

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH  
(Camp sitting at Kavaratti)

Thursday This the 22 nd day of January, 1998.

CORAM

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN

O.A. No.357/1996.

1. M.V. Sayed Koya  
Head Master,  
Govt. J.B.School  
Keechery, Andrott,  
Lakshadweep.
2. M.M.Sayed Mohammed Koya  
Sub Treasury Officer, Andrott  
Lakshadweep Administration. ... Applicants.

(By Advocate Mr. Mathai M.Paikeday)

Vs.

1. Union of India, represented by  
Secretary to Govt.,  
Ministry of Home Affairs,  
Secretariat, New Delhi.
2. The Administrator  
U.T. of Lakshadweep  
Kavaratti. ... Respondents.

Mr. B.Sajeev Kumar, Advocate for  
Mr. PR Ramachandra Menon, ACGSC  
O.A. No.1265/1996.

1. K.C. Sabjan  
S/o T.Khader,  
Senior Auditor, Pay & Accounts  
Field Planning Unit, Androth,  
residing at Androth Island,  
U.T. of Lakshadweep.
2. Pachammal Muthukoya  
S/o Ahammed Kunnashada,  
Lab Assistant, Govt. High School,  
Androth.
3. P.K.Sharafudheen  
S/o Ibrahimkunhi,  
Hatchery Manager,  
Animal Husbandry Unit, Androth.
4. A.C.Syed,  
S/o T.Ahammed,  
Work Charge Carpenter,  
Public Works Department, Androth.
5. A.Akbhar Ali,  
S/o Koyamma Koya Haji,  
Lab Technician,  
Community Health Centre, Androth.

*For*

6. B. Muhammed  
S/o Pathada Ahammed,  
Boat Driver,  
Port Department,  
Androth.

...Applicants.

(By Advocate Mr. ESM Kabeer)

Vs.

1. Union of India  
represented by Secretary to Govt.  
Ministry of Home Affairs  
Secretariat, New Delhi.

2. The Administrator  
Union Territory of Lakshadweep  
Kavaratti.

...Respondents.

(By Mr. S. Rajakrishnan, ACGSC)

Mr. B. Sajeew Kumar, Advocate. for  
Mr. PR Ramachandra Menon, ACGSC  
O.A. 1270/1996.

1. P.A. Attakoya,  
S/o K. Pookoya  
Draftsman,  
Sub Divisional Office, Androth.
2. P. Thang Koya,  
S/o K.K. Pookoya  
U.D. Clerk,  
Mahatma Gandhi College,  
Androth.
3. A.C. Aboobacker,  
S/o Late P. Kidave Haji,  
Junior Engineer, P.W.D., Androth.
4. E. Kunhiseedi Koya,  
S/o Shaikoya,  
Fisherman, Fisheries Unit, Androth.
5. K.C. Mulla Koya  
S/o Abdul Khader,  
Peon, Sub Treasury office, Androth.
6. K. Muthukoya  
S/o Hammed,  
Accountant, Sub Divisional Office,  
Androth.

...Applicants.

(By Advocate Mr. ESM Kabeer)

Vs.

1. Union of India  
represented by Secretary to Govt.  
Ministry of Home Affairs,  
Secretariat, New Delhi.

2. The Administrator,  
Union Territory of Lakshadweep,  
Kabaratti.

... Respondents.

(By Mr. S. Rajakrishnan, ACGSC)

Mr. B. Sajeew Kumar, Advocate. for  
Mr. PR Ramachandra Menon, ACGSC

O.A. No. 1283/1996.

1. P.P.Kuniseedi Koya,  
S/o Late A.B.Shaikoya,  
Agricultural Supervisor,  
Agricultural Department Unit, Androth.
2. V.V.Nalla Koya,  
S/o P.Bamban,  
Executive Officer Village (Dweep Panchayath),  
Androth.
3. P.Shaikoya,  
S/o C.M.Koya,  
Primary School Teacher Grade I,  
Senior Basic School, Androth.
4. K.C.P. Shamsudheen,  
S/o Muhammed Master,  
Junior Accounts Officer,  
Pay and Accountant, Androth.
5. P.K.Syed Muhammed,  
S/o P.M.Ibrahim Kunhi,,  
Oil Engine Mechanic,  
Agricultural Development Unit,  
Androth.
6. K.C.Nalla Koya,  
S/o P.P.Koyamma,  
Mali, Agricultural Development Unit,  
Androth.
7. P.Ummer,  
S/o Abdu Rahiman,  
Extension Officer (G),  
Sub Divisional Office, Androth.
8. P.Ubaidulla,  
S/o K.K.Nalla Koya Thangal,  
Primary School Teacher,  
Government High School, Androth. ...Applicants.

(all applicants residing at Androth Island,  
Union Territory of Lakshadweep).

(By Advocate Mr. ESM Kabeer).

Vs.

1. Union of India,  
represented by Secretary to Govt.  
Ministry of Home Affairs,  
Secretariat, New Delhi.
2. The Administrator,  
Union Territory of Lakshadweep,  
Kabaratti. ...Respondents.

Mr. B. Sajeev Kumar, Advocate for  
Mr. P. Ramachandra Menon,  
ACGSC.

ORDER

K.M.AGARWAL, CHAIRMAN

In all these applications under Section 19 of the  
Administrative Tribunals Act, 1985, the applicants have made

*Jon*

a prayer for directing the respondents to give them the monetary and other benefits as given to the applicants in O.A.Nos.896/86, 1274/91 and 580/93, (Annexures A-9, A-10 and A-12 in O.A.No.357/96), and, thereafter, to compute and pay the arrears accordingly with interest.

2. The present applicants are the local recruits, (in short, the "islanders"), whereas the applicants in O.As.896/86, 1274/91 and 580/93 were the recruits from the mainland, (in short, the "mainlanders") in the employment of the Lakshadweep Administration. The mainlanders were granted special pay of 40% of basic pay, subject to a maximum of Rs.350/- per month by order dated 28.3.1958, (Annexure A-1 in O.A. 357/96), of the Central Government. By another order dated 25.4.1970, (Annexure A-2), the earlier order for payment of special pay was made inoperative subject to certain exceptions and instead special allowance, (emphasis given), of 40% of basic pay, subject to a maximum of Rs.350/- per month was introduced and sanctioned for local recruits posted outside their native island. Mainlanders were given option either to opt for special allowance under the order dated 25.4.1970, or to continue to receive the special pay under the earlier order dated 28.3.1958. By order dated 21.10.1970, (Annexure A-3), it was clarified that the optees of special pay would, on promotion, cease to get special pay and that they would also not be entitled to any special allowance. After the implementation of the recommendations of Third Pay Commission, the special allowance under the order dated 25.4.1970 was converted into compensatory allowance at the rate of 10% of the pay, subject to a maximum of Rs.150/- per month and special allowance at the rate of 35% of the pay, subject to a maximum of Rs.400/- per month with effect from 1.11.1973 vide order dated 15.3.1975, (Annexure A-4), of the Government. There was, thus, 5% increase in the basic pay of

the employees who had opted for special allowance as compared to those who had opted for retention of their special pay pursuant to order dated 25.4.1970. This gave cause to the optees of special pay for filing petitions in the High Court, which ended without any fruitful result in view of the order dated 30.6.1981, (Annexure A-6), of the Government, in supersession of its earlier order dated 3.8.1978, (Annexure A-5), giving special and compensatory allowances to the optees of special pay on promotion. This order dated 30.6.1981 was quashed by the Kerala High Court on the ground of violation of the principles of natural justice, with liberty to the Government to pass fresh orders after giving an opportunity of hearing to the affected employees. Accordingly objections were invited and representations made. Meanwhile by order dated 23.9.1986, (Annexure A-7), special compensatory allowance at the specified rates was sanctioned to the employees posted in Lakshadweep. By another order dated 29.9.1986, (Annexure A-8), the existing rates of special pay were doubled, subject to the ceiling of Rs.500/- per month, where such pay was not taken into account in the C.C.S. (Revised Pay) Rules, 1986. Ultimately by order dated 27.4.1989 in O.A.No.896/86, (Annexure A-9), the Tribunal directed:

" In the facts and circumstances, we allow this application only to the extent of declaring that the Special Pay optees will be entitled to the benefit of revised Special Pay in accordance with the order dated 29th September, 1986, at Annexure-N, (Annexure A-8 in O.A.357/96), besides getting the Compensatory Allowance. We also direct that the order dated 23rd September, 1986, (Annexure A-7 in O.A.357/96), granting Special Compensatory Allowance will be applicable to the optees only if the applicants opt for the same within a period of two months from the date of communication of this order. If they opt for the Special Compensatory Allowance they will get it at the same rate as indicated in para 1 of that order without any reduction, but in that case they will cease to draw the Islands Special Pay and

*Ym*

Compensatory Allowance. The application is disposed of on the above lines."

In O.A. No.1274/91 dated 3.4.1992, (Annexure A-10), following declaration and directions were made:

"..... It is hereby declared that the applicants are entitled to be paid Islands Special Pay to be reckoned at 80% of the basic pay applicable to them from time to time including the revised pay after 1.1.86 subject to maximum of Rs.500/- per month, that the applicants are entitled to Compensatory Allowance at the rate of 10% of their basic pay including the revised pay from 1.1.1986 subject to a maximum of Rs.150/- per month and that the element of Islands Special Pay is liable to be continued to be treated as part of basic pay for all purposes including dearness allowance, pension, retirement and other service benefits and we direct the respondents to compute the amounts due to the applicants including arrears of special pay, compensatory allowance and other allowances as a consequence of the above declaration and to disburse to them the same within a period of two months from the date of communication of this order."

The operative part of the common order dated 27.1.1994 made in O.A. Nos.580/93, 787/93, 877/93 and 1969/93 reads as follows:

"We direct respondents to grant the benefits granted to applicants in O.A.896/86 and O.A. 1274/91 to applicants herein also. Amounts if any paid under this head will be adjusted and the remainder will be paid within six months from today. We are granting a long period of six months in the hope that extensions will not be sought for. We alert respondents to adhere to the time schedule strictly."

The local recruits, (i.e., islanders), getting special allowances are, therefore, claiming equal treatment with those mainlanders, who secured the aforesaid benefits in the

said O.As.

3. The applications are resisted on the ground that the present applicants and the applicants in O.As. 896/86, 1274/91 and 580/93 belong to two distinct categories of employees and, therefore, they cannot claim equality with those belonging to a different category.

