

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.732/07, O.A.568/07, O.A.331/07,
O.A.692/07 & O.A.30/08

Thursday this the 6th day of November 2008

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

O.A.No.732/07

Dr.P.Sayed Koya,
S/o.K.Attakoya,
Residing at Pattakal House,
Androth Island, Lakshadweep.
Working as Chief Medical Officer,
Androth Island, U.T of Lakshadweep.

...Applicant

(By Advocate Mr.T.M.Kochunni)

Versus

1. Union of India represented by the Secretary to Government of India,
Ministry of Health & Family Welfare,
Department of Health, Nirman Bhavan, New Delhi.
2. The Director of Medical & Health Services,
Lakshadweep Administration, Kavaratti.
3. Under Secretary to Government of India,
Ministry of Finance, Department of Expenditure,
New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC [R1&3] &
Mr.S.Radhakrishnan [R2])

O.A.No.568/07

1. A.Cheriya Koya,
S/o.Aboosala K.,
Seaconny, L.H.W.Department,
Kadamath, Lakshadweep.
2. C.Abdulla,
S/o.P.C.Alikutty,
Crane Operator,
Lakshadweep Harbour Works,
Kadamath, U.T of Lakshadweep.

3. K.C.Atta Koya,
S/o.Ahamed,
Seaconny,
L.H.W Kadamath, Lakshadweep.
4. M.G.Muhammed Ali,
S/o.K.P.Abdulla Koya Hajee,
Junior Engineer, L.H.W.,
Kadamath, Lakshadweep.
5. K.P.Sayed Ali,
S/o.Ismail Hajee,
Work Maistry, L.H.W.,
Kadamath, Lakshadweep.
6. K.Ahammed,
S/o.Kasim,
Mason Gr.I.,
L.H.W.Kadamath, Lakshadweep.
7. Puthiyara Hamza,
S/o.Muhammed,
Seaconny,
L.H.W.Kadamath, Lakshadweep.
8. K.I.Musthafa,
S/o.B.C.Kunhikoya,
Mechanic Gr.II,
L.H.W.Kadamath, Lakshadweep.
9. C.P.Pookoya,
S/o.N.P.Ahammed,
Senior Driver-cum-Seaconny,
L.H.W.Kadamath, Lakshadweep.
10. T.Moosa,
S/o.Abdul Kadher,
Carpenter Gr.I.,
L.H.W.Kadamath, Lakshadweep.
11. T.Kunhi Seethi,
S/o.Muhammed,
Operator Gr.II,
L.H.W.Kadamath, Lakshadweep.
12. B.Kunhi,
S/o.Sayed,
Blacksmith,
L.H.W.Kadamath, Lakshadweep.

13. P.M.Babujan,
S/o.Aboo,
Senior Foreman,
L.H.W.Department,
Kadamath, Lakshadweep.
14. Koormal Abdulla,
S/o.Ahammed,
Operator Gr.II,
L.H.W.Kadamath, Lakshadweep.
15. K.Koyakidavu,
S/o.Yousuf,
Seacunny,
L.H.W. Kadamath, Lakshadweep.

...Applicants

(By Advocate Mr.T.M.Kochunni)

Versus

1. Union of India represented by the Secretary,
Ministry of Shipping, Road Transport & Highways,
Department of Shipping, New Delhi.
2. Under Secretary to Government of India,
Ministry of Finance,
Department of Expenditure, New Delhi.
3. The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works,
Port Blair.
4. The Deputy Chief Engineer,
Lakshadweep Harbour Works,
Kavarathi.
5. The Executive Engineer,
Lakshadweep Harbour Works, Amini.
6. The Executive Engineer,
Lakshadweep Harbour Works, Kavaratti.

...Respondents

(By Advocate Mrs.K.Girija,ACGSC)

O.A.No.331/07

1. K.P.Kassali,
S/o.Attakoya,
Chamayanthapura, Kavarathi,
Work Maistry, Lakshadweep Harbour Works,
Kavarathi.

2. K.P.Kasim,
S/o.Aboobacker,
Naliyampura, Kavarathi.
Operator Gr.I.,
Lakshadweep Harbour Works, Kavarathi.

...Applicants

(By Advocate Mr.T.M.Kochunni)

Versus

1. Union of India represented by the Secretary,
Ministry of Shipping, New Delhi.
2. Under Secretary to Government of India,
Ministry of Finance,
Department of Expenditure, New Delhi.
3. The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works,
Port Blair 74401.
4. The Deputy Chief Engineer,
Lakshadweep Harbour Works,
Kavarathi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.No.692/07

1. K.P.Maja,
S/o.Koyamma K.P.,
Kunnumpura House.
Seacunny, Lakshadweep Harbour Works,
Kavarathi.
2. C.Abdul Kader,
S/o.Ali Muhammed,
Chammayam House,
Kadamath Island.
Seacunny (Retired).
3. P.P.Aboosala,
S/o.Yousuf,
Purathupura House, Kadamath.
Operator Gr.II., (Retired), L.H.W.
4. P.C.Aboosala,
S/o.Ahammed,
Pathyachata House, Kadamath.
Driver Gr.I., (Retired), L.H.W.

