

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 132 of 2010

Wednesday, this the 21st day of September, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. T.P. Sayed Mohammed, Stenographer, DRDA (L), Kavaratti, Thithiyapura House, Kavaratti.
2. T.P. Hameedath, Upper Division Clerk, DRDA (L), Kavaratti, Thekkilappura House, Agatti.
3. A.K. Sathrambi, Upper Division Clerk, DRDA (L), Kavaratti, Alikakkada House, Kalpeni.
4. B.C. Anwer, Lower Division Clerk, DRDA (L), Kavaratti, Ballyachada House, Amini.
5. M. Salih, Staff Car Driver, DRDA (I), Kavaratti, Muchiyam House, Kavaratti.
6. Yacoob K., Peon, DRDA (L), Kavaratti, Kunninamel House, Kalpeni.
7. P.P. Seedikoya, Peon, DRDA (L), Kavaratti, Pallipuram House, Kavaratti.
8. G. Amina, Peon-cum-Women Messanger, DRDA (L), Kavaratti, Gabrige House, Minicoy.
9. P.A. Siddique, Watchman, DRDA (L), Kavaratti, Puthiya Alikam House, Kavaratti. **Applicants**

(By Advocate – Mr. N. Nagaresh)

V e r s u s

1. Union of India, represented Secretary to the Ministry of Rural Areas Development, Government of India, Krishi Bhavan, New Delhi – 110 001.

2. Union Territory of Lakshadweep, represented by its Administrator, Secretariat, Kavaratti.

3. District Rural Development Agency, represented by its Chairman, Union Territory of Lakshadweep, Kavaratti. **Respondents**

[By Advocates – Mr. Millu Dandapani, ACGSC (R1) & Mr. S. Radhakrishnan (R2&3)]

This application having been heard on 21.09.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicants nine in number were working in the District Rural Development Agency (hereinafter referred to as DRDA), Kavaratti on adhoc basis. All the applicants were initially appointed by the Chairman of the DRDA against various posts on different dates and all of them were recruited through employment exchange. According to them they were initially recruited on adhoc basis and were continuously working in the respective posts for long number of years. As per Annexure A-1 series the Chairman in exercise of the power vested under Rule 7 of the notification of DRDA dated 6.8.1997 which contains the service rules of the employees of DRDA, Lakshadweep, regularized the adhoc appointment of the applicants from the respective dates shown in the order. They were informed that the DRDA being a temporary establishment their appointment will be purely temporary and liable for termination at any time without assigning any reasons. Subsequently, by Annexure A-12, in terms of the provisions contained in 4.2 of chapter iv (Personal Policies of DRDA) on the guidelines of DRDA Administration, 1999 and Government of India,

Ministry of Rural Development's letter dated 7.2.2002, the Administrator of the U.T. of Lakshadweep in exercise of powers conferred to relax on provision of Rule 5 as laid down in the notification relating to recruitment rules, was pleased to absorb the Group C staff borne in the establishment of DRDA on the strength of General Administration common cadre posts subject to certain terms and conditions. One of the condition being that "their service on absorption shall be governed by the New Pension Scheme, 2004". They agreed to the said terms and conditions stipulated in the said order and subsequently were absorbed in service. The grievances of the applicants is that even though they were absorbed on regular service there was considerable delay in implementation of the absorption process which has adversely affected their service conditions. It is pointed out that in many other States and Union Territories the similarly situated persons were absorbed much earlier so that they are governed by better terms and conditions including the service conditions relating to pension. There they had an option to be governed by the old pension rules prior to the introduction of the new pension scheme in 2004. In the case of the applicants alone that too nine in number in Lakshadweep Administration the delay has thus took away their right of being governed by the old pension rules. It is pointed out that though initially their appointment in DRDA by itself might not have absorbed them in the Lakshadweep Administration earlier, but as a matter of policy when similarly situated employees were absorbed in regular establishment as per the recommendations of the Shankar Commission the Lakshadweep Administration ought not to have taken more time than the other authorities

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in the respective States who by virtue of their quick action in the matter of absorption conferred better right on the employees so absorbed. Representations were made in this regard and the Project Officer seems to have recommended their cases to be considered. Annexure A-16 is the copy of the representation and Annexure A-17 is the recommendation made by the Project Officer, DRDA. It appears that Annexure A-16 representation along with the recommendation made by the Project Officer Annexure A-17 has not got the attention of the authorities as yet. According to the applicants similarly situated persons had an option to be governed by the old pension rules as per the decision rendered by the Co-ordinate Bench of the Tribunal at Calcutta, a copy of which is produced as Annexure A-18.

