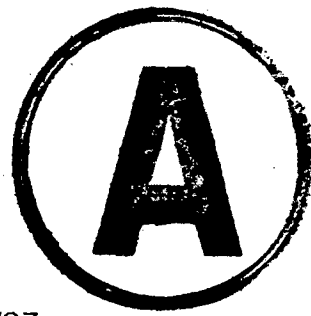


CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



Common order in O.A. Nos. 440/06, 575/07, 704/07, 708/07,
712/07, 721/07, 722/07, 5/08 and 47/08

Tuesday this the 25 th day of March, 2008.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER

O.A.440/06:

1. T.P.Pookoya, Agricultural Mali,
Village(Dweep)Panchayath, Kadamth Island,
Union Territory of Lakshadweep.
2. B.Kunhikoya, Helper,
Public Library, Department of Social Welfare,
Amini Island, Union Territory of Lakshadweep
3. K.C.Mohammed, Agricultural Mali,
District Panchayat, Kadamat Island,
Union Territory of Lakshadweep.
4. M.K.Sayedali, Sevak,
JNSS School, Kadmat Island, Union Territory of Lakshadweep.
5. K.P.Ibrahim, Peon,
JB School(North), Kadmat Island,
Union Territory of Lakshadweep.
6. P.P.Abdul Hameed Haji, Peon,
JNSS School, Kadmat Island, Union Territory of Lakshadweep.
7. A.C.Abdulla, Agricultural Mali,
Agricultural Unit, Kadamat Island,
Union Territory of Lakshadweep
8. B.Chariyakoya, Helper,
Science & Technology Department Unit,
Agatti Island, Union Territory of Lakshadweep.
9. T.H.Muthukoya,
Peon, Govt.High School,

Kadmat Island, Union Territory of Lakshadweep.

10. T.Alimohammed, Peon,
Electricity Department, Kadmat Island,
Union Territory of Lakshadweep.
11. T.Ibrahim Agricultural Mali,
Village(Dweep), Kadamat Island,
Union Territory of Lakshadweep.
12. T.Mohammed, Peon,
Village(Dweep)Panchayat,
Kadmat Island, Union Territory of Lakshadweep.
13. K.C.Siddique, Peon,
Electricity Department, Kadmat Island,
Union Territory of Lakshadweep.
14. K.P.Abdul Khader, Peon,
O/o Additional Sub Divl.Officer,
Kadmat Island, Union Territory of Lakshadweep.
15. K.C.Kidave, Watchman,
Govt.High School, Kadmat Island,
Union Territory of Lakshadweep.
16. R.C.Aboosalakoya, Peon,
Weight Measurement Dept.,
Kadmat Island, Union Territory of Lakshadweep.
17. K.P.Migdad, Helper,
Science & Technology Department Unit,
Kadamat Island, Union Territory of Lakshadweep.
18. M.C.Ibrahim, Agricultural Mali,
Agricultural Unit, Kadamat Island,
Union Territory of Lakshadweep.
19. V.P.Cherryakoya, Helper,
JNSS School Hostel, Kadmat Island,
Union Territory of Lakshadweep.
20. M.S.Haris, Agricultural Mali,
Village (Dweep)Panchayat,
Kadamat Island, Union Territory of Lakshadweep.

