

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.144/2003

Friday, this the 23rd day of January, 2004.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

T.O.Ramachandran,
1/468, 'Deepa',
P.O.Thenkurussi,
Palakkad - 678 671. - Applicant

By Advocate Mr PV Mohanan

Vs

1. Union of India represented by
its Secretary,
Ministry of Finance,
New Delhi.
2. Pay and Accounts Officer,
Lakshadweep Administration,
Kavaratti.
3. The Branch Manager,
Canara Bank,
Thenkurussi,
Palakkad - 678 671. - Respondents

By Advocate Mr CB Sreekumar, ACGSC(for R-1)

By Advocate Mr PR Ramachandra Menon(for R-2)

By Advocate Mr MC Sen(for R-3)

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant retired as Head Master, J.B.School, Agathi, Lakshadweep on 28.2.97. As per A-1 Pension Payment Order dated 31.5.97, the applicant's pension was determined at Rs.1,648/- with effect from 1.3.97. The commutation of pension was also duly allowed. In the light of the recommendations of the Vth Central Pay Commission, the

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applicant's pension also was revised. He was thus getting Rs.4,963/- as pension with D.R. at appropriate rate thereon. While so, by A-2 order dated 1.6.2002, the applicant's pension was revised to Rs.4,210/- as against Rs.4,963/- drawn by the applicant so far. Commuted value of pension and gratuity receivable were also revised. The monthly reduction in gross pension worked out to Rs.1122/-. An amount of Rs.63,583/comprising arrears of pension and dearness relief was proposed to be recovered from the applicant. According to the applicant, there is no authority to reduce his pension except under Rule 9 of the CCS (Pension) Rules. There was no circumstance under which such reduction under Rule 9 could be made. No notice was given to the applicant before scaling down his pension. How and why such reduction was effected has not been stated in the impugned order A-2. The applicant would submit that A-2 order is illegal and violative of the principles of natural justice. It is also bad in law as no reason is stated. Pension is not a bounty and it represents compensation of past service rendered. No part of the pension could be reduced without notice. The applicant seeks reliefs by way of order setting aside the impugned A-2 pension payment order and a direction to the respondents not to reduce the pension drawn by the applicant in pursuance of A-2 proceedings.

2. The respondents have filed a detailed reply statement explaining the factual back ground under which the applicant's pension had to be revised. According to the respondents, the earlier pension order was based on pay inclusive of Island

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Special pay. However, from 1.1.86 i.e. after the implementation of the IVth Pay Commission's recommendations only basic pay under FR 9(21)(a)(1) was to be counted for determining dearness allowance, pension and other service benefits. Thus, on the basis of CCS(Revised Pay) Rules, 1986, Island Special Pay or any other special pay was not to be counted for determining dearness allowance, pension, DCRG etc. with effect from 1.1.86. Accordingly Rule 33 of the CCS(Pension) Rules was also amended with the result that with effect from 1.1.86, the basic pay, NPA and stagnation increment alone were to be counted for determining D.A. and pensionary benefits. The respondents would submit that a series of O.A.s were filed before the C.A.T., Ernakulam Bench on the matter of admissibility of Island Special Pay/Compensatory Allowance and treatment of Island Special Pay for determination of DA, Pension, Gratuity etc. In O.A.No.896/86 being the first of such series, this Bench of the Tribunal by order dated 27.4.89, the claim of the applicants therein for grant of Island Special Pay and inclusion thereof for purpose of pensionary benefits etc. was upheld. The SLP filed by the respondents before the Supreme Court was dismissed not on grounds of merits but on grounds of delay/limitation. The benefit allowed to the applicants in O.A.896/86 came to be extended to those in O.A. No.1274/91 and thereafter those in O.A.Nos.580/93, 787/93, 877/93 and 1969/93. Meanwhile, the Government had filed SLP against the Tribunal's orders in O.A.1274/91 and connected cases. SLPs were also filed against the Tribunal's order in O.A.No.580/93 and connected cases. It is submitted by the respondents that