2. It is therefore, prayed that a declaration be made to the effect that the applicants are entitled to be absorbed on the strength of the General Administration common cadre post of the Administration of Union Territory of Lakshadweep in the annual plan next to August, 1999, with retrospective effect with all consequential benefits and to direct the second respondent to bring the applicants under the CCS (Pension) Rules, 1972 with effect from 1.4.2000. But in the course of the arguments, learned counsel for the applicants rightly pressed his prayer No. 2 for absorption into the service notionally at least for the limited purpose of applying CCS (Pension) Rules, 1972.

3. In the reply statement filed by the respondents it is stated that the second respondent initiated action for absorption of the applicants of DRDA staff on the basis of Shankar Commission report within the purview of

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Central Civil Service Rules and in the provisions of relevant recruitment rules of the posts to which absorption are to be made. By Annexure A-12 series, all the nine applicants were ordered to be absorbed in relaxation of the recruitment rules. They have given undertaking that they will not claim any seniority over and above the staff working in the administration in the respective grades, they will be junior most in the respective grades, their seniority will be reckoned from the date of absorption only and that they will not claim any pensionary benefit or claim for counting of their service rendered under DRDA before the date of absorption as qualifying service for pension purpose. It is also stated that the new pension scheme came into force applicable to those persons recruited on or after 1.1.2004. The applicants who were absorbed in administration are to be therefore governed by the new pension scheme. It is further contended that unlike other Union Territories, Lakshadweep Administration is under direct control of Ministry of Home Affairs without legislation. The cadre controlling authority is Ministry and creation of even last grade post is required to be approved by the Government of India. The contention of the applicants that some State Governments have accorded pension to DRDA staff on absorption cannot be taken as a proof for extending the same to the applicants at par with other regular staff in the U.T. of Lakshadweep as the State Government have their own staff for which such schemes are got sanctioned in the floor of their legislative system available in the respective state. Whereas in respect of staff working in the administration of Lakshadweep, pension are sanctioned by Central Pension Accounting Officer under the Ministry of Finance, New Delhi. The staff borne in DRDA



● were being paid contributory provident fund prior to the absorption and in view of terms and conditions undertaken by the applicants at the time of absorption in the administration, their claim for pension under CCS (Pension) Rules, cannot be taken up and the claim is not sustainable.

4. We have heard the learned counsel for the applicant Mr. N. Nagaresh, Mr. Millu Dandapani, ACGSC for respondent No. 1 and Mr. S. Radhakrishnan for respondents Nos. 2 & 3.

5. Admittedly the applicants were only adhoc appointees in an autonomous institution namely DRDA. That they were not in the pay rolls of the Government of India. That Annexure A-1 series itself was done with a view to give them regular service in DRDA and subsequently they were absorbed in the service of Government of India by the Lakshadweep Administration. Before absorption they were asked to give an undertaking agreeing the service terms and conditions stipulated in Annexure A-1. Applicants have agreed to the terms and conditions and accordingly, they were all absorbed. One of the condition is that they will be governed by the New Pension Scheme of 2004. It is true that their absorption is after 2004 and normally they will be governed only by the new pension scheme as they are treated as new recruits without any seniority and without any monetary benefits. For all practical purpose they were borne in the regular cadre only after Annexure A-12 was issued. Though the applicants would contend that similarly situated persons in other States were absorbed much earlier, has been answered by the respondents stating that their absorption is in the respective State Government service which is governed by a new set

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of pension rules and their own, whereas in Lakshadweep Administration they are governed by the Central Pension Rules of the Government of India. However, according to the applicants even though they may not be entitled for any seniority or any other benefit the fact remains that they had been in service of the DRDA from the very inception continuously ever since they were appointed on adhoc basis which ultimately culminated in Annexure A-12 order. The order itself is suggestive of the fact that they are not merely fresh recruits and therefore at least for the limited purpose of conferring them the benefit of old pension rules they may be given an option as a special case. In so far as there is no legal right enforceable as such in them and the Court cannot give any such direction but at the same time nothing prevents the Government of India in considering the hardship that may be caused in case the applicants are to be governed by the new pension scheme. Agreed by the fact that the applicants are in the cadre strength of the Lakshadweep Administration only after 2004 but if they are treated as notionally as having been in service prior to 2004 for the limited purpose of enabling them of having the benefit of old pension rules, is a matter for the executive to consider. The representation of the applicants Annexure A-16 has been favourably recommended by the Project Officer as is seen from Annexure A-17.

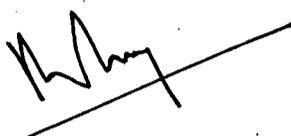
6. In the circumstances it is only proper that the Government of India may consider the case of the applicants as to whether as a special case they can be given an option to be governed by the old pension rules. A detailed representation if made in this regard to the first respondent, may be



considered and appropriate orders be passed and communicated to the applicants. OA stands disposed of as above. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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