

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 535/90

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DATE OF DECISION 15.3.1991

~~S.Vijayakumar and 4 others~~ Applicant (s)

M/s.Pirappancode V.Sreedharan Nair, Advocate for the Applicant (s)  
S.P.Aravindakshan Pillai  
Versus

~~Union of India, Ministry of~~ Respondent (s)

Information and Broadcasting

represented by its Secretary, Central Secretariat,  
New Delhi.

Mr.George Joseph, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

The five applicants in this case dated 26.6.1990 filed under Section 19 of the Administrative Tribunals Act, are employees under the Director General, All India Radio and the Director General, Doordarshan functioning under the Ministry of Information and Broadcasting. They have prayed that the impugned order at Annexure A-14 dated 29.11.89 communicating that the judgment of the Calcutta Bench of the Central Administrative Tribunal granting special duty allowance to those serving in North Eastern Region/Andaman and Nicobar Islands would be implemented only in the case of petitioners before that Bench, should be set aside and the respondents 2 and 3 directed to grant special duty allowance to the applicants from 1.11.83 and from 1.12.88 in accordance with the O.Ms of 14.12.83 and 1.12.88 respectively for the periods they had worked in the North Eastern Region and Andaman and Nicobar Islands. Their further prayer is that the applicants should be declared to be entitled to the benefit of the judgment of the Calcutta Bench of the Tribunal at Annexure A-XII. The material facts of the case are as follows.

2. The applicants belong to Group-C Central Civil Service. The first applicant had been posted at Gauhati and Car Nicobar Island from 12.11.84 to 14.10.89. The second applicant had worked at the All India Radio, Port Blair from 1.4.1982 to 27.6.1987. The third applicant had worked under the All India Radio and TVRC at Port Blair from 3.10.1986 to 7.6.1989. The fourth applicant was posted at TVRC, Car Nicobar from 22.9.86 to February, 1988. The fifth applicant was posted from 4.6.87 to April 1989 in the All India Radio at Port Blair. Their prayer is that in accordance with the Government of India's O.M dated 14.12.83 they were entitled to special(duty) allowance as they had all India transfer liability and had been posted for certain periods in the North Eastern Region and Andaman and Nicobar Islands . In accordance with that O.M for the period they were posted in these special areas, they were entitled to special (duty) allowance at the rate of 25% of the basic pay subject to a ceiling of Rs.400/- per month. Subsequently in accordance with the O.M of 1.12.88 they are entitled to the special (duty) allowance at the rate of 12 1/2% of the basic pay subject to a ceiling of Rs.1000/- per month during the period after 1.12.88 for the period they had been posted in the North Eastern Region. Their plea is that similarly circumstanced employees had moved the Tribunal in O.A 16,17 and 18 of 1988 and the Full Bench in the judgment(Annexure A-12) dated 12.4.1989 covering those applications held that the applicants in those cases were entitled to special (duty) allowance as claimed by them. The first applicant submitted a representation on 24.1.1990 (Annexure A-13)praying for grant of the special (duty) allowance relying upon the aforesaid judgment of the Larger Bench of the Tribunal for the period between 12.11.84 and 1.7.87 when he was posted at All India Radio, Gauhati and thereafter upto 14.10.89 when he was transferred to the Television Relay Centre at Car Nicobar. No reply was given to his representation, but subsequently when the applicants came across the impugned O.M of 29.11.89 at Annexure A-14 restricting the benefit of the judgment only to the petitioners in that case, they have been constrained to move this

.3.

Tribunal by this application. They have challenged the impugned order as unreasonable and unjustifiable and have also referred to a further judgment of the Calcutta Bench of the Tribunal dated 16.5.90(Annexure A-15) in which relying upon the aforesaid judgment of the Full Bench, the applicants in that case were also granted the special(duty) allowance including arrears counting from three years before the institution of those cases or the date when they had joined their respective places of posting at Port Blair whichever was later. Their further argument is that since they are similarly placed as the applicants in Annexure A-12 judgment, their exclusion from the benefit of special (duty) allowance would be violative of Articles 14 and 16 of the Constitution.

