

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

* O.A.No.618/2002

Monday, this the 22nd November 2004

C O R A M:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.S.K.HAJRA, ADMINISTRATIVE MEMBER

1. Raghava Warriar, S/o Uzhuthara Warriar,
Headmaster (Retired), Souparnika,
P.O. Mokkam, Kozhikode, Kerala.
2. K.K.Krishnan, S/o K.Perachan,
Block Development Officer (Retired)
Union Territory of Lakshadweep
R/o Little Kurumbetty,
Bengalam P.O, Elathur, Calicut.
3. K.Narayana Kurup, S/o Appu Kurup, Maistry(Retd)
Lakshadweep Public Post Department,
Sreenilayam, P.O.Tuneri,
Via Vadakara, Calicut.
4. A.Gopalan, S/o Krishna Kurup
Line Man (Electrical) (Retd.)
R/o Geethanjali, P.O. Kurunnalayoda,
Valiappalli, Vadakara, Calicut.
5. C.H.Chathu, S/o C.H.Anandan Nair,
Junior Engineer (Electrical) (Retd.)
R/o Cheriya Kumbalam, P.O.Paleri,
Via Kuttiyade, Vadakar.
6. K.Vijayan, S/o T.Kumaran
Assistant Director of Fisheries (Retd.)
R/o Butterfy, 12/358, P.O.Arakkinav,
Calicut.
7. P.Chandrasekharan, Superintendent (Retd.)
Lakshadweep Public Works Department,
Palathottathil House, P.O Karuvambram West,
Manchery, Malappuram.
8. K.T.Rajagopalan, S/o Kunhikrishnan Kurup
Oil Engine Mechanic (Retd)
Agricultural Department, Union Territory of.
Lakshadweep, Rajashree, P.O Mannarghat Cottage
Palaghat.
9. A.P.Unnikrishnan, S/o P.C.Vasudevan Namboodiripad
Assistant Director of Science
Technology and Environment (Retd.), Kavarathi,
Dhanya, P.O.Karuvassery, Kozhikode.
10. M.Viswanathan, Superintendent(Retd.)
Directorate of Education, Kavarathi
S/o Kuttappan Nair, Rajani Nivas,
P.O.Karuvassery, Janatha Road, Calicut.

11. T.Savithri, D/o Appu, Teacher (Retd.)
Educational Department, Union Territory
of Lakshadweep, Malayil House, Aiswarya,
P.O.Arakkinav, Calicut.
12. K.M.Shankarankutty, Driver(Retd.)
Govt Hospital, Minicoy Island
P.O.Kizhayoore, Pattambi, Palakkad.
13. M.Gopalan Nair, S/o Madhavan Nair,
Junior Engineer (Retd.) Public Works Department
Minicoy Island, Jayavihar, Perumpullikal
P.O.Manamnagar, Pandalam.
14. P.K.Achuthan, S/o C.P.Krishnan Master
Headmaster (Retd.), Govt J.B.School
Amini Island, Sneham, Karthikappally, Badagara.
15. P.P.Narayanan, S/o Appu, Lower Division Clerk(Retd.)
Lakshadweep Public Works Department
Meethala, Nellyyullathil, Kuttoth Post,
Sidha Samajam, Via Badagara.
16. Thampi Varghese, S/o Varghese,
Fisheries Instructor (Retd), Govt High School,
Androth, R/o Timssea 28/215
Chevarambalam P.O, Kozhikode.
17. P.V.Ramakrishnan, S/o Ryrn Nambiar,
Assistant Registrar (Retd.)
Co-operative Society, Union Territory of Lakshadweep
R/o Gouri Nivas, P.O Kodali, Kannur.
18. Sadanandan M.K, S/o K.M.Bappu, Co-operative
Inspector, Union Territory of Lakshadweep
R/o Giridhar, Tellicherry P.o,
Moozhikkara, Kannur.
19. M.N.Damodharan, S/o Neelakandan Nambisan
Block Development Officer(Retd),
Soubhagya, H.No.V/675, P.O Chemmanthatta
Via Keecheri, Thrissur.
20. A.Hydrn, S/o P.Pookker Ali, Junior Engineer
Lakshadweep Public Works Department (Retd),
Annikadrath House, P.O.Kochannur, Thrissur.
21. T.V.Bhaskaran, Craft Institutor (Retd),
S/o Kunjambu, R/o Sree Nilayam, Payyannur.
22. Raghavan, S/o Divakaran, Junior Engineer
Electrical(Retd.) R/o Pushpa Vilasm,
Chervarambaloor P.O, Kozhikode.

