

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. 214/2006

WEDNESDAY THIS THE 7th DAY OF MARCH 2007

C O R A M

HON. BLE MRS. SATHI NAIR, VICE CHAIRMAN

1. M.P. Sasidharan, aged 54 years, Son of Late P. Pappu, employed as Bosun in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Mayithara House, Pizhalā P.O., Pizhalā, Ernakulam District – 682 027.
2. P. Manoharan, aged 56 years, Son of P.A. Prabhakaran, employed as Chief Engineer Gr. II in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at 18/143, C.P.W.D. Quarters, Indira Nagar, Adyar, Chennai 600 020.
3. T.A. Maxy, aged 54 years, Son of T.V. Antony, employed as Bosun in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Thyppadath House, Chembumukku, Thrikkakara P.O., Ernakulam Kerala – 682 021.
4. V.A. Uthaman, aged 58 years, Son of V. Ashokan, employed as Bosun in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Valiyathara House, Elankunnappuzha P.O., Ernakulam, Kerala, Pin : 682 503.
5. Shine Peter K., aged 30 years, Son of K. Peter, employed as Engine Driver Class II in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Kollannoor House, Kanippayyoor P.O., Kunnamkulam (Via), Trichur District, Kerala Pin : 680 517.
6. T. Jayapalan, aged 57 years, Son of Unni, employed as Senior Deckhand in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Thodiyil House, Beach Road, Beach P.O., Calicut, Kerala Pin : 673 032.
7. V. Sekar, aged 52 years, Son of S. Veerasamy, employed as Senior Deckhand in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at 46, Angappan Naicky Street, Chennai, Pin : 600 001.
8. K.A. Haridas, aged 54 years, Son of Ayyappan T.K., employed as Senior Deckhand in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Kodichuvattil House, Ezhikkara P.O., North Paravoor, Kerala Pin : 683 513.
9. A. Jayaraj, aged 51 years, Son of V.A. Antonyswamy, employed as Junior Deckhand in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at 11/142 Poompugar Nagar, 8th Street, Kolathur, Chennai – 600 099.

10. T. Karthikeyan, aged 47 years, Son of T. Thirunavukkarsu, employed as Cook Grade 1 in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at No. 22, Thiruvallurpettai, 1st Cross Street, Anakaputhur, Chennai, Pin : 600 070.
11. M. Govindasamy, aged 58 years, Son of Munsamy, employed as Jr. Deckhand Cum Cook in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at No.3 Mary Helen Street, Vettiy Nagar, Chennai, Pin : 600 082.
12. P. Karuppiah, aged 48 years, Son of C. Pichan, employed as Topass in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at 85/1 CPWD., Quarters, K.K. Nagar, Chennai – 600 078.
13. G. Ayyappa Prasad, aged 58 years, Son of M. Gangadharan Pillai, employed as Skipper in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Parapally House, Cherupushpam Road, Elamkulma P.O., Ernakulam.
14. I.C. Sasidharan, aged 56 years, Son of Late I.T. Cheetha, employed as Chief Engineer Gr.I in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Shruthi Villa, Kumbalam P.O., Via Panangad, Ernakulam District Pin : 682 506.
15. V.N. Bhaskaran, aged 58 years, Son of Late Narayanan, employed as Bosun in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Type III No.4, CIFNET, Quarters, Pullepady, Kochi 0- 16.
16. A.A. Abdul Kadir, aged 51 years, Son of A.M. Abdul Rahman, employed as Engine Driver – Ch – I in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Ange Veetil House, P.O. Ponjassery, Via., Mudickal, Ernakulam – 683 547.
17. N.C. Mohanan, aged 56 years, Son of Chathan, employed as Sr. Deckhand the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Nikathithara Sea Shore, Narakkal, Kochi – 682 505.
18. K. Palani, aged 53 years, Son of Late Kuppuswamy, employed as Sr. Deckhand in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Type II No. 10, CIFNET Quarters, Pullepady, Kochi - 17.
19. K. Madhavan Nair, aged 59 years, Son of Kesava Pillai, employed as Sr. Deckhand in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Madhava Vilasam, Nettayam, Kachani P.O., Trivandrum – 13.
20. O.B. Vasudevan, aged 54 years, Son of Late Balakrishnan, employed as Cook Grade I in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Odayattil House, Olarikkara, P.O. Pallazhi, Trichur.

