

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.234/09

Tuesday this the 6th day of April 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. N.Ramachandra Panciker,
S/o.late Neelakandan Nair,
Foreman (Civil), Grade II Lakshadweep (Rtd.),
Lakshadweep Harbour Works, Kavaratti,
Union Territory of Lakshadweep.
Residing at Vipanchika, Karukachal P.O,
Kottayam.
2. B.Murugan,
S/o.Pazhani,
Assistant Engineer,
Lakshadweep Harbour Works, Amini,
Union Territory of Lakshadweep.
Residing at Amini.
3. J.Rajendran Pillai,
S/o.late Janardhanan Pillai,
U.D.Clerk, Lakshadweep Harbour Works,
Amini, Union Territory of Lakshadweep.
Residing at Amini.
4. R.Gopinathan Kurup,
S/o.late Raghava Kurup,
U.D.Clerk, Lakshadweep Harbour Works,
Androth, Union Territory of Lakshadweep.
Residing at Androth.
5. V.S.Valsala,
D/o.Subramanian,
Assistant, Lakshadweep Harbour Works,
Kavaratti, Union Territory of Lakshadweep.
Residing at Kavaratti.



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6. N.N.Shailaja,
D/o.Gopalakrishnan Panicker,
Junior Engineer, Lakshadweep Harbour Works,
Kavaratti, Union Territory of Lakshadweep.
Residing at Kavaratti.

...Applicants

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. Union of India represented by Secretary,
Ministry of Finance, Department of Expenditure,
New Delhi.
2. Deputy Chief Engineer – V,
Lakshadweep Harbour Works, Kavaratti,
Union Territory of Lakshadweep.
3. The Chief Engineer and Administrator,
Andaman and Lakshadweep Harbour Works,
Port Blair.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC [R1]
& Mr.S.Radhakrishnan [R2-3])

This application having been heard on 6th April 2010 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicants' prayer in this joint Original Application is to restrain the respondents from recovering the arrears on account of the double House Rent Allowance paid to them. The first applicant Shri.N.Ramachandra Panicker had already retired from service and the respondents have recovered Rs.61666/- from his DCRG. Others are still in service and the respondents have proposed to recover the over-payment made to them from the month of April, 2009 onwards.



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2. When this case was heard initially for admission on 23.4.2009, counsel for the applicant Shri.P.V.Mohanan, has submitted that the excess amount paid to them was not because of any fraud or mis-representation done by them. Taking into consideration the aforesaid submissions and also relying on the judgment of the Apex Court in Paras Nath Singh Vs. State of Bihar and others [(2009) 6 SCC 314], this Tribunal restrained the respondents from effecting any recovery from the applicants.

3. The brief facts of the case are that the applicants was/were engaged with the Lakshadweep Harbour Works at Amini, Androth and Kavaratti under the Andaman and Lakshadweep Harbour Works having its headquarters at Calicut. According to Government of India, Ministry of Finance (Department of Expenditure) OM No.11016/1/B.II(D)/84 dated 29.3.1984, the following decisions have been taken regarding the question of payment of House Rent Allowance to Central Government civilian employees who are posted in the states of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh, Mizoram and Andaman & Nicobar Islands.

“(a) Central Government employees who are in occupation of hired private accommodation at the last place of posting before transfer to any of the states/Union Territories mentioned above may be allowed to draw House Rent Allowance admissible to them at that station.

(b) Such Central Government Civilian Employees may also be allowed to draw in addition to (a) above, House Rent Allowance at the rate admissible at the next place of posting in the aforesaid States/Union Territories in case they live in a hired private accommodation.



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(c) The benefits mentioned in (a) and (b) above will also be admissible to Central Government Employees who get transferred from one station of a State/Union Territory of the North Eastern Region to another States/Union Territory of the North Eastern Region mentioned above."

4. When the first applicant in this OA and other members of the Lakshadweep Harbour Works Employees Union were transferred to Union Territory of Lakshadweep, they were not given the benefits of the double House Rent Allowance as admissible to them according to the aforesaid order of the Ministry of Finance dated 29.3.1984. They have, therefore, approached this Tribunal earlier vide O.A.962/99 and the same was allowed declaring that the members of the Union are entitled to get the benefits of double House Rent Allowance, while they were posted in the Union Territory of Lakshadweep, if they keep their families in places where they have been keeping their families while they were posted in the main land and directed the respondents to disburse the applicants arrears of House Rent Allowance due to them as expeditiously as possible at any rate within a period of three months from the date of receipt of the order. Based on the aforesaid directions of this Tribunal, the applicants in OA 962/99 and similarly placed persons working in Lakshadweep Harbour Works, Lakshadweep were paid arrears towards House Rent Allowance and thereafter they were drawing the mainland House Rent Allowance for certain period as they were staying with their family members in their own house which is outside the municipal limit and were drawing House Rent Allowance for their stay at mainland station. The respondents in the



