

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. NO. 522/97

THURSDAY THIS THE 21st DAY OF DECEMBER, 2000.

C O R A M

HON'BLE MR. A. V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. A. V. Thilakan, S/O Velayudhan
Carane Operator, Lakshadweep Harbour Works,
Kalpeni
2. M.A. Ayyappan S/o Ayyankutty
Crane Sarang,
Lakshadweep Harbour Works,
Kalpeni
3. M.K. Appukuttan Nair S/o Raman Nair
Senior Foreman,
Lakshadweep Harbour Works,
Mangalore.
4. P. Vijayappan Nair S/o Paramu
Junior Engineer (C)
Lakshadweep Harbour Works
Andrott Island, Union
Territory of Lakshadweep
5. T. Krishnan S/o Achuthan,
Marine Engine Driver,
Lakshadweep Harbour Works
P.O.Androth Island,
U.T. of Lakshadweep.
6. C. Chamy S/o Chinnan,
Foreman Carpentry,
Lakshadweep Harbour works
P.O.Androth Island,
U.T. Of Lakshadweep.
7. K. Appukuttan S/o Kumaran
Crane Operator,
Lakshadweep Harbour Works
P.O. Androth Island, Lakshadweep.
8. K.P. Premachandran S/o K.P. Appu (late)
Crane Operator, Grade-I
Lakshadweep Harbour Works
Androth.
9. N.P. Chandran S/o Kumaran
Marine engine Driver,
Lakshadweep Harbour Works
P.O. Androth Island,
U.T. of Lakshadweep.
10. G.M. Balakrishnan S/o Sankaran
Foreman Carpenter,
Lakshadweep Harbour Works,
Kalpeni

11. T.P. Gopi Nair S/o Sri Madhavan Nair (late)
Marine Surveyor,
Lakshadweep Harbour Works
Kavaratti Island
12. M.Nandakumaran S/o M. Sankaran Nair
Assistant Engineer,
Lakshadweep Harbour Works
Agathy Island residing at
Manayath House, West Nada
P.O. Guruvayur.
13. R. Gangadharan Unnithan S/o Ramakrishna Pillay (late)
Junior Engineer,
Lakshadweep Harbour Works,
Agatti Island residing at
Unnisseril, Pallickal Naduvilamuri
Pallickal P.O.
Kayamkulam.

By Advocate Mr.M.R. Rajendran Nair

Vs.

1. Union of India, represented by
Secretary to Government,
Ministry of Surface Transport
New Delhi.
2. The Chief Engineer and Administrator
Andaman Lakshadweep Harbour Works,
Port Blair.
3. The Additional Chief Engineer,
Lakshadweep Harbour Works,
Karaparamba, Kozhikode.
4. The Executive Engineer
Lakshadweep Harbour Works
Androth
5. The Executive Engineer,
Lakshadweep Harbour Works
Kavarathi
6. The Executive Engineer,
Lakshadweep Harbour Works
Androth.

Respondents

By Advocate Mr. S Radhakrishnan

The application having been heard on 15.11.2000, the Tribunal delivered the following on 21.12.2000.

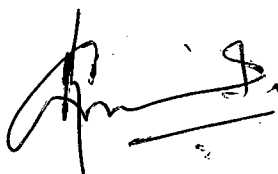
O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

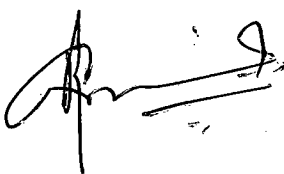
Aggrieved by A-10 order dated 9.5.96 issued by the first respondent the applicants 13 in number working in the Lakshadweep Harbour Works (LHW for short) filed this application seeking the following reliefs:

- i) To quash Annexure A-10
- ii) Declare that applicants are entitled to get Island Special Pay @ 50% of the basic pay with effect from 1.1.86 and @ 80% of the basic pay, subject to the maximum of Rs. 500/- with effect from 1.1.86 and compensatory allowance @ 10% of the basic pay, subject to the maximum of Rs. 150/- per month and to direct the respondents to draw and disburse the entire emoluments due to the applicants on account of Island Special Pay and compensatory allowance together with interest at the rate of 15% per annum.
- iii) Declare that the Island Special Pay is liable to be treated as part of basic pay for all purposes, including dearness allowance, pension and retirement and other service benefits and
- iv) Direct the respondents to compute amounts due to the applicants and to pay the same together with interest @ 15% per annum.
- v) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and
- vi) Grant the cost of this Original Application.

2. By Annexure A-1 order dated 25.3.58, Govt. of India Ministry of Home Affairs sanctioned with effect from the date of issue of those orders a special pay of 40% of the basic pay subject to a maximum of Rs. 350/- per month to all officers who were deputed to the Islands from the mainland. By subsequent orders the special pay was ordered to be treated as pay under FR 9(25). Applicants claimed that they were appointed to the Lakshadweep Harbour Works (LHW for short) on various dates prior to 1970 and according to them their appointment order contained a clause to that effect that they would be paid 40% special pay and hence they were liable to be given special pay for the period of duty in the island. Govt.



of India by A-3 letter dated 25.4.70 sanctioned special allowance to various categories of Govt. servants. under Lakshadweep Administration and serving in the Islands at the rate of 40% of the basic pay subject to maximum of Rs. 350/per month when they were posted outside their native island. It was also stipulated therein that the Island Special Pay sanctioned to various categories of employees would cease to be admissible with effect from the date of that order. According to exception No.1 persons who were in continuous service as mainland recruits under the Lakshadweep Administration from a date prior to the date of issue of the orders and were in receipt of special pay would continue to draw island special pay at the existing rate as long as they continued in the post held by them immediately prior to the issue of those orders. It was also provided that on his first promotion after the date of issue of those orders, pay of such a Government servant in the new post would be fixed, as it existed then without taking into account the island special pay. The employees were also required to exercise an option as contained in the said letter. By A-4 letter dated 21.10.1970, the option clause was modified. Applicants claimed that being aggrieved by these orders, they made representations to the Administrator but their requests were rejected. Some of the affected parties approached the High Court of Kerala in O.P.No. 1307/72. The High Court by judgment dated 8.6.72 disposed of the OP directing the respondents to consider the grievance of the petitioners on the basis of Third Pay Commission report. The Third Pay Commission recommended special allowance at the rate of 35% of the pay and a compensatory allowance at the rate of 10% of pay subject to a maximum of Rs.150/- per month. Thereafter the Government issued order dated 15.3.75 sanctioning compensatory allowance and special allowance at the rate of 10% and 35% respectively.



Some of the special pay optees approached the High Court of Kerala in O.P.No. 472/76 challenging the order dated 21.10.70. That OP was disposed of directing the respondents to consider their representation. Thereafter, the Govt. issued order dated 3.8.78 informing that the employees who gave option pursuant to orders dated 25.4.70 and 21.10.70 may be given further option to draw special pay or special allowance. Thereafter, that order was clarified by telegram dated 24.10.79 stating that employees in receipt of special pay would draw special pay only till their promotion and that after their promotion they would draw only special allowances and compensatory allowance. Several employees' unions challenged the orders in O.P.Nos. 3623/78, 103/79, 4230/78 etc. Thereafter, the Govt. issued order dated 30.6.81 clarifying that special pay opted employees were given a further chance to exercise option to draw special pay on their promotion. But this order did not give any option to those who opted for special allowance. This order was also challenged before the High Court in O.P.No. 5244/81. The High Court quashed the order as the same was passed without hearing the affected party to the extent it denied compensatory allowance to special pay optees. Thereafter, Govt. by its letter dated 12.9.85 informed their proposal to implement the order dated 30.6.81 and invited objections if any against the proposal. The mainland employees under the Administration submitted their objections requesting to permit them to draw 40% special pay and compensatory allowance. Thereafter the Govt. issued A-5 order dated 29.9.86 whereby the existing rate of special pay was doubled subject to a ceiling of Rs. 500/- p.m. Applicants claimed that they were also entitled for the benefits of the Govt. order dated 29.9.86 but they were not given special pay at the revised rate. An association of the employees filed O.A. 896/86 praying for a declaration that they were entitled



