

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.413/2001

Monday, this the 17th day of February, 2003.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. Central Government Fishing Seamen's Association, Head Office in FSI Complex, rep. by General Secretary K.V.Mani, Working as Chief Engineer Grade II, Cochin Base of Fishery of India, Kochangadi.P.O. P.B.No.853, Cochin, Kerala-682 005.
2. T.Gajanan, Jr.Deckhand, Cochin Base of Fishery Survey of India, Kochangadi.P.O., P.B.No.853, Cochin-682 005. - Applicants

By Advocate Mr V.Ramachandran

Vs

1. Union of India rep. by its Secretary to Government of India, Ministry of Agriculture, Department of Animal Husbandry & Dairying, New Delhi.
2. The Secretary, Department of Expenditure, Ministry of Finance, New Delhi.
3. The Director General, Fishery Survey of India, Botewala Chambers, Sir.P.M.Road, Bombay-400 001.
4. Zonal Director, Fishery Survey of India, Kochi. - Respondents

By Advocate Mr C Rajendran, SCGSC

The application having been heard on 30.10.2002 the Tribunal on 17.2.2003 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

There are two applicants in this case. The first is the Central Government Fishing Seamen's Association (Association for short) represented by its General Secretary. The second applicant, Shri T.Gajanan is a Junior Deckhand under the 4th respondent and is a member of the Association. The members of the Association belong to the floating staff working under arduous conditions for many hours daily and remaining on board the fishing ships for a continuous period of 20 days or more. During the remaining period, they are engaged in shore duty like unloading, bunkering work, preparations for the next voyage etc. for at least 8 hours a day. Since the applicant-Association's unsuccessful representations seeking redressal of their service grievances with special reference to the Vth Central Pay Commission's recommendations led to their approaching this Tribunal in O.A.1300/2000 for favourable orders and for directions. By A-10 order in O.A.1300/2000 dated 18.1.2001, this Tribunal directed the first respondent to consider the applicants' claim as per the Original Application as referred to in paragraphs 3 and 4 of the statement filed in that case by the Senior Central Government Standing Counsel and to take appropriate decision and communicate the same to the applicants within three months from the date of receipt of copy of the order. The first respondent, viz, Government of India issued A-11 order dated 12.4.2001 communicating the 3rd respondent (Director General, FSI, Mumbai) as under:

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"(a) The floating staff including Scientific and Technical Staff of the Fishery Survey of India be paid Daily Allowance at ordinary rates during the course of offshore duties.

(b) The High Sea Allowance and Messing Allowance available to these personnel would henceforth be withdrawn; and

(c) Normal deduction as prescribed under the rules from the eligible rates of DA would have to be made in case free boarding and/or lodging is provided to the personnel during course of their offshore duties.

2. These orders will take effect from the date of issue of this letter."

The applicants filed the present O.A. challenging the above order, and, in the meanwhile, the 4th respondent, viz, Zonal Director, FSI, Kochi issued A-13 circular dated 20.12.2001 conveyed the 3rd respondent's instructions for payment of Daily Allowance (D.A.) Messing Allowance to the vessel staff pending disposal of O.A.413/2001 filed before the C.A.T. The relevant instructions in A-13 read:

"1. 1/2(Half) Daily Allowance and Messing Allowance as per the existing rate.

2. Request for Daily Allowance may be made in the prescribed form (i.e. T.A.bill form) and no Com./off to be given.

3. Casual hands engaged on board will be paid only M.A.

Further the payment of Daily Allowance and Messing Allowance is subject to the orders of the Hon'ble Central Administrative Tribunal and excess amount if any paid are refundable."

The applicants amended the O.A., with permission, seeking to challenge A-13. In the light of the pleadings and grounds in the amended O.A., the applicants seek the following reliefs:

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- a) to quash A-11 to the extent it has withdrawn the Messing Allowance to the Floating Staff and limited the benefits of the Daily Allowance introduced as per the Vth Pay Commission Report.
- b) to declare that the members of the 1st applicant are entitled for daily allowance from the date of implementations of the Vth Pay Revision order directing the respondents to pay the same with arrears.
- c) to direct the respondents to enhance the Messing Allowance as stated in para 4 of the counter statement at A-9.
- d) to direct the 1st respondent to implement the recommendations by the Committee as to the proposal for revision of pay scales in respect of Bosson, Senior Deckhand and Junior Deckhand as was stated in para 4 of A-9 statement and as was directed to consider by this Tribunal in A-10 order.
- e) quash A-13 to the extent it has limited the Daily Allowance at half of the normal rate and also refused the Compensatory off.