5. T.P.Sayed,
S/o.Ahamed,
Thiruvathapura House, Kadamath.
Crane Operator (Retired), L.H.W.
6. P.K.Aboosala,
S/o.Hamza,
Puthiyakotta House, Kadamath.
Blacksmith Gr.I (Retired), L.H.W.
7. K.P.Muhammed,
S/o.Abdul Kader,
Kannipura House, Kadamath.
Driver Gr.I., (Retired), L.H.W.
8. P.C.Kunhi Koya,
S/o.Andari,
Parkiyachala House, Kadamath.
Watchman (Retired), L.H.W.
9. M.C.Aboobacker,
S/o.Ahammed,
Mullachetta House, Kadamath.
Foreman (Retired), L.H.W.
10. T.Migdad,
S/o.Kidave,
Thoppilakom House, Kadamath.
Foreman (Retired), L.H.W.
11. K.C.Sayed Kunhi,
S/o.Abdul Kader,
Kadachery House, Kadamath.
Greaser (Retired), L.H.W.
12. T.P.Shaik Koya,
S/o.Ahamed,
Lower Division Clerk,
Lakshadweep Harbour Works, Kadamath.
13. K.C.Seethi,
S/o.Yousuf,
Operator Gr.II,
Lakshadweep Harbour Works, Kadamath.
14. A.Sayed,
S/o.Hassainar,
Seacunny, L.H.W., Kadamath.
15. T.T.Abdulla Koya,
S/o.Kunhikoya,
Marine Engine Driver,
L.H.W. Kadamath.

16. K.Mujeeb Rahman,
S/o.Syed Muhamed,
Watchman,
Lakshadweep Harbour Works, Kadamath:

...Applicants

(By Advocate Mr.T.M.Kochunni)

Versus

1. Union of India represented by the Secretary, Ministry of Shipping, Road Transport & Highways, Department of Shipping; New Delhi.
2. Under Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi.
3. The Chief Engineer & Administrator, Andaman Lakshadweep Harbour Works, Port Blair.
4. The Deputy Chief Engineer, Lakshadweep Harbour Works, Kavarathi.
5. The Executive Engineer, Lakshadweep Harbour Works, Amini.
6. The Executive Engineer, Lakshadweep Harbour Works, Kavaratti.

...Respondents

(By Advocate Mrs.Mini R Menon,ACGSC)

O.A.No.30/08

1. Assainar P.,
S/o.Muhamed,
Pandaram House, Amini Island.
Working as Inspector of Works (Electrical),
Lakshadweep Harbour Works, Amini.
2. N.P.Hyder Ali,
S/o.Neelathapura,
Neelathapura House, Kavarathi.
Working as Junior Engineer (Mech.)
Lakshadweep Harbour Works, Kavarathi.

...Applicants

(By Advocate Mr.T.M.Kochunni)

Versus

1. Union of India represented by the Secretary, Ministry of Shipping, Road Transport & Highways, Department of Shipping, New Delhi.

2. Under Secretary to Government of India,
Ministry of Finance,
Department of Expenditure, New Delhi.
3. The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works,
Port Blair.
4. The Deputy Chief Engineer,
Lakshadweep Harbour Works,
Kavarathi.

...Respondents

(By Advocate Mrs.K.Girija,ACGSC)

These applications having been heard on 6th November 2008 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The issue raised in all these O.As are similar and, therefore, they are disposed of by this common order.

2. The applicants in all these O.As are working in Lakshadweep. The applicant in O.A.732/07 – Dr.P.Sayed Koya is an employee of the Lakshadweep Administration and the other applicants are employees of Lakshadweep Harbour Works Department. They were the beneficiaries of Island Special Duty Allowance in terms of the Ministry of Finance, Department of Expenditure Office Memorandum No.20014/3/83-E-IV dated 30.3.1984 (Annexure A-1 in O.A.732/07). According to them, the said allowance was stopped in terms of the Ministry of Finance, Department of Expenditure O.M.No.1152(2)/2000.E.II-B dated 31.7.2000 (Annexure A-2) which is admittedly a fake one as per Department of Expenditure itself and its genesis is under investigation vide Annexure A-3 U.O.No.11(2)/E.II(B)/2000 dated 9.5.2001. The said Annexure A-2 O.M reads as under :-

No.1152(2)/2000.E.II-B
Government of India,
Ministry of Finance,
Department of Expenditure.