21. P.M.Kunhimon, Agricultural Mali,
Village(Dweep), Kadamat Island,
Union Territory of Lakshadweep.
22. P.P.Basheer, Agricultural Mali,
Village (Dweep)Panchatyat,
Kadamat Island,
Union Territory of Lakshadweep.
23. A.C.Koyamma, Agricultural Mali,
Agricultural Unit, Kavaratti Island,
Union Territory of Lakshadweep.
24. K.S.Abdulla, Agricultural Mali,
Village(Dweep) Panchayat, Kadamat Island,
Union Territory of Lakshadweep.
25. B.P.Abdullakoya, Helper,
Public Library, Social Welfare Department Unit,
Kadamat Island, Union Territory of Lakshadweep.
26. Smt.K.Rahiyambi, Agricultural Mali,
Agricultural Unit, Kiltan Island,
Union Territory of Lakshadweep.
27. P.P.Chariyakoya, Agricultural Mali,
Agricultural Unit, Amini Island,
Union Territory of Lakshadweep .
28. N.Ibrahim Haji, Agricultural Mali,
Agricultural Unit, Kavaratti Island,
Union Territory of Lakshadweep.
29. M.Chariyakoya, Agricultural Mali,
Village(Dweep) Panchayat, Kadmat Island,
Union Territory of Lakshadweep.
30. P.P.Ibrahim, W.C.Asst.Plumber,
L.P.W.D.Sub Division, Kadmat Island,
Union Territory of Lakshadweep.
31. B.C.Thalhath, W.C.Carpenter,
LPWD Sub Division, Kadmat Island,
Union Territory of Lakshadweep.

32. T.P.Ameer, LPWD Sub Division,
Kadmat Island, UT of Lakshadweep.
33. T.P.Hamzath, W.C.Asst.Carpenter,
LPWD Sub Division, Kadmat Island,
Union Territory of Lakshadweep
34. T.I.Mullakoya, W.C.Asst.Mason,
LPWD Sub Division, Kadmat Island,
Union Territory of Lakshadweep.
35. T.P.Abdul Hameed, W.C.Welder,
LPWD Sub Division, Kadmat Island,
Union Territory of Lakshadweep.
36. P.P.Attakoya, Oilman,
Electricity Department, Kadmat Island,
Union Territory of Lakshadweep
37. P.P.Badar, Agricultural Mali,
Village (Dweep) Panchatyat,
Kiltan Island, Union Territory of Lakshadweep.
38. A.Attakoya, Peon,
Secretariat, Kavaratti Island,
Union Territory of Lakshadweep.
39. P.I.Abdul Latheef, Peon,
Kavaratti Island, Union Territory of Lakshadweep.
40. P.P.Sayed Mohammed, Agricultural Mali,
Dist.Panchayat, Amini Island,
Union Territory of Lakshadweep.
41. A.Muthukoya, Peon,
Govt.JB School(South), Kadmat Island,
Union Territory of Lakshadweep.
42. B.Moosa, Spraying & Dustering Operator,
Agricultural Unit, Kavaratti Island,
Union Territory of Lakshadweep.
43. A.Ahammed, Watchaman,
Munsiff Court, Amini Island,
Union Territory of Lakshadweep.

44. P.P.Mohammedkoya, Peon,
Medical Department, O/o Administrator,
Lakshadweep Administration, Kochi.
45. U.C.Mohammed, Peon,
Medical Department,
Lakshadweep Administration, KochiApplicants

(By Advocate Shri N.Unnikrishnan)

Vs.

1. Union of India Rep.by the Secretary
to the Government of India,
Ministry of Personnel and Public Grievances,
Department of Personnel and Training
D/o Personnel & Training, New Delhi
2. The Administrator
Union Territory of Lakshadweep, Kavaratti
3. The Secretary to the Administrator,
Union Territory of Lakshadweep, Cochin-3
4. The Superintending Engineer,
Lakshadweep Public Works Department,
Union Territory of Lakshadweep, Kavaratti
5. The Director of Education,
Union Territory of Lakshadweep, Kavaratti
6. The Director of Agriculture,
Union Territory of Lakshadweep, Kavaratti
7. The Director of Social Justice,
Empowerment & Culture,
Union Territory of Lakshadweep, Kavaratti
8. The Director of Panchayath & RD
Union Territory of Lakshadweep, Kavaratti
9. The Chief Executive Officer,
Dist.Panchayath, Union Territory of Lakshadweep,
Kavaratti
10. The Executive Engineer (Electricity)
Union Territory of Lakshadweep,
Kavaratti