2. In their reply statement, the respondents have defended the impugned orders stating that the floating staff working under the FSI are also Government employees, that their rights and duties are governed by the CCS(CCA) Rules, that the floating staff though Central Government servants, could not be treated on a par with shore staff in the matter working and that it was a departure from normal rule that the floating staff were allowed full DA in lieu of High Sea Allowance (HSA) which stood abolished. When DA was granted for doing offshore duties, there was no question of granting Messing Allowance since DA would cover boarding and lodging expense or in plain words, meal and accommodation. Messing Allowance was to be construed as provision of free food to the floating staff on offshore duties and therefore the withdrawal of Messing Allowance with the introduction of DA was perfectly

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in order. As DA was allowed in lieu of HSA on all the days including intervening holidays spent on duty, there was no question of grant of any compensatory off to those people who had earlier opted for HSA, the respondents would maintain.

3. The applicants have filed rejoinder. They have also filed further material to support the legitimacy of their claim. Thereafter the respondents and the applicants have filed additional reply statement and additional rejoinder respectively.

4. We have heard Shri V Ramachandran, learned counsel for the applicant and Shri C Rajendran, learned SCGSC appearing for the respondents. Learned counsel have filed detailed written argument notes seeking to put in focus their opposing stands on the matter canvassed in the oral arguments.

5. At the outset, Shri V.Ramachandran, learned counsel for the applicants would state that the proposal for revision of pay scales for Bosuns, Senior Deckhand and Deckhand was not pressed as the matter is being separately pursued in the light of the respondents' own statement in paragraph 4 of A-9 reply statement filed in respect of O.A.No.1300/2000 and the Tribunal's order in O.A.1300/2000 dated 18.1.2001(A-10), and that therefore the related prayer is not pressed herein. Taking us through the historical facts centering around the points of contention with regard to High Sea Allowance, Messing Allowance, D.A., and Compensatory Off, the learned counsel would state that HSA to the floating staff was

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introduced in 1982 in order to compensate the rigours of high sea voyages involving a minimum duration of 20 days. Messing allowance came to be introduced as a system of compensation to the floating staff on offshore duty on monthly rate basis for the discontinuance of free food since 1954. The IIIrd Pay Commissions replaced the per mensem rate of Messing Allowance by per diem rate with 100% enhancement. The same was further enhanced in 1982 when HSA was introduced for the first time. Thus the floating staff, including the applicants' category of employees, were getting HSA and enhanced Messing Allowance simultaneously. There was a further enhancement of Messing Allowance in 1993 and the rates so revised still continue, the learned counsel would state. Learned counsel would contend that when Daily Allowance was introduced by the Vth Pay Commission, there was no recommendation regarding withdrawal of Messing Allowance. On the other hand, full DA was introduced specifically in lieu of HSA which was in vogue until then. However, while spelling out the modality for grant of DA, the Vth Pay Commission introduced only one restrictive clause and that was to the effect that DA was admissible at full rate except in circumstances where free food was provided. In other words, only when free food was provided while on duty at high sea, could the DA be interfered with. As per Government of India Order No.4 under S.R.51, free board is deemed to include all the principal meals throughout the period of the Government servant's stay at the outstation. According to counsel, S.R.51 permits deduction from DA only in case free food is provided on board and not when some allowance under the nomenclature of Messing

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Allowance was paid. It is urged that Messing Allowance at Rs.35/- for officers and Rs.25/- for crew fixed in 1993 and remaining unrevised till date, is too meagre to meet even part of the messing cost. It is stressed by the learned counsel that grant of Messing Allowance, not being in lieu of all principal meals and being insufficient to meet expenditure for even one principal meal, cannot justify reduction in the normal DA. Maintaining that grant of Messing Allowance as an advantage available to the floating staff by virtue of the rules in existence, was not subject matter of scrutiny, evaluation or reappraisal by the Vth Central Pay Commission, the learned counsel for the applicants would plead that by virtue of this Tribunal's order in T.A.K.No.646/1987 and T.A.K.No.386/1988 dated 25.8.89, the admissibility of Messing Allowance is upheld and that the respondents are prevented from taking a different stand on account of the application of the principle of resjudicata which is laid down by the Supreme Court in a large body of case law. The respondents' own statement in A-9 would go to show that they had every intention of considering an upward revision of Messing Allowance even after the Vth Central Pay Commission's recommendations came into effect.

6. With regard to compensatory off claimed by the applicant for duty performed on holidays spent at sea, it is pointed out by the learned counsel for the applicants that A-15 order of this Tribunal in O.A.873/90 dated 30.4.92 has resolved the question and that that order has also become final. An option was given to the floating staff in the

matter of availing compensatory off in lieu of HSA for holidays spent on duty at sea. According to counsel, there would be no justification for outright denial of HSA for the entire period on the ground that the floating staff opted for compensatory off. The learned counsel would stress the liability of the respondents to pay interest to the applicants on account of withholding of legally admissible claims like HSA and DA. The counsel would underscore the need for enhancement of the rate of messing allowance bearing a true and realistic connection with the cost of the principal meals per day. However, the learned counsel has stated that the prayer for revision of pay scales for Bosuns, Senior Deckhand and Junior Deckhand might be taken as given up without prejudice to the right of the applicants to raise the same at appropriate opportunity.

7. Shri C.Rajendran, learned SCGSC has contended that the floating staff of the ships of the FSI like all other Central Government servants come within the purview of various Civil Service Rules and that they are given all the benefits in keeping with the provisions available under the CCS Rules. The learned SCGSC would maintain that the pay pattern of the floating staff has been formulated and is periodically revised so as to make their scales comparable to, if not a notch higher than, that of the shore staff. He would draw our attention to the fact that the educational qualification of the floating staff as compared to the shore staff deriving comparable remuneration is conspicuously inferior. Thus, the pay and allowances drawn by the floating staff are only on

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account of the nature of their high sea duties. As far as the Messing Allowance is concerned, the learned SCGSC would state that the respondents provided Cooks, cooking materials, utensils, fuel/energy, cleaning materials and other miscellaneous materials for the preparation of the principal meals. Expenses on account of transportation of provisions and vegetables were also met by the employer. These expenses, incurred in addition to the Messing Allowance and the DA to the floating staff had to be taken into account while considering the reasonableness of the allowances given to the floating staff and the deductions/adjustments made therefrom. The reduction in DA was on account of this Tribunal's interim order to allow Messing Allowance also. When Messing Allowance and DA were paid together, DA had to be necessarily regulated under Government of India decision No.3 coming under S.R.51. As regards the cut in DA and the provision of free food, learned standing counsel would submit that 50% of the DA alone was admissible since DA is essentially a payment on account of boarding and lodging. The applicants' contention to the contrary was baseless, according to the learned standing counsel. While it was true that the vessel could not be treated as accommodation, it cannot be denied that if it were treated as accommodation, the applicants would be entitled only to 25% of the DA at normal rate. But they are being paid 50% since the interim order of the Tribunal dated 11.5.2001. Once Messing Allowance in lieu of free food is allowed, full DA ceases to be admissible and hence restriction of DA to 50% at the normal rate, and in this view of the matter, A-11 order could not be faulted, learned SCGSC would urge. Messing

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Allowance and HSA were withdrawn with the grant of full DA on the implementation of the Vth Pay Commission's recommendations. Prior to 12.4.2001, HSA used to be given. Now DA has taken effect from 12.4.2001. Since Messing Allowance was paid in lieu of food, the amount of DA was to be reduced by 50% and therefore the applicants' contention that the question of Messing Allowance could not be clubbed with the DA was not tenable. As regards Compensatory Off, the contention of the learned SCGSC is that it was being granted for the duties on holidays at sea in lieu of High Sea Allowance and that with the abolition of HSA and the introduction of DA for all days spent on duty on board the vessel, there was no scope for allowing compensatory off any longer.

8. We have perused the case records and have carefully considered the oral submissions and the written arguments of the learned counsel on either side.