to draw special pay at the revised rates on the basis of IVth Pay Commission report. That O.A. was allowed declaring that special pay optees were entitled to the benefit of revised special pay in accordance with A-5 order. Applicants claimed that the grounds on which O.A. 896/86 was allowed were applicable to applicants' case also. Further the Lakshadweep Govt. Employees Association submitted representation dated 28.1.91 before the Secretary, Govt. of India requesting to grant special pay at the rate of 40% of basic pay to all mainland recruits prior to 25.4.70 through out their service in Islands as per the offer of appointment and the spirit of the order in O.A. 86/85 and O.A. 896/86 pointing out that there were only less than 200 in the category and they would retire from service by 1990's. They also requested to treat special pay for all purposes. They also requested to grant them compensatory allowance, etc. In O.A. 1274/91 this Tribunal considered the various Government orders and judgment in O.A. 896/86 and declared that the applicants therein were entitled to be paid island special pay reckoned at the rate of 80% of the existing basic pay from time to time including the revised pay after 1.1.86 subject to a maximum of Rs. 500/- per month and they were entitled to compensatory allowance at the rate of 10% of their basic pay including the revised pay from 1.1.86 subject to a maximum of Rs. 500/- per month and that they were entitled to compensatory allowance at the rate of 10% of their basic pay subject to a maximum of Rs. 150/- per month and the element of island special pay was liable to be continued to be deemed as part of basic pay for all purposes including dearness allowances, pension, retirement and other service benefits and directed the respondents to compute the amounts due to the applicants including arrears of special pay, compensatory allowance and other allowance as a consequence of the declaration and disburse them within a period of two months



from the date of communication of the orders. According to the applicants there was disparity in emoluments between those in receipt of special pay and special allowance. The special allowance was converted as Special Compensatory allowance with effect from 1.11.86. Further, the change over from special pay to allowance deprive the retirement benefits also and thus there was recurring loss. They submitted that Mr. Venugopalan and 93 others who were similarly situated like the applicants approached this Tribunal in O.A. No. 580/93 and connected cases. This Tribunal by A-6 order dated 27.1.94 directed the respondents to disburse special pay and compensatory allowance to applicants at the rate of 80% and 10% respectively of the basic pay at revised rates. Under these circumstances applicants submitted representation dated 6.9.94 before the respondents requesting for extension of benefit of the judgments and to disburse them island special pay and compensatory allowance at the revised rates. A-7 is the copy of the representation dated 6.9.94 submitted by the first applicant. When they did not get any reply to their representation applicants approached this Tribunal through O.A. No. 1548/91 and 1591/91. Even though the said OAs were disposed of directing the respondents to pay the amounts to the applicants within three months from the date of order, respondents filed application for review of the orders in both the cases. Upon hearing the Review Applications this Tribunal permitted the original applicants to make a representation setting out their claims before respondent Secretary to Government of India, Ministry of Surface Transport, New Delhi and the said respondent was directed to pass speaking orders thereon within three months from the date of receipt of representation and communicate the same to the applicants. Accordingly applicants submitted identical representations detailing their grievances. One such representation is



produced as A-9. By A-10 order dated 9.5.96 the claim of the applicants were rejected stating that the employees of LHW were not party to O.A. 580/93 or 1274/91, that the employees of LHW were not similarly situated like the employees of Lakshadweep Administration and that employees of LHW were a part and parcel of the Andaman Lakshadweep Harbour Works, those who were working in Andaman & Nicobar Region were also being paid special allowance and therefore, the employees working in Lakshadweep region alone could not be paid additional benefits and that the orders of the Tribunal in O.A. 580/93 and 1274/91 were applicable to the special pay optees of the Lakshadweep Administration. It was also stated in A-10 that in so far as LHW was concerned no one had opted for special pay and therefore eligible for special allowance only. Stating that A-10 reply was illegal unjust, arbitrary and unreasonable the applicants filed this O.A. seeking the reliefs stated earlier.

