.8/8/97 CB3(1) dated 18.11.99 issued by the 3rd respondent.

O.A.448/2002
Applicant's Annexures:

1. A-1: True copy of the Office Memorandum F.No.4/6/1038/97 C3 dated 17.6.2002 issued by the 3rd respondent.
2. A-2: True copy of the Note F.No.4/6/46/97 C3 dated 8/11.1.2002 issued by the 3rd respondent.
3. A-3: True copy of the OM F.No.4/6/956/97-C3 dated 25.7.98 issued by the 2nd respondent.
4. A-4: True copy of the letter F.No.8/8/97-C3/1629 dated 12.11.98 issued by the Executive Engineer, LPWD, Amini.
5. A-5: True copy of the representation dated 3.5.99 submitted before the 2nd respondent.
6. A-6: True copy of the representation dated 5.5.2002 submitted before the 2nd respondent.

****

npp/9.12.02

CERTIFIED TRUE COPY
Date 11-12-2002
Deputy Registrar