

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.401/98

Thursday, this the 9th day of July, 1998.

CORAM:

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

E Aravinthakshan Nair
Superintendent,
Office of the Registrar of
Co-operative Societies,
Kavarathi.

- Applicant

By Advocate ~~Mr~~ MR 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 PR Ramachandra Menon, ACGSC

The application having been heard on 9.7.98, the
Tribunal on the same day delivered the following:

O_R_D_E_R

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN †

This application is directed against the order dated
12.12.87 A-9 issued by the first respondent turning down the
claim of the applicant for payment of Island Special Pay and
Compensatory Allowance at the prescribed rate. The applicant
as
has in this application stated that/he was in all respects

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identically situated as the applicants in O.A.580/93, the respondents are liable to draw and disburse the Island Special Pay and Compensatory Allowance to the applicant as was done both in the case of the applicants in O.A.580/93 especially when the SLP filed against the decision of the Tribunal in O.A.580/93 has already been dismissed by the Hon'ble Supreme Court. The applicant has therefore filed this application for a declaration that he is entitled to 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 for a direction to the respondents 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, and to declare that the Island Special Pay drawn by him will be liable to be treated as part of basic pay for all purposes including dearness allowance, pension and retirement and other service benefits. In the application it has been stated that the applicant had earlier approached the Tribunal when his claim for the benefit which were claimed in this application was turned down in O.A.446/96

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and the Tribunal had disposed of that application along with similar cases, directing the respondents to examine the case of the applicants in the light of the decision in O.A.580/93. Pursuant to this order of the Tribunal, the respondents by order dated 16.9.96 passed A-5 order turned down the claim of the applicant on the ground that against the order of the Tribunal in O.A.580/93, an SLP has been filed and the same is pending. After the SLP was dismissed, the applicant made a fresh claim for the benefits as sought in this application and it is in reply to that the impugned order has been passed.

2. Respondents contest the case on the ground that the application is barred by limitation and that the decision in O.A.580/93 cannot be applicable to the applicant because he was not a party to it. It has also been contended that the applicant having not exercised option for Island Special Pay, he is not entitled to stake the claim now.

3. We have heard the learned counsel on either side and have perused the pleadings and other materials on record. In O.A. 540/96 the Tribunal had directed the respondents to consider the claim of applicant in the light of the decision in O.A.580/93. In the order passed by the 1st respondent pursuant to the order of the Tribunal, the contention taken

was that though the applicant was similarly situated as the applicant in O.A.580/93 ~~and~~ as the SLP filed against the ^{was pending} decision in O.A.580/93/it was not possible to extend any benefit to the applicant. Now that the SLP has been dismissed, as respondents have no case that the applicant was not similarly situated as the applicants in O.A.580/93, it is not open for the respondents to put forth a fresh contentions. However, all these contentions which have been raised in this case were raised by the respondents in exactly similar applications O.A.1411/97 and O.A.1555/97. All these contentions have been overruled by the Tribunal. Regarding the plea of limitation, in the order in O.A.1555/97 the Bench has made the following observations:

"3. We have heard the learned counsel on either side and gone through the pleadings available on record. The contention of the respondents that the application is time barred is no more open to contest for the respondents as the persons similarly situated like the applicant who had filed Original Applications much after the date on which the Island Special Pay was due to them have been granted, the benefit in O.A.580/93 and connected cases. The further contention of the respondents that the applicant having lost his eligibility for Island Special Pay on promotion has no right to claim the same now is also not tenable in view of the ruling in O.A.580/93 where such Special Pay was given to similarly situated persons. The ruling of the Tribunal in O.A.580/93 and connected cases have been upheld by the Supreme Court. Under these circumstances the respondents have no option but to grant the applicant the

the Island Special Pay and work out the arrears and pensionary benefits due to the applicant accordingly if he is in all respect similarly situated like any of the applicants in O.A.580/93."

Regarding the contention of the respondents that as the applicant though similarly situated like the applicants in O.A.580/93, he is not entitled to have the benefits extended to him as he was not a party to the application. The Bench in its order in O.A.1411/97 observed as follows:

"..If a benefit is available to a class of employees either on the basis of a statute or instructions of the Government or on the basis of the ruling of a competent court on interpretation of the rules and instructions, that benefit should be made available to all employees similarly situated. If any authority is needed on this point, the same can be had in the ruling of the Apex Court in Aswani Kumar Vs State of Bihar (1997) 2 SCC 1."

4. In the light of what is stated above, we allow this application and direct the respondents to grant to the applicant the benefits given to the applicants in O.A.580/93 regarding Island Special Pay and Compensatory Allowance and to make available to him the monetary benefits flowing therefrom within a period of three months from the date of receipt of a copy of this order. No costs.

Dated, the 9th July, 1998.


(SK GHOSAL)
ADMINISTRATIVE MEMBER


(AV HARIDASAN)
VICE CHAIRMAN

trs/9798

LIST OF ANNEXURES

1. Annexure A5: Order No.26/95-F&A(SC) dated 16.9.1996 issued by the first respondent.
2. Annexure A9: O.M. No.10/33/95 SC dated 12.12.1997 issued by the first respondent to the applicant.

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