3. Respondents filed reply statement resisting the claim of the applicants. It was submitted that by R-2(A) letter dated 29.1.71 island special pay was replaced by special allowance at the rate of 40% of the basic pay subject to a maximum of Rs. 350/- per month wherein it was also provided that the existing employees would be allowed to continue to get special pay in the post in lieu of special allowance. It was further provided that as and when such employees get promotion, their basic pay would be determined without the special pay and they would be given either the special allowance or personal pay to their pay including the basic and special pay to protect their pay which they were getting before their promotion. Subsequently during 1978, the employees who continued to draw special pay were required to exercise fresh option to draw either special pay or special allowance. It was submitted that employees of Lakshadweep Administration filed a series of




petitions against the said Govt. orders but the employees of Andaman Lakshadweep Harbour works Department working in the Lakshadweep Islands were not a party to any of the litigations. Only the special pay optees of the Lakshadweep Administration were agitating the matter initially before the High Court of Kerala and subsequently before this Tribunal and this was the subject matter of O.A. 1274/91 and 580/93 filed by the special pay optees of Lakshadweep Administration. Such employees got benefits in the light of the orders passed in O.A. 1274/91 and 580/93. None of the employees belonging to Andaman Lakshadweep Harbour Works Department serving in Lakshadweep opted for special pay, but when they came to know that the employees of the Lakshadweep Administration got substantial increase in their salaries due to the orders passed by this Tribunal, a section of the employees filed O.A. Nos. 1548/94 and 1591/94 before this Tribunal. Even though initially certain orders were passed on the review applications filed by the Department, this Tribunal passed orders permitting the applicants to file representation/s setting out their claims before the respondent-Secretary, Ministry of Surface Transport, New Delhi. The representations submitted by the applicants were disposed of by the Ministry of Surface Transport after carefully considering all the above issues by A-10 memorandum dated 9.5.96. It was submitted that special allowance which was being paid to the Lakshadweep Island were made strictly in accordance with the orders of the Central Govt. in exercise of the option exercised by the employees. It was submitted that none of the applicants had opted within a period of two months from the date of issue of the order for the Island Special Pay in response to Annexure R-2(A) and therefore they were not eligible for such benefit. There was also no question of loss in pensionary benefits since as per the present definition of the emoluments, only basic pay was to be taken into account for



determining the quantum of pension and other retirement benefits. The orders specifically say that the option once exercised shall be final. In the circumstances the employees could not demand reversal of that option after a lapse of 20 years merely on the ground that it was convenient to them. Moreover, they were claiming this benefit on the basis of the judgment in O.A. Nos. 1274/91 and 580/93 with which they were in no way concerned. These cases related to employees of Lakshadweep Administration and principles applied in those cases would not apply to the employees of the Lakshadweep Harbour Works. They could not draw the benefit from any of the judgements which was passed by the Tribunal or any other Courts. It was submitted that there was no illegality or arbitrariness in the A-10 order.

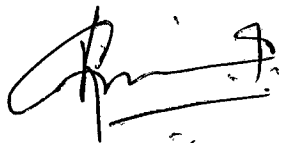
4. Heard learned counsel for the parties. Learned counsel for the applicant Sri M.R. Rajendran Nair submitted that the concept of island special pay did not call for distinction between employees of Lakshadweep Harbour Works and the employees of the Lakshadweep Administration. The island special pay was intended to be an incentive to work in Lakshadweep Island. Even if one may not work in a particular department if he was working in Lakshadweep Island he was entitled to receive island special pay and all the applicants seek island special pay for the period they worked /have been working in the Islands and as such they were eligible to get island special pay and that just because they were employees of Lakshadweep Harbour Works did not bar them to draw island special pay. It was further argued that the fact that the applicant were not parties to other Original Applications filed by employees working under Lakshadweep Administration did not make them ineligible to draw and claim similar benefits. Further it was submitted that all the applicants opted for