aforesaid OA, therefore, approached this Tribunal vide MA 1093/01 and MA 1094/01 in OA 962/99 seeking a clarification whether the members of the first applicant association could be entitled to the benefits of double House Rent Allowance. This Tribunal vide order dated 4.10.2001 held that it was an omission on the part of the Tribunal and clarified that those who have been keeping their families in their native place and not in the municipal limits or nearby the place of their last posting would not be entitled to the benefit of double House Rent Allowance during their posting in the UT of Lakshadweep. The first applicant herein and the Lakshadweep Harbour Works Employees Union challenged the aforesaid clarification before the Hon'ble High Court of Kerala in O.P.No.36264/01 in C.M.P.No.59164/01. In the said OP the High Court passed an interim order on 28.11.2001 staying the operation of the order of this Tribunal dated 4.10.2001. Later, in the final hearing of the case the High Court dismissed the aforesaid CMP as well as the OP and the stay granted was vacated on 12.2.2002. As a result, the applicants continued to enjoy the payment of double House Rent Allowance till the end of February, 2002. While dismissing the OP on 27.7.2007, the High Court passed the following orders :-

“ We find no infirmity in the order passed by the Tribunal. However, we make it clear that only those members of the applicant Association who have satisfied the conditions laid down are entitled to double HRA. Para 8 of the counter affidavit filed by the respondents reads as follows :-



Ext.P11 order of the Hon'ble Central Administrative Tribunal held that members of the first applicant union are entitled to get the benefit of double HRA. If while working at Calicut they were being paid HRA and they continue to keep their family in the place from where they have been transferred. This order did not clarify whether the members of the first applicant union would be entitled to double HRA even if they have shifted their families to their native place or other places after they are transferred to Lakshadweep Islands. These respondents therefore filed Miscellaneous Application for clarification that the members of the petitioner union who are similarly situated as the applicants in OA 675/91 would not be entitled to the benefit of double HRA. The Tribunal by Ext.P15 order clarified that those who are keeping their families at native place and not within municipal limits or nearby the place of their last posting would not be entitled to the benefit of double HRA during their posting in the UT of Lakshadweep.

The department was only seeking a clarification from the Tribunal that members of association as such would not get the benefit of double HRA by only those eligible persons.

Under such circumstances, we find no reason to entertain this OP and the same is dismissed."

5. As a result, the respondents have recovered Rs.61666/- from the DCRG payable to the first applicant vide Annexure A-1 letter dated 7.2.2008. As regards other applicants who are still in service, the Andaman & Lakshadweep Harbour Works has directed the Deputy Chief Engineer-V, Lakshadweep Harbour Works, Kavaratti to have necessary follow up action after the judgment of the High Court of Kerala in O.P.No.36264/01 dated 27.7.2007 and to effect the recovery of double HRA paid already to the employees those who are not entitled to the same. Vide Annexure A-3 letter dated 21.3.2009 the Lakshadweep Harbour Works, Kavaratti directed the Executive Engineer at Amini, Androth and Minicoy to ask the employees who have already retired to remit the amount immediately. They have also vide individuals letters directed the applicants



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to deposit the over-payment of double House Rent Allowance to the Cashier before 20.4.2009. According to the counsel for the applicant, the impugned proceedings to recover the amount is violative of the dictum laid down by the Apex Court in Purshotham Lal Das Vs. State of Bihar [(2006) 11 SCC 492], Baula Singh Vs. State of M.P [(2007) 6 SCC 180] and Syed Abdul Quadir Vs. State of Bihar [(2009) 3 SCC 475].

6. We have heard learned counsel for the parties. We have also perused the entire pleadings on record. Admittedly, the applicants are not entitled for the double House Rent Allowance which they have received on account of this Tribunal's order dated 25.1.2001 in O.A.962/99. This Tribunal has immediately, on pointing out certain discrepancies, clarified vide order dated 4.10.2001 in M.A.1093/01 and M.A.1094/01 in the said OA that those who are keeping their families in their native place and not in the municipal limits or nearby the place of their last posting would not be entitled to the benefit of double House Rent Allowance during their posting in the UT of Lakshadweep. However, the applicants have challenged the aforesaid order before the High Court of Kerala in O.P.No.36264/01. By virtue of the interim stay granted against the aforesaid order of this Tribunal the applicants continued to enjoy the double House Rent Allowance which they were admittedly not entitled. Finally, the High Court dismissed their case. The logical conclusion of such an order is that the applicants were not entitled to receive such double House Rent Allowance. Further



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consequence of the order is that whatever excess amount they have received has to be returned to the respondents department. By filing the present OA the applicants have mis-directed themselves. The argument of the applicants that their case falls under the category of the cases wherein the Government employees have inadvertently received excess payment and the Supreme Court has ordered that no recovery shall be made in such cases are not applicable in these cases. In fact the applicants are well aware that they were not eligible to draw double House Rent Allowance. The order of the Government was only to the effect that those who are keeping their families in their native place and not in the municipal limits or nearby the place of their last posting would not be entitled to the benefit of double House Rent Allowance during their posting in the UT of Lakshadweep. As the Hon'ble High Court has also rejected their case, there is no alternative for them but to repay the excess amounts already received.

7. We, therefore, do not find any merit in this OA and accordingly the same is dismissed. There shall be no order as to costs.

(Dated this the 6th day of April 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER