

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.348/94 and O.A.200/95

Wednesday, this the 15th day of April, 1998.

CORAM:

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

O.A.348/94

1. AC Mohammed Irshad,
Port Assistant Grade 'B'
Ameni Island,
U.T. of Lakshadweep.
2. KFD Mohammed,
Port Assistant Grade 'B'
Kavaratti Island,
U.T. of Lakshadweep.
3. KK Abdul Jabbar,
Port Assistant Grade 'B'
Kadamath Island,
U.T. of Lakshadweep.
4. F. Moosa,
Port Assistant Grade 'B'
Minicoy Island,
U.T. of Lakshadweep.
5. P.S. Musthafa,
Port Assistant Grade 'B'
Chetlath Island,
U.T. of Lakshadweep. - Applicants

By Advocate Mr Shafik MA

Vs

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

By Advocate Mr S Radhakrishnan, ACGSC(rep)

O.A.200/95

1. AC Mohammed Irshad,
Port Assistant Grade'B'
Amini Island,
Union Territory of Lakshadweep.
2. KFD Mohammed,
Port Assistant Grade'B'
Kavaratti Island,
Union Territory of Lakshadweep.
3. KK Abdul Jabbar,
Port Assistant Grade'B'
Kadamath Island,
Union Territory of Lakshadweep.
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Minicoy Island,
Union Territory of Lakshadweep.
5. PS Musthafa,
Port Assistant Grade'B'
Chetlath Island,
Union Territory of Lakshadweep. - Applicants

By Advocate Mr Shafik MA

Vs

1. Union of India represented by
the Secretary,
Ministry of Home Affairs,
New Delhi.
2. Port Officer,
Union Territory of Lakshadweep,
Kavaratti.
3. The Administrator,
Union Territory of Lakshadweep,
Kavaratti. - Respondents

By Advocate Mr S Radhakrishnan, ACGSC(rep)

The application having been heard on 15.4.98, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

The applicants in these two cases are Port Assistants
Grade'B'. Their grievance is that while the duties,
responsibilities and recruitment qualification of Port Assistants

Grade'A' and Port Assistants Grade'B' are practically identical, the Port Assistants Grade'B' are given a pay scale of Rs.1200-2040 while the Port Assistants Grade'A' are given a higher pay scale of Rs.1350-2200. This according to them, is violative of the principles of equal pay for equal work, irrational and wholly unjustified. Seeking extension of the pay scale of Rs.1350-2200 to the Port Assistants Grade'B' also, the applicants made representations to the 4th respondent on 27.11.92 and followed it up with a reminder on 14.10.93. Finding no response they approached this Tribunal filing O.A.348/94. That application was disposed of on the first day when it came up for hearing on admission itself with the following directions:

"Applicants seek a declaration that they are eligible to be placed in the scale of Rs.1350-30-1440-40-1800-EB-50-2200. They submit that they have been making representations for five years for the grant of this scale. We find two representations Annexure-A4 and A5 in this behalf. In spite of the long delay in taking a decision in the matter, we think time must be granted to respondents and we are granting a long period of six months to take a decision. If at the end of that period respondents pass no orders, it will be deemed that the declaration is granted. If the 4th respondent is not competent to take a decision, he will place the representation before the competent authority forthwith."

Finding that no decision of the respondents had been communicated to the applicants as directed by the orders of the Tribunal in O.A.348/94, the applicants filed O.A.200/95 praying for a direction to the respondents to refix the pay of the applicants in the revised pay scale of Rs.1350-2200 with effect from the date of initial appointment and to disburse to them the consequential arrears of salary with 18% interest. It was alleged in the application that as the respondents have not passed any order

on the representations of the applicants in terms of the decision in O.A.348/94, the declaration sought for in O.A.348/94 has to be deemed to have been granted.

2. The respondents in their reply statement have contended that though the nature of the duties and responsibilities of the post of Port Assistants Grade 'A' and Grade 'B' are similar, the quantum and the level of duties and responsibilities being different, the case of the applicants for parity in pay scale with that of the Port Assistants Grade 'A' is not justified, and that on a consideration of the facts mentioned in the representations, the first respondent had taken a decision not to grant the pay scale to the Port Assistants Grade 'B' on 12.10.94. The decision having been taken on the basis of the analysis of the job content and as the grade of Port Assistants Grade 'B' is a promotional post to Port Assistants Grade 'A', the Tribunal may not interfere in the matter which falls within the province of administration to create posts of different level in a cadre, pleaded the respondents. However, the Tribunal in its order dated 19.4.96 has observed:

"3. We afforded an opportunity to respondents to decline reliefs prayed for, if there were reasons for that. They did not do that within the period granted, or not even in twice that length of time, obviously as there were no grounds to decline the relief. The declaration has breathed into life.."

and directed the respondents to refix the pay of the applicants and to give them consequential benefits as the declaration has already come into existence. The respondents took up the matter before the Hon'ble Supreme Court and the Hon'ble Supreme Court in its order dated 20.11.97 (SLP No.8357/97) set aside the order of the Tribunal in this case as also the order passed in O.A.348/94 with a direction to the Tribunal to dispose of these applications afresh on merits.