New Delhi, the 31st July 2000

OFFICE MEMORANDUM

Sub : Special (Duty) Allowance/Island Special Allowance for civilian employees of Central Govt. serving in the States of North Eastern Region and Union Territories of Andaman, Nicobar and Lakshadweep Islands regarding.

The undersigned is directed to refer to this Department's O.M.No.11(3)/95-E, II (B) dated 12.1.1996 read with O.M.No.11(2)/97-E, II(B) dated 22.7.1998 on the subject mentioned above.

2. Government of India has clarified time and again that a mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India did not make him eligible for the grant of SDA/ISA.

3. It has been brought to the notice of this Department that the local Tribal doctors holding the posts of Medical Officers, Senior Medical Officers, Chief Medical Officers and Specialists belong to Central Health Service/ Railway Service/Assam Rifles etc. working in North Eastern States and Union Territories of Andaman Nicobar and Lakshadweep Islands are drawing SDA/ISA with their pay similar to those officers who draw this allowance virtue of their transfer from outside the region to this region on tenure posting. A hard area allowance like SDA/ISA should not be granted to those officers of all India Service when they happened to be posted either in their native region or to a region by their own request.

4. In view of the above, the amount already paid on account of SDA/ISA to ineligible officers after 20.9.1994 to be recovered immediately.

5. All the States and Union Territories concerned are requested to keep the above instructions in view for strict compliance.

The applicants have, therefore, prayed in these O.As that they should be declared entitled for the Island Special Duty Allowance from the respective dates of their posting in the island. They have also sought a direction to quash the aforesaid O.M dated 31.7.2000 as illegal.

3. As the counsel for the applicant was not available at the time of hearing, I have perused the entire pleadings on record. I have also extensively heard Shri.T.P.M.Ibrahim Khan, Shri.S.Radhakrishnan, Smt.K.Girija and Smt.P.Shyni learned counsel for the respondents in these cases. It is not necessary to go into the facts in individual cases as the common issue raised in them has already been decided by this Tribunal at least in three of the Original Applications and the orders in them have been produced by the respondents. The applicant in O.A.732/07 himself was a co-applicant in O.A.1140/00 which was decided on 25.10.2000 (Annexure R-2 (a) in O.A.732/07). One of the prayer in the said O.A was to declare that the applicants therein were entitled to the Special Duty Allowance while working in the Island. Their contentions in the said O.A was also that they were being paid the Special Duty Allowance in the light of the O.M No.20014/3/83-E-IV dated 14.12.1983 referred to in Annexure A-1 O.M dated 30.3.1984. After considering the issue in detail, this Tribunal held that the aforesaid O.M dated 14.12.1983 was applicable only to persons who do not belong to that particular region and the applicants therein being a native of Lakshadweep and posted in Lakshadweep itself, they are not entitled for any Special Duty Allowance. The operative part of the said order is reproduced as under :-

"7. From the above said ruling it is clear that 1983 Office Memorandum is applicable only to persons who do not belong to that particular region. Since the applicants admittedly belong to Lakshadweep and they are posted at Lakshadweep, except the 2nd applicant who is working at Cochin the Office Memorandum of the year 1983 read in the light of the said ruling cannot be of any help to the applicants.

8. One of the prayers is to declare that the applicants are entitled to SDA while working in the North Eastern Region. From the pleadings it is very clear that applicants are not working in the North Eastern Region and have not worked in the North Eastern Region at any point of time.

9. I do not find any ground, much less any good ground, to admit the Original Application.

10. Accordingly, the Original Application is dismissed."

4. The aforesaid order was challenged before the Hon'ble High Court vide O.P.No.30957/00 but the same was later on dismissed as withdrawn vide judgment dated 4.11.2003 (Annexure R-2(b) in O.A.732/07).

