

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.603/02

THURSDAY, THIS THE 17TH DAY OF JULY, 2003.

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

1. All India Light House Employees Association represented by its President P.A.Karappan, aged 53 years. S/o P.A.Ayyappan (Assistant Light Keeper) Kadalur Point Light House, PO.Katalar, Koylandy Kozhikode residing at Pulissery House, PO.Thottipal, Trichur Dist.
2. Prasanthan Karayi, aged 28 years S/o Nanu, Assistant Light Keeper (Senior Scale) Azhikode, Kodungallur, Trichur Dist. residing at Light House Quarters, Azhikode, Kodungallur, Trichur Dist.Applicants

(By Advocate Mr. T.C.Govindaswamy)

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1. Union of India, rep. by Secretary to the Government of India, Ministry of Surface Transport, New Delhi.
2. The Director General, Department of Light Houses & Light Ships, Deep Bhavan, A.13, Sector 24, Noida, Gowdam Budh Nagar Dist. UP.201301.
3. The Director (Regional) Department of Light Houses and Light Ships, Ministry of Surface Transport, Deep Bhavan, Gandhi Nagar, Kochi.20.Respondents

(By Advocate Mr.S.K.Balachandran, ACGSC)

The Application having been heard on 17.7.2003, the Tribunal on the very same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIREMAN

The 1st applicant the All India Light House Employees Association represented by its President who has filed this

application representing 35 members of the Association who are/had been working in Lakshadweep. The 2nd applicant is an Assistant Light Keeper (Senior Scale), presently working at Azhikode near Kodungallur and had been working in Lakshadweep and is an aggrieved party. The issue involved in this case relates to the eligibility of persons working in various Islands of Lakshadweep under the 2nd respondent for Special Duty Allowance. The short resume of the facts is as follows. On the basis of the Ministry of Finance O.M.No.20022/2/88-E.II(B) dated 24.5.1989 and Corrigendum No.20022/2/88-E.II(B) dated 27.6.1989 the Government of India decided to give certain incentives as Special Duty Allowance to employees having All India transfer liability posted in Andaman & Nicobar and Lakshadweep Islands and Annexure A-2 Government of India, Ministry of Finance, O.M.No.12(1)/98-E.II(B) dated 17.7.1998 revising the rates of Special Duty Allowance from 1.8.1997. The members of the applicants' Association who were working in Lakshadweep were paid Special Duty Allowance. An order dated 18.4.2000 (Annexure A-3) purportedly on the basis of judgement of the Apex Court (in civil appeal No.3251 of 1993) dated 20.9.1994 directing that payment of Special Duty Allowance be stopped from 20.9.1994 and payment made from 20.9.1994 to ineligible persons be recovered. Finding that on the basis of the above said order recovery would be made from pay and allowance of the applicants, the applicants filed O.A.No.1154/2000 which was, however, withdrawn. Subsequently Annexure A-5 order dated 10.10.2000 was issued directing recovery of quantified amount from the members of the applicant's Association. Aggrieved by that applicants filed O.A.No.1199/2000 challenging Annexure A-5 and praying for a declaration that they

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are entitled to be granted Special Duty Allowance as provided under A-1 and A-2 while posted in the islands referred to in A-1 and A-2 and for incidental direction as no notice or opportunity had been given before quashing A-5 order. The Tribunal found that the order was vitiated for violation of the principle of natural justice and set aside the order directing that any amount recovered pursuant to A-5 should be refunded to the individuals. However, liberty was reserved to the department to pass appropriate orders on the question after observing the principle of natural justice. However, again without issuing any notice or affording any opportunity to the affected persons A-7 order dated 2.1.2002 was issued classifying the members of the applicant's Association ineligible persons and as a result Annexure A-9 order classifying the applicants as ineligible for Special Duty Allowance was consequently issued. Thereafter, A-10 order was issued directing recovery of quantified amount of Special Duty Allowance paid after 20.9.1994 from their pay and allowances. Aggrieved by that the applicants have filed this application for the following reliefs:

" Call for the records leading to the issue of Annexure A-7, A-9 and A-10 and quash the same to the extent they relate to the applicants;

b. Call for the records leading to the issue of Annexure A-7 and A-9 and quash the same , to the extent they say that, " the question of payment of SDA to an employee in Cochin district (during the period of posting in Lakshadweep Islands) comes only if he is posted to the region (Cochin district) from outside the region (other districts)".

c. Declare that the applicants are entitled to be granted SDA as provided under Annexures A-1 and A-2 and direct the respondents to pay the same with effect from 1.4.2000 with all consequential benefits thereof.