Applicants

(By Mr.P.V.Mohanan, Advocate)

Vs.

1. The Administrator, Union Territory of Lakshadweep
Kavarathi.
2. Union of India represented by its Secretary
Ministry of Home Affairs, New Delhi.

Respondents

(By Mr.P.R.Ramachandra Menor (R1)
(By Mr.T.P.M.Ibrahim Khan (Rs)

The Original Application has been heard on 22.11.2004 and the Tribunal on the same day delivered the following:

O R D E R

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

The applicants 22 in number who were employees of the Lakshadweep Administration retired on superannuation on various dates between 1.1.96 and 31.5.1997. They alongwith others filed O.As No.580/93, 787/93, 877/93 and 1969/93 praying that they be granted the benefits given to the applicants in O.As 896/86 and 1274/91 on the ground that they were similarly situated. These OAs were disposed of by a common order dated 27.1.94 directing the respondents to grant the benefits granted to the applicants in OA 896/86 and 1274/91. By order dated 27.4.89 OA 896/86 was disposed of to the following directions:

"9. In the facts and circumstances we allow this application only to the extent of declaring that the Special Pay optees will be entitled to the benefit of revised special pay in accordance with the order dated 29th September, 1986 at Annx.N besides getting the Compensatory Allowance. We also direct that the order dated 23rd September, 1986 granting Special Compensatory allowance will be applicable to the optees only if the applicants opt for the same within a period of two months from the date of communication of this order. If they opt for the Special Compensatory Allowance they will get it at the same rate as indicated in para 1 of that order without any reduction, but in that case they will cease to draw the Islands Special Pay and Compensatory Allowance. The application is disposed of on the above lines. There will be no order as to costs."

Similarly, by order dated 3.4.92, OA 1274/91 was disposed of with the following directions:

"In the light of the above discussion, we find that there is absolutely no merit in the contentions raised by the respondents and that the applicants are entitled to the declaration as prayed for in this application. In the result, the application is allowed. It is hereby declared that the applicants are entitled to be paid Island Special Pay to be reckoned at 805 of the basic pay applicable to them from time to time including the revised pay after 1.1.86 subject to a maximum of Rs.500 per month that the applicants are 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 element of Islands Special Pay is liable to be continued to be treated as part of basic pay for all purposes including dearness allowance, pension, retirement and other service benefits and we direct the respondents to compute the amounts due to the applicants including arrears of special pay, compensatory allowance and other allowances as a consequence of the above declaration and to disburse to them the same within a period of two months from the date of communication of this order. There is no order as to costs."

2. In view of the judgment of the Tribunal in OA 580/93 and connected cases, the applicants became entitled to the benefits of the order in O.As 896/86 and 1274/91 the most important benefits being that the Islands Special Pay would be continued to be treated as part of basic pay for all purposes including DA, Pension, Retirement and other service benefits and the respondents were directed to compute the benefits due to the applicants and disburse to them accordingly. This decision of the Tribunal was carried before the Hon'ble Supreme Court. However, by order dated 6.12.96 the Hon'ble Supreme Court dismissed the Special Leave Petition. In spite of the dismissal of the Special Leave Petition and the declaration of the applicants' right by the order of the Tribunal which has become final, the respondents did not grant the applicants the benefit

of counting the Islands Special Pay as part of the pay for the purposes of pension and other benefits. Since the applicants retired before implementation of the 5th Central Pay Commission their pay and terminal benefits were determined and fixed without reckoning the Island Special Pay as basic pay for the purpose of DA and Pension. Aggrieved by that the applicants filed OA 27/02 which was disposed of allowing the applicant to file a consolidated representation and directing the first respondent to consider and dispose of the representation in the light of Annxs.A2 and A3 thereof. After considering the representation the first respondent has issued Annx.A9 order dated 14.3.2002 turning down the claim of the applicants on the ground that in terms of Rule 33 of CCS (Pension) Rules 1972 the Islands Special Pay is not to be reckoned as basic pay as has been held by the Tribunal in OA 1038/99 dated 5.7.2000 and that it is not possible to include the Special pay as basic pay for the purpose of fixation of pension. The respondents have also relied on Annx.A10 dated 28.2.02 of the 2nd respondent. Therefore, the applicants have filed this O.A seeking to set aside Annxs.A9 and A10 orders and for a direction to the respondents to fix the pensionary benefits of the applicants based on the revised pay under the CCS (Revised Pay) Rules 1997 by taking note of the benefit of Island Special Pay extended upto 31.7.97 and to pay the revised pensionary benefits to the applicants with arrears from the date of the retirement with interest @ 18% per annum till its payment and declare that the Island Special Pay, which is part of basic pay conferred to the applicants should be treated as emoluments under Rule 33 of the Pension Rules for the purpose of fixation of pensionary

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benefits. It is alleged in the application that the decision contained in the order dated 25.4.01 (Annx.A6), extend the benefit as per decision of OA 1274/97 that the Island Special Pay would be available upto 31.7.1997 and therefore, the rejection of the applicant's claim is wholly unjustified.