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the Supreme Court after referring to the dismissal of the SLP against the order in O.A.896/86 proceeded to dismiss the SLPs filed in O.A.No.1274/91 and connected cases as also O.A.580/93 and connected cases. The respondents would maintain that the Island Special Pay granted prior to 1.1.86 did not form part of basic pay with effect from 1.1.86 and the benefits of other allowances availed by the employees treating special pay of Rs.500/- per month with effect from 1.1.86 to 31.12.95 should have to be worked out separately and refunded back to the Government. With regard to the includability of Island Special Pay in pay, the respondents would place reliance on a subsequent order of this Tribunal in O.A.1038/99 dated 5.7.99 in which it has been held that in terms of Rule 33 of CCS (Pension) Rules, 1972 and the definition of expression 'basic pay' referred to in Rule 9(21)(a)(1) of the FRs, it would be clear that pay did not include special pay and that being the position, the term emoluments as per Rule 33 of the CCS(Pension) Rules should be understood as pay exclusive special pay. The Tribunal specifically held in the said decision that there cannot be a direction to the respondents to refix the pension and pensionary benefits reckoning the Island Special pay drawn by them during their service. The respondents have also pointed out that the decision of this Tribunal in O.A.1038/99 has been followed in O.A.No.441/99, 284/98 and 537/99. In the light of a comprehensive reference made to the Ministry, it has been clarified that in supersession of the Tribunal's orders it has been decided that the element of Island Special Pay would not be treated as part of basic pay for the purpose of computation of pension

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including DCRG. However, there is an observation in the said letter that the cases already decided would not be reopened. It is the case of the respondents that this matter was finally settled by the clarificatory letter dated 23.10.2002 (R-6) which states that the decision dated 5.7.2000 of the Tribunal in O.A.1038/99 would be applied in respect of the cases which had not yet been finalised by the date of issue of the Ministry's letter dated 28.2.2002. Since the applicant retired from service from 28.2.97 and since his pensionary benefits were finalised as per A-1 taking into account the element of Island Special pay or Rs.500/- per month which he was drawing at the time of retirement, in the light of R-7 and R-8 clarificatory letters, the pensionary benefits had to be necessarily revised excluding element of Island Special Pay. The action on the part of the respondents being in conformity with Rule 33 of the CCS(Pension) Rules, the excess amount drawn by the applicant had only to be recovered and adjusted in the future payments. The O.A. being devoid of merit has to be dismissed, it is urged.

3. I have heard Shri P.V.Mohanan, learned counsel for the applicant and Shri PR Ramachandra Menon, learned counsel for the 2nd respondent. According to the learned counsel for the applicant, the impugned A-2 order is unsustainable inasmuch as the applicant's pension has been reduced from Rs.4,963/- to Rs.4,210/- without notice. Consequently, the recovery of an amount of Rs.63,583/- which might ensue if A-2 order is implemented also can have no justification. He would maintain that pension can be reduced only under Rule 9 of the

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CCS(Pension) Rules by a specific Presidential order and that therefore the scaling down of his pension was illegal. Learned counsel for the applicant would maintain that the applicant together with several similarly situated employees prayed for grant of benefits like Island Special Pay as allowed in the case of applicants in O.A.896/86 and O.A.1274/91. This Tribunal in a common order in O.A.No.580/93 and connected cases dated 27.1.94 directed the respondents to grant the benefits already granted to the applicants in O.A.896/86 and O.A.1274/91 to the applicants in the said O.A.s also. Counsel would point out that the applicant in this case was applicant No.81 in O.A.580/93 considered by this Tribunal in the composite order dated 27.1.94. It was in pursuance of this Tribunal's order that the applicant also received the benefit of Island Special Pay. The Tribunal in its order in O.A.1274/91 had also specifically held that the element of Island Special Pay ought to be continued to be treated as part of basic pay for all purposes including DA, pension, retirement and other service benefits. Learned counsel for the applicant would contend that this Tribunal's order in O.A.896/86 has become final since the SLP filed against the said order had been dismissed by the Hon'ble Supreme Court as per judgement dated 27.1.90. SLPs filed against the Tribunal's common order in O.A.No.580/93 and connected cases were also dismissed along with the SLP filed against the Tribunal's order in O.A.1274/91 by common judgement dated 6.12.96 in the light of the judgement of the Supreme Court dated 27.12.90 dismissing the SLP filed against Tribunal's order in O.A.896/86. However, as per Government of India,