3. The respondents have accepted the service details given by the applicants about their postings, but have stated that the special (duty) allowance is admissible only to those employees who are transferred <sup>to the special regions</sup> from outside and have all India transfer liability. Since the applicants were originally appointed at Port Blair, they were not granted special (duty) allowance. They have argued that the judgments of the Larger Bench and of the Calcutta Bench at Annexures A-12 and A-15 are applicable only to those who were applicants in the cases covered by those judgments. The respondents have distinguished the present application from them by stating that the applicants in the instant case before us were initially appointed in the special area while the applicants in those cases had been transferred to the special area. The intention of special (duty) allowance was to attract more persons for posting on transfer to this area and not for the benefit of persons initially appointed to those areas or persons who do not have all India transfer liability.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have not seriously contested the application in view of the finding of the Larger Bench in their judgment dated 12.4.89 at Annexure A-12. Their only objection to the grant of special (duty) allowance to the applicants is that since the applicants had been originally recruited in the special area of Andaman & Nicobar Islands, the special (duty) allowance which was intended to be given to encourage posting of persons from outside to these regions,

cannot be given to the applicants. This contention is in any case not applicable to the 3rd applicant who was recruited as Engineering Assistant at Calicut and subsequently transferred from Calicut to Port Blair. The question whether those who were locally recruited in the special areas of Andaman & Nicobar Islands or in North Eastern Region would also be entitled to the special (duty) allowance was specially gone into by the Larger Bench in their aforesaid (Annex.A-12) judgment. The following observations in the judgment would be decisive:-

"It has been argued by Mr.D.N.Das,Sr.Standing Counsel appearing for the respondents that the said allowance was decided to be given to the persons who are posted in North Eastern region for a fixed tenure and as such Central Government employees initially recruited from within the region and who are never posted outside the region cannot get such benefit. We are unable to accept this contention. It is true that at para 1 of the O.M. dated 14.12.1983 there is a mention of a fixed tenure of posting for a period of three years in order to get such Special (Duty) Allowance. But on a reference to Annexure A to the applications we get that some of the applicants on transfer from places outside Port Blair have been staying at Port Blair in their respective posts for a period of 11/12 years. So, from this fact it is patent that tenure of posting as mentioned in Annexure 'C' or as argued by Mr.Das should not be the criterion to deny the applicants' claims. The only criterion for determining these cases is whether the applicants have their All India transfer liability. In our opinion without recalling the O.M. issued in 1983 the concerned department or the Ministry of the Government of India had no reason to make the benefit of the memorandum available to certain classes of persons and to withdraw its application to certain other classes. Besides, we do not find any consistency in the stand taken by the Government of India. At para (2) of the letter, dated 28.9.1984 circulated by the Cabinet Secretariat as we find from para 22 of the judgment passed by the Guwahati Bench, it is mentioned that Group 'C' employees recruited locally in the North Eastern region and who have not been transferred outside that region since their joining the service will not be eligible for Special (Duty) Allowance. It is curious to note that in further clarification of the said letter issued on 28.9.1984 it was stated by the Cabinet Secretariat on 17.7.1985 (vide the concluding portion of para 22 of the judgment passed by the Guwahati Bench) that Group 'C' employees recruited locally in the North-Eastern region, but who are liable to serve anywhere in India, will be eligible for Special (Duty) Allowance although they may not have been transferred outside that region since their joining the service due to administrative reason. So, it is clear on a reading of the subsequent clarification that nontransfer of a locally recruited Central Government employee outside the region having All India transfer liability should not be a ground for refusing Special (Duty) Allowance. In our opinion the classifications or eligibility for getting such allowance as made by the Government of India in its letters dated 12.4.1984 and 28.9.1984 as they appear from para 22 of the judgment passed by the Guwahati Bench,

are wholly unreasonable and discriminatory. It is now a well settled principle of law that a classification in that way is only permissible when it is founded on an intelligible differentia and when the differentia has a rational relation to the object that has to be achieved. In the cases before us the applicants carry with them All India transfer liability. At the time of their appointments it was made clear to them in no uncertain terms that they would be liable to be posted and transferred anywhere in India. Taking that liability on themselves and joined their services. Because of the fact that since their appointments they have not been transferred outside the region the grant of Special (Duty) Allowance cannot be denied to them. In our opinion the refusal to grant the said allowance to them in that score would be wholly discriminatory".