5. Again the same issue was considered by this Tribunal in O.A.1282/00 and vide order dated 20.12.2001 (Annexure R-2 in O.A.568/07) dismissed the claim of the applicants based on the following judgments of the Hon'ble Apex Court (1) Chief General Manager Telecom Vs. S Rajeendar C.H. Bhattacharjee [1995 (1) JT (SC) 440] (2) Union of India Vs. S.Vijayakumar [1994 (6) JT SC 443] (3) Union of India Vs. Executive Officers Association [AIR 1995 SC 1746]. The operative part of the said order of this Tribunal is reproduced as under :-

"8. I have perused the case records and have considered the various contentions for and against the prayers in the application. The Island Special (Duty) Allowance is an incentive on a par with the Special (Duty) Allowance given to officers having all India transfer liability posted to North Eastern Region. The scope and meaning of all India transfer liability has been explained and the necessary guiding principles in this regard laid down by the Apex Court in Union of India Vs. S.Vijayakumar, 1994 Supp.(3) SCC, 649. It has been held that in the light of various O.Ms Special (Duty) Allowance was meant to attract persons from outside the North Eastern Region to work in that region because of inaccessibility and difficult terrain. It is intended to attract and retain service of competent officers in North East Region. According to the Apex Court, the 1987 OM makes it clear that Special (Duty) Allowance would not become payable merely because of the clause in the appointment order relating to all India transfer liability. Denial of Special (Duty) Allowance in such circumstance would not involve any unlawful discrimination, it has been held by the Apex Court. The same principle has been reiterated in Union of India Vs. Executive Officers Association Group C's case (AIR 1995 SC, 1746).

From the various Memoranda which have been analysed threadbare by the Apex Court, it would obtain that each and every officer transferred and posted to North East Region/Andaman Nicobar Islands/Lakshadweep Island merely by virtue of his all India transfer liability would not necessarily get the benefit of incentive allowance. The idea is to attract and retain competent officers in the difficult and arduous geographical and linguistic regions. Naturally, persons from regions outside the specific region alone need be allowed such incentive as it is they who are exposed to the geographical, linguistic, cultural and social hardships. Persons belonging to North Eastern Region when posted to the same region are not put to the same stress and strain and physical hardship that an outsider would experience when he is posted to that region. Similarly, when an inhabitant of Lakshadweep Island is posted to one or the other Islands, no such hardship can be presumed so as to justify any compensation or incentive in order to make him stay in his own home territory. In the instant case, therefore, any Central Government employee from outside the Union Territory of Lakshadweep having all India transfer liability when posted to any of the Islands of Lakshadweep should be eligible for the Island Special Duty Allowance. Any person belonging to a particular Island forming part of the Union Territory of Lakshadweep, when posted to his own home island or to another island under the Union Territory of Lakshadweep, would not be legally entitled to claim the said incentive allowance. The waiver of recovery of allowances given upto 20.9.94 being the date of the landmark judgment of the Apex Court in the case of Union of India Vs. S.Vijayakumar and the decision to recover the allowances given thereafter and to stop any such allowance thereafter are perfectly in order.

9. In view of the above discussion, I dispose of this application in the following manner :-

- (a) The first applicant Shri R.Ramachandra Panicker being a person from the mainland is entitled to Island Special (Duty) Allowance for the period during which he performed duties of posting to Lakshadweep. The impugned orders to the extent those seek to deny the said right to him are set aside. The applicant shall get all consequential benefits.
- (b) The third applicant, Shri P.Kunhiseethi, who hails from Lakshadweep and posted to Lakshadweep, is not entitled to Island Special Duty Allowance as per the existing instructions as well as the rulings of the Apex Court on the subject. The impugned orders in so far as those relate to the third respondent Shri P.Kunhiseethi warrant no interference.
- (c) The fourth applicant, Shri K.V.Chakkappan who hails from the mainland, is entitled to Island Special Duty Allowance for the period during which he performed duties on posting to

Lakshadweep. The impugned orders to the extent those seek to deny the said right to him are set aside. The applicant shall get all consequential benefits.

(d) The second applicant in the O.A being the Lakshadweep Harbour Works Employees Union represented by its General Secretary Shri.N.Ramachandra Panicker, cannot be granted any of the reliefs sought except to the extent held to be admissible in the foregoing paragraphs. Accordingly, I decline to make the declaration sought for.

(e) The respondents are directed to implement the directions at (a) and (c), above as expeditiously as possible and in any case, not later than three months from the date of receipt of copy of this order.