21. A.R. Alphonse, aged 57 years, Son of Rokkey, employed as Jr. Deck Cum Cook in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Type II No.08, CIFNET, Quarters, Pullepady, Kochi – 682 017.

22. S.K. Suresh, aged 23 years, Son of Suseelan, employed as Topaz in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Thadatharayil Veedu, Chetteyampara, Vinoba Niketham, Thiruvananthapuram.

23. K.R. Prakasan, aged 51 years, Son of C. Raghavan, employed as Mate in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Kadayil House, Nanthiattukunnam P.O., North Paravur, Ernakulam District, Kerala.

24. T.X. Sebastian, aged 54 years, Son of T.O. Xavier, employed as Chief Engineer Gr. II in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Thekkeveettil House, Near Govt., Ayurveda Hospital, Nayarambalam – 682 509.

25. S.S. Kunder, aged 56 years, Son of S.M. Suvarna, employed as Bosun in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Door No. 20 – 112A/68, Type III, CIFNET Residential Quarters, Beach Road, Visakhapatnam – 530 001.

26. K.K. Joseph, aged 56 years, Son of Kasper Joseph, employed as Senior Deck Hand in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Kuttappassery House, Moolankuzhi, Beach Road, Cochin – 2.

27. D. Velayutham, aged 55 years, Son of R. Doraiswamy (Late), employed as Senior Deck Hand in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at No. 122/11, Nochi Kuppam, Mylapore, Chennai – 600 004.

28. K. Ramunaidu, aged 48 years, Son of Appanna, employed as Cook Gr. I in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Door No. 1/84, Sriramnagar Street, Vepagunda, Visakhapatnam – 47.

29. G. Paidi Raju, aged 45 years, Son of Nookalu, employed as Jr. Deck Hand – Cum - Cook in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Door No. 20 – 112A/55, Type – I, CIFNET Residential Quarters, Beach Road, Visakhapatnam – 530 001.

30. S. Demudu, aged 45 years, Son of S. Erran Naidu, employed as Topass in the Office of the Deputy Director of Central Institute of Fisheries Nautical and Engineering Training Unit, Chennai residing at Door No. 20-112A/61, Type I, CIFNET Residential Quarters, Beach Road, Visakhapatnam – 530 001.

By Advocate Mr. Ashok M. Cherian
Vs.

1. The Union of India, represented by its Secretary to Government of India, Ministry of Agricultural, Department of Animal Husbandry & Dairying, New Delhi.

2 The Secretary
Department of Expenditure
Ministry of Finance,
New Delhi.

3 The Director
Central Institute of Fisheries Nautical and
Engineering Training,
Fine Arts Avenue,
Kochi-16

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants are Floating Staff in the service of the 1st respondent employed in the Central Institute of Fisheries Nautical Engineering and Training (CIFNET for short). They sail off-shore for minimum of 15 days per month. On implementation of the recommendations of the Fifth CPC w.e.f. 1.1.1996, floating staff of the Central Civil Service are entitled to get full Daily Allowance provided they are not given free food on board. Normal deduction from Daily Allowance which can be made if free food is provided on board is 50% of the Daily Allowance. Questions arose as to whether Floating Staff of Central Government can be denied with Messing Allowance which they had been given when they are paid Daily Allowance as recommended by the Fifth CPC and whether normal deduction of 50% can be made from the Daily Allowance considering Messing Allowance as paid in lieu of free food. The questions were

answered in judicial review made by this Bench in O.A. 413/01 filed by the Central Fishermen Association in a case challenging an order withdrawing Messing Allowance to the Floating Staff of Fisheries Survey of India. The Tribunal by its order dated 17.2.2003 held that the Fifth CPC has not interfered with paying Messing allowance on introduction of Daily Allowance to the Floating Staff and hence the Floating staff are entitled to be paid Messing Allowance even on payment of Daily Allowance. The Tribunal further clarified that Messing allowance at the rate of Rs. 35/- and Rs. 25/- has no nexus to the expense to provide free food on board and hence full Daily Allowance cannot be denied to the Floating Staff of FSI on the alleged reason of paying Messing Allowance to them (Annexure A-2). The decision was upheld by the Hon'ble High Court in its judgment in WP(C) NO. 21143/03 dated 15.7.2005 (Annexure A-3). In spite of repeated requests, the Floating Staff of CIFNET are not paid Daily Allowance for which they are entitled to along with the Messing Allowance being paid to them. Hence they have filed this Original Application.