(emphasis added)

We have checked up from the records and found that all the five applicants on their appointment were clearly told that they have all India transfer liability. This is evident from Annexure A-1 in case of the first applicant, Annexure A-4 in case of the second applicant, Annexure A-5 in case of the third applicant, Annexure A-8 in case of the fourth applicant and Annexure A-10 in case of the fifth applicant. The Larger Bench further observed as follows: -

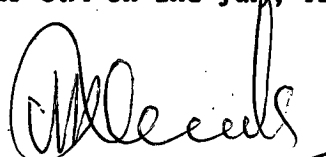
"We are of the opinion that when the conditions of service impose All India service liability and so long as that liability continues to exist and it has not been revoked by an order of the competent authority, it is not open to the Government to deny the benefit of the Special (Duty) Allowance to any employee on the ground that the All India transfer liability has not been in fact enforced. As the applicants of all these three cases satisfy the condition stipulated in the O.M. of 1983, we hold that they are entitled to get the Special (Duty) Allowance as claimed by them."

Similar view was taken by the Calcutta Bench of the Tribunal in their judgment dated 16.5.90 at Annexure A-15. That Bench further held that extending the benefit of the Larger Bench judgment to some and denying the same to others who are not a party in the cases covered by that judgment, will be violative of Articles 14 and 16 of the Constitution.

5. In the facts and circumstances we allow this application, set aside the impugned order dated 29.11.89 at Annexure A-14 and direct the respondents to grant special (duty) allowance as per O.M No.20014/3/83-E.IV dated 14.12.83 and O.M No.20014/16/86/E-IV/E II(B) dated 1.12.88

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including the arrears for the period of their posting in the special region and falling with the period of three years before the date of institution of this O.A on 2nd July, 1990. There will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

15/3/91

  
(S.P. Mukerji)  
Vice Chairman

n.j.j

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

R.A.No. 71/92  
(Dy.No. 9131/91)

O. A. No. 535/90  
~~XXXXXX~~ No.

~~199~~  
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DATE OF DECISION 29.05.92

Union of India, Secretary <sup>Applicant (s)</sup>  
~~M/o Information and Broadcasting~~ and others

Mr.N.N.Sugunapalan, SCGSC Advocate for the Applicant (s)

Versus

M/s S.Vijayakumar and others Respondent (s)

Mr.Pirappancode V.Sreedharan Nair Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? X
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. To be circulated to all Benches of the Tribunal? X

JUDGEMENT

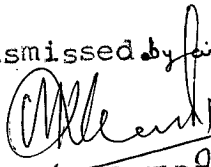
(Hon'ble Shri S.P.Mukerji, Vice Chairman)

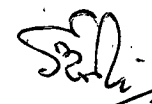
We have gone through the R.A. and connected papers including the original case file. Though the R.A. was filed originally on 14.11.91, the Registry pointed out on 18.11.91 two defects to be cured. The time to cure the defect expired on 22.11.91 and the Deputy Registrar under the powers of the Registrar declined to condone the delay when the defects were cured four months later on 16.3.92. Under Rule 5(4) of the Procedure Rules the R.A. cannot be entertained.

2. However, in view of the fact that <sup>the</sup> Hon'ble Supreme Court had directed the Review applicants to file the R.A. we have examined the R.A. despite the fact of delay in curing the defects. The only ground taken in the R.A. is that contrary to the presumption made by the Tribunal, the original applicants

had only zonal liability of transfer. This ground cannot be accepted as in our judgment we have specifically referred to annexures 1, 4, 5, 8 and 10 wherein the original applicants were informed that they have all-India transfer liability. These annexures had not been denied by the original respondents i.e., Review Applicants. Hence by the dictum of the Larger Bench the original application was allowed.

3. We see no merit in the Review Application which is dismissed by circulation.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

  
29.5.92  
(S.P. MUKERJI)  
VICE CHAIRMAN

29.05.92

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