

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.619/2001

Tuesday this the 16th day of December, 2003.

C O R A M

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

1. C.R.Sadasivan Nair,
S/o Late K.Raman Pillai,
Headmaster, Government J.B.School,
Agathi, U.T.of Lakshadweep,
Residing at Agathi.
2. The Lakshadweep Special Pay Opted
Employees' Association,
Represented by its General Secretary,
Shri C.R.Sadasivan Nair,
Headmaster,
Government J.B.School, Agathi,
Residing at Agathi.
3. M.Chellappan,
S/o N.Moniyar,
Superintendent, Vigilance Cell,
Secretariat, Kavaratti,
Residing at Kavaratti. : Applicants

[By Advocate Mr.P.V.Mohanan]

Vs.

1. The Union of India represented by
the Secretary to Government,
Ministry of Home Affairs,
New Delhi - 1.
2. The Secretary to Government of India,
Ministry of Finance,
Department of Expenditure,
New Delhi.
3. The Administrator,
U.T.of Lakshadweep,
Kavaratti : Respondents

[By Advocate Mr.P.R.Ramachandra Menon]

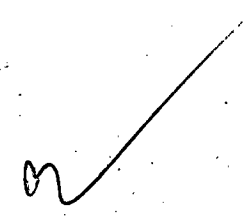
The application having been heard on 16.12.2003, the
Tribunal on the same day delivered the following:

O R D E R

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

The first applicant was Headmaster, Government J.B.School,
Agathi when the application was filed. The 2nd applicant was the
Lakshadweep Special Pay Opted Employees' Association represented

..2/-



by the General Secretary and the 3rd applicant is another Member of the Association. They are aggrieved by Annexure A-4 order of the 3rd respondent stating that the Special Pay paid to a section of employees of the Administration would no longer be in existence with effect from 01.08.1997 and all the employees of the Lakshadweep Administration, serving in the entire Union Territory of Lakshadweep should be paid Special Compensatory (Remote Locality) Allowance at the revised rates, effective from 01.08.1997 and directing recovery of over payments, if any, made, as also the order dated 13.08.1999 of the 3rd respondent stipulating that the Island Special Pay in Lakshadweep stands abolished and all employees working under the U.T.Administration of Lakshadweep would be eligible only for Special Compensatory (Remote Locality) Allowance at the prescribed rates with effect from 01.08.1997 reiterating the decision contained in the O.M.No.10/1/98-F&A(A) dated 06.08.1998 issued by the U.T Administration of Lakshadweep in the matter has been found to be correct and appropriate as the same has been issued in conformity with the recommendations of the Vth Central Pay Commission.

2. It is alleged in the application that the Ernakulam Bench of the Central Administrative Tribunal had in its order dated 27.04.1989 in O.A 896/86 upheld the rights of the " Mainland Recruits " for the Special Pay and the Tribunal has again in its order dated 03.04.1992 in O.A 1274/91 held that the applicants who were Special Pay Optees working under the Lakshadweep Administration 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 01.01.1986 subject to a

maximum of Rs.500/- per month and they were entitled to Compensatory Allowance at the rate of 10% of their basic pay including the revised pay from 01.01.1986 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 directed the respondents to treat the Special Pay as part of the basic pay and therefore the impugned orders which takes away these benefits are arbitrary, irrational and against the dictum which has been upheld by the Hon'ble Supreme Court and therefore requires to be set aside.

3. The applicants seek to set aside Annexures A-4 and A-5 and for direction to the respondents to pay Island Special Pay treating as Basic pay and its benefits to the applicants and similarly placed mainland recruits, who are members of Lakshadweep Special Pay Opted Employees Association, as in Annexures A-6, A-7 and A-8 and to give consequential benefits to them.

