

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 156 / 2008

Friday, this the 20th day of February, 2009.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

N.Reghu,
Supporting Staff Gr.I,
Central Plantation Crops Research Institute,
Regional Station, Minicoy.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. The Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi
through its Secretary.
2. The Director,
Central Plantation Crops Research Institute,
Kasargod-671 124.
3. The Senior Administrative Officer,
Central Plantation Crops Research Institute,
Kasargod-671 124.Respondents

(By Advocate Mr T.P.Sajan)

This application having been finally heard on 27.1.2009, the Tribunal on 20.2.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance in this O.A is that he is being denied the Special Duty Allowance (SDA for short) while he has been posted at Minicoy Island with effect from 29.9.2004.

2. The facts in this case are that the applicant is a native of Kayamkulam, Kerala. He was initially engaged as Casual Labourer under the second

respondent, namely, the The Director, Central Plantation Crops Research Institute, Kasargod-671 124. He was later on absorbed and regularised as a Supporting Staff Gr.I and posted to the Central Plantation Crops Research Institute, (CPCRI for short) Regional Station, Minicoy Island which is one of the Regional Stations under the 2nd respondent with effect from 29.9.2004. According to the applicant he is being discriminated in the matter of payment of SDA as similarly placed persons Shri P.V.Gopalan, Supporting Staff Gr.I working in the Central Marine Fisheries Research Institute, situated in Minicoy is granted the SDA. He has also submitted that he made a number of representations in this regard and finally he got the Annexure A-3 Advocates notice issued to the 2nd respondent. In response to the aforesaid notice, the 2nd respondent vide the impugned Annexure A-5 letter dated 20.11.2007 stated that their earlier Annexure A-7 proposal dated 30.3.2004 to the 1st respondent viz, Indian Council of Agricultural Research, New Delhi for payment of SDA to staff posted at Regional Station at Minicoy from outside the region was not accepted by them on the ground that the staff members were not eligible for grant of SDA as intimated to them vide the Annexure A-6 letter dated 12.7.2004.

3. The learned counsel for the applicant Sri TC Govindaswamy has relied on the orders of this Tribunal in O.A.1282/2000 in which the issue regarding the entitlement of SDA to persons posted in various Islands of Lakshadweep was considered. It was held in the said O.A as under:

"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. The issue was again considered by this Tribunal in O.A.603/2002 – All



India Light House Employees Association & another v. Union of India & others vide order dated 17.7.2003 (Annexure A-8), following the earlier in O.A.1282/2000 (supra), it was held as under:

"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 posted to Lakshadweep Islands are entitled to receive Special Duty Allowance is borne 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 v. S Vijayakumar & 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 v. 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.

5. Respondents in their reply have submitted that the applicant on his absorption as Supporting Staff Gr.I/Mazdoor on 29.9.2004 was posted at CPCRI, Regional Station, Minicoy against one of the posts available at that station. They have also submitted that vide OM No.20014/3/83-E IV dated 14.12.1983, the Government of India, Ministry of Finance have brought out a scheme extending certain facilities and allowances including the SDA for the civilian employees of the Central Government serving in the North Eastern Region and Union Territory of Lakshadweep and it was done to attract and retain the services of the officers who have an All India Transfer Liability in the region due to inaccessibility and difficult terrain. All India Transfer Liability of the officers have to be determined by applying the test whether the recruitment to

service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole and a mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, does not make him eligible for the grant of SDA.

6. We heard Shri T.C.Govindaswamy, counsel for applicant and Shri T.P.Sajan, counsel for respondents. Admittedly, the applicant is a native of Kerala State posted in Minicoy Island. It is not denied that the Annexure A-1 Memorandum of the Government of India, Ministry of Finance No.11(5)/97-E.II (B) dated 29.5.2002 is applicable to the Minicoy Island also. The O.M specifically deals with "*Special Duty Allowance to civilian employees posted from outside the region only*". The applicant was initially working as casual labour under the 2nd respondent in Kasaragod in the mainland. On his absorption as Supporting Staff Gr.I he has been posted at Minicoy Island with effect from 29.9.2004. It is also an undisputed fact that the applicant has got an all India transfer liability, as is evident from the offer of appointment No.4(117) Regularisation/2004-Estt.I/903 dated 8.9.2004 issued to him and produced by the respondents' counsel on our direction. Item No.4 of the terms and conditions of the said offer of appointment reads as under:

"His headquarters will be at the station indicated above for the present. But he will be liable to serve in any Institute and/or office of the Indian Council of Agricultural Research located anywhere in India."

