

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O. A. NO. 531/2008

Dated this the 5th day of April, 2010

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

- 1 Keepat Koya S/o late Shamsudeen Koya
 Senior Statistical Officer(Retd.)
 Directorate of Education, Agathi Island
 residing at Agathi, Lakshadweep.
- 2 Kavallal Koya S/o late Ummada Syed Koya
 Junior Employment Officer,
 District Employment Exchange,
 Androth, Lakshadweep.
- 3 A. Koyamma Koya S/o late Majeed
 Statistical Investigator, Medical Directorate,
 Kavaratti Island residing at Kavaratti.
 Lakshadweep.
- 4 P.P. Atta S/o late Kutti Pippepepura Aboobacker
 Junior Employment Officer,
 District Employment Exchange
 Kavaratti Island, Lakshadweep
- 5 B. Kasmi Koya S/o late Kocha Syed Koya
 Statistical Officer
 Directorate of Fisheries, Kavaratti Island
 Lakshadweep.
- 6 P.P. Koya S/o late Mamikakkade Syed Mohammed
 Research Assistant
 Directorate of Education
 Kavaratti Island residing at Kavaratti.
 Lakshadweep.

- 7 P.P. Pookoya S/o late Beeram pathummade Mhohammed
Statistical Assistant,
Directorate of Planning & Statistics
Lakshadweep, residing at Kavaratti.
- 8 P.Kidave S/o late Vadakkalode Aboobacker
Statistical Assistant(Retd.)
Directorate of Education, Kavarattii Island
residing at Kavaratti., Lakshadweep.
- 9 C.N.Kuttiammed S/o late Beerampatthummade Nallakoya,
Statistical Assistant, Public Works Department
Lakshadweep residing at Kavaratti.
- 10 B.K.C. Muthukoya S/o late KPKA Abdul Rahiman
Statistical Assistant,
Directorate of Education, Kavaratti Island
residing at Kavaratti, Lakshadweep.
- 11 P.Abdul Samad S/o Late Thalakkade Abdul Khaderkoya
Statistical Assistant
Directorate of Animal Husbandry
Kavaratti Island
Lakshadweep.
- 12 K. Mohammed Nazer S/o late Molappurasyed Buhari
Statistical Assisetant
Directorate of Industries, Kavaratti Island
, Lakshadweep.
- 13 A.I.Mohammed Kasim S/o A.B.Kunhikoya Thangal
Statistical Assistant
Department of Electricity, Kavaratti Island
Lakshadweep.
- 14 H.B.Mohammed Saleem S/o Musa Manikfan
Statistical Assis tant
Directorate of Agriculture
Kavaratti Island, Lakshadweep.

15 P. Abdul Jabbar S/o Puthliyaveedu Kunhi Seedi Koya
Statistical Assistant
Integrated Child Development Scheme
Kavaratti Island, Lakshadweep.

Applicants

By Advocate Mr. T. C. Govindaswamy

Vs

1 The Administrator
Lakshadweep Administration
Kavaratti Lakshadweep

2 The Collectorate cum Development Commissioner &
Secretary (Planning)
Administration of the Union Territory of
Lakshadweep, Kavaratti.

3 The Secretary,
Department of Statistics
Ministry of Planning and Programme Implementation
New Delhi

4 Union of India represented by the
Secretary to the Government of India
Ministry of Home Affairs
New Delhi.

5 The Secretary to Govt. Of India
Department of Expenditure
Ministry of Finance
New Delhi.

6 The Secretary (Planning)
Directorate of Planning & Statistics
UT of Lakshadweep, Secretariat
Kavaratti

Respondents

By Advocate Mr. S. Radhakrishnan for R 1, 2 & 6
By Advocate Mr. Varghese P. Thomas for R -3, 4 & 5

The Application having been heard on 9.3.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants are challenging denial of higher scale of pay granted to them.

2 The applicants belong to the cadre of Statistical Officer of the Department of Planning and Statistics of the Union Territory of Lakshadweep. According to them, as they discharge identical duties and responsibilities as that of Statistical Assistants/Officers in the Ministries/departments of Govt. of India, they were given identical scales of pay. While so, the Govt. Of India Ministry of Planning & Programme & Implementation Department of Statistics, implemented the scale of pay recommended by the Vth CPC to certain Group-B and C Statistical Function Posts in Ministries/Departments subject to the condition that the Recruitment Rules would be amended suitably. Accordingly, the post of Statistical Investigator/ Statistical Assistants were granted the scale of pay of Rs. 6500-10500 and 5000-8000 w.e.f. 1.1.1996. In the circumstances, the 1st respondent exercised the delegated power and issued order dated 19.12.1998 granting the revised pay scales (Annexure A-2). The 2nd respondent by order dated 19.4.2000 directed to keep Annexure A-2 order in abeyance and to grant the scale of pay Rs. 5500-9000 and Rs. 4500-7000 (A-3). Aggrieved, the applicants approached this Tribunal through O.A. 349/2003 which was disposed of by order dated 8.12.2006 (Annexure A-4) with a direction to the respondents to take up the issue once again and to