4. The respondents in their reply statement contend that the applicants are not entitled to the declaration and directions sought. On acceptance of the Vth Central Pay Commission (Annexure R-I), the 1st respondent issued Annexure R-2 order taking away the Island Special Pay and granting the Special Compensatory (Remote Locality) Allowance in accordance with the recommendations of Vth Central Pay Commission and that according to the provisions of Rule 33 of CCS(Pension) Rules read with FR 9(21)(a)(i), Special Pay is not to be treated as pay for the

purpose of calculation of pension even it be assumed that they were enlisted to get Special Pay even after 01.08.1997 contend the respondents.

5. We have carefully gone through the pleadings and considered the issue involved in this case. The government servants are entitled to receive pay allowances and other service benefits as revised by the government periodically taking into account the successive pay commission reports and other relevant materials. True, the Island Special Pay Optees serving in Lakshadweep Administration were for certain period enjoying the benefit of Island Special Pay which came to be reckoned for terminal benefits in accordance with the rules then existing. The Tribunal in earlier orders on the subject recognised and declared the entitlements which was upheld by the Apex Court. However, it should not be forgotten that the above adjudications were on the basis of the rules then existing. Now the pay structure of the employees under the Union Territory of Lakshadweep is on the basis of recommendations of the Vth central Pay Commission which has been accepted with effect from 01.08.1997. The recommendations of the Vth Central Pay Commission were accepted and acted upon as is seen in Annexure R-1 and R-2.

6. The Vth Central Pay Commission on a detailed examination of all the relevant aspect including the betterment in the living conditions in Lakshadweep Island and need for uniform service conditions for all the employees working there without any discrimination recommended dispensing with the Special Pay and

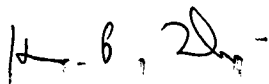
granting in its place Special Compensatory (Remote Locality) Allowance to all the employees doing away with disparity among persons performing identical duties in same conditions. The Government accepted the recommendations and issued the impugned orders. The decision of the government in such matters on consideration of relevant aspects being policy decisions we are of the considered view that judicial intervention with them is neither warranted nor justified. The learned counsel of the applicants Shri P.V.Mohanan argued that it is not evident from Annexure R-2 that the Government of India has taken any conscious decision to abolish the Special Pay and therefore the denial to grant Special Pay and not reckon the same for computation of terminal benefits is arbitrary, irrational and against the orders of the Tribunal as also the Apex Court. He further argued that since the Tribunal has in OA 1274/91 declared that the special pay in the case of employees under the Lakshadweep Administration who are special pay optees have to be treated as basic pay for the purpose of pensionary benefits. The government had no authority to pass an order in derogation of that as far as the parties to the decision are concerned. In the light of this position the learned counsel referred us to the rulings of the Apex Court in S.R.Bhagwat and others Vs. State of Mysore reported in AIR 1996 SC 188 and in S.S.Bola and others Vs. B.D.Sardana and others reported in AIR 1997 SC 31.27

7. We have considered this argument of the learned counsel. However we do not find any substance in argument. The decision of the Tribunal in the earlier OAs including OA 1274/91 were based on the extant rules and instructions regarding pay and

allowances applicable to the employees of the Lakshadweep Administration at that time. If the pay rules undergo a change which is an indispensable necessity the decision based on old rules become obsolete and unworkable. On and with effect from 01.08.1997 the employees of the Lakshadweep Administration are entitled only to Special Compensatory (Remote Locality) Allowance as special pay has been dispensed with on acceptance of the recommendations of the Vth Pay commission. A conjoint reading and harmonious interpretation of Annexure R-1 and R-2 would leave no doubt that the recommendations contained in Annexure R-1 has relied on by the learned counsel do not apply to the facts of this case. As stated earlier periodical revision of pay structure and pay rules is an unavoidable and essential feature in service parlance the decisions based on old rules cannot apply when rules undergo a change.

In the conspectus of facts and circumstances, we find no merit in the Original Application. We therefore, dismiss the Original Application without any order as to costs.

Dated, the 16th December, 2003.



H.P.DAS
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

VS