As submitted by the respondents themselves, the very purpose of sanctioning SDA to the civilian employees of the Central Government to attract and retain them in service in the region due to inaccessible and difficult terrain. It was also clarified by the Apex Court in the judgment in **Union of India v. S Vijaya Kumar & others** [1994 (Supp.3) SCC 649] that such allowances are not admissible to officers belonging to the same region when they are posted there.

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It was held in the said judgment as under:

"The Special Duty Allowance shall be admissible to Central Government employees having All India Transfer Liability on posting to North Eastern region (including Sikkim) from outside the region."

Again in the judgment in **Union of India v. Executive Officers' Association Group 'C'** [1995 (Supp.1) SCC 757] the Apex Court has held as under:

"7. The main source for claiming the Special Duty Allowance is the Office Memorandum dated 14.12.1983 the very first para of which reads as under:

"The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram have been engaging the attention of the Government for some time. The Government had appointed a committee under the Chairmanship of Secretary, Department of Personnel and Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the committee have been carefully considered by the Government and the President is now pleased to decide as follows."

8. A careful perusal of the opening part of the Office memorandum reproduced above would show that the Government had appointed a committee under the Chairmanship of the Secretary, Department of Personnel and Administrative Reforms to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in the North Eastern Region so that competent officers may be attracted and retained in the North Eastern Region States. The use of words "attracting and retaining in service" are very much significant which only suggest that it means the competent officers belonging to a region other than the North-Eastern Region. The question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. The intention of the Government and spirit behind the office memorandum is to provide an incentive and attraction to the competent officers belonging to region other than the North-Eastern Region to come and serve in the North-Eastern Region. It can hardly be disputed that the geographical, climatic, living and food conditions of people living in North-Eastern Region and the States comprising therein are different from other regions of the country. The North-Eastern Region is considered to be "hard zone" for various reasons and it appears that it is for these reasons that the Government provided certain extra allowances, benefits and other facilities to attract competent officers in the North-Eastern Region at least for two to three years of tenure posting. The Ministry's Office memorandum in question came up for

consideration before this Court in Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee which was decided by us by judgment dated 18.1.1995 in which this Court took the view that the said office memoranda are meant for attracting and retaining the services of competent officers in the North-Eastern Region, from other parts of the country and not the persons belonging to that region where they were appointed and posted. This was also the view expressed by this Court in yet another case reported in Union of India v. S.Vijayakumar. In Vijayakumar the point for consideration was exactly identical, with regard to the entitlement to Special Duty Allowance to those employees/officers who are residents of North-Eastern Region itself. After considering the Memorandum dated 14.12.1983 and other related office memorandums indicated above, it was held that the purpose of the allowance was to attract persons from outside the North-Eastern Region to work in the North-Eastern Region because of inaccessibility and difficult terrain. In the facts and circumstances stated above the view taken by the Tribunal cannot be upheld and deserves to be set aside."

7. From the aforesaid judgments, it is seen that there are cases where officers and staff with all India transfer liability working in other places are posted to the North Eastern Region, Lakshadweep Islands, Minicoy Island etc. There are also cases where persons from such Regions/Islands are recruited and posted at the same places. The SDA is granted only to those employees from outside who are posted in those Regions/Islands. The purpose of granting SDA is to attract and retain persons from other regions posted in those Regions/Islands which are comparatively in accessible and have a difficult terrain. In the present case, the applicant, though he was initially appointed as a casual labourer with respondent No.2 at the mainland, on his absorption and regularization as a Supporting Staff Gr.I, he has been posted under the U.T of Minicoy. Therefore, there is no doubt that he is also entitled for the SDA in terms of the Annexure A-1 O.M dated 29.5.2002. I, therefore, allow this O.A. Consequently the Annexure A-5 and Annexure A-6 letters dated 20.11.2007 and 12.7.2004 are quashed and set aside. The respondents shall pay the SDA as provided in Annexure A-1 Office Memorandum to the applicant with effect from 20.9.2004, with consequential arrears. Necessary orders in this regard shall be



issued by the respondents within two months from the date of receipt of a copy of this order. There shall be no order as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER

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