

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.537/99

Thursday this 11th day of October, 2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.D.Bharathy Kutty Amma,
W/o M.G.Vijayan Menon,
Craft Teacher(Retd.)
Government High School,
Kalpeni.Applicant

(By Advocate Mr.T.C.G.Swamy)

vs.

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. The Union of India,
represented by the Secretary
to the Government, Ministry of
Home Affairs, Secretariat,
New Delhi.Respondents

(By Advocate Sri P.R.R.Menon)

The Application having been heard on 13.9.01. the Tribunal
on 11.10.2001 delivered the following;—

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant's case is as follows. The applicant
retired voluntarily with effect from 1.11.1998 while serving
as Craft Teacher (Paper Mache), Govt. High School, Kalpeni
She was an optee for island special pay. In the order in
O.A. Nos. 1274/91, 580/92, 787/93 and 1431/94 and various
other cases this Tribunal had declared that the applicants
therein who had opted for island special pay were entitled
to be paid island special pay to be reckoned at 80% of the
basic pay applicable to them from time to time including the

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revised pay after 1.1.1986 subject to a maximum of Rs.500/per month, that they were entitled to compensatory allowance at the rate of 10% of their basic pay including the revised pay from 1.1.1986 subject to a maximum of Rs.150/- per month and that the island special pay is liable to be continued to be treated as basic pay for all purposes including dearness allowance, pension, retirement benefits etc. The applicant was getting island special pay which was stopped with effect from 1.8.1977 and payment recovered from salary of August, 1998 onwards. From an order dated 5th August, 1998 issued by the Government of India, Ministry of Home Affairs(Annexure A2) it is clear that the Government of India had not passed any order stopping island special pay. However the first respondent has issued the impugned order dated 1.8.1998 to the effect that the island special pay now being paid to a section of the employees of the Administration should no longer be in existence with effect from 1.8.97 and employes would be paid Special Compensatory(Remote Locality) Allowance at the revised rates with effect from 1.8.97 (Annexure A3). Alleging that in view of the declaratory judgment of the Tribunal in O.A.1274/91 and connected cases that those who have opted for island special pay are entitled to be paid island special pay to be reckoned at 80% of the basic pay applicable to them from time to time including the revised pay after 1.1.1986, the impugned order issued by the first respondent that any order issued in that behalf by the second respondent, is arbitrary, discriminatory and irrational, the applicant has filed this application to

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quash Annexure A3 for a declaration that the applicant is entitled to get the pensionary benefits and also to reckon the island special pay as part of the basic pay and to direct the respondents to pay the applicant the pensionary benefits reckoning the island special pay and also to reimburse the special pay already recovered from the applicant.

2. The respondents have filed a detailed reply statement contending that the special pay having been abolished as per the recommendations of the Fifth Central Pay Commission and the Special Compensatory(Remote Locality) Allowance have been granted to all Central Government employees including the employees under the U.T.Administration of Lakshadweep, the claim of the applicant for grant of special pay and for reckoning the same for the purpose of commutation of pensionary benefits, is unsustainable. The employees under the U.T.Administration are entitled only to Special Compensatory(Remote Locality)Allowance at the prescribed rates with effect from 1.8.97 and therefore the applicant is not entitled to any relief, contend the respondents.

3. Shri Govindaswamy, the learned counsel of the applicant argued that as the Hon'ble Tribunal has in O.A.1274/91, 580/92, 787/93 and 1431/94 held that those employees of the Lakshadweep Administration opted for special pay are entitled to be paid Island Special Pay to be reckoned at 80% of the basic pay applicable to them from

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time to time including the revised pay after 1.1.1986 subject to a maximum of Rs.500/- per month and are also entitled to the compensatory allowance at the rate of 10% of the basic pay subject to a maximum of Rs.150/- per month and that the element of Island Special Pay is liable to be treated as part of basic pay for all purposes including dearness allowance, pension, retirement and other service benefits and as the above rule has become final, the respondents are not entitled to contend that the applicant who is a special pay optee is not entitled to get Island Special Pay and to have the element of special pay reckoned for pension.

4. It is not disputed by the respondents that the judgments of the Tribunal, referred to above, have become final. Be that as it may, the above said judgments were rendered by the Tribunal considering the eligibility of the employees as per the service conditions on the basis of the existing pay revision orders. The pay and allowances, and special pay etc. payable to the employees undergo changes with varying decisions of the Government on acceptance of successive Pay Commission's reports. It is not disputed that the Fifth Central Pay Commission has recommended abolition of special pay and has recommended Special Compensatory(Remote Locality) Allowance to the employees including those working under the U.T. of Lakshadweep. On acceptance of the report of the Fifth Central Pay Commission, the Government of India, Ministry of Finance has issued order dated 20th July, 1998 (Annexure R16) granting

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Special Compensatory(Remote Locality)Allowance to the Central Government employees serving in the specified areas in different States and Union Territories. effective from 1st August,1997.The element of special pay has been taken away. Therefore from 1.8.1997 onwards, the employees are entitled to Special Compensatory(Remote Locality)Allowance and special pay is no more admissible. Therefore the declaration that the employees of the U.T. of Lakshadweep would be entitled to Island Special Pay in the judgments referred to above, do not apply any longer to the employees who have opted for the revised pay since on acceptance of the report of the Fifth Central Pay Commission, the element of special pay has been abolished. Therefore we do not find any merit in the argument of the learned counsel of the applicant that the applicant was entitled to get Island Special Pay till the date of his superannuation beyond 1.8.1997. The applicant has claimed a declaration that he is entitled to get all pensionary benefits reckoning the element of Island Special Pay. A Single Member of this Tribunal had in O.A.1038/1999 considered whether the Island Special Pay is to be reckoned for computation of pension. It held as follows:-

"5. The learned counsel appearing for the respondents vehemently argued that in the light of the rule position on the subject, the applicants are not entitled to reckon the Island Special Pay for the purpose of pension. In support of this argument he relied on Rule 33 of CCS(Pension)Rules,1972 .Rule 33 of CCS(Pension)Rules, after amendment with effect from 1st of January,1986, reads thus:

"The expression 'emoluments' means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his

death; and will also include a non-practising allowance granted to medical officer in lieu of private practice."

