

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.272 of 2002

Wednesday, this the 23rd day of February, 2005.

CORAM:

HON'BLE SHRI K.V.SACHIDANANDAN, JUDICIAL MEMBER

HON'BLE SHRI H.P.DAS, ADMINISTRATIVE MEMBER

P.Janaky,
Retired Teacher,
Govt. High School,
Kadamath,
Peetakandiyil House,
Nut Street, Vadakara.

Applicant

By Advocate Me VB Harinarayanan

vs

1. Union of India,
Rep. By its Secretary,
Minisgtry of Home Affairs,
New Delhi.
2. The Administrator,
U.T. Of Lakshdweep.
3. The Accounts Officer,
Principal,
Pay & Accounts,
Kavaratti.

Respondents

By Advocate Mr S Radhakrishnan



ORDERHON'BLE SHRI K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant, while working as Primary School Teacher, Government School, Kadmat, Lakshadweep Island, retired on 31.5.97. He was drawing a pay of Rs.2,360/-, special pay of Rs.500/- & D.A. 170% of basic pay. Since she had opted for Island Special Pay, she was getting special pay of Rs.500/-. According to the applicant, pursuant to the judgment of the Hon'ble Supreme Court in S.L.P.No.8544/95, the 2nd respondent, vide A-1 dated 10.9.97, ordered that the Primary School Teachers are entitled for Island Special Pay at the rate of 80% of the revised pay with effect from 1.1.86 subject to a maximum of Rs.500/-. It was further clarified that the element of Island Special Pay is to be counted as part of the basic pay for the purpose of determining D.A., pensionary benefits etc. Since the benefit was not granted to the applicant, he made several representations to the 2nd respondent. Thereafter the pension sanctioning orders of the applicant were issued on 28.2.2000(A-2), without reckoning Island Special Pay as part of the basic pay. Thereupon, O.A.No.964/2001 was filed by the applicant for revising the pensionary benefits reckoning Island Special Pay as part of the basic pay. On the basis of the order dated 25.4.2001 of the Ministry of Home Affairs, to treat Island Special Pay as part of the pay for Special pay optees upto 31.7.97, the O.A. was disposed of permitting the applicant to make a comprehensive representation and directing the respondents to consider the same. Applicant submitted A-5 representation dated 14.1.2002. In purported implementation of the directions contained in O.A.964/2001, the claim of the applicant was rejected vide A-6 dated 25.1.2002 for want of clarification from the Ministry. Aggrieved, the applicant has filed this application for the following relief:

- a) To call for the records leading to A-6 order and set aside the same;
- b) To issue a direction to the respondents to revised the pension payable to the applicant, reckoning Island Special Pay as part of the basic pay.
- c) To declare that the action on the part of the respondents in not reckoning Island Special Pay as part of the basic pay for the purpose of computing pension is highly illegal and in violation of the direction issued by the Hon'ble Supreme Court as well as this Tribunal.
- d) To declare that the applicant is entitled to get pension reckoning Island Special Pay as part of her basic pay and disburse the revised pension and consequent arrears with 18% interest from the date of retirement.

2. The respondents have filed a detailed reply statement contending that the SLP filed by the respondents was dismissed on delay and not on merits. However, the second



respondents ordered implementation of the order of the Tribunal. Respondents plead that as per F.R. 9(21)(a)(i), the pay include only NPA and stagnation increment and does not include Island Special Pay with effect from 1.1.86. The benefit of DA/Compensatory Allowance and other allowances availed by the applicant treating Island Special Pay as part of pay with effect from 1.1.86 to 31.5.97 is against the rules and therefore excess payment made to her ought to have been recovered from the applicant. As per Rule 33 of the CCS (Pension) Rules 1972, 'emoluments' means 'basic pay' which does not include Island Special Pay. As per the direction of the Tribunal in O.A.964/2001, the representation of the applicant was duly considered based on O.M. Dated 25.1.2002. In a similar circumstance, in compliance of the directions contained in O.A.No.1274/91, the Ministry of Home Affairs, vide letter dated 25.4.2001, conveyed a decision to allow the benefit of Island Special Pay to Special Pay optees of the U.T. Of Lakshadweep. But a contrary view has been taken by a Single Bench of this Tribunal in O.A.1038/99 and the Ministry of Home Affairs vide letter dated 25.4.2001 (R-5) has taken a decision that the element of Island Special Pay will not be treated as part of basic pay for the purpose of computation of pension including DCRG. As per O.M. dated 19.12.2000(R-6), the DOPT clarified that the element of special pay will only be taken into account where the IVth CPC has recommended the replacement of the applicable pre-revised scale with special pay by a revised scale without special pay. Therefore, the respondents contend that the applicant is not entitled for any benefit and the O.A. is only to be dismissed.