4. At the outset, the learned counsel for the applicants were questioned as to what they had to say on limitation. Section 21 of the Administrative Tribunals Act, 1985 prescribes a limitation of one year, or one and a half years where representation is made, but not decided. O.A. 896/86 was decided on 27.4.1989 and the other O.A. 1274/91 was decided on 3.4.1992. The present applicants wanted similar reliefs as were granted to the applicants in O.As. 896/86 and 1274/91. The applicants in O.As. 580/93, 787/93, 877/93 and 1969/93 claimed and were granted reliefs similar to those granted in O.As. 896/86 and 1274/91. The present applicants cannot, therefore, base their claim on these O.As., which were decided on 27.1.1994. Even from 27.1.1994, the present applications appear to be barred by time. The learned counsel for the applicants could not give any satisfactory reply to the question on limitation beyond urging that no such objection was raised on behalf of the respondents and further that the representations of the applicants were rejected on 19.4.1995, (Annexure A-13), wherefrom the applications were within limitation.

5. I am of the view that as provided in Section 3 of the Limitation Act, it is the duty of the Court to see if the application is or is not within time and, therefore, on the ground of absence of objection, the point cannot be overlooked. Similarly representations ought to have been made in time, but not made. Accordingly if an order is made on any delayed representation, that may not extend the limitation for filing the application. However, as a limited

*Jon*

number of employees are concerned and the question is about their entitlement or otherwise of certain monetary benefits, I do not think it just or expedient to dismiss the applications on the technical ground of limitation and accordingly proceed to consider them on merits.

6. A close scrutiny of the facts in the present case would show that step by step the Government was trying to remove the disparity of pay and allowances between the mainlanders and the islanders and had, more or less, succeeded in obtaining complete parity between them with the issuance of its orders dated 23.9.1986 and 29.9.1986, (Annexures A-7 and A-8). Initially mainlanders were granted special pay of 40% of basic pay, subject to a maximum of Rs.350/- per month. By subsequent order dated 25.4.1970, the "special pay" was made "special allowance", rates being the same and made available to both islanders and mainlanders, except those mainlanders who opted to continue with their special pay. Special allowance, or special pay, the result of monetary return to the employees was the same or similar. After Third Pay Commission, special allowance of 40%, subject to a maximum of Rs.350/- was converted into compensatory allowance of 10% with a ceiling of Rs.150/- per month and further special allowance of 35% with a ceiling of Rs.400/- per month. There was no corresponding change, or increase in special pay. When the dispute was raised by optees of special pay and writ petitions in the High Courts were disposed of as infructuous or with direction to pass fresh orders, the Government passed orders dated 23.9.1986 and 29.9.1986, (Annexures A-7 and A-8), bringing, more or less, parity between special pay and special allowances of two categories of optees and/or employees. But the balance was disturbed by the orders made in O.A.Nos.896/86 and 1274/91. The grievance



of the applicants in these O.As. was that they being the optees of special pay were denied 5% increase in their pay as compared to those who had opted for special allowance, as also the benefit of the Government orders dated 23.9.1986 and 29.9.1986, because they had not been able to secure promotion subsequent to the date of their option for retention of special pay pursuant to order dated 25.4.1970. O.A.No.896/86 was allowed and the special pay optees were held to be entitled to "the benefit of revised Special Pay in accordance with the order dated 29th September, 1986", (Annexure A-8), "besides getting the Compensatory Allowance." It was made more specific in O.A.No.1274/91 by declaring that the applicants therein were "entitled to be paid Islands Special Pay to be reckoned at 80% of the basic pay applicable to them from time to time including the revised pay after 1.1.86 subject to maximum of Rs.500/- per month". It was further declared that they were "entitled to Compensatory Allowance at the rate of 10% of their basic pay including the revised pay from 1.1.1986 subject to a maximum of Rs.150/- per month". The result was as apprehended by the respondents in O.A.No.1274/91 and mentioned in paragraph 2 of the order, (Annexure A-10), that: "If the island special pay is treated as pay, then there will be wide disparity between the emoluments of the island special pay opted employees and those who are getting special allowance." To be more clear, initially there was parity between special pay of 40% and the special allowance of 40%. The disparity appeared when after the Third Pay Commission, the special allowance of 40% was divided into compensatory allowance of 10% and special allowance of 35%, total allowance 45%, i.e., increase by 5% with no corresponding increase in the special pay. The agitation by the special pay optees for parity with special allowance optees, instead of solving the problem resulted in

*For*

the present discontentment among the special allowance optees and the islanders, because they got more than special allowance optees pursuant to the orders made in O.As. 896/86 and 1274/91 inasmuch as the former class of employees started getting special pay of 80% of their basic pay and further compensatory allowance of 10% of their basic pay; whereas the latter class of employees continued to get special allowance of 35% of their basic pay and compensatory allowance of 10% of their basic pay. In other words, optees of special pay started getting 90% of their basic pay as special pay and compensatory allowance, whereas the optees of special allowance continued to get 45% of their basic pay as special allowance and compensatory allowance. That is the reason why these applications have been filed. I am, therefore, of the view that in all fitness of things, the present applicants must also get total emoluments equal to those given to the optees of special pay, or the applicants in O.As.896/86 and 1274/91.

7. The learned counsel for the applicants cited **P. SAVITA AND OTHERS Vs. UNION OF INDIA**, AIR 1985 SC 1124; **JAIPAL Vs. STATE OF HARYANA**, AIR 1988 SC 1504; **S.M. ILYAS Vs. INDIAN COUNCIL OF AGRICULTURAL RESEARCH**, AIR 1993 SC 384; **INDIAN COUNCIL OF AGRICULTURAL RESEARCH Vs. A.N. LAHIRI**, AIR 1997 SC 2259; and **UNION OF INDIA Vs. P. SATHIKUMARANA NAIR**, AIR 1997 SC 2344, besides referring to the meaning of "special pay" as given in F.R. 9 (25), but it does not appear necessary to discuss them as the applications are allowed.

8. The learned counsel for the respondents cited **UNION OF INDIA Vs. S.VIJAYAKUMAR**, (1994) 28 ATC 598; **CHIEF GENERAL MANAGER (TELECOM.) N.E. TELECOM. CIRCLE Vs. RAJENDRA CH. BHATTACHARJEE**, JT 1995 (1) SC 440; **UNION OF INDIA Vs. EXECUTIVE OFFICERS' ASSOCIATION GROUP-C**, (1995) 29 ATC 517; and **RESERVE BANK OF INDIA Vs. R.B.I. STAFF OFFICERS ASSOCIATION**, (1991) 4 SCC 132 in support of his contentions,

*Jan*

but they are all distinguishable and, therefore, not discussed in order to save this order from being unnecessarily burdened.

9. In the result, these applications succeed and are hereby allowed with following directions:

(i) The applicants in these applications shall get special allowance and compensatory allowance to such an extent and for such period as to bring about complete parity with special pay and compensatory allowance given to the applicants in O.As. 896/86 and 1274/91 so as to avoid any further dispute either by the optees of special pay, or those of special allowance or islanders.

(ii) The arrears shall be worked out and paid to the applicants within a period of nine months from the date of receipt of a copy of this order.

(iii) The applicants shall not be entitled to any interest on the amount of arrears to be paid to them.

(iv) The parties shall bear their costs as incurred.

10. The applicants are denied interest on arrears, as also costs of litigation, because they approached the Tribunal after a pretty long time and after expiry of the period of limitation. A period of nine months for compliance is fixed, because calculations etc. are to be made for a period prior to 1986.

  
(K.M. AGARWAL)  
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.Nos. 357/96, 1265/96, 1270/96, 1283/96, 1411/97, 1555/97 & 401/98  
Monday this, the 28th day of April, 2000.

C O R A M

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER  
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A.NO.357/96

1. M.V. Sayed Koya  
Head Master,  
Govt. J.B. School,  
Keechery, Andrott  
Lakshadweep.
2. M.M.Sayed Mohammed Koya  
Sub Treasury Officer, Ankdrott  
Lakshadweep Administration. . . .Applicants

By Advocate Mr. Mathai Paikeday

Vs

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

By Advocate Mr. P.R. Ramachandra Menon, ACGSC .

O.A.No. 1265/96

1. K.C. Sabjan, S/ of T. Khader  
Senior Auditor  
Pay & Accounts Office Field Planning Unit,  
Androth  
residing at Androth Island,  
Lakshadweep islands
2. Pachammal Muthukoya  
S/o Ahammed Kunnashada  
Lab Assistant,  
Govt. High School,  
Androth
3. P.K. Sharafudheen  
S/o Ibrahimkunhi  
Hatchery Manager  
Animal Husbandry Unit,  
Androth.
4. A.C. Syed S/o T. Ahammed,  
Work Charge Carpenter,  
Public Works Department,  
Androth.
5. A. Akbhar Ali S/o Koyamma Koya Haji

Lab Technician  
Community Health Centre,  
Androth.

6. B. Muhammed  
S/o Pathada Ahammed,  
Boat Driver,  
Port Department,  
Androth. ..Applicants

By Advocate Mr. ESM Kabeer

Vs.

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

By Advocate Mr. P.R. Ramachandra Menon, ACGSC

O.A.1270/96

1. P.A. Attakoya S/o K. Pookoya  
Draftsman,  
Sub Divisional Office,  
Androth.
2. P. Thang Koya S/o K.K.Pookoya  
Upper Division Clerk  
Mahatma Gandhi College,  
Androth.
3. A. C. Aboobacker, S/o late P. Kidave Haji,  
Junior Engineer,  
PWD, Androth.
4. E. Kunhiseedi Koya, S/o Shaikoya,  
Fisherman, Fisheries Unit.  
Androth.
5. K. C. Mulla Koya, S/o Abdul Khader,  
Peon, Sub Treasury Office,  
Androth.
6. K. Muthukoya,  
Accountant, Sub Divisional Office,  
Androth. ..Applicants

By Advocate Mr. ESM Kabeer

Vs.

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

By Advocate Mr. P.R. Ramachandra Menon

O.A.No. 1283/.96

1. P.P.Kuniseedi koya, S/o late A.B. Shaikoya,  
Agricultural Supervisor,  
Agriculture Department,  
Androth.
2. V.V. Nalla Koya S/O P. Bamban  
Executive Officer,  
Village (Dweep Panchayath)  
Androth.
3. P. Shaikoya S/o C.M. Koya,  
Primary School Teacher Grade-I  
Senior Basic School,  
Androth.
4. KCP Shamsudheen, S/o Muhammed Master,  
Junior Accounts Officer,  
Pay & Accounts Officer,  
Pay & Accountant, Androth.
5. P.K. Syed Muhammed, S/o P.M. Ibrahim Kunjhi  
Oil Engine Mechanic  
Agricultural Development Unit,  
Androth.
6. K.C. Nalla Koya S/o P.P. Koyamma  
Mali, Agricultural Development Unit,  
Androth.
7. P. Ummer S/o Abdul Rahiman,  
Extension Officer (G)  
Sub Divisional Office,  
Androth.
- 8.. P. Ubaidulla S/o K.K. Nalla Koya Thangal,  
Primary School Teacher,  
Government High School,  
Androth.

