

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.518/93

DATE OF DECISION : 20.10.1993

P.A.Raghavan,
Assistant Director of Fisheries,
Union Territory of Lakshadweep,
Kavarathi.

.. Applicant

Mr. K.M.V.Pandalai

.. Adv. for applicant

V/s

1. Union of India, rep. by
Secretary, Ministry of
Agriculture, New Delhi.

2. The Administrator,
Union Territory of lakshadweep,
Kavarathi.

.. Respondents

Mr. M.V.S.Nampoothiry, ACGSC

.. Adv. for respondent No.2

CORAM : The Hon'ble Mr. N.Dharmadan, Judicial Member

JUDGMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The applicant is an Assistant Director of Fisheries working in the Union Territory of Lakshadweep under the second respondent. He is aggrieved by Annexure-A5 order passed by the Ministry of Agriculture considering his representation for getting the charge allowance for the additional official duties and responsibilities discharged by him pursuant to Annexures-A1 to A3 orders.

2. Applicant was put-in additional charge of Director of Fisheries during the leave period of Shri George Varghese, Director of Fisheries, as per three orders, Annexures-A1 to A3. The operative portions of the said orders are extracted below:-

. 2/-

" Shri P.A. Raghavan, Assistant Director of Fisheries, Kavaratti is put in additional charge of the Director of Fisheries during the leave period of Shri George Varghese, Director of Fisheries."

(Annexure-A1)

XXXXXXXXXX

XXXXXXXXXX

XXXXXXXXXX

" The Assistant Director of Fisheries, Union Territory of Lakshadweep, Kavaratti will hold the current duty additional charge of the post of Director of Fisheries, Union Territory of Lakshadweep, in addition to his normal duties until further orders."

(Annexure-A2)

XXXXXXXXXX

XXXXXXXXXX

XXXXXXXXXX

" In the Administration's order cited, Shri George Varghese, Director of Fisheries has been relieved from Govt. services for retirement on superannuation on 31.5.90 AN and Shri P.a.Raghavan, Asst. Director of Fisheries, Kavaratti is put in additional charge of the Director of Fisheries."

(Annexure-A3)

The applicant also produced a chart indicating the period during which he has discharged the duties and responsibilities of the Director of Fisheries, as Annexure-A4. His representation for getting additional charge allowance was rejected as per the impugned order.

3. The case of the applicant is based on FR 49(iii) which reads as follows:-

"FR 49(iii) - Where a Government servant is formally appointed to hold (charge of another post) or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, (or of the highest post if he holds charge of more than two posts,) in addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 39 days but not exceeding 3 months;

Provided that in any particular case, it is considered necessary that the Government servant should hold charge of (another post) or posts for a period exceeding 3 months, the concurrence of the Ministry of Finance shall be obtained for the payment of the additional pay beyond the period of 3 months."

4. The applicant submitted that the duties and responsibilities attached to the post of Director are more and are of higher degree. The applicant was put-in charge

of the entire duties and responsibilities of the Director during his absence. He was also discharging the statutory functions and without considering these crucial aspects the impugned order was passed holding that the applicant was only given the opportunity to discharge the current duties of the post of Director and hence no additional remuneration is permissible under FR 49. A reading of Annexures-A1 to A3 makes it very clear that the applicant was put-in additional charge of the Director of Fisheries during the absence of the regular incumbent. But it is stated in Annexure-A2 that the applicant was holding only the current duties as additional charge of the post of Director of Fisheries. That order is dated 30.5.90, But the subsequent order, Annexure-A3, issued on 11.6.90 declares that the applicant has been put-in additional charge of the post of Director of Fisheries. So, it is to be presumed that Annexures-A1 and A3 will govern the issue and the right of the applicant to get additional remuneration can be based on Annexures-A1 and A3. It is the case of the applicant that during the whole period governed by Annexure-A4 chart, he was discharging the entire duties of the Director of Fisheries notwithstanding any specific orders to that effect. In other words, according to the applicant, he has discharged duties and functions of Director of Fisheries inspite of the wordings in Annexure-A2, for the entire period.

5. Relying on a clarification, Annexure-A7, dated 11.8.89, the applicant further submitted that if he was put-in charge of only "current duties" it is obligatory on the part of the concerned authorities to enumerate the duties. No such enumeration has been issued in this case for limiting the duties of the applicant to such of the

current duties as are permissible to be discharged by the applicant. In the absence of the said clarification in regard to the duties of the regular incumbent to the post of Director of Fisheries, it is to be taken that the applicant has performed the entire duties of the post. A reading of Annexures-A1 and A2 with the averments made in the O.A., it can only to be treated that no other person was working in the post of Director of Fisheries during the period covered by Annexure-A4 other than the applicant.

6. Under these circumstances, there is considerable force in the submission of the learned counsel for the applicant that the applicant was discharging the entire duties and responsibilities of the post of Director of Fisheries for the whole period covered by Annexures-A1 to A3.

7. The statement of the respondents in the reply, relevant for deciding the case, can be extracted as follows:-

"..... Approval of Ministry is required for sanctioning charge allowance and therefore 2nd respondent has taken up the matter with the Secretary to the govt. of India, Ministry of Agriculture, New Delhi. After obtaining certain clarifications on the matter Ministry has communicated order as Annexure-5 of the O.A. stating that 'Since Shri P.A.Raghavan was given only the work of current duty vide letter F.No.4/2/89-SS(1) dated 30.5.90 (enclosed as Annexure-A2) of the application), no additional remuneration is admissible to the applicant."

As a matter of fact, respondents have not specifically stated in the reply that the applicant was not discharging the entire duties and responsibilities of the post of Director of Fisheries during the period covered by Annexures-A1 and A3. They have also not mentioned which are the current duties assigned to the applicant to be performed during the basence of the regular incumbent. In


view of the lapse of the respondents to give such details, there is no difficulty in coming to the conclusion that the applicant was discharging all the duties and responsibilities of the Director of Fisheries, accepting the statement given by the learned counsel for the applicant. Hence he is entitled to additional remuneration.

8. An issue more or less identical was considered by this Tribunal in C.J.Mathew vs. Union of India and others (O.A.No.1153/91) and we have held as follows:-

"9. Having considered the matter in detail, we are of the view that the applicant has performed duties pursuant to the direction of Commissioner/Chief Commissioner of Income Tax and he is entitled to the additional remuneration under FR 49(iii) as extracted above.

10. In the result, we allow the application and direct the respondents to dispose of the claims of the applicant in accordance with law and disburse the amount. This shall be done within a period of two months from the date of receipt of a copy of this judgment."

9. According to me, the earlier decision in OA 1153/91 squarely covers the issue arising in this case and this O.A. can be allowed following the same. Accordingly, I quash the impugned order and allow the original application. No costs.


20.10.93

(N.DHARMADAN)
JUDICIAL MEMBER
20.10.1993

v/-

LIST OF ANNEXURES:

- | | |
|----------------|--|
| 1. Annexure-A5 | .. Copy of order No.3.32/90-FY(Admn)
Pt. dated 15.6.92. |
| 2. Annexure-A1 | .. Copy of order No.12/98/84-Services
dated 18.1.90. |
| 3. Annexure-A2 | .. Copy of letter No. F/2/89-Services
(I) dated 30.5.90. |
| 4. Annexure-A3 | .. Copy of letter No.15/1/84-FY dated
11.6.90. |
| 5. Annexure-A4 | .. Details showing the period of
additional charge of Director. |
| 6. Annexure-A7 | .. Copy of OM No.4/2/89-Est(Pay.II)
dated 11.8.89. |