3. We have heard Shri V.B.Harinarayan, learned counsel for the applicant and Shri S.Radhakrishnan, counsel for respondents. Learned counsel had taken us to various pleadings, material and evidence placed on record. Counsel for the applicant submitted that by virtue of the judgment of the Hon'ble Supreme Court and orders of this Tribunal and subsequent O.M., the applicant is entitled for the relief sought for. Counsel for the respondents on the other hand, argued that the expression 'emolument' means "basic pay as denied in Rule 9(21)(a)(1) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death and will also include non-practicing allowance granted to Medical Officers in view of private practice." The pay other than special pay or pay granted in view of his personal qualification, which has been sanctioned for a post held by him substantively or in any officiating capacity. So it is clear that the pay does not include Island Special Pay. Therefore, the applicant has no case.

4. We have considered the arguments advanced by the learned counsel. The claim of the applicant is that he is entitled to revise the pension reckoning the Island Special Pay as part of the basic pay. After so much of judicial deliberations in different O.A.s i.e. O.A.1274/1991 and O.A.1038/1999, A-3 O.M. was issued by the Ministry of Home Affairs,



Government of India which is reproduced as under:

“..I am directed to refer to the correspondence with UT Administration of Lakshadweep's letter No.Pen/98-PAO/780 dated the 3rd August, 2000 on the above cited subject and to say that the matter has been examined in this Ministry in consultation with the Ministry of Finance and in the light of the fact that the Island Special Pay was included as part of pay for the purpose of pension due to a specific court decision dated 3.4.92 in O.A.No.1274/91 and that the Island Special Pay has been stopped from 1.8.97, it has been decided that the benefit of the order dated 3.4.92 of the Central Administrative Tribunal, Ernakulam bench in O.A.No.1274/91 will be available to special pay optees of the U.T. Administration of Lakshadweep upto 31.7.97.

This issues with the approval of IFDNHA vide their Dy.No.524/fin.II dated 30.3.2001.”

Admittedly the applicant is a special pay optee. The respondents had disposed of the representation of the applicant as directed by this Tribunal in O.A.964/2001 conflicting decision of the Tribunal has been quoted and therefore, a clarification is sought from the Ministry dated 25.4.2001 and declined the benefit stating that “..Administration is not in a position to include the element of Island Special Pay as part of pay for the purpose of revision of pension, till a final reply is received from the Ministry of Home Affairs.” It is pertinent to note that this impugned order was passed on 25.1.2002 and the respondents were not able to bring to the notice of this Tribunal any further clarification from the Ministry till date.

5. The grant of special pay is a policy decision of the Government to attract more mainlanders to the island for engaging them in employment when the islanders were not available at that point of time. In a case reported in 1996 (2) SLR Vol.112 in A.M.Joseph v. Union of India for grant of special pay to employees working at Andaman & Nicobar Islands, almost on the same footing with the Lakshadweep Administration, the Apex Court observed:

“..As a fact all those who are working in Andaman & Nicobar Island, as per the Fundamental Rules, are being paid Andaman special pay and the appellant is not discriminated on that account. Accepting the contention of the counsel for the respondents, we are of the considered view that the grievance of the appellant is not well founded. It is needless to mention that whatever direction that have been given by the Government of India under the Fundamental Rules for payment of special pay to the employees working in Andaman & Nicobar Island, they are entitled for the same and accordingly such special pay be paid to all the eligible persons including the appellant.”

6. If the special pay has to be allowed as a one time measure vide O.M. A-3 dated 25.4.2001, the Ministry has directed that the special pay optees of U.T. Of Lakshadweep are

entitled for the special pay upto 31.7.97 only. Since the applicant has retired prior to that date i.e. 31.5.97, we are of the view that the applicant is entitled for the relief prayed for and we allow the application and direct the respondents to revise the pension of the applicant reckoning island special pay as part of basic pay, however, without any other consequential benefits. In the circumstances, the applicant will not be entitled for any interest or costs.

Dated, the 23rd February, 2005.


H.P.DAS
ADMINISTRATIVE MEMBER


K.V.SACHIDANANDAN
JUDICIAL MEMBER