dispose of the same within a time schedule. The respondents reconsidered the matter, rejected the proposal (A-5) which was communicated to the applicants. The applicants are challenging the denial of the scale of pay already received by them on the ground that the Ministry of Home Affairs who took up their case with the Ministry of Finance was not in a position to know the duties and statistical function of the posts, the Ministry of Planning and Programme Implementation Department of Statistics has disowned its law despite specific findings of the Tribunal, the impugned orders are issued without authority of law, similarly situated employees in the U.T. Of Pondicherry were granted the same, no show cause notice was given, the order passed granting the higher scale of pay was not recalled or cancelled by the competent authority.

3 The respondents in the reply statement submitted that the grant of higher scale to the applicants by the Administration was an error which was corrected. A mistake committed cannot be perpetuated in future as per the law laid down by the Courts. They submitted that the applicants are employees of the U.T. Of Lakshadweep governed by the service rules and financial rules of the Central Government but they are not employees of the Union Govt. The cadre structure of Lakshadweep is entirely different from the Indian Statistical Services and Subordinate Statistical Services (R1(a), R1(b), R1(c) and R1(d). They further submitted that no specific recommendations were made by the CPCs as regards the statistical function of posts in the UT of Lakshadweep. The Ministry of Planning & Programme Implementation which issued the OM, has itself conveyed thrice to the Lakshadweep Administration that the said OM is not applicable to Lakshadweep vide



R1(a), (b) and ©. Moreover, the promotional post of Research Officer/Senior Statistical Officer are presently placed in the pay scale of Rs. 6500-10500, grant of higher scale to the applicant will disturb the relativity by placing the promotional and feeder posts in the same scale.

4 The applicants filed rejoinder stating that the recommendations of the CPCs mutatis mutandis extended to the applicants too. The upgraded pay scale had been extended to Statistical Officers in UT of Pondicherry.

5 The respondents filed additional reply statement reiterating their views in the reply statement. As regards comparison with UT of Pondicherry, they submitted they are not comparable as the UT of Pondicherry has a Legislative Assembly whereas the U.T. Of Lakshadweep does not have such Legislative Assembly and the Administrator of Lakshadweep, exercises certain delegated powers only.

6 The Tribunal by its order dated 14.10.2009 directed the respondents to file an affidavit indicating whether the 6th CPC has made any specific recommendation with regard to the issue involved in matter and the pay scales awarded to the applicants by the 5th & 6th CPCs. The respondents have filed an affidavit stating that the following scales were recommended by the 5th & 6th CPCs:

Designation	V Pay Commission	VI Pay Commission
Statistical Assistant	4500-125-7000	5200-20200 + Grade Pay of Rs 2800
Statistical Officer /Statistical Investigator & Junior Employment Officer / Research Assistant	5500-175-9000	9300-34_800 +Grade Pay of Rs. 4200



7 We have heard learned counsel for the parties and perused the records produced before us.

8 The Ministry of Statistics & Programme Implementation issued OM dated 30.6.98, upgrading pay scales of Group-B and C Statistical function posts confining to Central Ministries and Departments to facilitate constitution of Subordinate Statistical Service (SSS). The Ministry of Finance had laid down certain conditions for the proposed cadre of SSS. The Ministries/Departments were asked to take necessary action to upgrade the scale of pay accordingly and to amend the Recruitment Rules wherever required to provide for the amended qualification, etc. with the approval of the competent authorities. The V CPC had not recommended any upgraded pay scales for the Lakshadweep Administration and hence it cannot participate in the proposed SSS.. However, the Lakshadweep Administration vide Office Order dated 19.12.2008 implemented the upgraded scale as has been recommended by the V CPC as implemented in the Ministries/Departments of Government of India vide Ministry of Planning & Programme Implementation Department of Statistics OM dated 30.6.1998. Therefore, we do not find any approval of the competent authority in the Government of India for grant of upgraded scale of pay to the applicants. When the Administration proposed to rectify the error in implementing the upgraded scales to the applicants, they approached the Tribunal through O.A. 349/2003 which was disposed of with a direction to the Lakshadweep Administration to take up the matter with the nodal Ministry/Ministry of Finance. Now that the Ministry of Finance has rejected grant of higher scale, they have approached the Tribunal again for the same relief.

ty

9 We find that the pay scales of employees of Lakshadweep Administration are considered by expert bodies like Central Pay Commissions and decided separately by the Finance Ministry and has no link with the pay scale of Central Ministries/Departments. There is no specific recommendation made by the V or VI CPC for Statistical function posts of the Lakshadweep Administration. The Ministry of Finance etc. had reconsidered the matter and did not agree for upgradation of the scale of the applicants on par with SSS.