...Applicants

By Advocate Mr. ESM Kabeer

Vs.

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

..Respondents

By Advocate Mr. P.R. Ramachandra Menon

O.A. No. 1411/97

A.M. Indira  
w/o late K.R. Ramachandran  
House No. 18, Vasantham  
Sri Narayana Housing Colony  
Chala, Thottada P.O.  
Kannur District.

..Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. The Administrator,  
Union Territory of Lakshadweep  
Kavarathi.
2. Union of India represented by Secretary,  
to Government, Ministry of Home Affair,  
New Delhi.

..Respondents

By Advocate Mr. P.R. Ramachandra Menon

O.A.1555/97

K.P.Ramanandan  
Accountant (Retd.)  
Post Office Kavarathi  
residing at Rohinivilla, Kushal Nagar  
Kanhagad, Kasargod Dist.

..Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by  
the Secretary,  
Ministry of Home affairs,  
New Delhi
2. The Administrator,  
Union Territory of Lakshadweep  
Kavaratti.

..Respondents

By Advocate Mr. P.R.Ramachandra Menon

O.A. 401/98

E.Aravindakshan Nair  
Superintendent  
Office of the Registrar of  
Cooperative Societies,  
Kavarathi.

..Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs

1. The Administrator,  
Union Territory of Lakshadweep  
Kavarathi.

2. Union of India represented by  
Secretary to Government,  
Ministry of Home Affairs,  
New Delhi

... ..Respondents

By Advocate Mr. P.R. Ramachandra Menon

These applications having been heard on 4.4.2000 the Tribunal delivered the following on 28.4.2000.

### O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Tribunal by order dated 22.1.98 allowed O.A. Nos.357/96, 1265/96, 1270/96 and 1283/96. Against this order of the Tribunal, respondents filed O.P.No.13181/98, O.P. No.13764/98, O.P. No. 13763/98 and O.P.No.13793/98 respectively in the High Court of Kerala. Similarly, against the orders of this Tribunal in O.A.No.1555/97 and O.A. 1411/97 both dated 4.2.98 the respondents filed O.P.No.14678/98 and O.P.No.15693/98 respectively in the High Court of Kerala. Against the order dated 9.7.98 in O.A. No.401/98 respondents filed O.P.No.23448/98 in the High Court of Kerala. The High Court of Kerala by its common judgment dated 29.10.99 in first six Original Petitions directed the matter to be re-heard by the Tribunal keeping in view the observations and directions contained therein. O.P.No. 23448/98 was disposed of by the Lok Adalath held on 22.1.2000 at Ernakulam organised by the High court Legal Services Committee, Ernakulam by remanding the matter to this Tribunal for fresh disposal as the matter was identical with those cases covered under O.P.No.13198 and connected cases. All the above O.As were re-heard together and are being disposed of by this common judgment.

2. The High Court in its judgment has grouped the O.Ps in two categories, the first category consisting of O.Ps against the orders of this Tribunal in O.A. No.357/96,

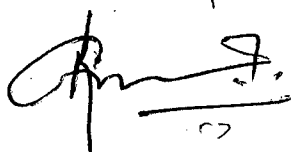




1265/96, 1270/96 and 12183/96 and has described the same as Island group and the O.Ps against O.A. 1556/97 and 1411/97 in the second category and described the same as "Mainlanders group". O.A. No.4D1/98 which was disposed of by the Lok Adalath will come under the second group. While remanding these O.As for re-hearing, the High Court directed the Tribunal to keep in view the observations/directions contained therein.

3. It is worthwhile in the above context to quote paragraphs 7 to 12 of the judgment of the High Court of Kerala which are as follows:

"7. We shall first deal with cases relating to mainland group employees. It is true that in O.A. No. 896 of 1986 there was an adjudication, which was challenged before the Apex Court. But the same was not decided on merits and the special leave petition was dismissed on ground of limitation. It is trite law that dismissal of the special leave petition cannot be construed to be treated as precedent for the purpose of Article 141 of the Constitution of India, 1950 (in short, the Constitution). When a special leave petition is dismissed in limine, it does not furnish any ratio decidendi (See Om Prakash Gargi v. State of Punjab) (1996) 11 SCC 399). Dismissal of a special leave petition by a non-speaking order, which does not contain the reason for dismissal, does not amount to acceptance of the correctness of the decision sought to be appealed against. Effect of such a non-speaking order of dismissal without anything more only means that the apex Court had decided only that it is not a fit case where the special leave petition should be granted. Such an order does not constitute law laid down by the Apex Court for the purpose of Article 141 of the Constitution (see IOC Ltd. V. State of Bihar. (1986 (4) SCC 146); Union of India V. All India service Pensioners' Assn 1998(2) SCC 580 = AIR 1988 SC 501; Rup Diamonds V. Union of India 1989 (2) SCC 356); Nawab Sir Mir Osman Alk Khan V. CWT, (1986 Supp. SCC 700) Supreme Court Employees' Welfare Assn V. Union of India (AIR 1990 SC 334); State of Manipur V. Thingujam Brojen Meetei (1996) 9 SCC 29 and C.G. Govindan V. State of Gujarat (1998 (4) SCALE 455). Once when reasons are given the decision becomes one which attracts Article 141 of the Constitution. It, therefore, follows that when no reasons are given, but special leave petition is dismissed simplicitor article 141 is not attracted.

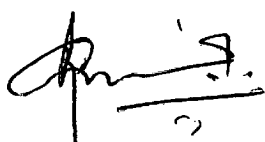


8. In the aforesaid background, if a fresh adjudication was warranted on consideration of the points urged by the parties, it was not impermissible for the Tribunal to do that. further, it is trite law that making of repeated representations does not explain away the delay in approaching the court. They have the effect of re-opening of settled matters (see - S.S.Rathore V. State of M.P. (AIR 1990 SC 10); Bhoop Singh V. Union of India (AIR 1992 SC 1414); Union of India V. C. Ramaswamy (1997 (4) SC 647; Union of India V. O.P. Saxena -1997 (6) SCC 360) Union of India V. Saxena, - (AIR 1997 SC 2978); and Shanti Devi V. State of Haryana and Others (1999 (5) SCC 703).

9. When a mistake is committed by the authority, same cannot be allowed to be perpetuated (See Chandigarh Administration and Another V. Jagjit Singh and another (AIR 1995 SC 705); Gursharan Singh V. New Delhi Municipal Committee (1996 (2) SCC 459). Tribunal, in the subsequent cases, seems to have taken the dismissal of the special leave petition in O.A. No.896 of 1985 to be final, even though certain distinguishing features were sought to be highlighted by the employer. It is open to the Court or Tribunal on consideration of materials to come to a conclusion different from what had been arrived at earlier, if it is found that the earlier conclusion was erroneous. As was observed by Apex Court in A.R. Antulay V. R.S. Nayak (AIR 1988 SC 1531), when relevant factors are brought to notice of the Court or Tribunal, even if there are any to rectify that injustice or otherwise the injustice noticed will remain for ever. An act of Court shall prejudice no man (Actus Curiae Neminem Gravabit). Lord Cairns in Alexander Roidger V. Comptoir D' escompte De Paris (1869-71) LR 3 PC 465 at p.475) observed thus:

"Now, their Lordships are of the opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression 'the act of the Court' is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter upto the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court."

The basic fundamentals of administration of justice are simple. No man should suffer because of the mistake of the Court. No man should suffer a wrong by procedure of irregularities, rules or procedures. As was held in Antulay's case (supra), to err is human. Courts and Tribunals are no exception. To



own up the mistake when judicial satisfaction is reached does not militate against its status or authority. It enhances both.

10. We find that the basis on which the mainland employees support the orders of the Tribunal are earlier decisions of the Tribunal in respect of which special leave petitions were dismissed. Plea of limitation taken by the employer has been characterised to be a last desperate attempt to get off the adjudications already done. Law relating to dismissal of special leave petitions has been elaborately dealt with supra by us. It would have been appropriate for the Tribunal to consider the grounds raised to oppose the applications of the employees without merely relying on the earlier decisions which were sought to be distinguished with reference to various materials. It is emphasised by employees that once a policy decision has been upheld by a Court, without even moving the Court or the Tribunals, persons similarly situated are to be granted the benefit. This is too broadly stated to be accepted. True it is when a policy decision is affirmed by a Court, logical conclusion is that it is available to all whom the policy applies. But, at the same time, it cannot be lost sight of that stale claims are not to be entertained. An employee, who was satisfied by what he got and did not raise even a protest, should not be allowed to get the benefit in the background of statutory limitations provided in the statute whereby such claims are to be adjudicated. Further, applicability of the earlier decision was under serious challenge. Unfortunately, as indicated above, Tribunal did not advert to these aspects.

11. So far as islanders are concerned, Tribunal clearly fell in error in holding that the decision in O.A. No.896 of 1986 and other decided matters were applicable to the facts of their case. This position is fairly conceded by learned counsel for such employees. It is, however, submitted that the positive stand taken before the Tribunal related to parity of scale of pay of similarly situated persons on the logic of equal work for equal pay. Tribunal admittedly did not advert to those contentions and merely directed that the earlier decisions are to apply to their cases. This is clearly unsustainable. Additionally, some of the conclusions of the Tribunal, even otherwise are not supportable. For example, in O.A. No.12174 of 1991, there is an observation that for working out pension, dearness allowance, etc. special pay should also be included. A reference has been made to certain Government orders by the employer to show that special pay is not to be taken note of while computing pension, dearness allowance, etc. Without even referring to those orders, tribunal has endorsed its earlier view. Tribunal should have decided about acceptability of employer's stand.



12. Residual question is what would be appropriate course to be adopted in such a situation. Though learned counsel for the employer strenuously urged that a final decision should be taken by this Court, we do not think it necessary and appropriate to do so, because the disputes are to be adjudicated on factual basis. In the background of legal principle set out above, tribunal would be the appropriate forum to do so.

In the circumstances we direct the matter to be re-heard by the tribunal, keeping in view the following observations and directions.