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Ministry of Home Affairs letter dated 25.4.2001, the benefit of Island Special Pay ordered to be allowed as per this Tribunal's order in O.A.1274/91 was decided to be made available upto 31.7.97 since from 1.8.97 Island Special Pay was stopped. According to the applicant's counsel, the applicant's case was covered by the said order which had clearly stated that the benefit obtaining in the light of the directions contained in O.A.1274/91 would be made available to the optees upto 31.7.97. Learned counsel would strongly contend that the applicant received the benefit of Island Special Pay and the further benefit of fixation of pay in the light of orders in O.A.1274/91 and O.A.580/93, since the applicant retired on 28.2.97 and his pension and pensionary benefits were determined. Accordingly, as per the instructions and orders holding the field then, there was no justification for revising the applicant's pension relying on the decision to the contrary rendered by this Tribunal in O.A.1038/99 dated 5.7.2000 to the effect that element of Island Special Pay could not form part of pension and the pensionary benefits in accordance with Rule 33 of the CCS(Pension) Rules. It is pointed out by the learned counsel for the applicant that although the Ministry of Home Affairs O.M. dated 25.4.2001 extending the benefit of this Tribunal's decision in O.A.1274/91 to the special pay optees of Lakshadweep upto 31.7.97 was superseded as per R-8 communication dated 28.2.2002, the respondents were not justified in revising the applicant's pension as per the impugned order for the reason that in R-8 communication there is a clear undertaking that cases already decided would not be reopened. Thus while the element of Island Special Pay ceased

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to be treated as part of basic pay for the purpose of computation of pension including DCRG, reopening of concluded cases was specifically prohibited. It was in disregard to this position that the respondents have taken recourse to the impugned order. Learned counsel for the applicant would also invite my attention to this Tribunal's order in O.A.934/2001 dealing with a similarly placed Lakshadweep employee, who retired prior to the implementation of the Ministry of Home Affair's O.M. of 25.4.2001. In any case, since the impugned order has been passed without affording the applicant an opportunity to state his case, the impugned order is violative of the principles of natural justice, the learned counsel would urge.

4. Shri PR Ramachandra Menon, learned counsel for respondents would take me through the various decisions of the Tribunal turning on the issue of grant of special pay and includability thereof in the basic pay for purposes of pension and pensionary benefits. Counsel would contend that this Tribunal's order starting from O.A.896/91 till the common orders in O.A.580/93 and connected cases could not be construed to have reacted legal finality merely because the related SLPs were dismissed by the Hon'ble Supreme Court. Referring to the well settled legal position that dismissal of a SLP without looking into the merit of the question, per se would not have any declaratory force. Learned counsel for the respondents would invite my attention to this Tribunal's order in O.A.1038/99 dated 5.7.2000 followed by O.A.444/99, 284/98

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and O.A.537/99. He would maintain that as per the definition of the term 'emoluments' defined in Rule 9(21)(a)(i) of the CCS(Pension) Rules and Rule 33 of the CCS(Pension) Rules, the emoluments did not include special pay and that therefore the revision of the applicant's pay and pension as per A-2 order was perfectly in order. In this regard the respondents also place reliance on the Supreme Court's ruling in Government of Andhra Pradesh Vs Syed Yousuddin Ahmed, [AIR 1997 SC 3439] and forcefully contend that the special pay being not part of the basic pay, the applicant could not have any legitimate objection to the impugned order A-2.

5. I have examined the applicant's prayers with reference to the pleadings and other material on record and the rival contentions put forward by the counsel on either side. On going through the nature of the grievance raised by the applicant in this case, I notice that in an identical case in O.A.934/2000, a Bench of this Tribunal has examined the scope of revision of fixation of pension also allowed to a Lakshadweep special optee who voluntarily retired from service from 31.5.97. The issue raised in that case was that there was no justification in revising the pension of the applicant therein to her disadvantage. I notice that the applicant in O.A.934/2000 retired on 31.5.97. The applicant in this case retired on 28.2.97. Both were special pay optees. When they retired, their pension and pensionary benefits were determined by including the element of Island Special Pay. In implementation of the Vth Pay Commission's recommendations, the pension and pensionary benefits of the applicant in

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O.A.No.934/2001 were revised. In the same manner, the applicant's pension also was revised to give effect to the recommendations of the Vth Pay Commission. It was while they were receiving the revised pension that the impugned action of downward revision of pension and pensionary benefits was taken recourse to in both the cases. The factual matrix obtaining in both the cases is therefore strikingly similar. It is therefore profitable to reproduce the findings of this Tribunal in O.A.934/2001 since those findings would be relevant in deciding the point at issue have also. Paragraph 6 of the order in O.A.934/2001 is as under:

