

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NOS. 861/03, 947/03, 502/04, 662/04 & 714/05

TUESDAY THIS THE 18th DAY OF SEPTEMBER 2007

**C O R A M**

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

**O.A. 861/2003**

M.P. Krishnan Nambeesan S/o Govindan Nambeesan  
Retd. Language Teacher,  
S.B.School, Minicoy  
residing at 35, Sukruthi,  
Harinatha Nagar Colony  
Chervarambajan, Calicut-17

Applicant

By Advocate Mr. Hariraj

Vs.

- 1 Union of India represented by the  
Secretary to Ministry of Home Affairs  
New Delhi.
- 2 The Administrator  
Union Territory of Lakshadweep  
Kavaratti.
- 3 The Pay and Accounts Officer  
Central Pension Accounting Office  
Ministry of Finance, Trikoot II Complex  
New Delhi-PIN 110066

Respondents.

Mr. TPM Ibrahim Khan, SGSC for R 1 & 3  
Mr. P.R. Ramahcandra Menon for R -2

**O.A.No. 947/03**

K. Kaumari Amma w/o PKC Raja  
Geetha Nivas, Makkad PO  
Aluva, Ernakulam  
Retired Teacher of JB School  
Amini (UT of Lakshadweep)

Applicant

By Advocate Mr.P.V.Mohanam

Vs

1 The Pay and Accounts Officer  
Central Pension Accounting Office  
Ministry of Finance, Trikoot II  
Bhikaji Cama Place, R.K. Puram,  
New Delhi

2 The Principal  
Pay and Accounts Officer  
Union Territory of Lakshadweep  
Kavaratti.

3 The Manager,  
State Bank of Travancore  
Angamall  
Ernakulam District.

4 The Administrator  
Union Territory of Lakshadweep  
Kavaratti

..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1& 3  
By Advocate Mr. P.R. Ramachandra Menon R 2 & 4

O.A.No. 502/2004

M. Viswanathan S/o M. Kuttappan Nair  
Superintendent (Retd.)  
Directorate of Education, Kavaratti  
Rajini Nivas, Janatha Road,  
Post Karuvessery, Calicut-673 010

..Applicant

By Advocate Mr. P. V. Mohanan

Vs

1 The Administrator  
Union Territory of Lakshadweep  
Kavaratti.

2 The Manager,  
Syndicate bank  
Cherootty Road  
Calicut, Kerala.

..Respondents

By Advocate Mr. P.R. Ramachandra Menon

O.A.No. 662/2004

Bhaskaran Nair S/o Narayana Kurup  
Librarian (Retired)  
M.G. College, Androth  
16/686 Raj Nivas, Kunnamkulam  
Palakkad-678 001

Applicant

By Advocate Mr.P.V.Mohanan

Vs.

- 1 The Administrator  
Union Territory of Lakshadweep  
Kavaratti.
- 2 The Principal Pay and Accounts Officer  
Office of the Principal Pay & Accounts Office  
Union Territory of Lakshadweep
- 3 The Manager,  
Syndicate Bank  
Palakkad. Respondents

By Advocate Mr. Shafik M.A. for R 1 & 2  
Mr. P.S. Kalkura for R-3

O.A.714/2005

P.V. Poulose S/o Varkcy  
Retired Drawing Teacher  
Government High School  
Agatti,UT.of Lakshadwaep  
residing at Pullakudiyil House  
Kombanad PO, Via Perumbavoor.  
Ernakulam District.

..Applicant

By Advocate Mr. P.V. Mohanan

Vs.

- 1 The Administrator  
Union Territory of Lakshadweep  
Kavaratti.
- 2 The Principal Pay and Accounts Officer  
Office of the Principal Pay & Accounts Office  
Union Territory of Lakshadweep
- 3 The Manager,  
State Bank of Travancore  
Perumbavoor. Respondents.

