

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.349/2003

Friday this the 8th day of December, 2006

CORAM :

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

1. **Keepat Koya**
Statistical Officer
Directorate of Fisheries, Agathi Island
Lakshadweep
Residing at : Agathi, Lakshadweep
2. **Kavallai Koya**
Junior Employment Officer
District Employment Exchange
Kavarathi Island, Lakshadweep
Residing at : Kavarathi
3. **A.Koyamma Koya**
Statistical Investigator
Medical Directorate
Kavarathi Island, Lakshadweep
Residing at : Kavarathi
4. **P.P.Atta**
Research Assistant
Directorate of Education
Kavarathi Isalnd, Lakshadweep
Residing at : Kavarathi
5. **B.Kasmi Koya**
Statistical Assistant
Employment Exchange
Kavarathi, Lakshadweep
Residing at : Kavarathi
6. **P.P.Koya**
Statistical Assistant
District Rural Development Agency
Lakshadweep
Residing at : Kavarathi

7. P.P.Pookoya
Statistical Assistant
Directorate of Education
Lakshadweep
Residing at : Kavarathi

8. P.Kidave
Statistical Assistant
Directorate of Education
Lakshadweep
Residing at : Kavarathi

9. C.N.Kuttiammed
Statistical Assistant
Public Works Department, Lakshadweep
Residing at : Kavarathi

10. BKC Muthukoya
Statistical Assistant
Department of Planning and Statistics
Secretariat, Kavarathi, Lakshadweep
Residing at : Kavarathi

11. P.Abdul Samad
Statistical Assistant
Directorate of Animal Husband
Lakshadweep, Residing at : Kavarathi

12. K.Mohammed Nazar
Statistical Assistant
Directorate of Industries, Lakshadweep
Residing at : Kavarathi

13. A.I.Mohammed Kasim
Statistical Assistant
Department of Electricity, Lakshadweep
Residing at : Kavarathi

14. H.B.Mohammed Saleem
Statistical Assistant
Directorate of Agriculture, Lakshadweep
Residing at : Kavarathi

15. P.Abdul Jabbar
Statistical Assistant
Integrated Child Development Scheme
Lakshadweep, Residing at : Kavarathi : Applicants

(By Advocate Mr. TC Govindaswamy)

Versus

1. The Administrator Lakshadweep Administration
Kavarathi, Lakshadweep
2. The Collector-cum-Development Commissioner & Secretary
(Planning), Administration of the Union Territory of
Lakshadweep, Kavarathi
- 3.. The Secretary, Department of Statistics
Ministry of Planning and Programme Implementation
New Delhi
4. Union of India represented by the Secretary
to Government of India
Ministry of Home Affairs, New Delhi
5. Secretary to Government of India
Department of Expenditure
Ministry of Finance, New Delhi : Respondents

[By Advocate Mr. S.Radhakrishnan (R1&2)
By Advocate Shri TPM Ibrahim Khan, SCGSC (R3-5)]

The application having been heard on 03.11.2006, the Tribunal
on 8.12.2006 delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This application is filed by fifteen employees of the Lakshadweep Administration, aggrieved by the orders of the respondents on re-fixation of pay in pursuance of the fifth pay commission recommendations .

2. According to the applicants, they are working as Statistical Officers in the scale Rs.6,500-10,500 (applicants 1 to 4) and as Statistical Assistants in the scale Rs.5000-8000(the remaining applicants). They all belong to the



Department of Planning and Statistics of the Union Territory of Lakshadweep. They claim to discharge duties and responsibilities identical to their counterparts in the Ministries and Departments of the Government of India and they were treated on par with the latter, in the matter of scale of pay. The Government of India in the Ministry of Planning and Programme Implementation, Department of Statistics issued O.M No.11025/7/97-ISS-B order dated 30.6.98 (A-2)(p21-23). The subject matter of that OM was, "*Implementation of the recommendations of the Vth Central Pay Commission with regard to grant of upgraded scales of pay to the holders of the Statistical Function Posts(Group B and Group C).*" A reference was made in para 4 of the above O.M that the Implementation Cell of Ministry of Finance (Department of Expenditure) had agreed for the grant of upgraded scale of pay with effect from 1.1.96 to certain Group B and C Statistical Function Posts in different Ministries/Departments, [emphasis supplied] subject to the condition that the administrative Ministries/Department of these posts agreed in principle, to the recommended posts. Such posts included Statistical Investigator/Senior Statistical Investigators/Statistical Assistants etc. On further consideration of the matter, an order was passed, the operative portion of which reads as follows:

" 5.....and it has been decided to grant the upgraded scales of pay in respect of the categories of posts stated in paragraph 4 above with effect from 1.1.96. The Ministries/Department are accordingly requested to take necessary action to upgrade the scales of pay of the various categories of Statistical Post Holders as mentioned above with effect from 1.1.96...." . In pursuance of the said order, the 1st respondent, the Administrator, Lakshadweep Administration, passed A-3



order F.No.46/22/97-Plg dated 19.12.98(p24). In that order, referring to the A-2 order, the Statistical Assistants and Statistical officer etc like the applicants were granted revised/upgraded scales of pay with effect from 1.1.96. Subsequently, the second respondent issued A-1 impugned order dated 9.4.2003(pp17-20), with the approval of the 1st respondent(p17). Tracing the history of upgradation of the pay scale, it was mentioned in the said order that

- the Department of Statistics had requested vide O.M No.11025/7/07-ISS-B dated 14.10.97, all the Ministries and Departments of Government of India not to allow (emphasis supplied)upgraded scales till a decision taken on the formation of Subordinate Statistical Service and, till then, normal replacement scale alone be given,
- in a subsequent O.M of even number dated 30.6.98(A2), the Ministry reconsidered the matter in view of the observations/advice received from Implementation Cell of the Department of Expenditure and decided to grant the upgraded scales of pay with respect of Statistical Function posts in the Ministries and Departments of Government of India(emphasis supplied) with retrospective effect from 1.1.96, subject to necessary changes in the recruitment rules,
- neither of these two O.Ms were endorsed to the U.T. Administration,
- as for the Statistical Function posts in the Lakshadweep Administration had the requisite educational qualifications as recommended by the V th CPC and the recommendations of the Anomaly Committee were there in this regard, the A-3 order were issued,
- later on, it transpired that the Ministry of Statistics and Programme



Implementation informed that the A-2 O.M was meant for all Ministries/Departments of the Central Government and the recommendation of the Vth Pay Commission to constitute the subordinate Statistical Service was for various Group B and C statistical function posts located in different Ministries/Departments of the Central Government and it was not concerned with the Statistical Staff of the U.Ts,

- in view of the fact there were separate recommendations for the U.Ts including Lakshadweep, the U.T. Administration might take up the matter of upgradation of scales further with the Ministry of Finance through the Ministry of Home Affairs,
- despite an exchange of correspondence between the Ministry of Home Affairs and Ministry of Programme Implementation as to who was to deal with the subject of Statistical Officers, the latter Ministry informed vide letter no 11025/1/2001-SSS dated 29-10-2001 that they were not in agreement with the action of granting upgraded pay scales to the statistical function posts without consultation with the Implementation Cell, Department of Expenditure,
- Ministry reiterated the said decision in a subsequent letter of even number dated 8-5-2002,
- a specific point made in that letter was that chapter 104 of the CPC report dealing with the pay structure of staff of all the UT-s did not provide for any upgraded pay scales to the statistical function posts, and hence it refused to ratify the action of the Lakshadweep administration in having



granted the upgraded scales(vide A3)

As a consequence, in view of the Ministry of Programme Implementation, not supporting the action taken by the Administration in granting upgraded pay scales, of absence of any recommendation from the Vth CPC to grant upgraded pay scales to Statistical Function Posts in Lakshadweep and of the Ministry of Finance's direction vide letter No.7(3)/E111(A)/2000 dated 22.3.2000 to keep in abeyance the orders of upgradation of pay scales, it was ordered in A1 that A-3 orders were kept in abeyance with immediate effect and the controlling offices of the above posts were directed to draw the salary for the employees in normal replacement scale only. Aggrieved by the A-1 order the applicants have approached this Tribunal.

3. The main relief sought for is the quashing of A-1 order and granting consequential benefits as if the said orders had not been issued at all.

4. The respondents resist the application. The points made by them are as follows:

i) A-1 order is perfectly in order.

ii) A-2 order is applicable only to different Ministries/Departments of Central Government and not to the Union Territory of Lakshadweep, a position confirmed by the Ministry of Planning and Programme Implementation confirming thrice vide Annexures R-1, R-2 and R-3 that the A-2 O.M was not applicable to Lakshadweep - a position corroborated from the contents of the said Annexures.

iii) A-3 has been issued on the basis of the A-2.

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is written over a diagonal line.