11. The Munsiff, Munsiff Court, Amini,
Union Territory of Lakshadweep,
Kavaratti
12. The Director,
Department of Science & Technology,
Union Territory of Lakshadweep,
Kavaratti
13. The Director,
Department of Weight & Measurement,
Union Territory of Lakshadweep, Kavaratti
.....Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC(R-1)

(By Advocate Shri S.Radhakrishnan, (R.2-13)

O.A.575/07:

K.P.Shaffi, Oilman,
Power House, O/o the Assistant Engineer,
Electrical Sub Division,
Union Territory of Lakshadweep, Kavaratti. Applicant

(By Advocate Shri N.Unnikrishnan)

Vs.

1. Union of India, rep. by the Secretary
to the Government of India,
Ministry of Personnel and Public Grievances,
Department of Personnel & Training,
New Delhi 110 001.
2. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. The Executive Engineer,
Electricity Department,
Union Territory of Lakshadweep, Kavaratti. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC (R1)

(By Advocate Shri S.Radhakrishnan (R.2&3)

O.A.704/07:

P.Hamza, Oilman,
Office of the Assistant Engineer,
(Electrical) Electrical Sub Division,
Union Territory of Lakshadweep, Kavaratti. Applicant

(By Advocate Shri N.Unnikrishnan)

Vs.

1. Union of India, rep. by the Secretary to the Government of India, Ministry of Personnel and Public Grievances, Department of Personnel & Training, New Delhi 110 001.
2. The Administrator, Union Territory of Lakshadweep, Kavaratti.
3. The Executive Engineer, Electricity Department, Union Territory of Lakshadweep, Kavaratti. Respondents

(By Advocate Shri MVS Namboothiri(R1)
(By Advocate Shri S.Radhakrishnan (R.2&3)

O.A.708/07:

P.P.Basheer, Oilman,
Office of the Assistant Engineer,
(Electrical) Electrical Sub Division,
Union Territory of Lakshadweep, Kavaratti. Applicant

(By Advocate Shri N.Unnikrishnan)

Vs.

1. Union of India, rep. by the Secretary to the Government of India, Ministry of Personnel and Public Grievances, Department of Personnel & Training, New Delhi 110 001.
2. The Administrator, Union Territory of Lakshadweep, Kavaratti.
3. The Executive Engineer, Electricity Department, Union Territory of Lakshadweep, Kavaratti. Respondents

(By Advocate Shri TPM Ibrahim Khan (R1)
(By Advocate Shri S.Radhakrishnan (R.2&3)

O.A.712/07:

K.P.Mohammed, Oilman,
Power House, Kavaratti Island,
Office of the Assistant Engineer,
(Electrical) Electrical Sub Division,
Union Territory of Lakshadweep, Kavaratti. Applicant

(By Advocate Shri N.Unnikrishnan)

Vs.

1. Union of India, rep. by the Secretary
to the Government of India,
Ministry of Personnel and Public Grievances,
Department of Personnel & Training,
New Delhi 110 001.
2. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. The Executive Engineer,
Electricity Department,
Union Territory of Lakshadweep, Kavaratti. Respondents

(By Advocate Shri S.Radhakrishnan (R.2&3))

O.A.721/07:

M.P.Mohammed^{ALA} Oilman,
Office of the Assistant Engineer,
(Electrical) Electrical Sub Division,
Union Territory of Lakshadweep, Minicoy. Applicant

(By Advocate Shri N.Unnikrishnan)

Vs.

1. Union of India, rep. by the Secretary
to the Government of India,
Ministry of Personnel and Public Grievances,
Department of Personnel & Training,
New Delhi 110 001.
2. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. The Executive Engineer,
Electricity Department,
Union Territory of Lakshadweep, Kavaratti. Respondents

(By Advocate Shri P.J.Philip, ACGSC(R1))
(By Advocate Shri S.Radhakrishnan (R.2&3))

O.A.722/07:

P.P.Sharafudeen, Oilman,
Office of the Assistant Engineer,
(Electrical) Electrical Sub Division,
Union Territory of Lakshadweep, Minicoy. Applicant

(By Advocate Shri N.Unnikrishnan)

Vs.