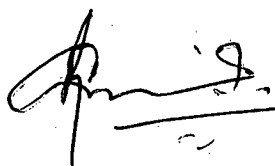
(1) Tribunal shall, at the first instance, consider whether the applications are barred by limitation, as contended by the employer. In case it finds that it is barred by limitation, further examination on merits may not be necessary

(2) Tribunal shall consider the acceptability of the plea taken by the employer that the earlier decisions were rendered without taking note of relevant provisions

(3) So far as the island employees are concerned, the first direction regarding limitation shall also be considered by the Tribunal as indicated. However, if it finds that the applications are not barred by limitation plea that the island employees are entitled to the same benefits as given to the mainland employees on the logic of equal work for equal pay shall be considered. While considering the case on merits, tribunal shall also consider whether the principle that on a policy decision being taken, which has been sanctified by the decisions of the Court, other similar placed employees can be given the benefit even though they have not approached the court or the Tribunal.

(4) as the dispute is surviving for more than a decade, Tribunal will make an effort to dispose of the applications in terms of the directions given herein above within six months from today. we make it clear that we have not expressed any opinion on merits.

4. Before we proceed to examine the rival contentions of the Original Applications it will be worthwhile to give factual background of the whole issue. The Union Territory of Lakshadweep came into existence on 1.11.1956. Prior to it, inhabitants were part of South Canara district and Malabar district in erstwhile Madras State. On formation of the Union Territory, same was brought under direct control of the Central Government. Vigorous steps were undertaken for



development of those islands. As a part of this venture, recruitment of qualified, skilled and technical persons and those having experience were required. Since such persons were not easily available in the islands, they had to be drawn either on deputation from neighboring State Government or by direct recruitment of qualified persons from the rest of the part of the country i.e. mainland. Living conditions on those days in the islands were miserable. Taking into account the unhealthy health conditions and lack of social life and amenities, various incentives were given to those belonging to the mainland so as to attract them to work in adverse working conditions. One of the incentives offered was a special pay, as recommended by Administrator, as per Report No.3475/578(C) dated 28.5.1957, sanction for which was accorded by Government of India as per letter dated 28.3.58. A special pay at the rate of 40% of basic pay subject to a maximum of Rs. 350/per month to all persons deputed or recruited to the islands from mainland was given. As there was some improvement in the working conditions, Govt. of India decided to stop the payment of island special pay and introduced island special allowance at the same rate subject to one exception (A-II of O.A. 357/96) i.e. those persons who were in continuous service as mainland recruits under U.T. Administration from a date prior to date of issue of the orders and were in receipt of island special pay were to continue to draw island special pay at the existing rate so long as they continued in the post held by them immediately prior to the issue of the order. Such persons were not eligible for special allowance sanctioned in concerned orders while drawing island special pay. On their first promotion after date of issue of those orders, pay of such employees in the new post was fixed without taking into account island



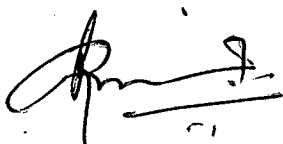
special pay. They were required to exercise an option. In essence, option offered two alternatives first was to cease to have any claim in respect of island special pay and draw special allowance at the rate of 40% of basic pay subject to a maximum of Rs. 350/- per month and the other alternative was where pay plus island special pay in the post held by them prior to their promotion was greater than pay fixed in the new post, difference was to be granted to them as personal pay to be absorbed in future increments subject to the condition that pay of such government servants in the new post shall not be less than the basic pay plus island special pay which they would have drawn had they continued in the lower post. No special allowance was admissible to such employees. The first alternative, as indicated above, was subsequently substituted with another clause as per order dated 21.10.1970 (A-III of O.A. No.357/96) whereby an option to be exercised by the mainland recruits to continue to draw island special pay so long as they continued in the same post without promotion to switch over to special allowance within a stipulated date. If no such option was exercised, then they would be deemed to have exercised option in favour of island special allowance. Further stipulation was that in case of persons who opted for island special pay, pay of such employees on promotion to higher post shall be fixed taking into consideration only the basic pay drawn in the lower post and if total of basic pay plus island special pay drawn in the lower post is greater than the pay fixed in the higher post, difference was to be granted as personal pay to be absorbed in future increments. It was also stipulated that they shall not after promotion be eligible for island special pay or special allowance. Some of the employees represented to Government against the order, but at the same time, they



did not give their option. Some other employees however, exercised their option. As per order dated 15.3.75 (A-IV of O.A. No.357/96) in furtherance of III Pay Commission Report and as per order dated 23.9.86 (A-VII of O.A. No. 357/96) in furtherance to acceptance of IV Pay Commission's Report rates and manner of payment of special/compensatory allowance were modified. Government also issued order dated 3.8.78 (A-V of O.A. 1357/96) and order dated 30.6.81 (A-VI of O. A. 357/96) giving option to these employees. A large number of cases were filed before the High Court of Kerala and later before this Tribunal by the affected employees. Prior to 1.1.86, in addition to basic pay special pay etc. coming under clauses (ii) and (iii) of Fundamental Rule 9(21)(a)(i) were also taken into account for determining dearness allowance, pensionary benefits, etc. So prior to 1.1.86 Dearness Allowance and pension were reckoned counting island special pay also alongwith basic pay as clarified by the Government of India, Ministry of Home Affairs in letter No. 1/12(16)/69-ANL dated 29.1.70. This caused difference in emoluments in the case of various special pay recipients compared to those not getting special pay. The IV Pay Commission recommended that only basic pay under FR 9(21)(a)(1) would be counted for determining dearness Allowance, pension and other service benefits. Accordingly, from 1.1.86 the basic pay, non practicing allowance and stagnation increments alone would be counted for determining dearness allowance and pensionary benefit and Island special pay or any other special pay would not be counted for determining dearness allowance, pensionary benefits etc.. However, the island special pay recipients claimed continued payment of dearness allowance, pension, gratuity and other service benefits counting island special pay also as was done



prior to 1.1.86. They filed O.A. 896/86 before the Madras Bench of this Tribunal at Ernakulam which was allowed by the Tribunal by its order dated 27.4.89 (A-IX in O.A.357/96). The SLP filed by the Government before the Supreme Court against this order was dismissed on the ground of delay. Thus the special pay optees were paid enhanced rate of special pay and compensatory allowance based on pre-revised pay as the view of the Govt. of India was that they were not admissible on revised pays. The island special pay optees again filed O.A.No. 1274/91, 1355/91 etc. praying (i) payment of enhanced rate of island special pay as per order dated 29.9.86 and (ii) payment of compensatory allowance @ 10% subject to maximum of Rs. 150/- on revised pay with effect from 1.1.86 and treatment of island special pay as part of basic pay for computing DA, pensionary benefits and all other service benefits as was done prior to 1.1.86. O.A. No.1274/91 was allowed as per order dated 29.9.86 (A-X in O.A.357/96). O.A. No.1355/91 was also allowed. The SLPs filed against these orders were dismissed. Similarly special pay recipients who ceased to draw the same in terms of the orders dated 25.4.70 and 21.10.70 by deemed option, promotion, etc. were pressing their demand for continued payment of special pay in accordance with the condition in their offer of appointment as a principle of promissory estoppel, through their association and O.A. 86/85 was also filed by the said Association which was disposed of by this Tribunal directing that the respondents were at liberty to pass fresh orders after giving opportunity to the Association. Based on this direction and observation made by the Tribunal in O.A. 896/96 the said Association submitted representation on 20.1.91 to the Ministry of Home affairs requesting interalia to pay island special pay to those





mainland recruits to whom it had been stopped in terms of orders dated 25.4.70 and 21.10.70 by deemed option, promotion, etc. Thereafter O.As 580/93, 787/93, 877/93 and 1969/93 were filed for extending the benefits under the order in O.A. 896/86 and the order in O.A. 1274/91. In the interim order dated 23.3.93 the Tribunal directed the Administrator to dispose of the representation submitted to the Govt. of India within six weeks. As the Administrator was not competent to take a decision on the representation he reported the direction of the Tribunal to the Ministry of Home affairs who could not take a final decision before the stipulated period. Finally, the Tribunal disposed the above O.As in combined order dated 22.1.94 directing the govt. to pay the benefits to the applicants therein as granted to the applicants in O.A. 896/86 and O.A. 1274/91. Aggrieved by this, the Government filed SLP before the Supreme Court which was dismissed by the Hon'ble Supreme Court. A few similarly situated employees like the employees in O.A. 580/93 filed O.As in the Tribunal for similar reliefs as given to applicants in the O.A. Administration extended the benefit of island special pay and compensatory allowance to those who were in service and were in receipt of island special pay prior to 25.4.70 who were the applicants in O.A. 580/93 and similar other O.As.

5.. We shall deal with the Original Applications of the mainland group of employees first which are O.A. 1555/97, 1411/97 and 401/98.

A handwritten signature in black ink, appearing to be 'A. S.', with a horizontal line underneath.


O.A. 1557/97

6. The applicant was posted as LDC under the respondent w.e.f. 7. 9.63 and retired voluntarily on 7.9.91. He was getting island special pay till 5.2.77, the date of his promotion as Head Accountant. He was further promoted as Accountant on 14.2.90 and on 7.9.91 he voluntarily retired from service. On his promotion the Island special pay was dropped and he was paid a special allowance. Coming to know that persons situated like him have been granted island special pay till their date of superannuation, he filed O.A.No.1247/95 claiming the same benefit. That O.A. was disposed of with a direction that if the applicant made a representation it would be examined on its merits and appropriate orders passed within four months from the date of receipt of the same by the Administrator. Though the applicant made a representation the same was rejected by A4 order dated 2.7.96. Aggrieved by that the applicant filed O.A. 481/97 which was disposed of with the direction to the Administrator to take a decision after considering the rulings of the Tribunal in O.A. 580/93 and the rulings of the Hon'ble Supreme court in the SLP filed against it. The applicant again made A-6 representation on 25.2.97 to which the applicant got the impugned A1 order dated 6.8.97 rejecting his claim on the ground that the judgment in O.A. No. 580/93 and connected cases apply only to the parties therein and it had no general application and hence the applicant was not entitled to claim the benefits. It was also stated that the applicant did not opt for island special pay during his service and therefore he was not entitled to raise the same at a later stage. It was aggrieved by this order that the applicant filed this Original Application seeking the following reliefs:



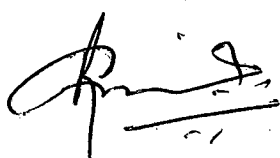
- i) To quash Annexure A1
- ii) Declare that the applicant was entitled to be paid Island Special Pay and compensatory allowance at the rate of 80% of the basic pay subject to a maximum of Rs. 500/- and compensatory allowance at the rate of 10% of the basic pay subject to a maximum of Rs. 150/- per month for the period during which he worked in the island.
- (iii) Direct the respondents to draw and disburse the arrears of Island Special Pay and compensatory allowance due to applicant for the period from 5.2.77 to 7.9.91 and to refix the pension and other pensionary benefits due to the applicant reckoning the element of Island Special Pay drawn by applicant as part of his basic pay.
- iv) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and
- (v) Grant the costs of this Original Application."