9. In order to understand the extent to which HSA, Messing Allowance and DA are related, it is necessary to have a brief idea about the history of the various allowances. The floating staff were enjoying the benefit of Messing Allowance since 1954 on account of discontinuance of provision of free food. Messing allowance was paid for days spent on duty both during voyage and on board the ship for eight hours or more since during such period the floating staff could not have the normal board and lodges like the shore staff. Before the IIIrd Pay Commission's recommendations came into force, the

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floating staff used to be paid Messing Allowance on a monthly basis. On the basis of the recommendations of the IIIrd Pay Commission, the monthly payment of Messing Allowance was replaced by per diem payment. The Messing Allowance was substantially enhanced as a result of the IIIrd Pay Commission's recommendations. In 1982, HSA was introduced/an allowance to compensate for the rigours of the high sea voyages. It is seen that Messing Allowance was also enhanced in 1982. Thus from 1982 onwards, HSA and Messing Allowance used to be paid simultaneously to the floating staff. The IVth Central Pay Commission also made certain common observations regarding the floating staff, particularly with regard to Messing Allowance and HSA for crew and officers among the marine staff. Messing Allowance was further enhanced in 1993. As pointed out by the applicants, the Messing Allowance so enhanced in 1993 has been continuing without any change. We, therefore find that the HSA and Messing Allowance to the floating staff were simultaneously allowed to the floating staff till the Vth Central Pay Commission's recommendations came into force. Meanwhile, there was a lot of litigation turning on the extent of admissibility of Messing Allowance, the eligibility of the floating staff to compensatory off etc. and certain principles had been laid down by this Tribunal in various orders which include the common orders in T.A.K.No.646/87 & O.A.K.No.386/88 dated 25.8.89(A-12), order in O.A.924/90 dated 30.10.91 and O.A.873/90 dated 30.4.92(A-15). These are contained in paragraphs 22 and 26 of A-12 order, paragraphs 6 to 9 of A-17 order and paragraphs 15 & 16 of A-15 order of the C.A.T., Ernakulam Bench.

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10. The present dispute is attributable to the impugned orders A-11 & A-13 cited above, passed in pursuance of this Tribunal's directions in O.A.1300/2000 dated 18.1.2001(A-10) with regard to implementation of the recommendations of the Vth Pay Commission and with reference to the statements made by the respondents in their reply statement in that O.A.(vide A-9). In the statement (A-9) filed by the SCGSC representing the respondents in that case, the following averments were made:

"3. The representation dated 14.7.1997 of the applicant has been placed before the Committee to scrutinise the recommendations of the Fifth Central Pay Commission. The committee has examined the representations and indicated that the Pay Commission has recommended one full daily allowance has been sent to the first respondent i.e. the Ministry of Agriculture, Department of Animal Husbandry and Dairying, New Delhi, which is under the active consideration of the first respondent.

4. As regards the enhancement of Messing Allowance allowance contained in this above said representation to the floating staff a proposal has been sent to the first respondent for necessary orders. As recommended by the Committee, necessary proposal for revision of pay scales in respect of Bosun to the scale of Rs.1640-2900 (pre-revised). Sr.Deckhand to the scale of Rs.1400-2300 (pre-revised) and Jr.Deck hand to the scales of Rs.1200-2040 (pre-revised) has been sent to, the first respondent for necessary consideration."

In A-10 order, this Tribunal had directed.....

"..the first respondent to consider the claim of the applicants made in the Original Application as also as mentioned in the statement filed by the counsel for the respondents in paragraph 3 and 4 and to take an appropriate decision and communicate the same to the 1st respondent within a period of three months from the date of receipt of a copy of this order."

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Since, as mentioned, the controversy centres round the interpretation given to the provisions of the recommendations of the Vth Central Pay Commission, it is pertinent to go through the relevant recommendations which are contained in Paragraph 68.27 of the Report (see Swamy's Vth Pay Commission's Report Part-I B page 810). These are reproduced as under:

"68.27 Allowances to floating staff - The pay scales presently available to the floating staff are in accordance with floating staff in other organisations, including the fishing organisations under the Department of Agriculture and Cooperation, and we do not recommend any change in these. Also, since floating staff are Central Government employees, they will have to be governed by the various provisions of CCS Rules as also the ordinary laws of the land. It is incorrect to suggest that mere application of CCS Rules confers on the floating staff the status of "Shore staff" and all consequential benefits of working hours, leave, etc. In our commendations on floating staff in general, we have suggested abolition of High Sea Allowance and payment of full DA in lieu thereof, and taking into account all other difficulties, as a departure from normal rules. Provisions relating to ex gratia compensation for death during the course of duty have been made to cover the risks out at sea. We recommend that Scientific Officers of FSI should also be paid full Daily Allowance at normal rates applicable for tour, while on the high sea on marine survey work. If free food is provided on board, normal deductions will apply."

From the above, it is clear that the Vth Central Pay Commission has abolished HSA and introduced DA at full rate in its place. Such a revision is made after taking note of the fact that mere application of CCS Rules would not confer on the floating staff the status of shore staff and all consequential benefits of work hours, leave etc. The Vth Pay Commission has made it clear that such a recommendation was

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being made taking into account all the difficulties of the floating staff and as a departure from normal rules. However, the Commission has stipulated that if free food is provided on board normal deductions will apply meaning thereby that if free food is provided to the employees concerned while on board, the DA would get reduced as provided under the rules. We would immediately state that the relevant rule is Rule 51 of the S.R. to which we will advert later.

11. It is significant to mention in this context that the Vth Pay Commission's recommendations did not contain any observation regarding the abolition of or regulation concerning Messing Allowance. The question therefore that arises for first consideration is the admissibility of Messing Allowance with the introduction of DA. It has to be accepted that grant of full DA is in lieu of HSA. Until the Vth Pay Commission came into effect, HSA and Messing Allowance used to be paid simultaneously without any deduction from the HSA. Thus, when HSA is replaced by grant of full DA, no allowance that used to be granted simultaneously with HSA could suffer any diminution or withdrawal unless specifically stated to that effect. In other words, since HSA and Messing Allowance were allowed until the Vth Pay Commission's recommendations came into effect, full DA which is the substituted equivalent of HSA has to be necessarily allowed along with Messing Allowance. To put it differently, in the absence of a specific withdrawal of Messing Allowance, it cannot be implied that by introduction of DA, the Messing Allowance that was

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so far allowed could be interfered with. The only circumstance under which the normal DA can be reduced is when free food is provided on board the vessel. If free food is provided on board, normal deductions will apply.

12. Now we proceed to examine whether grant of Messing Allowance is the same as provision of free food on board. It is to be remembered that as far as grant of HSA was concerned, there was no restrictive condition regarding regulating the allowance on the basis of provision of free food on board. That is why HSA and Messing Allowance were allowed as two separate and independent allowances. In fact, even after introduction of HSA, Messing Allowance used to be enhanced at periodic intervals, as we have already seen. We notice that the latest enhancement was in the year 1993. But the situation changes with the introduction of full DA subject to the condition that whenever free food is provided on board, normal deductions would apply. By no stretch of imagination can it be considered that Messing Allowance can be equated with provision of free food on board. It is only in the nature of partial reimbursement of the expenses which the floating staff reasonably incurred for providing themselves with food while on board. What is "free board" is explained in Government of India decision No.4, appended to S.R.51. The same is reproduced hereunder:

"Scope of terms free board and lodging:(i)xxxxxxxx
(ii) "Free board" should be deemed to include the provision of all the principal meals throughout the period of the Government servant's stay at the outstation at the public expense and casual

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hospitality, such as an occasional meal as an invited guest or free luncheon or tea during working hours, should not be treated as "free board" for the purpose of grant of daily allowance."

The Messing Allowance enhanced in 1993 on per diem basis for the officers is Rs.35/- and for other staff is Rs.25/-. We are not persuaded to believe that this allowance has any rational connection with provision of free board which should include all the principal meals throughout the outstation duty. Even granting that the respondents are providing fuel/energy/cooks/cooking materials and other amenities, it would be too far fetched to argue that Messing Allowance can be equated with provision of the required principal meals throughout the period floating staff spend on outstation duty(in this case on board the vessel). In our opinion, DA can be reduced only when free board is provided. The definition of "free board" is inclusive in character. "Free board" is a larger amenity than all the principal meals. It should take in its ambit something more than the principal meals which, of course, constitutes the main component. Since Messing Allowance at Rs.35/- for officers and Rs.25/- for the crew fixed in 1993 remains unrevised, the argument that such allowance has to be taken as provision of free food and that it would justify reduction of 50% of the DA at normal rate is unreasonable and has to be rejected. Therefore, we have to hold that the Vth Pay Commission's recommendations did not contain any observation regarding the treatment to be given to M.A. vis-a-vis DA the grant of which is recommended by the Commission. The Commission does not appear to have addressed itself to the question of discontinuing Messing Allowance in the light of the introduction of DA at normal rate for the