1. Union of India, rep. by the Secretary
to the Government of India,
Ministry of Personnel and Public Grievances,
Department of Personnel & Training,
New Delhi 110 001.
2. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. The Executive Engineer,
Electricity Department,
Union Territory of Lakshadweep, Kavaratti. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC(R1))
(By Advocate Shri S.Radhakrishnan (R.2&3))

O.A.5/08:

A.Basheer, Oilman,
Office of the Assistant Engineer,
(Electrical) Electrical Sub Division,
Union Territory of Lakshadweep, Agatti. Applicant

(By Advocate Shri N.Unnikrishnan)

Vs.

1. Union of India, rep. by the Secretary
to the Government of India,
Ministry of Personnel and Public Grievances,
Department of Personnel & Training,
New Delhi 110 001.
2. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. The Executive Engineer,
Electricity Department,
Union Territory of Lakshadweep, Kavaratti. Respondents

(By Advocate Shri S.Radhakrishnan (R.2&3))

O.A.47/08:

P.Koya, W.C.Mate,
Office of the Assistant Engineer
Lakshadweep P.W.D.,
Union Territory of Lakshadweep, Minicoy. Applicant

(By Advocate Shri N.Unnikrishnan)

Vs.

1. Union of India, rep. by the Secretary
to the Government of India,
Ministry of Personnel and Public Grievances,

Department of Personnel & Training,
New Delhi 110 001.

2. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. The Superintending Engineer,
Lakshadweep Public Works Department,
Union Territory of Lakshadweep, Kavaratti.
4. The Assistant Engineer(Civil)
Lakshadweep Public Works Department (LPWD),
Minicoy. Respondents

(By Advocate Mrs.Aysha Youseff ACGSC(R1)
(By Advocate Shri S.Radhakrishnan (R.2-4)

The applications having been heard on 25.3.2008
the Tribunal on the same delivered the following.

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

As the law point involved in all these O.As. is one and the same, all these O.As. are dealt with in this common order.

2. The question involved in these cases is, whether at the time of regularization of Casual Labourer with temporary status in Group 'D' post, the individual is entitled to protection of pay drawn by him before such regularization.

3. Briefly stated, the applicants in all these O.As.were engaged by the Union Territory of Lakshadweep Administration on different dates. All were granted temporary status in the pay scale of Rs.2550-3200 on 1.9.93 in accordance with the one time measure of temporary status scheme. As per the terms and conditions of the Scheme such persons were eligible for incrementing their wages over years equivalent to the annual increment. Thus, the emoluments drawn by such temporary status holders

corresponded to the number of years of service rendered by them in that capacity.

4. Under the provisions of the aforesaid scheme, the temporary status holders are also entitled to be regularized as Group 'D' employees against regular vacancies. When the question of fixation of pay came up earlier by Memorandum dated 29.1.1998, the Department of Personnel had held as under:

"2. As per the provisions of Casual Labourers (Grant of Temporary Status and regularization) Scheme, the conferment of temporary status to the casual labourers is without reference to the availability of a regular Group 'D' post and despite conferment of temporary status they continue to draw wages on actual basis. The pay of casual labourer with temporary status on their regularization against a Group 'D' post may, therefore, be fixed at the minimum of the pay scale of the relevant group 'D' post."