By Advocate Mr. Shafik M.A. for R 1 & 2

### ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

These Original Applications filed by the retired employees of the  
U.T. Of Lakshadweep revolve round the question of treating the

element of Island Special Pay as part of basic pay for all purposes including pension and other terminal benefits. Several such Applications had been filed before this Tribunal and the Hon'ble High Court of Kerala to which the applicants in these OAs were also parties. After completion of the pleadings in these Applications it was submitted before the Bench that the orders in a related and similar case has been stayed by the Hon'ble High Court of Kerala and on that count, the cases have been adjourned from time to time. The concerned case was allowed by the Tribunal in O.A. 618/02 and the Department had filed OP 22461/2005 before the Hon'ble High Court and the matter is still pending before the Hon'ble High Court. Since the matter has been pending for long, the desirability of keeping these related Applications indefinitely pending has been considered and the OAs are being disposed of by this common order taking into account the nexus of each of the cases with that of the above mentioned OP pending before the High Court.

2 Before we proceed with the factual position in the OAs it is necessary to recapitulate the background of the whole issue.

3 The Union Territory of Lakshadweep came into existence on 1.11.1956. Prior to it, its inhabitants were part of South Canara and Malabar districts in erstwhile Madras State. On formation of the Union Territory, same was brought under direct control of Central Government. Vigorous steps were undertaken for development of

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those islands. As a part of this venture, recruitment of a qualified, skilled and technical persons and those having experience were required. Since such persons were not easily available in the islands, they had to be drawn either on deputation from neighboring State Government or by direct recruitment of qualified persons from the rest of the country i.e. Mainland. Living conditions on those days in the islands were miserable. Taking into account the unhealthy conditions and lack of social life and amenities, various incentives were given to those belonging to the mainland so as to attract them to work in adverse working conditions. One of the incentives offered was a special pay, as recommended by the Administrator, as per Report No. 3475/578(C) dated 28.5.1957, sanction for which was accorded by Government of India as per letter dated 28.3.1958. A special pay at the rate of 40% of basic pay subject to a maximum of rs. 350/- per month to all persons deputed or recruited to the islands from mainland was given. As there was some improvement in the working conditions, Government of India decided to stop the payment of island special pay and introduced island special allowance at the same rate subject to one exception i.e. those persons who were in continuous service as mainland recruits under UT Administration from a date prior to date of issue of the orders and were in receipt of island special pay were to continue to draw island special pay at the existing rates as long as they continued in the post held by them immediately prior to the issue of the order. Such persons were not eligible for special allowance sanctioned in concerned orders while

drawing island special pay. On their first promotion after date of issue of those orders, pay of such employees in the new post was fixed without taking into account island special pay. They were required to exercise an option. In essence, option offered two alternatives first was to cease to have any claim in respect of island special pay and draw special allowance at the rate of 40% of basic pay subject to a maximum of Rs. 350/- per month and the other alternative was where pay plus island special pay in the post held by them prior to their promotion was greater than pay fixed in the new post, difference was to be granted to them as personal pay to be absorbed in future increments subject to the condition that pay of such government servants in the new post shall not be less than the basic pay plus island special pay which they would have drawn had they continued in the lower post. No special allowance was admissible to such employees. The first alternative, as indicated above, was subsequently substituted with another clause as per order dated 21.10.1970 whereby an option to be exercised by the mainland recruits to continue to draw island special pay so long as they continued in the same post without promotion to switchover to special allowance within a stipulated date. If no such option was exercised, then they would be deemed to have exercised option in favour of island special allowance. Further stipulation was that in case of persons who opted for island special pay, pay of such employees on promotion to higher post shall be fixed taking into consideration only the basic pay drawn in the lower post and if total of basic pay plus

island special pay drawn in the lower post is greater than the pay fixed in the higher post, difference was to be granted as personal pay to be absorbed in future increments. It was also stipulated that they shall not after promotion be eligible for island special pay or special allowance. Some of the employees represented to Government against the order, but at the same time, they did not give their option. Some other employees however, exercised their option. As per order dated 15.3.1975 in furtherance of III CPC report and as per order dated 23.9.86 in furtherance to acceptance of IV Pay Commission's Report rates and manner of payment of special/compensatory allowance were modified. Government also issued order dated 3.8.78 and order dated 30.6.81 giving option to these employees. A large number of cases were filed before the High Court of Kerala and later before this Tribunal by the affected employees. Prior to 1.1.86, in addition to basic pay special pay etc. coming under clauses (ii)and (iii) of Fundamental Rule 9(21)(a)(I) were also taken into account for determining dearness allowance, pensionary benefits, etc. So prior to 1.1.86 Dearness Allowance and pension were reckoned counting island special pay also along with basic pay as clarified by the Government of India, Ministry of Home Affairs in letter No. 1/12(16)/69-ANL dated 29.1.70. This caused difference in emoluments in the case of various special pay recipients compared to those not getting special pay. The IV Pay Commission recommended that only basic pay under FR 9(21)(a)(1) would be counted for determining Dearness Allowance, pension and other service benefits. Accordingly, from

1.1.86 the basic pay, non practicing allowance and stagnation increments alone would be counted for determining dearness allowance and pensionary benefit and Island Special pay or any other special pay would not be counted for determining dearness allowance, pensionary benefits, etc. However, the island special pay recipients claimed continued payment of dearness allowance, pension, gratuity and other service benefits counting island special pay also as was done prior to 1.1.86. They filed OA 896/86 before the Madras Bench of this Tribunal at Ernakulam which was allowed by the Tribunal by its order dated 27.4.89. The SLP filed by the Government before the Supreme Court against this order was dismissed on the ground of delay. Thus the special pay optees were paid enhanced rate of special pay and compensatory allowance based on pre-revised pay as the view of the Government of India was that they were not admissible on revised pays. The island special pay optees again filed O.A. NO. 1274/91, 1355/91 etc. Praying (i) payment of enhanced rate of island special pay as per order dated 29.9.86 (ii) payment of compensatory allowance @ 10% subject to maximum of Rs. 150/- on revised pay with effect from 1.1.86 and treatment of island special pay as part of basic pay for computing DA, pensionary benefits and all other service benefits as was done prior to 1.1.86. OA 1274/91 was allowed as per order dated 29.9.86. O.A. 1355/91 was also allowed. The SLPs filed against these orders were dismissed. Similarly special pay recipients who ceased to draw the same in terms of the orders dated 25.4.70 and 21.10.70 by deemed

option, promotion, etc. were pressing their demand for continued payment of special pay in accordance with the condition in their offer of appointment as a principle of promissory estoppel, through their association and OA 86/85 was also filed by the said association which was disposed of by this Tribunal directing that the respondents were at liberty to pass fresh orders after giving opportunity to the Association. Based on this direction and observations made by the tribunal in O.A.896/86 the said Association submitted representation on 20.1.91 to the Ministry of Home Affairs requesting inter alia to pay island special pay to those mainland recruits to whom it had been stopped in terms of orders dated 25.4.70 by deemed option, promotion, etc. Thereafter OAs 580/93, 787/93, 377/93 and 1969/93 were filed for extending the benefits under the order in O.A. 896/86 and the order in O.A. 1274/91. In the interim order dated 23.3.93 the tribunal directed the Administrator to dispose of the representation submitted to the Government of India within six weeks. As the Administrator was not competent to take a decision on the representation he reported the direction of the Tribunal to the Ministry of Home Affairs who could not take a final decision before the stipulated period. Finally, the Tribunal disposed the above OAs in combined order dated 22.1.94 directing the Government to pay the benefits to the applicants therein as granted to the applicants in OA. 896/86 and OA 1274/91. Aggrieved by this, the government filed SLP before the Supreme Court which was dismissed by the Hon'ble Supreme Court. A few similarly situated employees like the

employees in O.A.580/93 filed OAs in the Tribunal for similar reliefs as given to applicants in the O.A. Administration extended the benefit of island special pay and compensatory allowance to those who were in service and were in receipt of island special pay prior to 25.4.70 who were the applicants in O.A. 580/93 and similar other OAs.

4 Twenty two employees of Lakshadweep Administration including the applicants in O.A. 580/93 and connected cases who were granted benefit given to the applicants in O.A. 896/86 and 1274/91 on the ground that they are similarly situated filed O. A 618/2002 praying for the following reliefs.

- (i) To call for the records leading to Annexure A-9 and A-10 and set aside the same.
- (ii) To direct the respondents to fix the pensionary benefits of the applicants based on the revised pay under the Central Civil Service (Revised Pay) Rule, 1997 by taking note of the benefit of Island Special pay extended upto 31.7.1997 and to pay the revised pensionary benefits to the applicants with arrears from the date of the retirement with interest at the rate of 18% per annum till the date of payment.
- (ii) To declare that the Island Special Pay, which is part of basic pay conferred to the applicants should be treated as 'emoluments' under Rule 33 of pension rule for the purpose of fixation of pensionary benefits.
- (iv) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.

5 They are aggrieved by the Administrator's order dated 14.3.04 and 28.2.2002 by which the benefits given to them by the decision in

O.A. 1274/91 was ordered to be upset by the clarification issued by the Government of India, Ministry of Home Affairs vide letter No. U-14025/2/97 dated 28.2.2002 relying on another order of this Tribunal in O.A. 1038/99 linked with O.A. 1975 of 1991. The above O.A. 618/2002 was allowed by this Tribunal after considering the earlier orders in O.A. 896/86 and 1274/91 and the import of the subsequent decision of this Tribunal in O.A. 1038/99 by a Single Member Bench and also the rule position in terms of Rule 33 of CCS Pension Rule 1972 with the following observations/directions:-

“5 It is an undisputed fact that in Annex. A5 judgment in O.A. 5890/93 and connected cases it was declared that the applicants in these cases were entitled to the benefits given to the applicants in OAs 896/86 and 1274/91. In terms of the said declaration in OA 1274/91 the applicants were entitled to have the Island Special Pay to be treated as part of the basic pay for DA, pension and other service benefits. It is also an undisputed fact that SLP filed against the order of the Tribunal has been dismissed and the order of the Tribunal has become final between the parties. The position emerging from this was that between the applicants and the respondents the decision rendered by the tribunal has thus become final in view of the dismissal of the SLP whereby the applicants were entitled to have the Island Special pay treated as basic pay for DA pension, Gratuity and other service benefits. It is true that in OA1038 of 1999 decided on 5<sup>th</sup> July, 2000 a Single Member of the Tribunal held that Island Special Pay will not be included in pay in view of the provisions contained in Rule 33 of the CCS (Pension) Rules. However, a subsequent decision in a similar case to the contrary will not have the effect of annulling the effect of a decision inter-parties which have become final. The Government of India, Ministry of Home Affairs was aware of the legal position and that was why they in their order dated 23<sup>rd</sup> October, 2002 addressed to the Secretary (Finance) UT of Lakshadweep (Annexure R-6) relating to continuation of Island Special Pay for the purpose of calculation of Pension and DCRG in para 2 of the order mentioned as follows:

“It is, therefore clarified that the order dated 5.7.2000 of the Hon'ble Tribunal in O.A. 1038/99 would be effective only in cases which have not been finalised by the date of issue of this Ministry's letter of even number dated 28.2.2002. On the other hand, the cases already decided by that date would not be reopened.”

It is therefore clarified that the order dated 5.7.2000 of the Hon'ble Tribunal in O.A. 1038/99 would be effective only in cases which have not been finalised by the date of issue of the Ministry's letter of even number dated 28.2.2002. On the other hand the cases already decided by that date

would not be reopened. Learned counsel of the respondents tried to explain; that the Government having finalised the pension of the applicants in this case without reckoning the Island Special Pay as part of the pay before 28.2.2002 the same is not liable to be reopened. We are unable to accept the explanation because the entitlement of the applicants to have Island Special Pay as part of the pay for pensionary benefits has already been declared by the tribunal and the respondents were directed to extend the benefits to the applicants by a binding order which has become final by dismissal of the SLP by the Apex Court. Therefore it is idle to contend that the cases of the pension of applicants have been finalised without reckoning Island Special Pay as part of the pay because the respondents were not entitled to do so violating the binding decision;

6 In the light of what is stated above, the impugned orders Annx.A9 is set aside and Annx.1 A-10 is set aside to the extent it relates to the applicants and the respondents are directed to recompute the pensionary benefits of the applicants based on the revised pay under the CCS (Revised) Pension Rules treating the Islands Special Pay as part of the basic pay for D.A .Pension.Gratuity another terminal benefits and make available to the applicants the monetary benefits flowing therefrom as early as possible and not later than three months from the date of receipt of a copy of this order."