3. The applicants have filed a rejoinder in O.A.200/95 in which they have contended that the contention of the respondents in the reply statement that the creation of two Grades of Port Assistants is justified considering the quantum and level of duties and responsibilities is not true to fact. They have also stated that in the minor islands, there has been considerable increase in movement of passengers and cargo and therefore there is absolutely no justification for disparity between the Port Assistants posted in major islands and minor islands. They have stated that Port Assistants Grade 'B' used to be posted in major islands and similarly Port Assistants Grade 'A' in minor islands also and that therefore the discrimination in pay scale offends the principle of equal pay for equal work.

4. We have heard the learned counsel of the applicants at considerable length. We have noted the arguments raised by him. However, it is well settled by now that it is for the administration to prescribe pay scale to the posts commensurate with the level and quantum of duties and responsibilities and that judicial intervention in such matters is not justified. Noting this, the learned counsel of the applicants sought permission to withdraw these applications with liberty to take up the matter further with the first respondent. Learned counsel of the respondents stated that ^{respondents} they have no objection in the applicants withdrawing the applications.

5. In the light of what is stated above, both these applications are dismissed as withdrawn, giving liberty to the applicants to take up the matter further with the first respondent. No costs.

Dated, the 15th April, 1998.


(SK GHOSAL)
ADMINISTRATIVE MEMBER


(AV HARIDASAN)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 200 of 1995

Friday, this the 19th day of April, 1996

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

1. A.C. Mohammed Irshad,
Port Assistant Grade B, Amini Island,
Union Territory of Lakshadweep.
2. K.F.D. Mohammed,
Port Assistant Grade B, Kavaratti Island,
Union Territory of Lakshadweep.
3. K.K. Abdul Jabbar,
Port Assistant Grade B, Kadamath Island,
Union Territory of Lakshadweep.
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Port Assistant Grade B, Minicoy Island,
Union Territory of Lakshadweep.
5. P.S. Musthafa,
Port Assistant Grade B, Chetlath Island,
Union Territory of Lakshadweep. .. Applicants

By Advocate Mr. Shafik M.A.

Versus

1. Union of India represented by
the Secretary,
Ministry of Home Affairs, New Delhi.
2. Port Officer,
Union Territory of Lakshadweep,
Kavaratti.
3. The Administrator,
Union Territory of Lakshadweep,
Kavaratti. .. Respondents

By Advocate Mr. MVS Nampoothiry

The application having been heard on 19th April, 1996, the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Applicants seek a direction to respondents to refix their pay in the revised scale of Rs. 1350-30-1440-40-1800-EB-50-2200 with effect from the date of their initial appointment. This is the scale of pay of Grade 'A' Port Assistants.

2. Applicants who are Grade 'B' Port Assistants approached this Tribunal earlier by OA 348/94, contending that the duties of Grade 'A' and Grade 'B' Port Assistants were the same and that the same scale should be extended, applying the principle of 'equal pay for equal work'. The argument appeared sound. Yet, on the facts of the case we thought we should give an opportunity to respondents to take a different course of action, if there was justification therefor. OA 348/94 was disposed of observing:

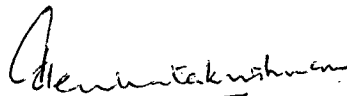
"In spite of the long delay in taking a decision in the matter, we think time must be granted to respondents and we are granting a long period of six months to take a decision. If at the end of that period respondents pass no orders, it will be deemed that the declaration is granted..."


3. We afforded an opportunity to respondents to decline reliefs prayed for, if there were reasons for that. They did not do that within the period granted, or not even in twice that length of time, obviously as there were no grounds to decline the relief. The declaration has breathed into life.

4. In spite of the vehement arguments advanced by Sri MVS Nampoothiry, learned Standing Counsel for respondents, we do not feel persuaded to deny the relief, since the declaration has already breathed into existence. However, we make it clear, consistent with the terms of the declaration, that it will be in effect after six months of the date of our judgment on 25th February, 1994. For the period beginning with 25th August, 1994 payment will be made to applicants.

5. We dispose of the application as aforesaid. Parties will suffer their costs.

Dated the 19th April, 1996


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN