

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 3/2004

Thursday, this the 2nd day of November, 2006.

CORAM:

**HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER**

1. P.Kaderkoya
Primary School Teacher,
Kiltan Island
Residing at : "Darul Nooriya", Kiltan
UT of Lakshadweep
2. E.Vasilmulook
Primary School Teacher, Junior Basic School
Kadamath Island,
Permanently residing at : Ealipura, Kiltan
UT of Lakshadweep
- 3, P.V.Mohammed Khan
Primary School Teacher, Government School
Minicoy Island
Permanently residing at Pentamveli,
UT of Lakshadweep. - Applicants

By Advocate Mr N.Nagaresh

v.

1. Union of India represented by Secretary
Department of Education,
Ministry of Human Resources Development
New Delhi
2. The Administrator
UT of Lakshadweep
Kavaratti
3. The Director of Education
UT of Lakshadweep
Kavaratti - Respondents

**By Advocate Mr TPM Ibrahim Khan, SCGSC (R-1)
Mr.S.Radhakrishnan (R2-3)**

The application having been heard on 12.10.2006, the Tribunal on 02.11.2006, delivered the following:



ORDER**HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

1. The three applicants are aggrieved by OM F.No.25/2/2001-Edn/AC dated 20.6.2003(A1) issued by the 2nd respondent, rejecting their claims for refixation of their pay by stepping it up to same level as that of their juniors.
2. The applicants joined the post of Primary School Teacher on 17/18.10.1982 in the pay scale of Rs.330-560 under the U.T. of Lakshadweep. On implementation of IV pay Commission report, their pay was fixed at Rs.1290/- with effect from 1.1.1986, based on their option for pay fixation with effect from 1.1.1986 (Annexure R2(a), R2(c) and R2(d)). Subsequently, they came to know that, their colleague Shri K.P.Cheriyakoya who joined as Primary School Teacher on 18.10.1982 got pay fixation at Rs.1350/-. Aggrieved by such fixation, the applicant sent A-3, A-4 and A-5 representations on 15.3.1990, 12.2.1990 and 17.8.1990 respectively. Their common grievance in the said representations was about the higher fixation given to Shri K.P. Cheriyakoya, who joined on or around the same day as theirs. Such higher fixation to Shri Cheriyakoya was available to him, as would be revealed later during the disposal of an earlier O.A on the same issue, because,, he submitted his option for coming over to the revised scale of pay under the IV Pay Commission, after receipt of one increment in the old scale; the applicants did not give such an option ending with a lower pay. After examination of the matter, respondent-3 directed the Head Master of the school, where the applicants were working to submit proposals for rectification of anomalies in pay fixation after getting final seniority list of Primary School Teachers from the Directorate (A-6 dated 26.7.1991). Further representation dated 17.11.1993 (A-7) was made by the 1st applicant. No action was taken thereon according to the applicants, though, as per the respondents, the pay fixation was in order based on the options



exercised by the applicants themselves and on extant instructions. In any case, the respondents contend that seniority has no role to play in pay fixation.

3. Subsequently, the Vth Pay Commission recommendations were also implemented, wherein also effects of lower fixation continued for the applicants. As a result, the applicants started drawing in the scale of Rs.5000-8000, which is the corresponding revised scale, the applicant's pay was fixed at the stage of Rs.5150/-, and the applicants contend that more than five persons, who were their juniors were drawing more pay than the applicants at Rs.5300/-. An example was that of one Shri YP Yousef, who joined the department later than the applicants and working in the island of Chetlat, and also granted higher pay than the applicants. As per the respondents, no irregular fixation was done this time also and as regards the case of Shri Yousef, action was taken to rectify wrong fixation, if any (R2(e)). It is the contention of the applicants that, their seniority was well established vide A-8 which would validate their claim for pay parity with their juniors. Finding no relief from the Department, the applicants approached this Tribunal vide O.A.1340/2000 claiming for stepping up of their pay on par with their juniors with all consequential benefits. The O.A was disposed of vide order dated 11.11.2002, permitting the applicants to make a re-option and, also to submit representation within a period of one month from the date of receipt of the copy of the order for reception of the re-option to come over to the IV Pay Commission with effect from 1.10.1986 and directing the 2nd respondent to consider their case sympathetically, as was done in the case of Shri KP Cheriakoya (because, he had submitted his option beyond the period prescribed) and to issue appropriate orders within three months. In pursuance of the above orders, the applicants made A-10 representation. The main points raised therein were:

→ It was on the specific orders of the Head Master of the School that he

- opted for the new scale w.e.f. 1.1.1986.
- the advantages of preferring the option on a later date as done by Cheriyaakoya was not explained to him and
- Cheriyaakoya himself exercised such as option after a long time.

Thereafter the 2nd respondent had issued A-1 order, rejecting their claims observing:

"The representation has been examined. Shri K.P. Cheriyaakoya, Primary School Teacher had submitted option well within time as the last date for exercising option was extended to 31.3.1987 as per the Government of India decision No.1 below Rule 9 of CCS (Revised Pay) Rules, 1986. The said decision extending the time of exercising option upto 31.3.1987 was issued as per OM dated 22.12.1986 and therefore was not published in the original CCS(Revised Pay) Rules, 1986 and therefore was not published in the original CCS (Revised Pay) Rules, 1986 which were notified prior to the said rules. The option was to be exercised as per the revised pay rules within three months from the date of its publication in the Gazette that the Rules were published on 22.9.1986 and the period of three months expired on 22.12.1986, that later the government of India extended the time upto 31.3.1987 as per its order dated 22.12.1986 and therefore the option exercised by Mr Cheriyaakoya on 14.1.1987 was well within and hence was accepted and therefore the case of the applicant cannot be treated at par with that of Mr Cheriyaakoya. The option now exercised is barred by limitation and if the same is accepted it will result in a number of cases being re-opened i.e. persons who have not opted within the time will start coming forward with re-options citing this as precedent.

The pay of Shri K.P.Cheriyaakoya junior to Shri P Kaderkoya the applicant was fixed on the strength of option to effect the revised pay from 1.10.1986. The pay of the applicant was fixed taking into account the pay as on 31.12.1985. These are the reasons for the anomaly and there is no provision to step up the pay of the senior as of junior in such cases. There is also no provision for exercising re-option. The Administrator is not competent to accept re-option beyond the last date for filing option.

Government of India itself has extended the time for submission of option



and further stating he was no power for accepting the re-option submitted beyond the time granted ".

4. Aggrieved by such rejection, the applicants have approached this Tribunal.

5. The relief sought are the following:

- i) To call for the records relating to A-1 and A-9 and to quash A-1.
- ii) To declare that the applicants are entitled to get their pay stepped up on par with their juniors specified in A-2, A-7, A-8 etc. immediately.
- iii) To direct the respondents to step up and re-fix the pay of the applicants on par with their juniors who were appointed on the same day and after with all consequential benefits including arrears of salary with 18% penal interest.

6. The claims rest on the following grounds:

- i) The action of the respondents in refusing to correct an anomaly, which has happened due to the incorrect procedure followed by the office of the 3rd respondent inspite of the long delay, is absolutely wilful, arbitrary and illegal.
- ii) The respondents who are duty bound to implement the orders contained in the various rules and fix the salary of the individuals of the same department on an equal footing, is showing hostile discrimination towards the applicant.
- iii) The applicants who have joined the services of the respondents after a properly constituted interview and selection are entitled to be treated equally along with the others who have been appointed on the same day and thereafter.
- iv) A-1 issued by the 2nd respondent shows the hostile attitude towards the applicants.

v) The notification of a chance for re-option has not been circulated among the teachers at all and the benefit of the same has been given only to those who are favoured by the respondents unduly.

7. The respondents oppose the application. According to them:

- The action of the Administrator in rejecting the representation of the applicants is in order and as per rules.
- Exercising of option for fixation of pay is solely at the discretion of the concerned employee and nobody can direct him to opt for fixation of pay from a particular date nor it is for the superior authority to explain to the employee the advantages in opting fixation from a particular date.
- There has been no discrimination or hostile attitude shown against the applicants as alleged.
- The pay of the applicants were fixed taking into account the pay as on 31.12.1985. These are the reasons for the difference and there is no provision to step up the pay of the senior to that of juniors in such cases.
- There is also no provision to the rules for exercising re-option.

8. Heard the counsel and perused the documents.

9. The following points are to be decided in this case:

- i) Was there any anomaly in the pay fixation of the applicants consequent to the implementation of the IV Pay Commission recommendation.
- ii) Was there any violation of orders by the respondents in such pay fixation.
- iii) Was there any discrimination suffered by the applicants.