6 As already mentioned supra OP No. 22461/2005 filed against this order is still pending in the Hon'ble High Court of Kerala and the order of the Tribunal has been stayed.

7 Against this background, the factual position of the present OAs under consideration is discussed below:-

#### O.A. 947/2003

8 The applicant a Head Teacher of the UT of Lakshadweep retired on 30.11.1991. Aggrieved by the denial of Special pay, the Special Pay Opted Employees Association had filed O.A. 896/86 which was allowed by the Tribunal by order dated 27.4.89. The SLP filed against the order was dismissed by the Apex Court on 27.12.1990. In spite of the above, the Ministry of Home Affairs issued

OM dated 27.12.1990 stating that special pay should not be counted for calculating Dearness Allowance and retiral benefits. Aggrieved by the denial, similarly placed persons to the applicant had filed OA 1274/91 seeking a declaration that Islands Special Pay is liable to be continued to be treated as part of Special pay for all purposes including pension. The O.A. was allowed by order dated 3.4.1992. In the light of the above order the applicant had filed O.A. 1975/91 seeking similar benefits which was allowed by Annexure A-1(a) order dated 24.8.1993. By Annexure A-3 order dated 4.4.1994 the pension payment orders of the applicant were modified accordingly. The SLPs filed against the OAs were dismissed by the Apex Court by order dated 6.12.1996 and therefore the order issued in pursuance of O.A. 1975/91 have become final. The applicant is not a party to O.A. 618/02. However, pension is sought to be revised on the basis of the Government of India Ministry of Home Affairs Circular No. U14012/2/97-ANL dated 23.10.2002.

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9 The applicant first approached this Tribunal in O.A. 1360/94 which was allowed following the judgment in O.A. 580/1993. At that time the SLP against the said order was pending before the Hon'ble Supreme Court. Therefore the order was implemented in the case of the applicant subject to the outcome of the SLP. The SLP was dismissed and the applicant retired from service on 30.11.1996 and his pension was continued to be paid taking into account the Island

Special pay. The applicant later filed O.As. 1169/99 and 129/2002 against non-implementation of the Fifth CPC Revision and revoking of his pension payment order and refixing pension without taking into account the Island Special pay. The O.A. 129/2002 was disposed of by the Tribunal directing reconsideration of the claim of the petitioner in the light of the Hon'ble High Court's order to consider the claim of the petitioner keeping in view the Govt. Letter dated 22.10.2002. The petitioner is not a party to the O.A. 618/2002. O.A.1360/94 was allowed on the basis of the decision in O.A. 580/93 and the applicants in O.A. 580/93 are the applicants in O.A. 618/02. In this manner the prayer of the applicant is related to the prayer in O.A. 618/2002.

**O.A. 502/2004**

10 The applicant was originally granted the pension reckoning the Island Special pay as basic pay in terms of the order of the Tribunal in O.A. 1274/91 dated 3.4.1992 as confirmed by the Apex Court. His pension was fixed accordingly from 1.6.1996 and he was enjoying the same. Consequent on the V<sup>th</sup> CPC Recommendations when his basic pay in the revised scale was not reckoned inclusive of Island Special pay, he along with 21 others filed O.A. 618/2002. The applicant is at Sl. No. 10 in the party array in O.A. 618/2002. Thus he is directly linked with O.A. 618/2002.

**O.A. 662/2004**

11 The applicant in this O.A. had originally filed O.A. 580/93 and accordingly was granted the benefit of reckoning of Island Special Pay for the purpose of pension. Since the order has not been

implemented he filed the present O.A. for a direction to the respondents to revise his pensionary benefits in terms of the said order in O.A. 580/93. Though he is the applicant in O.A. 580/93 he is not party in O.A. 618/02, the only difference in the case is that even though the prayer was allowed by order dated 10.7.94 and the SLP was dismissed in 1996 the applicant was not granted the benefit by issue of any order.