2 The question arising here is whether the Floating Staff in the CIFNET are eligible for payment of any Daily Allowance. The issue decided by this Tribunal in O.A. 413/01 referred to above was regarding the admissibility of Messing Allowance to the Floating staff of the Fisheries Survey of India even when they are paid full Daily Allowance and whether the Messing Allowance has any nexus to the

provision of free board.

3 Respondents in the reply statement has stated that the applicants are floating staff and they are given Messing Allowance at the rate of Rs. 35/- per day to group-B employees and Rs. 25/- per day to group-C and D employees. They have taken the stand that the staff are not being paid Daily Allowance because they are paid Messing Allowance. Their contention is that the claim of the Floating Staff of CIFNET for parity in Messing Allowance and Daily Allowance with staff of FSI are not justified as the recommendations of the Fifth CPC are specifically meant for FSI. It is therefore submitted that a decision was taken by the competent authority to implement the recommendations only for the Floating Staff of the FSI vide order dated 12.4.2001 and it cannot be extended to floating staff of CIFNET. The Recommendations of the Fifth CPC at para 68.27 regarding allowances to Floating Staff, is extracted below:

"68.27 Allowances to floating staff:- The pay scales presently available to the floating staff are in accordance with floating staff in other organisations, including the fishing organisations under the Department of Agriculture and Cooperation and we do not recommend any change in these. Also since floating staff are (Central Government employees they will have to be governed by the various provisions of CCS Rules as also the ordinary laws of the land. It is incorrect to suggest that mere application of CCS Rules confers on the floating staff

the status off Shore staff" and all consequential benefits of working hours, leave, etc. In our recommendations on floating staff in general, we have suggested abolition of High Sea Allowance and payment of full DA in lieu thereof, and taking into account all other difficulties, as a departure from normal rules. Provisions relating to ex gratia compensation for death during the course of duty have been made to cover the risks out at sea. We recommend that Scientific Officers of FSI should also be paid full Daily Allowance at a normal rates applicable for tour, while on the high sea on marine survey work. If free food is provided on board, normal deductions will apply."

4 As seen from the full text of Para 68.27 of the Fifth CPC Recommendations at Annexure R-1, these recommendations are placed in the Heading under FSI. However, a reading of the above recommendations at para 68.27 makes it clear that the Commission had made general recommendations for Floating Staff where they have suggested abolition of High Sea Allowance and payment of full DA in lieu thereof and what the Commission had done in para 68.27 is to apply the general recommendation to the floating staff of the FSI. It may be true that specific recommendation regarding floating staff in the CIFNET are not available in the Fifth CPC report but the general recommendation of the Commission regarding floating staff for payment of full DA should have been considered by all the departments in which floating staff are employed. It appears from the Fifth CPC Report that in preparation of the report, FSI was dealt with under the Ministry of Food Processing Industries, whereas

CIFNET which was functioning under the Ministry of Agriculture, Department of Animal Husbandry and Dairying, did not find mention in this chapter. This appears to be the reason why the recommendation on floating staff do not get to be considered by the concerned administrative Ministry of Agriculture. Since the respondents have now admitted that the applicants are also floating staff and drawing messing allowance, the proper course of action will be for the administrative Ministry to take up the matter with the Ministry of Finance for implementation of the recommendation of the Fifth CPC to the floating staff of CIFNET. Since recommendations of expert bodies like Pay Commissions are not subject to judicial review by the Court, I am of the view that it is for the administration to consider the case of the applicants for parity in implementation of the Fifth CPC recommendations, considering the similarity of the circumstances and the duties and functions of the posts held by the applicants. As already explained the earlier orders of this Tribunal in O.A. 413/01 cannot be made applicable to the applicants in the present O.A as in that O.A, it was only the mode of implementation of the Fifth CPC recommendation which was to be decided, whereas here the applicability of the CPC recommendation itself is in dispute. I cannot accept the contention of the applicants that the decision in O.A. 413/01 should be made applicable to the applicants in this O.A. as well.

5 Therefore I dispose of this OA with the direction to the Respondents 1 & 3 to take up the matter with the second respondent for implementation of the general recommendations of the Fifth Pay Commission regarding payment of Daily Allowance to floating staff in general, to the applicants in the CIFNET, Kochi and communicate a decision to them within three months from the date of receipt of this judgment. The O.A. is allowed as above. No costs.

Dated 7.3.2007

Sathi Nair
SATHI NAIR
VICE CHAIRMAN

kmn