

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.284/1998

Monday this the 25th day of June,2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SRI T.N.T.NAYAR, MEMBER (A)

M.V.Achutha Warriar,
Retired Headmaster,
Junior Basic School,
Androth, residing at 'Ambili',
Manjeri. ..Applicant

(By Advocate Sri M.R.Rajendran Nair)

vs.

1. The Administrator,
Union Territory of Lakshadweep,
Kavarathy.
2. Union of India, represented by the
Secretary to Government of India,
Ministry of Home Affairs,
New Delhi. .. Respondents

(By Advocate Sri P.R.R.Menon(R1)
Shri Govindh K.Bharathan, SCGSC(R2)

The Application having been heard on 23.5.01, the Tribunal
on 25.6.01 delivered the following:-

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant retired from the services of the Lakshadweep Administration as a Head Master on 28.2.1989. He had commenced service prior to 25.4.70 and was in receipt of Island Special Pay. The Island Special Pay was enhanced with effect from 1.1.1986. The applicant submitted a representation claiming arrears of enhanced special pay and for revision of pension reckoning the special pay on 13.8.1996, finding that this Tribunal had in its order in O.A.1274/91 filed by similarly situated persons directed payment of special pay at enhanced rate and to reckon special pay at enhanced rate as part of the pay for retiral

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benefits. Finding no response the applicant filed O.A.1269/96 which was disposed of directing the respondents to dispose of the representation dated 13.8.96 in the light of the orders passed by the Tribunal in O.A. 1276/96 and 527/96. The impugned order Annexure A1 has been passed by the 1st respondent turning down the claim of the applicant as the applicant was not a special pay drawee on the date of his retirement and that therefore he is not entitled to the claim made. Alleging that the special leave petition filed against the order in O.A.Nos.1274/91,580/93 has been dismissed and that denial of the benefit to the applicant is discriminatory, the applicant has filed this application impugning Annexure A1 order for a declaration that the island special pay drawn by the applicant is to be reckoned for pensionary benefits and for a direction to the respondents to reckon island special pay for pensionary benefits, to re-fix his pension and to pay arrears with interest.

2. The respondents contend that the applicant had switched over to island compensatory allowance which was sanctioned with effect from 1.10.1986 in lieu of special allowance with effect from 1.12.87, and had not thereafter drawn special pay, and that as he was not a special pay drawee, he is not entitled to any relief. They have further contended that special pay cannot be counted as pay for pension as per rules.

3. We have carefully gone through the pleadings and


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documents on record. On 24.1.2001 the Tribunal directed the respondents to produce the option exercised by the applicant to switch over to special compensatory allowance with effect from 1.12.87. However the document was not produced and it was stated that the same is not traceable .

4. We have heard the arguments of the learned counsel on either side. Although the respondents have not produced the option alleged to have been submitted by the applicant for switching over to special compensatory allowance and not to draw island special pay from 1.12.1987 onwards, the fact remains that the applicant was not in receipt of island special pay at the time of his retirement. In his representation(Annexure A2) the applicant has stated as follows:

"Since I commenced service prior to 24.5.70 and since I was in receipt of island special pay before that date, I continued to draw island special pay till 1.1.86. But when pursuant to the 4th Pay Commission's recommendations the relief island special pay and compensatory allowance was enhanced, the benefit was not granted to me."

Since the applicant continued in service till 28.2.89 if the island special pay was denied to him even without his option to switch over to allowance, the applicant would have normally and naturally agitated the issue then and claimed island special pay at the enhanced rate. The applicant has put forth his claim only several years after his retirement. Therefore the contention of the respondent that the applicant who was not a special pay drawee on the date of his retirement is not entitled to enhanced special pay as



also for revision of pension, has to be accepted, because enhancement of special pay can be claimed only if he had been in receipt of special pay. As admittedly he has not been granted special pay from 1.1.1986, he was in receipt of the next alternative. Further a Single Member Bench of this Tribunal had occasion to consider the question whether island special pay is to be reckoned for computation of pension in O.A.No.1038/1999. It was observed in this order as follows:

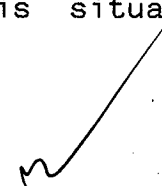
"5. The learned counsel appearing for the respondents vehemently argued that in the light of the rule position on the subject, the applicants are not entitled to reckon the Island Special Pay for the purpose of pension. In support of this argument he relied on Rule 33 of CCS(Pension)Rules,1972. Rule 33 of CCS(Pension) Rules, after amendment with effect from 1st of January,1986, reads thus:

"The expression 'emoluments' means basic pay as defined in Rule 9(21)(a)(i) 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 a non-practising allowance granted to medical officer in lieu of private practice."

Now it is to be seen what is the definition of 'basic pay' contained in Rule 9(21)(a)(i) of the Fundamental Rules. Rule 9(21)(a)(i) of the Fundamental Rules defines thus:

"the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre;..."

7. So, from the above definition, it is clear that pay does not include special pay. That being the position, emoluments, as per Rule 33 of CCS(Pension) Rules, in the case of the applicants is to be understood as their pay excluding special pay. In this situation, there cannot be a direction to the

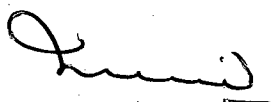


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respondents to refix the pension and pensionary benefits due to the applicants reckoning the element of Island Special Pay, drawn by them during their service."

We are in agreement with the above view. Therefore even if the appliant had been in receipt of special pay on the date of his retirement(which is not the case), the applicant would not have been entitled to have the island special pay reckoned for computing pensionary benefits.

5. In the light of what is discussed above, we find no merit in the application. Therefore we dismiss the application leaving the parties to bear their own costs.


(T.N.T.NAYAR)
MEMBER (A)


(A.V.HARIDASAN)
VICE CHAIRMAN

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List of Annexure referred to in the Order:

Annexure-A1	True copy of the order F.No.10/24/96-SC dated 26.12.97 issued by the respondent to the applicant.
nnexure-A2 A	True copy of the representation dated 13.8.96 submitted by the applicant to the respondent.