3. The respondents contest the claim of the applicants. They contend that Islands Special Pay not being part of pay in terms of Rule 33 of CCS (Pension) Rules, 1972, the decisions taken by the Tribunal to the contrary have to be treated as rendered per incuriam. The applicants are not entitled to the benefits, contend the respondents. They also contend that considering the fact that there has been a decision inter-parties the second respondent vide Annx.R6 dated 23.10.02 had decided that cases which had been settled and finalised need not be reopened and that as the pension claims of the applicants were settled without reckoning the Islands Special Pay as part of basic pay the same is not to be reopened.

4. We have gone through the material placed on record and have heard the learned counsel on either side.

5. It is an undisputed fact that in Annx.A5 judgment in OA 580/93 and connected cases it was declared that the applicants in these cases were entitled to the benefits given to the applicants in OAs 896/86 and 1274/91. In terms of the said declaration in OA 1274/91 the applicants were entitled to have the Island Special Pay to be treated as part of the basic pay for DA, Pension and other service benefits. It is also an

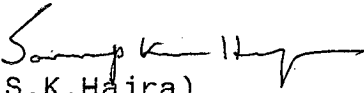
undisputed fact that SLP filed against the order of the Tribunal has been dismissed and the order of the Tribunal has become final between the parties. The position emerging from this was that between the applicants and the respondents the decision rendered by the Tribunal has thus become final in view of the dismissal of the SLP whereby the applicants were entitled to have the Island Special Pay treated as basic pay for DA, Pension, Gratuity and other service benefits. It is true that in OA 1038 of 1999 decided on 5th July, 2000 a Single Member of the Tribunal held that Island Special Pay will not be included in pay in view of the provisions contained in Rule 33 of the CCS (Pension) Rules. However, a subsequent decision in a similar case to the contrary will not have the effect of annulling the effect of a decision ~~in~~ inter parties which have become final. The Government of India, Ministry of Home Affairs was aware of the legal position and that was why they in their order dated 23rd October, 2002 addressed to the Secretary (Finance) U.T. of Lakshadweep (Annexure.R.6) relating to continuation of Island Special Pay for the purpose of calculation of Pension and DCRG, in para 2 of the order mentioned as follows:

["It is, therefore, clarified that the order dated 5.7.2000 of the Hon'ble Tribunal in OA No.1038/99 would be effective only in cases which have not been finalized by the date of issue of this Ministry's letter of even number dated 28.2.2002. On the other hand, the cases already decided by that date would not be reopened."

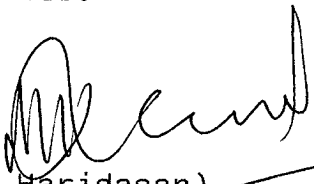
It is therefore, clarified that the order dated 5.7.2000 of the Hon'ble Tribunal in OA 1038/99 would be effective only in cases which have not been finalised by the date of issue of the Ministry's letter of even number dated 28.2.2002. On the other hand the cases already decided by that date would not be reopened. Learned counsel of the respondents tried to explain that the Government having finalised the pension of the applicants in this case without reckoning the Island Special Pay as part of the pay before 28.2.2002 the same is not liable to be reopened. We are unable to accept the explanation because the entitlement of the applicants to have Island Special Pay as part of the pay for pensionary benefits has already been declared by the tribunal and the respondents were directed to extend the benefits to the applicants by a binding order which has become final by dismissal of the S.L.P. by the Apex Court. Therefore it is idle to contend that the cases of the pension of applicants have been finalised without reckoning Island Special Pay as part of the pay because the respondents were not entitled to do so violating the binding decision.

6. In the light of what is stated above, the impugned orders Annx.A9 is set aside and Annx.A10 is set aside to the extent it relates to the applicants and the respondents are directed to recompute the pensionary benefits of the applicants based on the revised pay under the CCS (Revised) Pension Rules treating the Islands Special Pay as part of the basic pay for DA, Pension, Gratuity and other terminal benefits and make

available to the applicants the monetary benefits flowing there from as early as possible and not later than 3 months from the date of receipt of a copy of this order. No costs.


(S.K. Hajra)
Administrative Member

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(A.V. Haridasan)
Vice Chairman.