7. Respondents filed reply statement and resisted the application on the ground of limitation as also on merits. It was contended that the applicant not being a party to the rulings relied upon by him, he was not entitled to the benefit based on those rulings. Further he was not similarly placed as the applicants in O.A. No.896/86 and

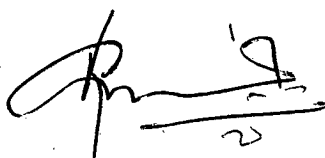


O.A. 1274/91. It was also contended that the applicant having opted to continue to draw island special pay till promotion was not entitled to get special pay continuously.

8. Heard the learned counsel for the parties. Learned counsel for the applicant submitted that the applicant had approached this Tribunal earlier through O.A. No.1247/95 and O.A. No.481/97 and the orders in those O.As had become final between the parties and this O.A. had been filed by the applicant aggrieved by A-1 order dated 6.8.97 passed by the second respondent pursuant to the direction of this Tribunal in O.A. No.481/97 and hence the O.A. is not barred by limitation. Relying on the ratio of the judgment in Sualal Yadav Vs. State of Rajasthan and others reported in AIR 1977 SC 2050, he submitted having entertained the representation of the applicant the plea of delay should not be taken by the respondents. He further submitted that almost all the employees of the Lakshadweep who were in receipt of special pay prior to 25.4.70 have been given the benefit of the orders of the Tribunal in O.A. No.896/86, 12745/91 pursuant to the Tribunal's direction in O.A. No.580/93 and other O.As. Not extending the benefit of the orders of this Tribunal in O.A. 896/86 and 1274/91 to the applicant would be discriminatory. Learned counsel for the respondents after taking us through the factual background of this case submitted that O.A. was liable to be dismissed (i) because the applicant was not similarly situated as the employees in O.A. 896/86 and O.A.1274/91, (ii) since orders providing for stoppage of island special pay on promotion or on deemed option had not been set aside by any Court of law till date and (iii) since the application was highly barred by limitation. On the question of limitation the learned



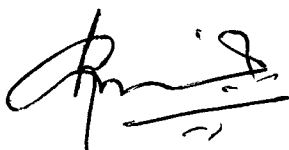
counsel submitted that the claim was in respect of the service for the period from 5.2.77 to 7.9.91 and the present O.A. was filed in 1997 and hence clearly the O.A. was barred by limitation. He further submitted that the orders passed by this Tribunal in O.A. 896/86 and O.A. 1274/91 were decisions rendered contrary to the provisions of law and the relevant orders which governed the issue. According to him the applicants in O.A. 580/93 and other connected O.As were never similarly situated as the applicant in O.A. 896/86 or O.A. 1274/91. They were persons who were drawing Island Special pay at one point of time but ceased to draw the same later, either due to promotion or deemed option as provided under the orders dated 25.4.70 and 21.10.70 (A-II and A-III of O.A. 357/97). On the other hand, the applicants in O.A. 896/86 and O.A. 1274/91 were persons who were continuing to draw Island Special pay without getting promotion. Hence, the applicants in O.A. No.580/903 who were enjoying the benefits of special allowance having ceased to draw island special pay due to promotion or deemed option wrongly contended before the Tribunal that they were similarly situated like the former groups which happened to be accepted directing payment of benefits to the applicants in O.A. 580/93 and other O.As. SLPs filed by Government against the order in O.A. 896/86 was dismissed on the ground of delay without any decision on merits. Learned counsel further submitted that the SLPs filed against the orders in O.A. 1274/91 and O.A. 580/93 and other OAs were dismissed after condoning the delay as the SLP in O.A. No.896/86 was already dismissed. Thus, according to him the SLPs in O.A. 1274/91 and O.A. 580/93 and other O.As were dismissed without considering the merits. As the SLPs were not dismissed on merits, according to the learned counsel the



Hon'ble Supreme Court has not laid down any law in the matter. He referred to paras 7 and 8 of the High court's judgment in the Original Petition against this and other connected O.As and also relied on the following judgments of the Hon'ble Supreme Court in support of his submission: (i) State of Manipur Vs. Thingjum Meetai (1996 (9) SCC 29 (Air 1996 SC 2124 para 9) (ii) Om Prakash Garji Vs State of Punjab & Others (1996 (11) SCC 399 (para 4) (iii) Mittal Engineering Works (P)Ltd. Vs. Collector of Central Excise, Meerut (1977 (1) SCC 203 (para 8) (iv) S.S. Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10) (v) Administrator of U.T. of Daman & Diu & Others Vs. R.D. Valand (1995 Supp.(4) SCC 593) (vi) State of Karnataka Vs. J.R. Pritam (1996 (6) SCC 267) and (vii) Ramesh Chand Sharma Vs. Udham Singh Kamal & Others (1999(8) SCC 304.

9. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record. The first question to be considered is whether the O.A. is barred by limitation.


10. We find that the applicant in this O.A. approached this Tribunal for the first time by filing O.A. 1247/95 which was disposed of by A3 order dated 25.4.96. In that O.A. the applicant had compared himself with the applicants in O.A. 580/93, 787/93, 877/93 and 1969/93. By A3 order dated 25.4.96 the Tribunal recorded the statement made by the Standing Counsel for the respondents that if the applicant would make a representation, the same would be examined on its merits and appropriate orders passed within four months of the date of receipt of the same. It was also



observed by the Tribunal in that order that a factual adjudication was required to ascertain to whether the applicant was similarly situated as those of O.A.580/93 and that the same must be done by the second respondent. It was further stipulated that the Tribunal had not expressed any opinion on merits and that the direction given in that order itself would not give a cause of action to the applicant. But the fact remained that it was on the basis of the submission made by the Standing counsel for the respondents that the O.A. was disposed of. Pursuant to that direction A-4 order was passed by the second respondent- the Administrator. It was also stated in A-4 that SLP was pending before the Hon'ble Supreme Court against the order of this Tribunal in O.A. No.580/93. Aggrieved by A4 order, the applicant filed O.A. 481/97. The same was disposed of by this Tribunal by A-5 order dated 10.4.97. Paras 2 and 3 of this order is as following:

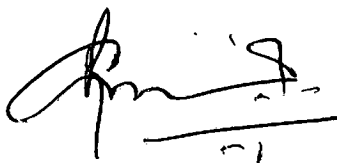
"2. When the application came up for hearing today, learned counsel for applicant states that it would be sufficient if the alternative relief prayed for in sub para (iii) of paragraph VIII of the O.A. is allowed. Learned counsel for respondents states that in view of the ruling of the Supreme Court in its order dated 6.12.96 at A-6, the second respondent would reconsider the entire issue and pass appropriate orders within a reasonable time.

3. In the light of the above submission by the learned counsel on either side, we dispose of the application with a direction to the respondents to reconsider the entire issue and give a speaking

A handwritten signature in black ink, appearing to be 'R. S.', with a horizontal line underneath.

order to the representation made by the applicant at A-7 keeping in view the decision of the Apex Court in the matter as contained in the order dated 6.12.96 ( A-6) and if on such reconsideration the respondents conclude that the applicant is entitled to the Island Special Pay and compensatory allowance as claimed by him, to make available to him the monetary benefits flowing therefrom within a period of two months from the date of communication of this order. No costs."

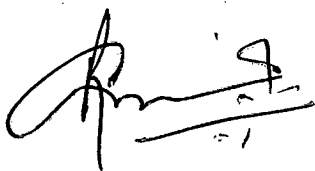
11. It is evident from the above that the above order has been passed by the Tribunal on being agreed to on behalf of the respondents. A-7 referred to in the above order is the representation dated 25.2.97. This is Annexure A-6 in the present O.A. In the said representation the applicant had clearly spelt out his claim which was implementation of the principles laid down in the order of the Tribunal in O.A. No.896/96 benefits given to similar other employees. When the respondents had agreed to dispose of the said representation based on which O.A. 481/97 was disposed of as above we are of the view that the respondents had waived the plea of limitation and had agreed to deal with the matter raised by the applicant on merits. The representation is stated to have been disposed of by the impugned order A-7 dated 6.8.97. The present O.A. is filed on 4.12.97. Therefore, we hold that the present O.A. is well within the time frame laid in Section 21 of the Administrative Tribunals Act, 1985 and is not barred by limitation. Having agreed to examine the issue on merits, respondents cannot raise the plea of limitation when the impugned order passed, in pursuance of the order of the Tribunal, on merits is under

A handwritten signature in black ink, appearing to be 'A. M. S.', with a horizontal line underneath it.



challenge. We get support of this from the ratio of the judgment of Hon'ble Apex Court reported in AIR 1977 Supreme Court 2050 referred to by the learned counsel for the applicant. Having concluded that the Original Application is not barred by limitation now we proceed to examine the claim of the applicant on merits.

12. In the present O.A. the applicant claimed that he was a member of the Special Pay Optee Employees Association of the Union Territory of Lakshadweep. Secretary of this Association and another were the applicants in O.A. 896/96. This would indicate that the order delivered by this Tribunal in O.A. No.896/86 would be applicable to all the members of the association as the Association represented a group of employees. The O.A. filed by them will be of a representative nature and once such an order had become final, the respondents are expected to implement the same without any application/representation from the individual members. In the O.A. the applicant had specifically contended that he was a member of this Association. This has not been controverted by the respondents in their reply statement in this O.A. He further pleaded that he submitted option in writing immediately after the order in O.A. 896/86 in writing and the same was recorded in his Service Register also. This has also not been specifically denied. In view of the above, we hold that the order in O.A. 896/96 would be applicable to the applicant.



13. Further, there is no dispute that the applicant opted to continue drawing special pay after 25.4.70. Therefore, he was governed by clause (a) of Exception 1 of letter dated 25.4.70 as modified by letter dated 21.10.70 (A-II and A-III of O.A. 357/96) which is as follows:

"the Government servant shall continue to draw the Island Special Pay at the same rate as he was drawing it immediately before the date of issue those orders, so long as he continues in the same post. While so drawing the Island Special Pay, such a Government servant shall not be eligible for the Special Allowance sanctioned in these orders. On his first promotion after the date of issue of these orders, the pay of such a Government servsasnt in the higher post shall be fixed taking into consideration only the basic pay drawn by him in the lower post and, if the total basic pay plus Island Special Pay drawn by him in the lower post be greater than the pay fixed in the higher post, the difference shall be granted to him as personal pay to be absorbed in future increments, subject to the condition that the pay of such a Government servant in the higher post at no stage be lower than the basic pay plus Island Special Pay which he would have drawn had he continued in the lower post. Such a Government servant shall not after his promotion be eligible for the Island Special Pay or the Special Allowance under these orders." (Emphasis added)

A handwritten signature in black ink, appearing to be 'Rm' followed by a flourish and a horizontal line.