10 The first point to be decided is whether there was any anomaly in the pay fixation of the applicants consequent to the implementation of the IV Pay

Commission recommendation. Under Rule 5 of the CCS (Revised Pay) Rules 1986 relating to implementation of the IV Pay Commissions recommendations, the Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment etc. Such exercise of option will have to be in the form prescribed under Second Schedule. The fact of having submitted an option is indisputable, the same being a matter of record vide R-2(a), R-2(c) and R-2(d). According to the applicants, however, it was under the orders of the Head Master that they chose to elect the revised scale from 1.1.86. The respondents deny however, there was any orders from anyone dictating the subordinate to specify a particular date for such option. As already mentioned above, their colleague Shri Cheriya Koya chose to wait to obtain his increment in the pre-revised scale before switching over to the new scale. It was also made clear in the Revised Pay Rules of 1986 that option once exercised shall be final. It was expected of the optees to study the implications of different options available before them before choosing one among them. The responsibility of making a decision can never be shifted to others. . The applicants would merely say that the same anomaly continued after the implementation of the V Pay Commission recommendation. Their increment date being 1st of October, whether they had a chance of exercising their option at least judiciously after the Fifth Pay Commission, especially when there was no change in the dates of increment as envisaged by the extant Revised Pay Rules, whether they did exercise any option are all questions, never mentioned as part of the material papers. Hence we have to find that there was no anomaly in the fixation of pay subsequent to the IV Pay Commission recommendations, or for that matter, subsequent to the V Pay Commission recommendations

11. As to the point whether there was any violation of orders by the respondents in such pay fixation, the applicants have drawn our attention to the



notes 6 and 7 of the Rule 7(1) of Revised Pay Rules 1996. The same is reproduced herebelow:

"Note 6 - Where in the fixation of pay under sub rule (1), pay of a Government servant, who, in the existing scale was drawing immediately before the 1st day of January, 1996, more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior.

Note - 7 Where a Government servant is in receipt of personal pay on the 1st day of January, 1996, which together with his existing emoluments as calculated in accordance with Clause (A), Clause (B), Clause (C) or Clause (D), as the case may be, exceeds the revised emoluments, then, the difference representing such excess shall be allowed to such Government servant as personal pay to be absorbed in future increases in pay."

12. A bare reading of the same would show the following:

- This applies to the recommendations of the V Pay Commission, the Rules coming into force from 1-1-96 whereas the contention of the applicant relates to the previous Pay Revision Rules after the IV Pay Commission.
- This rule applies when the Government servant in the existing scale was drawing more pay than another Government servant junior to him in the same cadre and when the situation got reversed after the pay fixation. The grouse of the applicants was about the junior getting more pay than he after the revision and not about any refixation resulting in his junior getting higher pay. He has no case that he got a higher pay prior to the revision, either after the IV Pay Commission or the V Pay Commission. Apart from this, violation of no orders or rules has been brought to our notice to record a finding as required by the applicants. Hence, this contention is unacceptable.

13 Next question is whether there was any discrimination suffered by the applicants especially by way of lack of awareness about extended dates for filing options. The point made by him was that the O.M according extension of time upto 31.3.87 was not properly published. Learned counsel for the respondents vide his latest affidavit dated 20.4.2006 states that the above decision was published in the Union Territory of Lakshadweep but he has no documentary evidence on the mode of such publication in his hands. According to him, the time for exercising option was again extended upto 31.8.88. This, being in the nature of an amendment to the relevant pay rules, must have been published in the Government of India Gazette. A pointed question was put to him whether he could gather any evidence about such publication in the Gazette which in all probability should be still available either in the Lakshadweep Administration or the Ministry concerned. He was directed to produce such evidence. In his reply affidavit the Secretary to Administrator, Lakshadweep has stated as follows:

"As per GOI decision No.1 below Rule 9 of CCS(Revised Pay) Rules 1986 the last date for exercising option was 31.3.87. Shri KP Cheriyaoya exercised his option on 14.1.87 and therefore it was accepted and his pay was fixed with effect from 1.10.86. The applicants opted for revised pay with effect from 1.1.86. The above GOI decision was published in the Union Territory of Lakshadweep also. Such order cannot be out of knowledge of the applicants. The claim of the applicants that they have not received the OM dated 31.3.87 cannot be correct. 99% of different categories of teachers in Lakshadweep received the OM and opted dates for pay fixation. It shows that either they were negligent in not responding to the OM in time or they might have decided not to exercise option in accordance with the OM. However, it is submitted that in spite of our earnest efforts the circulation details of the above OM could not be traced out, since the documents was almost 20 years old."

Under these circumstances, we find no alternative scenario to be imagined in which the applicants were kept in the dark about such extensions. We have to

presume that the procedures of publication were duly followed and response obtained thereto and further action on such options taken and there was no hostile discrimination meted out to the applicants.

14. Based on the above findings, we find no cause to interfere with the impugned orders. The O.A is dismissed. No costs.

Dated, the 2nd November, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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