- iv) When A2 was not applicable to the applicants and their like, there was an error in having issued A3 order ; correction of such an error is what is done by the impugned order
- v) Till date, the Ministries concerned have not given any consent for the upgradation sought for by the applicants.
- vi) No representation for reconsidering the A-1 order has been made by the applicants, in any case.
- vii) Besides, the Union Territory of Lakshadweep was not a recipient of A-2 O.M, going by the mailing list attached to the said O.M.
- viii) No recommendation was made in respect of the Statistical Function Posts in the Lakshadweep chapter of VCPC report.

5. Heard the parties and perused the documents. A perusal of the impugned order showed that references to many communications had been made therein, but these were not part of the material papers. For a proper adjudication of this case, copies of the following references, were found essential:

- (a) O.M. No. 11025/7/07-ISS-B dated 14.10.97 (referred to in Annex. A/1);
- (b) F. No. 23/03/2000-Plg(Estt) dated 23.10.2000 (referred to at Sl. No.4 of reference in Annexure A/1);
- (c) F.No. 23/3/2000-Plg. Dated 23.11.2000 (referred to as Ref. No. 5 of Annexure A/1);
- (d) O.M. No. U-14015/4/2001-ANL dated 25.7.2001 (referred to in the body of Annexure A/1);
- (e) Letter No. Letter No. 11025/1/2001-SSS dated 3.8.2001 (referred to in the body of Annexure A/1);



- (f) Letter dated 23.8.2001 of the Union Territory of Lakshadweep (referred to in the body of Annexure A/1);
- (g) Letter No. 11025/1/2001/SSS dated 29.10.2001 (referred to in the body of Annexure A/1);
- (h) Letter No. U-14015/2/2002-ANL dated 11.2.02 of the Ministry of Home Affairs reiterating its decision contained in O.M. dated 25.7.2001);
- (i) D.O. letter dated 19.3.02 of the Administration of Union Territory of Lakshadweep addressed to the Secretary, Ministry of Statistics and Programme Implementation;
- (j) Letter No. 11025/1/2001-SSS dated 8.5.02 of Ministry of Statistics and Programme Implementation.

6. Apart from the documents mentioned above, certain clarifications, too, were required as under:-

- (i) In so far as the subject of this O.A. is concerned (i.e. upward revision of pay scale of Statistical Assistants and Statistical Investigators etc.), which are the Ministry competent to take a decision; and in case of difference of opinion the deciding authority;
- (ii) Whether inclusion of such Statistical Assistants and Statistical Investigators etc. in the feeder cadre of Subordinate Statistical Service (SSS, for short) is a must for higher pay scale;
- (iii) If so, whether the counterparts of the applicants in other Union Territories are the beneficiaries of higher pay scale and also enjoying as the feeder cadre of SSS;
- (iv) Whether the Statistical Assistants and Statistical Investigators etc. of Union Territory of Lakshadweep were treated at par with their counterparts in the other Government Organisation in the past;
- (v) The extent of the acceptance by the Government of Vth Central Pay Commission's recommendations in respect of paragraph paragraph 104.4 ;
- (vi) Whether the Ministry of Finance to whom the matter is stated to have been referred is in a position to take a final decision in the matter.



7. The learned counsel for the Respondents were accordingly requested to file these documents and to get clarifications. The documents were accordingly filed and the following clarifications furnished :

Regarding the query no (i) it was clarified that the recommendation of the Vth CPC contained in para 81.17, the Ministry of Statistics & Programme Implementation had issued an OM No.11025/7/97-ISS-B dated 30.6.1998 for upgradation of the pay scales of all statistical function posts spread over various Ministries/Departments of the Central Government(R-3(A)). The employees of the Union Territory have got separate recommendation under the Chapter 104 of the Vth CPC. The implementation cell of the Ministry of Finance is competent to decide about the revised pay scales of Statistical employees of Union Territories as per the recommendations contained in Chapter 104.

8. With regard to the second query, the Hon. High Court of Delhi as per the judgment dated 6.7.99 in C.W.P.No.144 of 1999, citing Department of Expenditure that "the Government had no doubt in its mind that the 5th Central Pay Commission had not laid down any precondition for upgrading the pay scale of Senior Investigators". The appeal filed against the said judgment was also dismissed vide order dated 31.3.2004.