"..It is evident from Annexure A3 order that after the judgement of the Tribunal in O.A.1038/99 the Lakshadweep Administration had sought a clarification vide letter dated 3.8.2000 as to whether the Island Special Pay for the purpose of calculation of pension is to be reckoned and that in reply to that the Government of India, Ministry of Home Affairs informed the Lakshadweep Administration that the benefit of the Judgement in O.A.1274/91 be given to the Special pay optees upto 31.7.97. While Annexure A4 order of fixation of the applicant's pension was issued Annexure.A3 was in force. While Annexure.A5 order dated 11.9.01 was issued by the second respondent also the Annexure.A3 order of the Government of India, Ministry of Home Affairs was in force. Then how did the second respondent get the authority to issue Annexure.A5 is not made clear. In Annexure.A8 order dated 28.2.02 issued by the Government of India, Ministry of Home Affairs, it is stated as follows:

.....It has been decided in supersession of this Ministry's letter No.U.14025/2/97 ANL dated 25.4.01 that the element of special pay will not be treated as part of basic pay for the purpose of computation of pension including Death cum Retirement Gratuity. However, the cases already decided will not be reopened.

This order was issued with the concurrence of the Ministry of Finance, Department of Expenditure vide Note dated 9.2.02. It is abundantly clear from Annexure.A8 that the supersession of Annexure.A3 order

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by A.8 was only prospective in operation and cases which had already been settled earlier were not to be reopened. Thus till the date of Annexure.A8 the pension of the special pay optees under the Lakshadweep Administration was to be fixed and refixed in accordance with the decision contained in Annexure.A3 i.e. to count the special pay also as basic pay for the purpose of computation of pension. While the Government of India had ordered so in Annexure.A3 I find no justification for the second respondent to issue Annexure.A5 order in contravention of Annexure.A3. By Annexure.A5 considerable reduction is made in the pension and other terminal benefits of the applicant and recovery is sought to be made. No notice whatsoever was given to the applicant before Annexure.A5 was issued. The order is therefore vitiated for non-compliance of the principles of natural justice also even if a refixation is assumed to be necessary. Further because the government itself had stipulated in Annexure.A8 order that cases already settled need not be reopened there is no justification for reopening the pay fixation of the applicant already settled by Annexure.A4."

6. A-3 referred to in the above findings is the Ministry of Home Affairs O.M. dated 25.4.2001 addressed to the Administrator, UT of Lakshadweep already under reference in this order supra. Corresponding to A-4 referred to in the findings quoted above, the applicant's pension also was revised in order to give effect to the recommendations of the Vth Pay Commission. That is not disputed. A-2 order impugned in this case takes the place of A-5 impugned in the O.A. cited above and R-8 dated 28.2.2002 forming part of this O.A., is referred to as A-8 in the O.A.934/2001. In the circumstances the findings quoted above would be of equal force in the applicant's case also.

7. While the legal correctness of exclusion of Island Special Pay from basic pay for the purpose of computation of pension and DCRG is beyond question in the light of rule position explained in O.A.1038/99 dated 5.7.2000, I am of the view that the respondents were not justified in revising the

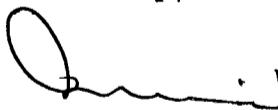
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applicant's pension and pensionary benefits to his prejudice as the same was not in consonance with the instructions on the matter. The benefit of treating the element of Island Special Pay as part of basic pay already allowed in terms of the earlier orders of this Tribunal could not be taken away as those orders were not specifically quashed by the Tribunal by its subsequent order in O.A.1038/99 dated 5.7.2000 or by the High Court. Duly taking note of this position the Ministry of Home Affairs in its letter dated 23.10.2002(R-6) has stated as under:

"..It was in the light of these circumstances that it was decided that the cases which had already been decided by treating the element of Island Special Pay as part of basic pay in terms of earlier order(s) of the Hon'ble Tribunal would not be reopened and that the order dated 5.7.2000 of the Hon'ble Tribunal in O.A.NO.1038/99 would be effected only in respect of the cases which had not yet been finalised."

8. In the light of the above discussion, the impugned A-2 order is set aside with all consequential benefits to the applicant. The respondents are directed to not to reduce the pension drawn by the applicant pursuant to A-1 proceedings. The O.A. is allowed. There is no order as to costs.

Dated, the 23rd January, 2004.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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