5. A Full Bench of this Tribunal (PB) in Nathu Singh and ors. Vs. Union of India and ors. in O.A.524/2000 (decided on 11.9.2001) dealt with the legality of the aforesaid O.M. and that Bench after considering the matter held as under:

"This Full Bench has been constituted to answer the following reference:

i) xxxxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxx

ii) Whether the increments earned by applicants as temporary status casual mazdoors have to be included while fixing their pay on their regularisation as Group 'D' employees and

iii) xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxx

16. In the result the reference is answered as follows.

i) xxx xxxxxxxx xxxxxxxxxxxxxx

ii) Yes. To that extent DOPT's O.M. Dated 29.1.98, in so far as it affects applicants in the present case, is quashed and set aside. However, we make it clear

that inclusion of such increments will by itself not entitle the beneficiaries to claim seniority on that basis.

iii) xxxxxxxxxx xxxxxxxx xxxxxxxxxxxx

6. When a similar situation of fixation of pay arose in respect of the regularized group 'D' employees of Lakshadweep Administration, some employee filed O.A. 303/02 vide Annexure A-46, the Tribunal in that case held as under:

"6. Learned counsel for the applicant submitted that as per the scheme he is entitled to the benefit of pay fixation. Learned counsel of the respondents on the other hand argued that the applicant is not entitled for any benefit as claimed in the O.A. since it was regulated as the O.M. Counsel for the applicant has brought to our notice a decision of the Full Bench in O.A. 524/2000 dated 11.9.2001 wherein an identical and similar matter was considered by the Full Bench of the Tribunal in that O.A. the DOPT's O.M. dated 29.1.1998 has been considered at length and after an elaborate arguments the said bench of this Tribunal had declared that the said O.M., in so far as it affects the applicants in that case was quashed and set aside and we are of the view that the applicant in this case is also similarly situated like the applicants in O.A. 524/2000 who have been absorbed in group 'D' post as Peon and the claim in that O.A. was also for the benefit of higher pay scale as claimed in this case. Learned counsel for the respondents on the other hand submitted that this matter has been taken before the Hon'ble High Court of Delhi in C.W. No.2317/02 which is pending disposal and a stay has already been granted in the matter and therefore, he submitted that if any order passed by this Bench could be subject to the outcome of the WPC before the Hon'ble High Court of Delhi.

7. We have given due consideration to the arguments advanced by the learned counsel of the parties. It is borne out from the material placed on record that the applicant was drawing Rs.2840/- while he was working in the Group 'D' post. Considering the entire provisions, we are of the view that the applicant is entitled to get the benefit. In fact that O.M dated 29.1.98 has been quashed by the Full Bench of this Tribunal and it is declared that the applicant is a person who is included in a group 'D' post, he should be considered as a fresh appointee

8. We are in respectful agreement with the decision of the Full Bench of this Tribunal in O.A.524/2000 which is binding on this Bench of the Tribunal. We direct the Respondents to grant all the benefits to the applicant as prayed for in tune with the Full Bench decision. However, we make it clear that this would be subject to the outcome of the judgment in CW No.2317/02 which is

pending before the Hon'ble High Court of Delhi and the relief will be moulded accordingly after its outcome.

9. The O.A. is allowed as above. In the circumstance no order as to costs."

7. The above said order of this Tribunal was agitated before the Hon'ble High Court in WP(C)No.27137/05(S) and the Hon'ble High Court had held as under: .

"First respondent joined the service as casual labour in the department of Agriculture on daily wages on 1.6.1979 and he was granted temporary status with effect from 1.9.1993 by order dated 9.10.1996. On 20.2.2001, he was offered temporary Group D post of Peon in the scale of pay of Rs.2550-55-2660-3200 along with other allowances and he was appointed on regular basis in Group 'D' by order dated 17.3.2001 in the scale of pay of Rs.2,840/-, protecting the pay he was received at that time. When action was taken to revise the payment to Rs.2,550/- contending that he will get only the minimum of the pay scale when his services were regularized, he approached the Central Administrative Tribunal. Tribunal after analysing various cases held that the respondents had very long service and his protection of pay was correctly done at the time when he was granted regular employment. When he was absorbed in Group D post as Peon there is nothing wrong in protecting the pay that he was drawing. We see no ground to interfere in the order of the Tribunal as there is no patent illegality and perverse findings so as to attract Article 227 of the Constitution of India. Hence this Writ petition is dismissed."