14. It is very evident from the above that an employee like the applicant who opted for Island Special Pay after 25.4.70 does not cease to receive Island Special Pay even after promotion. His pay every month has to be decided comparing his pay + Island Special Pay in the lower post with the pay in the higher post and if the latter is lesser than the former, the difference is to be paid as personal pay as clear from the Governments' order extracted above. The pay + Island Special Pay in the lower post will not be the same always. It will continue to rise every year with notional drawal of increments in the lower grade. The quantum of Island Special Pay will also increase in proportion. The above would indicate that the stand of the respondents that once a special pay opted employee is promoted he ceases to have the benefit of Island Special Pay is not based on the rules on the subject.

15. With effect from 1.1.86, the pay scales were revised. Therefore, the applicant's pay in the lower post and the higher post are to be fixed in the revised pay scales and then it has to be checked as indicated above as to whether he is entitled for any personal pay being the difference between his pay in the lower posts + Island Special pay and the pay in the higher post. The above has to be done keeping in view the direction of this Tribunal in O.A. 896/86 as we have already held that the applicant being a member of the Association which filed the O.A is covered by the order. O.A. 1274/91 is in effect a clarificatory order of O.A. 896/86 based on the dictum laid therein. As we have held that the applicant is covered by the order in O.A. 896/86 we also hold that he is covered by the order in O.A.1274/91.

A handwritten signature in dark ink, appearing to be 'Amir S.', with a horizontal line underneath and a small mark below the line.

16. The impugned order A-1 does not indicate that the same has been examined with reference to the rules which govern the pay of the applicant. It is issued clearly without proper application of mind. Therefore, we are unable to sustain the same and is liable to be set aside and quashed.

17. It would appear from the reliefs sought that the applicant was not being paid properly in accordance with the rules from the date of his promotion. But that cannot be a matter for litigation in this O.A. This O.A is a sequel to his earlier OAs viz. O.A. 12467/95 and O.A. 401/97. Both these were in the context of the orders of this Tribunal in O.A. 896/96, O.A. 1274/91 and O.A. 583/93. If the applicant was not receiving the pay correctly from 1977 onwards for that he cannot seek help of the order of this Tribunal in O.A. 896/86. Any benefits accruing from the directions of this Tribunal in O.A. 896/96 and O.A. 1274/91 will accrue only from 1.1.86. In our view cannot extend backwards.

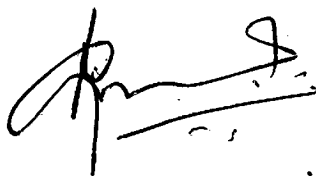
18. The learned counsel for the applicant also submitted that most of the employees who were drawing special pay prior to 25.4.70 had been given the benefit of the order in O.A. 896/96 as they were parties in O.A. 580/93 and other O.As and denying the same to the applicant would be discriminatory. We find that there were 94 applicants in O.A. 580/93, 45 applicants in O.A. 789/93, one applicant in O.A. 877/93 and one applicant in 1949/93.- thus a total of 141 employees. Apart from this a number of individual O.As had also been filed which have become final. According to



the respondents in the reply statement in one of the O.As there are only about 250 employees of mainlanders in 1996 out of which 90% will retire by 2000 and the remaining by 2005. Number of them have been paid the benefit of the judgment in O.A. 896/96 and O.A. 1274/93 through O.A. 580/93 and other connected O.As Thus, even though we find considerable force in the argument advanced by the learned counsel for the applicant as no rule/order had been struck down in that O.A, on the ground of discrimination no benefit can be given. In any case we have already analysed the case of the applicant and held that he could not be denied the benefits of the orders of O.A. 896/86 and O.A. 1274/91 only on the grounds of he having been promoted.

19. In the judgment of the High Court it has been directed that the Tribunal should consider acceptability of the plea taken by the employer that the earlier orders were rendered without taking into consideration relevant pleadings of the employer. We have carefully gone through the reply statement filed by the respondents in this O.A. We find that the respondents have only tried to distinguish the case of the applicant on the plea that as he had been promoted he ceased to draw special pay. We have already analysed this aspect and have come to the conclusion that this plea has no substance and even after promotion such employees will continue to get the benefit of the Island Special Pay on their notional pay in the lower grade.

20. In the light of the detailed analysis given in the foregoing paragraphs we allow this Original Application to the extend indicated below:

A handwritten signature in black ink, appearing to be 'A. S.', with a horizontal line drawn underneath it.

i) We set aside and quash A-1 issued by the second respondent.


ii) We direct the second respondent to consider the case of the applicant strictly in accordance with Government of India's letters dated 25.4.70 as modified by 21.10.70 and the directions of this Tribunal rendered in OA No.896/86 and OA No.1274/91 and our observations contained in paras 13,14, & 15 above and pass a reasoned order within two months from the date of receipt of the copy of this order.

iii) We direct that the consequential monetary benefits on such reconsideration as in (ii) above if any to which the applicant becomes entitled on account of pay and pension with effect from 1.1.1986 be disbursed to him within three months from the date of receipt of the copy of this order.

iv) We direct that parties shall bear their respective costs.

O.A.No.1411/97

21. The applicant in this O.A. is the widow of late K.R. Ramachandran who commenced his service as a Physical Education Teacher under the administration of Union Territory of Lakshadweep on 8.5.61. He expired on 17.6.88 while in service. He was drawing island special pay till 25.4.70 and special allowance thereafter till his death. The applicant is drawing family pension. According to her in fixing the

A handwritten signature in dark ink, appearing to be 'Ami S.', with a horizontal line underneath it.

family pension the element of special pay drawn by her husband was not reckoned as part of his basic pay. According to the applicant by virtue of the rulings of the Tribunal in O.A.896/86, 580/93 and connected cases, the mainlanders who commenced their service before 25.4.70 were entitled to draw Island special pay till their superannuation and the benefit was to be reckoned for computation of pensionary benefits. The applicant invited attention of the first respondent to these rulings and stated that her late husband was in all respects similarly situated like the applicants in those cases in all respects and requested for Islands special pay and also refixation of family pension accordingly. In reply to the said representation the applicant was told by A1 dated 2.9.97 that as she was not a party in the O.A. 580/93, or to the judgment of the Hon'ble Supreme Court in the SLP, her husband was not entitled to get island special pay and compensatory allowance and aggrieved by this, the applicant filed this application seeking the following reliefs:

- i). To quash Annexure A1
- ii) Declare that applicant's husband late K.R. Ramachandran was entitled to be paid island special pay and compensatory allowance at the rate of 80% of his basic pay subject to a maximum of Rs. 500/and compensatory allowance at the rate of 10% of the basic pay subject to a maximum of Rs. 150/per month for the period during which he worked in the island.
- iii) Direct the respondents to draw and disburse the arrears of Island Special Pay and compensatory allowance due to applicant's husband, for the period from 7.4.1970 to 17.6.1988 and to refix the family pension due to applicant reckoning the element of island special pay drawn by applicant's husband as part of his basic pay.
- iv) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant and
- v) Grant the costs of this Original Application.



22. In the reply statement, the respondents raised the preliminary objection of limitation. It was also contended that the applicant's husband had not claimed island special pay in his life time and it was not open to the applicant to claim it for the first time after about 10 years and as such it was stale and was highly barred by the law of limitation in the light of decisions of the Hon'ble Supreme Court. The respondents also raised the objection that the applicant was not a party to the rulings relied on by her and therefore she was not entitled to the benefit thereof.

23. Heard the learned counsel for the parties. Learned counsel for the applicant took <sup>us</sup> through the pleadings. his main argument was that by OA 580/93 a number of employees similarly situated like the applicant had been extended the benefit of the orders of this Tribunal in OA 896/86 and OA 1274/91 and hence, the applicant should also be extended the same benefits. Further as the family pension would get paid every month, the cause of action is a recurring one. Learned counsel for the respondents submitted that the husband of the applicant joined service on 8-5-63 and as per the deemed option, he started during special allowance and all other benefits concerned from 25-4-70 in lieu of Island Special Pay till he breathed his last on 17-6-88. He had no case during his life time to the contrary as now contended by the applicant- his widow. She has approached this Tribunal for the first time only in 1996 i.e. 8 years after the death of her husband and 26 years after arising of the cause of action i.e. replacement of Island Special Pay by special allowance on 25-4-70. The husband of the applicant was not similarly situated as the applicants in OA 896/86 and OA 1274/91 - he submitted. Further, the orders dated 25-4-70 and 21-10-70

A handwritten signature in dark ink, appearing to be 'A. M. S.', with a horizontal line underneath and a small '2' written below the line.




replacing the Island Special Pay by special allowance or promotion or 'deemed option' had not been set aside by any Court of law till date and the OA is highly barred by limitation.


24. We have given careful consideration to the submission made by the learned Counsel for the parties and the rival pleadings and have perused the documents brought on record.

25. We find that this applicant had also approached this Tribunal earlier in OA 374/96. This was disposed of by A-4 order dated 13-6-97. The impugned order A-1 had been passed in pursuance to the direction in this OA. A-1 order is dated 2-9-97 and this OA is filed on 23-10-97. Therefore, we are of the view that the present OA not barred by limitation. However, it will be a different matter when it comes to a question as to whether any of the reliefs sought for is barred by limitation.

26. The applicant herself admits that her husband was drawing special allowance after 25-4-70 till his death. On the basis of the directions of this Tribunal in OA 374/96 the applicant submitted a representation dated 29-6-97. She had not annexed the copy of this representation with the OA. However, a copy of her representation dated 28-8-97 sent as a reminder had been placed as Annexure A-5 of the OA. In this representation she had stated that the demand to continue the drawal of Island Special Pay was allowed by this Tribunal in OA 580/93 and similar other matters and the same became final because the SLP had been dismissed and requested the 1st respondent to extend to her arrears of Pay and allowances due to her deceased husband for the period from 25-4-70 to



25-4-70 to 17-6-88 and also revised pensionary benefits such as DCRG, Family pension etc. due to her by reckoning the special pay at Rs.500/- admissible in addition to the basic pay as was done in the similarly situated cases as per direction of this Tribunal. Respondents in the reply given to her by A-1 - the impugned order in reference to her representation dated 29-6-97 distinguished her husband's case from the applicants in OA 896/86 and OA 1274/91. They stated that her husband did not exercise option for continued drawal of Island Special Pay after 25-4-70 and, therefore, was 'deemed' as opted for Special allowance. Further, it was stated that in OA 580/93 no general declaration of law or principle was laid down. It was also stated that the orders dated 25-4-70 and 21-10-70 replacing the Island Special Pay had not been set aside. We find from the OA that the applicant herself admits that her husband was drawing only special allowance after 25-4-70. There is also no averment in the OA that the husband of the applicant was a member of the association, which was an applicant in OA 896/86. The direction in OA 896/86 will be applicable only to those who were in receipt of Island Special Pay or <sup>Personal ~~Sp~~</sup> pay (being the difference between the Pay + Island Special Pay and the pay in the promoted grade ), as already held by us in OA 1555/97 given above. Similarly the direction in the order in OA 1274/91 will also be applicable only to such employees. We have perused the order of this Tribunal in OA 580/93 (A-XII in OA 357/96). We find considerable force in the plea of the respondents that the said order does not lay down any law/dictum/principle. We also find that the 'deemed option' for special allowance had not been set aside by any Court of Law. We also find that the applicant through this OA is trying to unsettle the settled benefits received by her

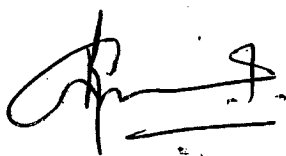


husband from 1970 onwards till his death on the plea of this Tribunal's directions. We do not find in A-IX & A-X (in OA 357/96) orders of this Tribunal in OA 896/86 and 1274/91 respectively any such direction that all Special Allowance recipients should be treated as to have opted for Island Special Pay had been given. In view of the above we do not find any infirmity in A-1 order calling for interference by this Tribunal.

27. In the result the applicant is not entitled for any of the reliefs sought and the Original Application is liable to be dismissed. Accordingly we dismiss this OA with no order as to costs.

O.A.No.401/98

28. The applicant in this O.A. has filed this application aggrieved by A-9 impugned order dated 12th December, 1997 of the first respondent rejecting his claim for payment of island special pay and compensatory allowance at the prescribed rate. The applicant commenced service as Lower Division Clerk under the first respondent on 23.4.62 and he was promoted as Upper Division Clerk w.e.f. 15.7.72 and as Head Clerk w.e.f. 7.7.83 and Accountant w.e.f. 19.5.86 and Superintendent w.e.f. 29.4.93 and at the time of filing of this O.A. he was working in the office of the Registrar of Co-operative Societies. The applicant was drawing special pay and compensatory allowance at the rate prescribed by the Government till his promotion as Upper Division Clerk in 1972 and thereafter he was not paid the same. According to the applicant he was in all respect



identically situated like the applicants in O.A. No.580/93, the respondents were liable to draw and disburse island special pay to the applicant as was done in so far as the applicants in O.A. No. 580/93 especially when the SLP filed against the decision of the Tribunal was dismissed by the Hon'ble Supreme Court. The applicant has filed this application for the following reliefs:

i. To quash Annexure A-9.

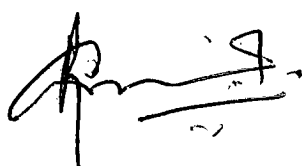
ii. Declare that the applicant is entitled to be get island special pay at the rate of 40% of the basic pay, subject to the maximum of Rs. 350/- till 1.1.1986 and at the rate of 80% of the basic pay subject to the maximum of Rs. 500/- with effect from 1.1.1986, and compensatory allowance at the rate of 10% of the basic pay, subject to the maximum of Rs.150/- per month and to direct the respondent to draw and disburse the entire emoluments due to the applicant on account of island special pay and compensatory allowance together with interest at the rate of 18% per annum.

iii. Declare that the island special pay drawn by him is liable to be treated as part of basic pay for all purposes, including dearness allowance, pension and retirement and other service benefits and,

iv. Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and,

v. Grant the costs of this Original Application.

29. In the O.A. it has been stated that the applicant had earlier approached this Tribunal when his claim for the benefit was turned down through O.A. No. 446/96 and the Tribunal had disposed of that application along with similar cases directing respondents to examine the case of the applicant in the light of the decision in O.A. No.580/93. Pursuant to the order of the Tribunal, respondents by A-5 order turned down the request on the ground that the applicant had not opted for the island special pay and the order of the Tribunal in O.A. 580/93 had been challenged by the Respondents by filing SLP before the Hon'ble Supreme

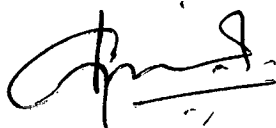


Court. After the SLP was dismissed, the applicant made a fresh claim for the payment of islands special pay and in reply to the representation respondents passed A-9 impugned order. The respondents contested this case on the ground that the application is barred by limitation and the decision in O.A. No. 580/93 could not be applicable because he was not a party to that. It has also been contended that as the applicant had not opted for island special pay he was covered by the 'deemed option' clause and was drawing special allowance with effect from 25.4.70. They denied that he was drawing Island Special pay and compensatory allowance till his promotion in 1972 .

30. Heard learned counsel for the parties. The applicant in this case is a 'deemed optee' of special allowance from 20.4.70. The submission of the counsel for both parties were on the same lines as in O.A. 1411/97. We find that the case of the applicant in this O.A. is similar to the husband of the applicant in O.A. No.1411/97. We have given detailed reasons in O.A. 1411/97 that the cases of employees who are covered by the 'deemed option' clause cannot get the benefit of the orders of this Tribunal in O.A. 896/86 and O.A. 1274/91. For the same reason stated we dismiss this Original Application. No costs.

O.A.No.357/96, 1270/96, 1265/96 and 1283/96

31. Applicants in these O.As are local recruits (in short islanders) in the employment of Lakshadweep administration. According to the applicants in all these O.As, they are similarly situated like the applicants in O.A. Nos. 896/86,



1274/91, 580/93 etc. and therefore they are also entitled to all the monetary benefits as being given to those employees pursuant to the orders of this Tribunal, as the applicants in these O.As and the applicants in those O.As. are doing the same type of work. They submitted denial of the benefits to the applicants was a clear instance of hostile discrimination and violative of the principle of equal pay for equal work and violative of their fundamental rights under Article 14 and 16 of the Constitution. According to them the applicants in O.A.580/93 were drawing along with the applicants and other similarly situated employees special allowances and special compensatory allowance for the last twenty years and that only a section of the employees alone had been given preferential treatment under the orders of the Tribunal and that it would be just and fair that the respondents extend the same benefits to the applicants and other similarly placed employees. According to the applicants monetary loss suffered by them are substantial and would not confine to the monthly emoluments alone. The disparity in the total emoluments would have an adverse impact on their retirement benefits as also pension. This is a case of hostile treatment, according to them.

32. The details of the applicants and the reliefs sought in these O.As are as following:

O.A.357/96

33. The first applicant in O.A. No.357/96 joined service of the Lakshadweep Administration on 11.8.66 and the second applicant joined service in 1977. The reliefs sought are as follows:

A handwritten signature in black ink, appearing to be 'R. S.' with a horizontal line underneath.

(i) An order declaring that the applicants are entitled to get the same monetary and other benefits as made applicable and given to the applicants in O.A. 896/86, O.A. 1274/91, O.A. 580/93, etc. pursuant to Annexure IX, X and XII orders

(ii) An order directing the respondents to compute amounts due to the applicants by way of arrears and to pay the same together with interest at the rate of 15% per annum;

(iii) Such other order/orders as this Hon'ble Tribunal may deem fit on the facts and in the circumstances of the case.

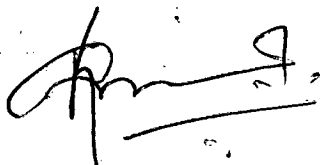
O.A.No.1270/96

34. The dates of appointment of the six applicants in this O.A. are as follows. The first applicant joined service on 5.12.64, the second applicant joined as Lower Division Clerk on 24.11.77 and was promoted to the post of Upper Division Clerk on 18.2.83, the third applicant joined on 10.10.5.80 as Work charged Maistri, the 4th applicant joined service on 17.1.81, the fifth applicant joined on 14.8.75 as Watchman, the sixth applicant joined on 14.5.76 as Lower Division Clerk. The reliefs sought by these applicants are as follows:

i) An order declaring that the applicants are entitled to get the same monetary and other benefits as are made applicable and given to the applicants in O.A. No.896/86, O.A.No.1274/91, O.A. No.580/93, etc. pursuant to Annexure A-IX, A-X and A-XII orders.

ii)An order directing the respondents to compute amounts due to the applicants by way of arrears of pay and to pay the same together with interest at the rate of 18% per annum.

iii) Such other order/orders as this Hon'ble Tribunal may deem fit on the facts and in the circumstances of this case.



O.A. 1283/96

35. The eight applicants in this O.A. joined service in the Lakshadweep Administration on various dates as follows. The first applicant as Agricultural Fieldman on 15.3.63 at Kadmath, second applicant on 20.9.68, third applicant on 22.5.69, 4th applicant as Lower Division Clerk on 12.5.62 at Kalpeni, 5th applicant on 14.4.70 at Minicoy, sixth applicant as Mali at Androth on 21.1.80, 7th applicant as Extension Officer at Androth, 8th applicant on 29.9.77. The reliefs sought by these applicants are as follows:

i) An order declaring that the applicants are entitled to get the same monetary and other benefits as are made applicable and given to the applicants in O.A. No.896, O.A. 1274/91, O.A. No.580/93, etc. pursuant to Annexure A-IX, A-X and A-XII orders.

ii) An order directing the respondents to compute amounts due to the applicants by way of arrears of pay and to pay the same together with interest at the rate of 18% per annum.

iii) Such other order/orders as this Hon'ble Tribunal may deem fit on the facts and in the circumstances of this case.

O.A.No.1265/96

36. The six applicants in this O.A. joined the services of the Lakshadweep Administration on various dates as given below. The first applicant as Lower Division Clerk on 29.9.64 at Kavarathi, second applicant on 18.7.66, third applicant on 27.8.72 at Kavarathi as Boat Lascar, 4th applicant on 11.6.74 at Androth as Work charged Carpenter, 5th applicant as Lab. technician at Androth on 16.9.81, the sixth applicant as Boat Lascar on 15.9.70. The reliefs sought through the O.A. are as follows:





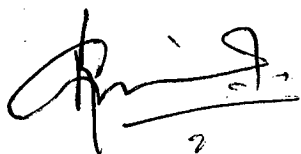
i) An order declaring that the applicants are entitled to get the same monetary and other benefits as are made applicable and given to the applicants [ in O.A. No.896/96, O.A. 1274/91, O.A. No.580/93 etc. pursuant to Annexure -IX, X and XII orders

ii) and order directing the respondents to compute amounts due to the applicants by way of arrears of pay and to pay the same together with interest at the rate of 18% per annum

iii) Such other order/orders as this Hon'ble tribunal may deem fit on the facts and in the circumstances of this case.