d. Direct the respondents to refund the amount of SDA already recovered from the applicants' salary within a time limit as may be deemed just and proper by this Hon'ble Tribunal.

e. Award costs of and incidental to this Application.

f. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The respondents in their reply statement contend that since pursuant to the Government of India, Ministry of Finance, O.M.No.11(5)/97-E.II(B) dated 29.5.2002 (Annexure A-11) an order dated 16.8.2002 Annexure R-1 has been issued by which A-10 stands cancelled. The OA has practically become infructuous. Regarding the claim of the applicant for continuance of Special Duty Allowance the respondents contend that as Islands of Lakshadweep come under the Cochin Directorate (Cochin Lighthouse District) none of the applicants is entitled to the Special Duty Allowance in view of the Apex Court decision in S.Vijaykumar's case as also Union of India & Ors Vs. Executive Officers Association AIR 1995 SC, 1746.

3. I have gone through the entire pleadings and materials placed on record and have heard Sri.T.C.Govindaswamy, learned counsel for the applicant and Sri.S.K.Balachandran,ACGSC who appeared for the respondents. Since the recovery pursuant to A-10 is no more relevant as the same has been cancelled by the respondents themselves by issuing Annexure R-1 order, the only question that falls for consideration is whether the members of the 1st applicant's Association or any one of them is entitled to continue to receive the Special Duty Allowance even after 5.10.01. The persons who have All India transfer liability when

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posted to Lakshadweep Islands are entitled to receive Special Duty Allowance is born out from the orders A-1 and A-2. The question whether employees belonging to north-eastern region when posted in the same region are entitled or not to get the Special Duty Allowance merely on account of the clause in the appointment order that they hold All India transfer liability was considered by the Apex Court in Union of India & Ors Vs. S.Vijaykumar & Ors reported in 1994(3) Supplementary SSC 349. It was held that only those who belongs to outside the region need to be attracted by special incentive allowance and they alone would be entitled to Special Duty Allowance and those who hailed from the region and are appointed there are not. The same view was upheld by the Apex Court in the Union of India & Ors Vs. Executive Officers Association 95 1746. The question whether the employees posted in Lakshadweep Islands are entitled to Special Duty Allowance on the basis of A-1 and A-2 was specifically considered by a Single Member Bench of this Tribunal in O.A.No.1282/2000. After considering the rival contention the Tribunal observed as follows:

" In the instant case therefore, any Central Government employee from outside the Union Territory of Lakshadweep having all India transfer liability when posted to any of the Islands of Lakshadweep should be eligible for the Island Special Duty Allowance. Any person belonging to a particular Island forming part of the Union Territory of Lakshadweep, when posted to his own home island or to another island under the Union Territory of Lakshadweep would not be legally entitled to claim the said incentive allowance ".

4. I entirely agree with the view taken because that is the proper and meaningful view that can be taken on the basis of A-1 and A-2. The contention of the respondents that the staff of the



2nd respondent working in various Islands of Ladshadweep are controlled by Cochin Directorate/District and therefore those whom the 1st applicant represents in this application having been employees of the Cochin Directorate or District are not entitled to get Special Duty Allowance even if they are posted to Lakshadweep Islands does not find support from any Memorandum issued by the Ministry of Finance or other instructions, apart from what is stated in the impugned order A-7 for which there is no authority. Therefore the employees who were posted to Lakshadweep Islands from outside would definitely be entitled to the Special Duty Allowance in terms of A-1 and A-2. In this case from the pleadings, it is not clear which of the persons mentioned in Sub Paragraph C of para 4 of the application were belonging and recruited from there or were transferred or posted to the Lakshadweep Islands from outside. I find that those members of the Association mentioned in sub paragraph C of Para 4 recruited in mainland and then posted to Lakshadweep Islands would be entitled to receive the Special Duty Allowance for the period they stood posted in Lakshadweep Islands.

5. In the light of what is stated above, the application is disposed of with the following declaration and directions.

(i) Since A-10 order stand cancelled by Annexure R-1 it is not necessary to set aside A-10 order specifically.

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(ii) A-7 and A-9 orders which classified all the persons enumerated therein and ineligible persons to receive Special Duty Allowance is set aside to the extent that those who were recruited in mainland but posted in Lakshadweep shall be entitled to receive the Special Duty Allowance.

(iii) The respondents are directed to identify those members of the 1st applicant's Association and specifically mentioned in Sub Paragraph C of para 4 of the OA who have been recruited from mainland and posted to Lakshadweep and to continue to pay them the Special Duty Allowance so long as they remain posted in Lakshadweep and to refund the amount if any, which was recovered from any one of the members of the Association on the basis of A-10.

(iv) The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.



A. V. HARIDASAN
VICE CHAIRMAN

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