6. The aforesaid order of this Tribunal was challenged by one of the applicant in the said O.A, Shri.Kunhi Seethi, before the Hon'ble High Court in O.P.3805/02 (s). The Hon'ble High Court after hearing the parties and perusing the records held that the Tribunal was justified in its finding that Island Special (Duty) Allowance can be claimed only by Central Government Civilian Employees from outside the Union Territory of Lakshadweep having All India transfer liability, when posted to any of the Islands of Lakshadweep. The operative part of the said judgment is reproduced as under :-

"6. On hearing the learned counsel for the petitioner and on perusing the records, this Court is of the view that the Tribunal is justified in its finding that Island Special (Duty) Allowance can be claimed only by Central Government Civilian Employees from outside the Union Territory of Lakshadweep having all India transfer liability, when posted to any of the islands of Lakshadweep. This view is fortified by the judgments of the Apex Court in the decisions reported in Union of India Vs. S.Vijayakumar, 1994 Supp. (3) SCC 649 and Chief General Manager (Telecom) N.E. Telecom Circle Vs. Rajendra Ch. Bhattacharjee JT 1995 (1) SC 440. The Tribunal rightly held that Special (Duty) Allowance is granted to the employees posted in certain regions because they are exposed to geographical, linguistic, cultural and social hardships. The Tribunal was also right in holding that persons belonging to Union Territory of Lakshadweep when posted in Lakshadweep itself, are not put to the same stress, strain and physical hardship that an outsider would experience when he

is posted to Lakshadweep. The petitioner, a native of Androth Island has been promoted to the post of Crane Operator and posted at Kalpeni. The contention of the petitioner that the classification is discriminatory and in violation of Articles 14 and 16 has no legal basis. Ext. P13 relied on by the petitioner is not applicable to the case on hand as that is made applicable to the employees of the Home Department and grant of that allowance stands on a different footing.

7. This Court is of the view that the finding entered into and the decision arrived at by the Tribunal warrants no interference by this Court in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

The O.P is accordingly dismissed."

7. The Lakshadweep Harbour Works Employees Union, the second applicant in O.A.1282/00 (supra) has also challenged the aforesaid order of this Tribunal in a separate proceedings before the Hon'ble High Court of Kerala vide O.P.No.10475/02 (s) and the same was also dismissed on the same line. The operative part of the said judgment is reproduced as under :-

"4. On considering the arguments of the learned counsel appearing for the petitioner and on perusing the materials placed on record, this Court is of the view that the order of the Tribunal is not vitiated by any illegality. There are valid grounds and sufficient justification for the conclusion of the Tribunal that Island Special (Duty) Allowance can be claimed only by the Central Government Civilian employees who come from outside the Union Territory of Lakshadweep and who are posted at any Island coming under the Lakshadweep administration. This finding of the Tribunal is fortified by the judgment of the Apex Court in the decision reported in Union of India Vs. S.Vijayakumar, 1994 Suppl. (3) SCC 649 and in Chief General Manager (Telecom) N.E. Telecom Circle Vs. Rajendra Ch. Bhattacharjee, JT 1995 (1) SC 440. The Tribunal rightly held that the Special (Duty) Allowance is granted to the employees posted in certain regions on considering the fact that they are exposed to geographical, linguistic, cultural and social hardships. The Tribunal was right in holding that the persons belonging to the Union Territory of Lakshadweep itself are not put to the same stress, strain and physical hardship experienced by an outsider coming from the mainland when he is posted to Lakshadweep. The classification of the employee on the basis whether they come from the mainland or not is not discriminatory or violative of Articles 14 and 16 of the Constitution of India.

5. Hence, the Original Petition fails and it stands dismissed."

8. As mentioned earlier, the applicant in O.A.732/07 was an applicant in the earlier proceedings vide O.A.1140/00 before this Tribunal and he had already secured an order of dismissal which was also upheld by the Hon'ble High Court of Kerala. He has filed the present case without disclosing the fact that he had approached this Tribunal and Hon'ble High Court earlier in the matter. Clearly this is a case of res judicata. The other applicants in these cases are also similarly placed. Once this Tribunal, the Hon'ble High Court and the Hon'ble Apex Court have held that the Special (Duty) Allowance is admissible only to Central Government Civilian employees from outside the Union Territory of Lakshadweep having All India Transfer liability while posted in Lakshadweep, there is no question of agitating the very issue again and again. Therefore, the genuineness or otherwise of the Annexure A-2 Office Memorandum dated 31.7.2000 is immaterial in deciding whether the applicants in these Original Applications are entitled for the Island Special Duty Allowance or not. In view of the above facts and circumstances of the case, I consider that these O.As are devoid of any merit and, therefore, dismiss them. There shall be no order as to costs.

(Dated this the 6th day of November 2008)

GEORGE PARACKEN
JUDICIAL MEMBER