37. All the applicants in the above four O.As. are local recruits/islanders and this fact was not in dispute.

38. According to the directions of the High Court, the question of limitation should be considered first by the Tribunal. The learned counsel for the applicants submitted that no objections were raised on behalf of the respondents on limitation and further that the representations of the applicants were rejected on 19.4.95 from when the applications were within time. The learned counsel for the applicant submitted that the question involved was of equal pay for equal work and the question of limitation should not arise in such cases in support of which he cited the following rulings. Further, on the question of limitation also he referred to the judgment of the Hon'ble Supreme Court in the case of A. Sagatanathan and Others V. Divisional Personnel Officer, S.B.C. Division, Southern Railway, Bangalore (1992 Supp(2) SCC 172). He also referred to the decision of the Bangalore Bench of this Tribunal in B. Krishna Rai V. State of Karnataka and Others (1989 (7) SLR 350) to over-rule the preliminary objection raised by the opposite party. Relying on Central Engineering Service Class II and Others Vs. Union of India (1992 (7) SLR 206) Counsel for the applicants submitted that the case may be decided on merits even if there is delay in filing the O.A. The counsel



2

relying on the ratio of the following decisions of the Supreme Court in support of the argued that the applicants are entitled for equal pay for equal work:

- (i) ICAR Vs A.N. Lahiri (AIR 1997 SC 2259)
- (ii) Union of India and another V. P. Sathikumaran Nair and others with Mohanan and Others etc. V. Union of India and another with P.I. Mohd. Iqbal and Others V. Union and Other (AIR 1997 SC 2344)
- (iii) State of Punjab and Others Vs. Krishan Niwas (AIR 1997 SC 2349)

39. Learned counsel for the respondents submitted that the applicants in all these O.As form a separate group as islanders who were never parties before this Tribunal in any earlier proceedings. Their claim for extension of benefits claiming parity as provided to the mainlanders in O.A. 896/96, O.A. 1274/91 and O.A. 580/93 and other connected O.As are for grant of Island sSecial pay. The applicants in all the above O.As were never paid or were eligible for island special pay introduced as per the orders of the Government of India dated 28.3.58, as a remote locality allowance, they being local recruits. All the above applicants in the above O.A. were drawing benefits of special allowance introduced as per order dated 21.10.70 and all other benefits flowing there from time to time. They cannot be treated as similarly situated as the applicants in any of the earlier O.As in the matter which was before this Tribunal for adjudication. He submitted that their claim for equal pay for equal work which was not at all <sup>attracted.</sup> According to him the principle of equal pay for equal work would be attracted only when equals were treated unequal



thereto by employer. Further, he submitted that the applicants in the above O.As who were local recruits are not equals to the applicants in O.A. 896/86, O.A. 1274/91 and O.A. 580/93 and other similar O.As. who are mainlanders provided with Island Special pay at one point of time as per order dated 28.3.58. Further there was no law or order which enabled the applicants in these cases for claiming the benefits of such remote locality allowance which was provided in the form of Island Special pay to those recruits from main land. He further submitted that the administration had not meted out any unequal treatment it was only because of the orders of this Tribunal that the parity was disturbed and the same could not be a ground to extend undue benefits at the cost of the employer. Referring to the principle of parity or equal pay for equal work. He also submitted that denial of benefit of island special pay introduced as a remote locality allowance to the local recruits did not violate the principles of equality for equal work as held by the Hon'ble Supreme Court. He relied a number of rulings in support of his argument.

(i) Reserve Bank of India Vs. Reserve Bank of India employees Association (AIR 1992 SCC )

(ii) Union of India Vs. Vijayakumar (1994 28 ATC 598)


(iii) Union of India Vs. Executive Officers Association (1995 (29) ATC 517)

He further, submitted that these applications are hopelessly barred by limitation. The basic verdict was passed in O.A. 896/86 on 27.4.89 whereas the applicants in this O.A. had approached this Tribunal for the first time only in 1996 i.e about 7 years after arising the cause of action and hence highly barred by limitation. He further submitted that no



petition to condone the delay was filed in any of these O.As nor any explanation was offered. He relied on a number of rulings in support of his argument.

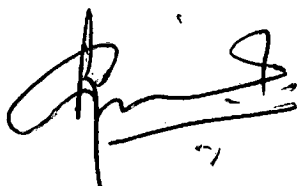
.40. We have given careful consideration with the submissions made by the learned counsel for the parties as well as rival pleadings in all these O.As. As the High Court has directed that the question of limitation should be examined first by the Tribunal we propose to examine this aspect. We find that many of the applicants had been appointed even prior to 1970 when for the first time special allowance was introduced for them when they were posted outside their native islands whereas their counterparts from the mainland were getting island special pay in the form of remote locality allowance from 1958.. As per the then existing rules such special pay was being considered for various benefits like D.A., pay fixation. Even those who have been appointed after 1970 when they joined service were clearly aware that they were entitled only for the special allowance and not for island special pay sanctioned as remote locality allowance. The orders of this Tribunal in O.A. 896/86 was delivered on 27.4.89 and O.A. 1274/91 on 3.4.92. It would appear from the pleadings that the applicants in these O.As have tried to make out a case that the parity was disturbed with the order of the Tribunal in O.A. 580/93 and similar other O.As by which those who were drawing special allowances and special compensatory allowance for the last 20 years had been given special pay and their cause of action arose from that date. The order in O.A.580/93 and other similar O.A. was delivered on 27.1.94 and the present applications are filed on 14.3.96 and later. Section 21 of the Administrative Tribunals Act 1985 prescribes a limitation



of one year or 1 1/2 years where representation is made but not decided. O.A. 896/86 was decided on 29.6.89, O.A. 1274/91 was decided on 3.4.92. The present applicants wanted similar reliefs as was granted to applicants in O.A. 896/86, and O.A. 1274/91. The applicants in O.A 580/93 and others claim and were granted reliefs similar to those granted in O.A. 896/86 and 1274/91. The present applicants can not therefore base their claim of these O.As which were decided on 27.1.94. Thus, from 27.1.94 the present applications are barred by time. We are unable to accept the arguments that the the limitation period has to be counted from 19.5.95 the date of rejection of the representation. We are of the view that the representation should be made in time and representations not made in time can not extend the time limit. Moreover, as observed by us, the local recruits and mainlanders were never treated alike even prior to the orders of this Tribunal. But at the same time both were doing similar nature of work. It cannot be said that the cause of action has arisen only with the orders of this Tribunal.

41. In fact even when these O.As were decided on 22.1.98 this Tribunal had held that these Original Applications were clearly barred by limitation. In the light of the foregoing we are of the view that these Original Applications are barred by limitation. Accordingly, we dismiss these O.As. with no order as to costs.

42. Summarising, the above seven Original Applications are decided as under:

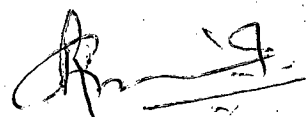
A handwritten signature in black ink, appearing to be 'A. S.', with a horizontal line underneath.

O.A. No. 1555/97 allowed in part as indicated in para 20.

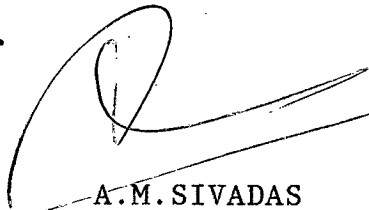
O.A. 1411/97, O.A. No.401/98, O.A. No.357/96 1270/96, 1265/96 and 1283/96 are dismissed as indicated in para 27,30 & 41.

There are no orders as to costs in any of the O.As.

Dated the 28th April, 2000.



G.RAMAKRISHNAN  
ADMINISTRATIVE MEMBER



A.M.SIVADAS  
JUDICIAL MEMBER

kmn.

List of Annexures referred in this Order

O.A.No.357/96

- AII True copy of the order No. 1/12(33)69-ANL(I) dated 25.4.70 issued by the Ministry of Home Affairs, Govt. of India.
- A-III True copy of the order No.1/12(33)69-ANL dated 21.10.70 issued by the Ministry of Home Affairs, Govt. of India.
- A-IV True copy of the Order No.2/4/2/73 Imp dated 15.3.75 issued by the Ministry of Home Affairs, Govt. of India.
- A-VI True copy of the Order No.U-14046/3/77-ANL dated 3.8.78 issued by the Ministry of Home Affairs, Govt. of India.
- A-VII True copy of the Order No. 20014/13/86-E-IV dated 23.9.86 issued by the Ministry of Finance, Govt. of India.
- A-IX True copy of the order in O.A. No.896/86 dated 27.4.89
- A-X True copy of the judgment in O.a. 1274/91 dated 3.4.92
- A-XII True copy of the order in O.A. No.580/93, 787/93, 877/93 & 1969/93 dated 27.1.94

O.A.1555/97

- A1 A true copy of the order No.1/16/97-SC dated 6.8.97 issued by the 2nd respondent.
- A2 True copy of the order in O.A. 1359/94 dated 7.10.97 of the Tribunal.
- A3 True copy of the order dated 25.4.97 in O.A. 1247/93 of the Tribunal.
- A4 True copy of the order No.F.No.10/29/95-F&A (SC) dted 2.7.96 issued by the 2nd respondent.
- A5 True copy of the order dated 10.4.97 in O.A. No.481/97 of the Tribunal.
- A6 True copy of the representation dated 25.2.87 submitted by the applicant to the 2nd respondent.

O.A. 1411/97

- A1 True copy of the O.M. No.F 1/35/97-SC dated 2.9.97 issued by the 1st respondent.
- A3 True copy of the representation dated 1.1.95 submitted by the applicant to 1st respondent.
- A5 True copy of the representation dated 28.8.97 submitted by the applicant to the 1st respondent.

O.A. No.401/98

- A-9 True copy of the O.M.F No.10/33/95/SC dated 12.12.97 issued by the 1st respondent to the applicant
- A-5 True copy of the order No. F.26/95-F&A (SC) dated 16.9.96 issued by the 1st respondent.

O.A. No.1270/96

- A-iX True copy of order in O.A. 896/96 dated 27.4.89 passed by this Tribunal
- A-X True copy of the judgment in O.A. No.1274/91 dated 3.4.92 passed by this Tribunal
- A-XII True copy of the order in O.A. No.580/93, 787/93, 877/93 and 1969/93 dated 27.1.94 passed by this Tribunal.

O.A. No. 1283/96

- A-IX, A-X and A-XII: As in O.A. ;No.1270/96