10 Judicial review come into play only if the action of the Administration is contrary to constitutional or statutory provision or is patently arbitrary or violative by malafides or fail to give reasons amounting to denial of justice. We do not find any situation warranting interference by the Tribunal. We do not find any infirmity in the action of the respondents in correcting a mistake.

11 The Ministry of Planning and Programme Implementation which issued the OM dated 30.6.1998 to various Ministries/Departments with certain condition like minimum educational qualification, revision of Recruitment Rules, etc. for Subordinate Statistical Service, did not state that it is applicable to the UT of Lakshadweep. However, the implementation of the same in the Lakshadweep Administration was a mistake and the Ministry of Statistics & Programme Implementation, New Delhi rejected the case thrice after repeated reconsideration. The cadre structure of Lakshadweep is entirely different from the cadre structure of Subordinate Statistical Services, more over, the upgraded scale will disturb the relativity by placing the promotional and feeder position the same scale as the promotion post of RO/SSO are presently



placed in the pay scale of Rs. 6500-10,500./- Hence the implementation of the same in the U.T. Lakshadweep was found to be a mistake without authority, which was since corrected by the Administration. Therefore, we do not find any infirmity with the action of the respondents.

12 As regards the prayer not to recover the excess payments made to the applicants, The learned counsel for the respondents drew our attention to the judgment of the High Court of Kerala in Santhakumari Vs. State of Kerala and argued that if an employee has received any amount contrary to a statutory provision, the mistake is mutual since the administration as well as employee is bound by statutory provision and unless there is statutory bar in recovering the the amount any amount paid by mistake can be recovered depending upon the facts and circumstances of each case. It was a case on a reference by a learned Single Judge of the Court in view of conflicting views expressed by learned Single Judge of this Court in Rose V. State of Kerala (2004(1)KLT 934) and by another learned Single judgment in Sivankutty Nair Vs. Secretary to Government(2005(3)KLT 512) on the question whether Government is entitled to recover the amount paid to an employee on account of wrong fixation of pay in a case where employee has not contributed to the whole mistake. The Division Bench held as follows:

5 In our view, if an employee has received any amount contrary to statutory provision the mistake is mutual since the administration as well as the employee is bound by the statutory provision. Paying and receiving the amount contrary to the statutory provision is illegal. When a mistake is mutual that has to be shared by both the parties. Law would nullify such an action if the parties are mistaken on the same fact situation. In a case where the mistake is mutual both the parties act on the

ty

same mistaken assumption. Person who pays the amount is on the legitimate belief that the person who received the amount is entitled to receive it and the person who received the amount is on the belief that he is entitled to receive the same. Mistake in such a situation in our view is mutual. Consequently same has to be set right in public interest unless there is statutory bar in recovering the amount.

6 Principle laid down by the learned Judge in Sivankukttu Nair's case 2005(3) KLT 512), in our view cannot be of general application. Reasoning of the learned Single Judge that the excess amount paid on account of wrong fixation of pay cannot be recovered unless the employee has in any way contributed to the mistake in our view, is an over statement of law. We may hasten to add, unless there is statutory bar in recovering the amount, any amount paid by mistake could be recovered depending upon the facts and circumstances of each case. To hold that only in case where employee has contributed to the mistake amount could be recovered cannot be sustained. Facts situation may warrant a sympathetic consideration but cannot be accepted as a general principle of law."

The judgment declares that recovery of excess amount depends on the facts and circumstances of each case and that there cannot be a general principle of law.

13 We find that the question of grant of higher pay scale to the applicants is still pending consideration of the Government. Therefore, in the facts and circumstances of the case, we are of the view that the recovery cannot be effected till a decision is finally taken by the Government on the issue.


14 In the result, in view of our finding in Para 8 & 9, we do not find any reason warranting interference by this Tribunal. However, in view of the observation in para 13 above, we order that excess payment



made to the applicants shall not be recovered until further orders. The O.A is disposed of as above. No costs.

Dated 5th April, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

knn