9. In reply to queries (iii) the Departments of Union Territories are not the participating organization in Subordinate Statistical Service(SSS). The Union Territory, Ministry of Home Affairs is concerned with the revision of pay

A handwritten signature in black ink, appearing to read 'A' or 'Anil', is positioned at the bottom left of the page.

scales/upgradation of employees of Union Territories. The Union Territory Division, Ministry of Home Affairs is competent to take a decision in the matter and the Ministry of Finance is also competent to take a decision in the matter. Copy of letter F.No.46/22/97-Plg dated 22.12.99 issued by the Union Territory of Lakshadweep (Planning & Statistics), Kavaratti is at R-2. The other queries were not furnished with any clarifications

10. The first question to be resolved is as what is scope for judicial intervention in respect of claims made by the applicants about their perceived equivalence with similar functionaries. A similar issue was considered by the Hon Apex Court in State of Haryana v. Haryana Civil Secretariat Personal Staff Association(2002) 6 SCC 72. It was observed therein:

“..Such comparison by a section of employees of the State Government with employees of the Central Government based merely on designation of the posts was misconceived.....”

“9. This Court in the case of Secy., Finance Deptt. v. W.B. Registration Service Assn. dealing with the question of equation of posts and equation of salaries of Government employees, made the following observations: (SCC pp. 165-67, para 12)

“12. We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like Pay Commissions, etc. But that is not to say that the court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Court must, however, realize that job evaluation is both a difficult and time



consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluation performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirementsThere can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and court's interference is absolutely necessary to undo the injustice."

"10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not true to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is written over a diagonal line.

irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same."

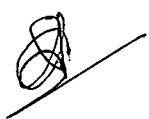
It is amply clear from the above pronouncements that (a) the question relating to job evaluation and recommendations is the job of the expert bodies like the Pay Commission and (b) the decisions thereon is the prerogative of the executive of the Government concerned.

11 The next question arises as to what are the recommendations of the VCPC with relation to the applicants and the like. The applicants submit that they are Central Government employees, discharge identical duties and responsibilities, comparable to the Statistical Assistants/Statistical officers of the other Ministries /Departments of Government of India and have been treated on par with them. They claim that they are entitled to be treated likewise. First, no evidence is led to sustain these assertions and, secondly, even otherwise, such assertions are of no validity in view of the ultimate recommendations of the V CPC, and especially in view of the rulings of the Hon. Supreme Court quoted above. Another point made by them is that their entitlement is evident from paras 104.3 and 104.4 of the V CPC(Annexure A-5). A perusal of the said Annexure does not give any indication about such an aspect. The counter

A handwritten signature in black ink, appearing to read 'B', is located at the bottom left of the page, below the text and above the page number.

position taken by the respondents is also that the recommendations in Annexure A-5 alone are applicable to the applicants. They have also stated that the Vth CPC did visit Lakshadweep and examined the questions relating, inter-alia, to the pay structure for Statistical Function Posts there and their recommendations did not include any upgradation of pay scales, if only because they were never envisaged as part of the SSS. This point of visit is contested by the applicants only ambiguously. In fact, the applicants admit in their rejoinder that there is no recommendation in Chapter 104 of the CPC report (A-5). According to the applicants, the Ministry has reviewed the situation by para 6 of A-2. A perusal of the said paragraph reveals that such review was confined only to the question of higher replacement scale to the posts in Director General of Employment and Training and Labour Bureau under the Ministry of Labour and to no other posts. This point of non-recommendation in Chapter 104 has been acknowledged by the applicants for a second time in the rejoinder itself. The argument made is that just because there is no recommendation in the said chapter, the upgraded scales in A2 are applicable. This is not an acceptable argument. The upgradation of pay scales in respect of Statistical function officers is given vide paragraph 81.17 of the V CPC is reproduced below:-

"Subordinate Indian Statistical Service. A large number of posts of Junior and Senior Statistical Investigators in the scale of RS.1400-2300 and Rs.1640-2900 are spread over different Ministries and offices of the Government of India. We observe that some of these posts are isolated and the chances of promotions for the incumbent in such cases are very bleak. We recommend that all such posts with statistical functions be constituted into a subordinate statistical service and all recruitment to the ISS Cadre Controlling Authority. All posts of Junior Statistical Investigator

A handwritten signature in black ink, appearing to be 'S. A.' followed by a stylized surname.

n the scale of Rs. 1400-2300 be upgraded and given the replacement scale of Rs.1600-2900. All Junior /Statistical Investigators / Statistical Assistants in the scale of Rs.1400-2300 will henceforth be called Statistical Investigators Grade I. At a level of Statistical Investigator Grade II, recruitment may be taken up with graduation in statistics as the minimum qualification. The entrants in this scale would move through the replacement scale of Rs.1640-2900 and RS.2000-3500 in a time bound manner. Post Graduation may be made the minimum qualification for entry to 50% of the post of Statistical Investigator Grade I. The entrants to this level will move through the replacement scale of Rs.2375-3750 and the entry scale of 155 Group 'A' in a time bound manner."