8. The applicants in the present O.As. relied upon all the above decisions and have inter-alia prayed for a declaration that the applicants are entitled to protection of their pay that they were drawn at the time of their appointment to Group'D' post and that they are entitled to fixation of pay in a higher stage as per rules.

9. The respondents have contested this O.A. According to them, protection of pay is admissible only, when the emoluments drawn by the applicants at the time they were holding the temporary status would fall within the character of the term "pay" under Rule 9 (21) of the

Fundamental Rules. They have also emphasized that for drawal of any benefit, there must be a positive order and no such order has been spelt out by the applicants to stake their claims. Of course, the respondents have also relied upon the order dated 29.1.1998.

10. The applicants have filed their rejoinder wherein they have added a copy of reply statement filed by the respondents in O.A. 303/02 wherein also they had relied upon the earlier order dated 29.1.1998.

11. Counsel for the applicants submitted that the issue is no longer res-integra and that, the applicants are entitled to protection of pay, has been confirmed by this Court vide order in O.A. 303/02 which has been upheld by the Hon'ble High Court. It has also been stated by him that the department took up the matter before the Apex Court which however, declined to entertain the SLP though it has left the question of law open.

12. Counsel for the respondents submitted that all the earlier decisions were passed on the rule position followed in the Telecom Department whereas the case has to be decided on the basis of the provisions applicable to Lakshadweep Administration. He has emphasized that the Full Bench judgement by which the order dated 29.1.1998 was quashed and set aside was a subject matter in Writ Petition No. 2317/02 before the Hon'ble High Court of Delhi. Counsel had invited the Tribunal's attention to the specific reference of the above Writ Petition in the order dated 14.12.2004 in O.A. 303/02 and said that the said order could be subject to the outcome of the judgment in the said writ petition.

13. Arguments were heard and documents perused. As it could be seen from the above in all the cases the applicants are victorious and their pay

drawn before regularization as Group'D' employee was protected. The applicants in O.A.303/02 and the applicants in these O.As. are identically situated. It has been confirmed by the counsel for the respondents that the applicant in O.A. 303/02 has been afforded the pay protection. As such, the applicants in these O.As. are also eligible for the same benefit as made available to the applicants in that O.A.

14. As regards the challenge against the Full Bench judgment, it has been ascertained that the Writ Petition No. 2317/02 was dismissed on 17.4.06 itself. A copy of the order extracted through Internet has been made available and the same perused. The Hon'ble High Court of Delhi had referred to a decision dated 2.9.05 in O.A. 65/05 wherein a similar view was taken directing refixing the payment of the applicant by giving due weightage to the increments earned by him while working in the temporary status. The said judgement dated 2.9.05 has been implemented. Likewise, the Hon'ble High Court has referred to an order dated 11.11.05 of the Ministry of External Affairs whereby such pay protection was extended.

15. With the dismissal of C.W.P.No.2317/02 of the Hon'ble High Court of Delhi, even the rider imposed vide order dated 14.12.2004 in O.A. 303/02 does not survive.

16. To sum up, taking into account all the above factors and the decision of Hon'ble High Courts, all the O.As. deserve to be allowed and accordingly, they are allowed.

17. It is declared that the applicants in all these O.As. are entitled to their pay protection taking into account the increments drawn by them (viz., the pay drawn by them prior to their respective regularisation in Group'D'

post shall be protected while fixing their pay as a regular Group'D' employee). Consequently, they are also entitled to the difference in the emoluments due and drawn. Respondents are directed to work out the same and make available the arrears of pay and allowances within a period of six months from the date of communication of this order. Under the above circumstances there shall be no order as to costs.

Dated the 25 th March, 2008.

Dr.K.S.SUGATHAN
ADMINISTRATIVE MEMBER

Dr.K.B.S.RAJAN
JUDICIAL MEMBER

iv