island special pay and were in receipt of island special pay and that the applicants were similarly situated like the applicants in O.A. 1274/91 and 896/86. It is argued that by this judgment a final verdict was given regarding the employees those who were recruited from the mainland to the service of the Lakshadweep island. The orders of this Tribunal in O.A. 896/86 and O.A. 1274/91 read together would indicate that all those who were recruited for the services of Lakshadweep Island from the mainland prior to 1970 were entitled to get island special pay at the admissible rate till their date of retirement and also were entitled to compensatory allowance at the rate of 10% of the basic pay subject to a maximum of Rs. 150/- and that island special pay together with the compensatory allowance were liable to be reckoned with for the purpose of pensionary benefits. Learned counsel submitted that there was no justifiable reason to deny the benefits to the applicants who were similarly situated like the applicants in O.A. 580/93 and O.A. 1274/91. It was argued that when the eligibility of persons similarly situated like applicants herein for grant of island special pay and compensatory allowance at revised rates was declared by this Hon'ble Tribunal in O.A. 580/93 there was no justification in denying the same to applicants.

5. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and perused the documents brought on record.

6. We find that these applicants had earlier filed O.A.No.1548/94 and O.A.No.1591/94. The judgements rendered in the above O.A.s were again reviewed by this Tribunal when the Department filed R.A.4/95 and R.A.5/95. This Tribunal passed A-8 orders dated 8.1.96 which is reproduced below:



"These review applications are directed against the judgements in O.A.1548/94 and O.A.1591/94. The issues raised are common and hence they are disposed of by a common order.

2. It is stated that the review applicants were not heard in the real sense, as the counsel who took notice and appeared for them had not been instructed by applicants to appear for them. Counsel for original applicants very fairly submitted that this is the position, and that he would have no objection in the matter being heard on merits. Accordingly, the applications were heard on merits. Counsel for original applicants would only want the review applicants/respondents in the Original Applications to consider whether the order in O.A.1274/91 and O.A.580/93 would govern the cases of applicants.

3. Original applicants are permitted to make a representation/representations setting out their claim before respondent Secretary to Government, Ministry of Surface Transport, New Delhi and the said respondent will pass speaking orders thereon within three months from the date of receipt of the representation/representations and communicate the same to original applicants.

4. Review applications are disposed of as aforesaid.
No costs."

A handwritten signature in black ink, appearing to be 'P. S.', with a horizontal line underneath.

7. Pursuant to the above orders of this Tribunal, A-10 impugned order dated 9.5.96 had been passed by the first respondent which is under challenge in this O.A. Respondents specific case is that the applicants in this O.A. are not similarly placed as those in O.A.580/93 and O.A.1274/91. It is stated that employees of Lakshadweep Harbour Works are not similarly placed as those under Lakshadweep Administration and that the former are part and parcel of Andaman, Lakshadweep Harbour Works and that those who are working in Andaman & Nicobar Region were also being paid special allowance, and those who are posted in Lakshadweep region alone could not be given any additional benefits as the same would amount to unfair discrimination. We find considerable force in this argument. We note that the applicants have relied on A-2 to submit that they were entitled for the island special pay. But we find that A-2 is an order issued by the Administrator and refers to the employees working under the Administration. Hence we hold that A-2 is not relevant to decide the case of the applicants. Further, we find from A-3 & R-2A that the orders by which island special pay was made applicable and subsequently withdrawn to LHW employees were ~~separate~~ from the one to employees under the Lakshadweep Administration.

8. In the impugned order A-10, it has further been stated that orders passed in O.A.580/93 and O.A.1274/91 were applicable to special pay optees of the Lakshadweep Administration and that as far as employees of LHW was concerned, none had opted to receive special pay and that they were being paid special allowance only. This had not been denied by the applicants. In fact they tacitly admit this when they state in the O.A. as follows:

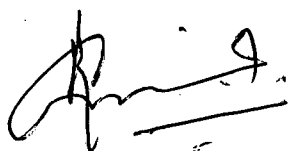


"Their option or deemed option to get special compensatory allowance was at a time when they were told that if they do not opt to receive special compensatory allowance and continue to get special pay, on their promotion they will not get either the island special pay or the special compensatory allowance"

In view of this matter, we find considerable force in the above plea of the respondents.