12. On a consideration of the above facts and contentions, it is found that there is no recommendation made in respect of the Statistical Function Posts in Lakshadweep Administration.

13 The next question that requires consideration is as to who is the proper authority to take a decisions based upon the such recommendation of the VCPC in respect of the employees like the applicant. At least on this issue, there is a unanimity of sorts. The consensus seems to be that it is the Ministry of Planning and Programme Implementation, Department of Statistics, Government of India. The applicants state so in their O.A. The respondents in their reply statement state, by way of elucidation, that the Government of India vide part C of notification No.GSR 569(E) dated 30.9.1997 and resolution No.50(1)/IC/97 dated 30.9.97 issued by the Ministry of Finance (Department of Expenditure), has accepted, with certain modifications, the recommendations of the fifth CPC with

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, followed by a horizontal line.

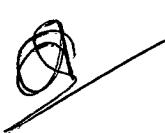
regard to revised scales of pay and dearness allowance etc. in respect of various categories of Central Government employees and the All India services. In Rule 14 of CCS(Revised Pay) Rules, 1997 it was made clear that if any question arises relating to interpretation of the provisions of these rules, it shall be referred to the Central Government for decision. It must be said in this connection that the pointed question arose as to the nodal Ministry, which should deal with this problem of the applicants. The Ministry of Home Affairs and the Ministry of Planning and Programme Implementation were taking the stand, as is seen in the impugned order, that it was the other Ministry which was to deal with this problem. It is to resolve this imbroglio that a specific question was posed to the respondents as to who would be the ultimate Ministry to resolve this issue. Unfortunately, no straight answer at all was given to this question. Hence, we have to record a finding that it is the Ministry of Planning which is the nodal Ministry and it is the Ministry of Finance which should take decision about the revised pay scales of Statistical employees of the Union Territories.

14. The next question that requires consideration is what is applicable to the case of applicants. As seen already, the A-3 order granting the upgraded scales was made in pursuance of A-2 O.M issued by the Ministry of Planning, Government of India. As pointed out by the respondents, the Implementation Cell of the Ministry of Finance is competent to decide about the revised pay scales of employees including the Statistical Employees of the Union Territories. As is shown in the impugned order, the Ministry of Finance took objection to the

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, followed by a horizontal line.

suo motu actions of certain Ministries and Departments on the pay scale of various posts, without their prior approval and a request of review of all such cases was made and, more importantly, it was directed to rescind these orders or keep them in abeyance, till the approval of the Ministry of Finance is obtained. It was in pursuance of this directive that a review was made by the Lakshadweep Administration. After extensive exchange of communication, the final position of the nodal Ministry, viz, Ministry of Planning and Programme Implementation was made clear and reiterated that the upgraded scales, as mentioned in para 81.17 (reproduced above) related only to Statistical Function Posts in different Central Ministries, the grant of such scales (as per A-2) was in any case confined to the Central Ministries and Departments and U.T of Lakshadweep cannot participate in the SSS. The nodal Ministry refused to ratify the grant of upgraded scales to the Statistical Function Officers of the Lakshadweep Administration. It was under these circumstances, that the upgradation already granted was decided to be kept in abeyance. An important point to be noted in this regard is that the said scale were merely kept in abeyance and not rescinded. Hence, we find that the order passed by the respondents in A-1 are perfectly justifiable.

15. That leaves the question of reliefs, if any, to be granted to the applicants. It is to be noted that there was no notice to the applicants on the proposed action of re fixation of scales to their prejudice. The fact that the upgraded scales are kept in abeyance means that the question is still open-ended. It is unfortunate that, despite the passage of more than three years since the passing of the impugned order, the situation is still in a state of suspended animation.



The misfortune is all the more so, when action is already underway with regard to the next Pay Commission. The need for taking a decision, one way or the other, cannot be overemphasized under these circumstances.

16. Hence in the interest of justice, we dispose of the application with the following directions:

- (i) The Lakshadweep Administration shall take up the issue once again, if not already taken after the passing of the impugned order, with the nodal Ministry within a period of one month from the date of receipt of a copy of this order.
- (ii) The nodal Ministry shall take up with the respondent-5 the issue for disposal, one way or the other, within a period of one month the date of receipt of the proposal from the Administrator.
- (iii) The respondent-5 shall take a decision and convey to the said nodal Ministry within a period of three months, thereafter.
- (iv) Till it is so conveyed, there shall be no recoveries from the pay of the applicants.

17. No costs.

Dated, the 8th December, 2006.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

trs