

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 302 OF 2011

Monday, this the 14th day of November, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R RAMAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. C.C Sabeer
S/o.B Essakunhi
Cheriyatta Chetta House
Amini Island Lakshadweep
P.C No.420
2. P.Nazeer, S/o.M.P Abdul Khader
Pandaram House, Amini Island
Lakshadweep P.C No.406
3. P.Mohammed Hasim, S/o.P.P Kunhikoya
Pattakal House
Amini Island Lakshadweep
P.C No.407
4. P.C Attamon, S/o.K.P Kunhi Ahammed
Puthiyara Chetta House
Kadamath Island Lakshadweep
P.C No.408
5. K.P Mohammed Rafeek
S/o.T.Yacoob
Kattupura House
Andoth Island Lakshadweep
P.C No.409
6. B.Mohammed Akberali
S/o.D Alikoya
Bandayam House
Agathi Island, Lakshadweep
P.C No.411
7. Kamarudheen K.M
S/o.Anadari (late)
Kalliyammakada House

Kadamath Island
Lakshadweep
P.C No.412

8. P.Mohammed Shafi
S/o P.Cheriya Koya
Pathummathada House
Amini Island
Lakshadweep
P.C No.413
9. B.P Muhsin, S/o A.C Sulaiman (late)
Balipura House, Kadamath Island
Kadamath Island, Lakshadweep
P.C No.414
10. M.Mohammed Farook,
S/o.C.M Koyammakoya
Moothakada House, Androth Island
Lakshadweep
P.C No.415
11. Sayed Mohammed Junaid P.U.P
S/o.P.P.T Aboosalih
Thangal, Padinjaray Ummatha Biyyapura House
Androth Island, Lakshadweep
P.C No.416
12. T.P Mohammed Shafi, S/o.K.P Migdad
Thottupura House
Chethlath Island, Lakshadweep
P.C No.417
13. E Sameer, S/o.P Attakoya
Edanilam House Kavaratti Island Lakshadweep
P.C No.418
14. C.K Munammed Raesuddin
S/o P Khader Koya
Chakkulam House, Kiltan Island,
Lakshadweep
P.C No.419
15. M.C Abdul Shukoor
S/o.Hyder Ali, Shan Mahal
Edayakkal
Androth Island, Lakshadweep
16. Sayed Fathahudeen, S/o.A.I Nallakoya
Komalam House

Androth Island Lakshadweep
P.C No.421

17. P.Abdul Mukthar
S/o.C.N Sayed Mohammed Koya
Poovinoda House
Kalpeni Island
Lakshadweep
P.C No.423
 18. A Mohammed Nazeer
S/o.P.P Kunhi Koya (Late)
Attaloda House
Chethlath Island
Lakshadweep
P.C No.424
 19. K.P Basheer
S/o.M.P Mahmood
S/o.M.P Kunhi Koya
Allathammada Ayshayyapura House
Androth Island
Lakshadweep, P.C No.426
 20. A.I Sayed Fathahudeen Ahammed
S/o.M.P Kunhi Koya
Alliahammada Ayshayyapura House
Androth Island
Lakshadweep, P.C No.....
- Applicants

(By Advocate – Mr.Abdul Kareem P.S)

Versus

1. Union of India, represented by the
Secretary, Ministry of Home Affairs
New Delhi
 2. The Administrator
Union Territory of Lakshadweep
Kavaratty
 3. The Superintendent of Police
U.T of Lakshadweep
Kavaratty
- Respondents

(By Advocate – Mr.Thomas Mathew Nellimoottil for R1
Mr.S Radhakrishanan for R 2&3)

The application having been heard on 14.11.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.JUSTICE P.R RAMAN, JUDICIAL MEMBER

1. The applicants are working as Police Constables under the 3rd respondent, the Superintendent of Police in Kavarattys Island, Lakshadweep. They entered into service before 01.01.2006. After the implementation of 6th Central Pay Commission their pay was fixed at Rs.6450/- in the pay band scale of pay Rs.5200-20200 plus grade pay Rs.2000/- with effect from 01.01.2006. But subsequently on 04.05.2010 it was re-fixed as Rs.6060/- in the Pay Band scale of pay of Rs.5200-20200 plus Grade Pay Rs.2000.

2. According to the applicants, the pay scale of their junior batch who were employed in Lakshadweep as police constables was fixed as Rs.6460 in the same pay band scale of pay Rs.5200 – 20200 plus grade pay Rs.2000 w.e.f 26.03.2006. Thus the applicants were paid Rs.400/- less in the basic pay with that of the juniors who were employed on or after 01.01.2006. Possibly on an audit objection to the step up payment to the teachers and other departments wherein it was stated that no instructions were there in the 6th CPC for stepping up the payment to those who were appointed before 01.01.2006. It is on that count the refixation of the pay in the case of the applicants, were revised subsequently. According to the applicants, since the juniors were paid higher pay than the seniors like the applicants, it is clearly violative of Article 14 of the Constitution. Here the juniors having the same



designation, same post same qualifications and direct recruitment like the the seniors, the applicants, will draw lesser pay. Thus according to the applicants, both are similarly situated and there is no reason for unequal treatment. At any rate this anomaly is liable to be rectified by stepping up of the pay of the seniors with that of juniors, which was done at the time of fixation of the pay but later revised the same based on an audit objection. Hence they pray for a direction to the respondents to fix their pay equal to that of juniors who were appointed after 01.01.2006 and for a declaration that the revised pay fixed and later reduced to Rs.6060 is wrong and to pay the arrears of salary as per the statement of fixation of pay under CCS Rules 2008.

3. In the reply statement filed by the respondents it is contended that the anomaly which occurred in the case of the applicants was taken up with the Administration and the Administration has taken up the matter for clarification from the Ministry in the light of the letter dated 25.11.2010 of MHRD in the case of school teachers (Annexure R-2(a)). If the anomaly is genuine, concurrence of the Ministry of Finance is also required. They are awaiting the clarifications from the MHRD with the concurrence of the Ministry of Finance.

4. We have heard both sides. The counsel for the applicants submits that during the pendency of the O.A the pay has been stepped up in the case of the applicants from a later date and what remains to be granted is to grant the benefit retrospectively from the date 04.05.2010 and to give the arrears. Admittedly, there is an anomalous situation whereby the juniors of the applicants are getting a higher pay than that of the applicants for the reason

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that the juniors had entered in the service after 01.01.2006. It is the contention of the respondents that the pay in the case of the applicants is fixed under different Rule. Respondents further submitted that the grievance of the applicants raised in the O.A can be considered on receipt of clarifications from the Ministry. If there is an anomaly, it is liable to be rectified as admitted in the reply affidavit. If there is an anomaly, merely because of want of approval from the higher authority, there is no reason why the applicants cannot approach the Court of law. We find that the applicants are entitled to be paid on the same grade in the same pay band scale as that of the juniors with effect from 04.05.2010, the date on which they revised the pay of the applicants. In this connection what has been done by the department earlier by fixing the pay of the applicants at Rs.6460/- was correctly done and it has been held many a times that audit objection is only an opinion of the Audit party and do not reflect any adjudicatory decision. In these circumstances, we allow this O.A and declare that the applicants are entitled to be fixed in the same scale of pay as that of their juniors. Even though the applicant was paid such amount at Rs.6460/-, the same was stopped with effect from 04.05.2010. Accordingly, we direct that the applicants be paid the same scale as that of their juniors with effect from 04.05.2010 and all arrears as on date shall be calculated and paid, at any rate within a period of four months. O.A is allowed as above.

(Dated, this the 14th day of November, 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE PR RAMAN
JUDICIAL MEMBER