12 The respondents in the reply stated that due to the pendency of the WP before the Hon'ble High Court against the order in O.A. 618/2002 this matter could not be reconsidered. It cannot be denied that the applicant has been given the benefit of the order in O.A. 583/93 as given to other applicant in that O.A. and connected cases and had he not been singled out, he would have come within the purview of the Annexure R-2 order passed by the Government to the effect that the cases already settled need not be reopened.

#### O.A.No.714/2005

13 After the O.A. 1274/91 was allowed the applicant filed O.A. 1291/91 which was also allowed by order dated 10.8.1992 in terms of the order in O.A. 1274/91. The applicant retired on 31.1.1996. Though he approached the respondents for implementation of the order the same was not granted as by that time orders on O.A. 1038/99 had been passed rejecting the same contention. O.A. 618/2002 was filed in the wake of the order in O.A. 1038/99 and it was allowed. The applicants submitted a representation in 2004

seeking similar treatment as given to the applicants in O.A. 618/2002 which were rejected against which the present OA has been filed. Essentially he is seeking parity with the applicants in O.A. 618/02 though he is not a party to that O.A.

14 To sum up, the applicant in O.A. 502/04 is a party to O.A. 618/02 which has been stayed by the Hon'ble High Court and as the case of the applicant is subject to the outcome of the judgment of the High Court of Kerala, no further adjudication is necessary in this case. Though the applicant in O.A. 662/02 is not a party in O.A. 618/02 he was applicant in O.A. 580/93 which was allowed by this Tribunal. Similarly the applicant in O.A 861/03 is applicant in O.A. 588/03. The applicants in O.A.714/05 and 947/03 are staking their claim on the basis of the order in O.A. 1274/91 which had already been allowed and the benefits granted are sought to be revised in the year 2002. In the case of the applicant in O.A. 947/2003, the orders of the Tribunal which were already implemented are sought to be revised.

15 In short, the cause of action in all these three OAs has arisen on account of respondents reopening the decision which was implemented in pursuance of the directions in O.A. 896/86 and 1274/91. The genesis of all the OAs can be traced back to the directions in O.A. 896/86 and 1274/91. O.A. 580/93 and connected cases were also disposed of by a common order directing the

respondents to grant the benefits granted to the applicants in O.A. 896/86 and 1224/91. These benefits granted were sought to be revised taking in to account the subsequent decision to the contrary in O.A. 1038/99 dated 5.7.2000 based on which the respondents sought further clarifications from the Government of India which were communicated vide their order dated 23.10.2002 directing that the cases which have not been finalised by the date of issue of the Ministry's letter dated 28.2.2002 need not be reopened. In the order in O.A. 618/2002 therefore this Tribunal had looked into all these aspects and clarified that the earlier orders of this Tribunal extending the benefits to the applicants was a binding order which had become final by the dismissal of the SLP. Even if the respondents had omitted to take the same into account in any case they are not entitled to issue the revised pension orders in such cases. The order in the said OA has already been extracted above and it is evident therefrom that the import of the order in the form of a declaration is applicable to all the applicants who have been granted the benefits in terms of the earlier orders in O.A. 896/86 and 1274/91 and related cases allowed following these orders.

16 Since the decision in O.A 618/2002 which was issued after considering all aspects of the orders in O.A. 856/86, 1274/91, 580/93 and all related cases, and the contradictory judgment in O.A. 1038/99 and the subsequent clarifications issued by the Government of India is pending before the Hon'ble High Court of Kerala we are of

the view that it is not necessary for us to keep these cases pending before us any more. Hence the OAs are disposed of with the general direction that the respondents shall reconsider the impugned orders in all these OAs in the light of the outcome of the Writ Petition filed before the Hon'ble High Court in O.A. 618/2002. The OAs are disposed of as above. No costs.

Dated 18.9.2007.

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DR. K.B.S. RAJAN  
JUDICIAL MEMBER

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SATHI NAIR  
VICE CHAIRMAN

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