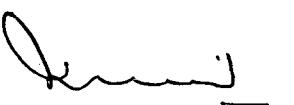
Now it is to be seen what is the definition of 'basic pay' contained in Rule 9(21)(a)(i) of the Fundamental Rules. Rule 9(21)(a)(i) of the Fundamental Rules defines thus:

"the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre;..."

7. So, from the above definition, it is clear that pay does not include special pay. That being the position, emoluments, as per Rule 133 of CCS(Pension)Rules, in the case of the applicants is to be understood as their pay excluding special pay. In this situation, there cannot be a direction to the respondents to refix the pension and pensionary benefits due to the applicants reckoning the element of Island Special Pay, drawn by them during their service."

5. The above ruling of the Single Member Bench has been followed by a Division Bench, to which both of us were parties in O.A.284/1998. Therefore, following the above rulings, we find that even if the applicant is assumed to be drawing special pay on the date of his voluntary retirement, which is not the case, he would not have been entitled to grant of special pay for computation of pension.

6. In the light of the above discussion finding no merit in the application, we dismiss the same leaving the parties to bear their own costs.


(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER


(A.V.HARIDASAN)
VICE CHAIRMAN

A P P E N D I X

Applicant's Annexures:

1. Annexure A1 : True copy of the order No.18/35/98-Edn of the Ist respondent dated 17.8.1998.
2. Annexure A2 : True copy of order No.U-14025/2/97-ANL - Govt. of India, Ministry of Home Affairs, New Delhi dated 5.8.1998.
3. Annexure A3 : True copy of the office Memorandum No.10/1/98-F&A(A) dated 6.8.1998 issued by the Ist respondent.
4. Annexure A4 : True copy of the office Memorandum No.10/1/98-F&A(A) dated 26.8.1998 issued by the Ist respondent.
5. Annexure A5 : True copy of the representation dated 9.12.1998 submitted by the applicant before the Ist respondent.

Respondents' Annexures:

1. Annexure R1 : True copy of letter No.71/4/8/58-ANL dated 28.3.'58 issued by the Govt.of India, Ministry of Home Affairs.
2. Annexure R2 : True copy of letter No.1/12/(33)69-ANL(I) dated 25.4.'70 issued by the Govt.of India, Ministry of Home Affairs.
3. Annexure R3 : True copy of letter No.1/12/(33)69-ANL dated 21.10.'70 issued by Govt.of India, Ministry of Home Affairs.
4. Annexure R4 : True copy of letter No.2/4(2)/73-Imp. dated 15.3.75 issued by the Govt.of India, Ministry of Home Affairs.
5. Annexure R5 : True copy of O.M.No.20014/13/86-E IV dated 23.9.86 issued by Govt.of India, Ministry of Finance.
6. Annexure R6 : True copy of letter No.6/29/86-Estt.(Pay-II) dated 29.9.86 issued by Govt.of India. Ministry of Personnel, PG & Pension.
7. Annexure R7 : True copy of the judgement passed by this Hon'ble Tribunal in O.A.896/86 dated 27.4.89.
8. Annexure R8 : True copy of the judgment passed by this Hon'ble Tribunal in O.A.1274/91 dated 3.4.92.
9. Annexure R9 : True copy of letter No.U.14046/3/77-ANL dated 30.6.81 issued by the Govt. of India, Ministry of Home Affairs.
10. Annexure R10: True copy of the common judgment passed by this Hon'ble Tribunal in O.A.580/93 and connected cases.
11. Annexure R11: True extract of Para 104.34 of the recommendations of the 5th Central Pay Commission.

12. Annexure R11(a) : True extract of Para 109.1 to 109.5 of the recommendations made by the 5th Central Pay Commission.
13. Annexure R12 : True copy of the common judgment passed by the Hon'ble Chairman of the Central Administrative Tribunal in QA.357/96 and connected cases.
14. Annexure R13 : True copy of letter No.U-14025/2/97-ANL dated 26.5.98 issued by the Govt. of India Ministry of Home Affairs.
15. Annexure R14 : True copy of fax message of letter No. U-14025/2/97-ANL dated 19.6.98 issued by the Govt. of India, Ministry of Home Affairs.
16. Annexure R15 : True copy of letter No.U-14025/2/97-ANL dated 16.7.98 issued by the Govt. of India, Ministry of Home Affairs.
17. Annexure R16 : True copy of order No.3/1/98-E.II(B) dated 20.7.98 issued by the Govt. of India, Ministry of Finance.
18. Annexure R17 : True copy of letter No.U-14025/2/97-ANL dated 13.8.99 issued by the Govt. of India, Ministry of Home Affairs.

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