9. . Further, a co-ordinate Bench of this Tribunal of which one of us was a party (Administrative Member) had occasion to consider the case of "deemed optees" of special allowance under the Lakshadweep Administration when O.A.Nos.357/96, 1265/96, 1270/96, 1283/96, 1411/96, 1555/97 and 401/98 were remanded back by the Hon'ble High Court of Kerala and re-heard. Applicants in O.A.Nos.1555/97, 1411/96 and 401/98 were mainland group of employees. Husband of the applicant in O.A.1411/97 was a 'deemed optee' for special allowance so also the applicant in O.A.401/98. This Tribunal while dismissing O.A.No.1411/98 held:

"The direction in O.A.No.896/86 will be applicable only to those who were in receipt of Island Special Pay or personal pay (being the difference between the pay + island special pay and the pay in the promoted grade) as already held by us in O.A.1555/97 given above. Similarly the direction in the order in O.A.1274/91 will also be applicable only to such employees. We have perused the order in O.A.580/93(A-XII in O.A.357/96). We find considerable force in the plea of the respondents that the said order does not lay down any law/dictum/principle. We also find that the



'deemed option' for special allowance had not been set aside by any court of law. We also find that the applicant through this O.A. is trying to unsettle the settled benefits received by her husband from 1970 onwards till his death on the plea of this Tribunal's direction. We do not find in A-IX and A-X(in O.A.357/96) orders of this Tribunal in O.A.896/96 and 1274/91 respectively any such direction that all special allowance recipients should be treated as to have opted for Island Special Pay had been given."

10. In the present O.A., we note that the Island Special Pay to the LHW employees were withdrawn and special allowance was introduced by R-2A letter dated 29.1.71. The 'deemed option' clause is included under Exception(I) and the same holds good even now. Further, as already stated the applicants do not contest that they were not in receipt of special allowance. In this view of the matter, the dictum in O.A.No.1411/97 squarely applies in this case as they are also trying to unsettle the settled matters of distant past.

11. In view of the foregoing, we do not find any infirmity in the impugned order A-10 calling for interference by this Tribunal and hold that the applicants are not entitled for any of the reliefs sought and the O.A. is liable to be dismissed. Accordingly, we dismiss this Original Application with no order as to costs.

Dated the 21st December, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

List of Annexures referred to in this Order

- A1:- True copy of letter No. 71/4(8)/58 ANL dated 28.9.58 issued by Under Secretary to Govt. of India, Ministry of Home Affairs, New Delhi-1
- A2 True copy of the letter No.5/20/67-Accts(4) dated 9.12.68 issued by Development Officer for Administrator, Union Territory of Laksha Dweep, Kavaratti.
- A3 True copy of the order No.1/12(33))69 dated 25.4.70 issued by Deputy Secretary, Govt. of India, Ministry of Home Affairs, New Delhi.
- A4 True copy of the order No.1/12/(33) G.ANL dated 21.10.70 issued by the Deputy Secretary Ministry of Home Affairs, New Delhi.
- A5 True copy of the order No.6/29/86-Estt dated 29.9.86 issued by the Director (P&A) Ministry of Personnel, Public Grievance & Pensions (Deptt of Personnel & Training) New Delhi.
- A6 True copy of the judgment dated 27.1.94 in OA No.580/93 issued by this Tribunal.
- A7 True copy of representatio;n dated 6.9.94 submitted by the 1st applicant to the 4th respondent.
- A9 True copy of the representation dated 5.5.96 by the 11th applicant to 1st respondent
- R-2(A) True copy of the order No.ALHW/ADM/2(24)/67 dated 29.1.71 of the first respondent.
- A-10 True copy of the Memorandum No.C-18018/6/96 -Pe II dated 9.5.96 issued by the first respondent.