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floating staff. If Messing Allowance was to be withdrawn, the only alternative was to provide free board which is comprised mainly of all the principal meals throughout the period of outstation duty.

13. In our considered opinion, with the introduction of DA attached with the condition that if free food is provided, normal deduction from DA will apply, the respondent-department should have to streamline the grant of Messing Allowance or provision of free food to the floating staff so as to make the recommendations of the Vth Central Pay Commission as contained in Para 8.27 of the Report concerning grant of DA workable and free from inequity. As a model employer and custodian of public finance, the Government has to formulate rules and regulations in that regard with a view to strike a balance. The respondent Department, particularly the 1st respondent, should constitute an expert Committee to go into the question of continued grant of Messing Allowance or formulation of any viable alternative in the context of the Vth Central Pay Commission's recommendation with regard to grant of full DA to floating staff. The respondent-department shall ensure that the Committee constituted for the purpose ascertain the views of the relevant Staff Association/Union also before finalising its proposals which should form the basis of the substantive and procedural rules or orders regarding the treatment to be given to Messing Allowance in the context of full DA as recommended by the Vth Central Pay Commission subject to normal deduction when free food is provided. The following aspects should be kept in view before the matter is entrusted to the Committee as suggested above by us.

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- i) Free food used to be provided till 1954 when Messing Allowance came to replace provision of free food.
- ii) Messing Allowance should have a realistic and proximate relation to the cost of all the principal meals and other ingredients of free board.
- iii) Deduction of 50% from DA should have a reasonable nexus to the amount of actual Messing Allowance considered along with other expenditure on account of provision of Cooks, cooking materials, fuel/energy, and other miscellaneous requisites, as claimed to have met by the respondents, if it is deemed to be the cost of free board comprising mainly of all the principal meals.

Till appropriate rules/regulations as aforesaid are brought in place, Messing Allowance shall be allowed at rates existing immediately prior to the impugned A-11 order without making any deduction from the normal DA on account of assumed provision of free food.

14. HSA has been abolished and DA at normal rate has been introduced in lieu thereof by the Vth Central Pay Commission. In our opinion, floating staff is eligible for HSA upto the date on which DA is admissible to them. So HSA stops when DA starts. HSA at the appropriate rate, if not given, should be drawn and disbursed to the floating staff till the date on which they are eligible for DA at normal rate in lieu thereof.

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15. With regard to compensatory off, we notice that this issue is settled by this Tribunal's order in O.A.No.873/90(A-15). High Sea Allowance is a payment directly related to the days spent on duty on voyage. The question of compensatory off for those days spent at duty on board, would not arise if HSA was claimed and allowed for such days. That is because, there would be no distinction between normal working days and holidays spent on duty on board the vessel, since the floating staff would work throughout the period of days of voyage and corresponding HSA could be claimed. It was in order to resolve the dispute regarding the admissibility of compensatory off that this Tribunal vide order in O.A.873/90 directed the respondent-authorities to allow the floating staff an opportunity to exercise an option in the matter of drawing HSA or availing compensatory off. The direction was to enable the floating staff to avail themselves of compensatory off in respect of holidays spent on duty on account of their being on board the vessel, within a specific time frame and to increase the Earned Leave in case such compensatory off could not be given. In the alternative, the floating staff could be satisfied with the monetary compensation of HSA and Messing Allowance for those days. The respondents' stand that the option was either to draw HSA or to avail compensatory off is not correct if it means that once an employee chooses to avail of compensatory off in respect of the holidays he spent on duty on board the vessel, he would be ineligible for HSA in its entirety. The correct position, according to us, is that once the employees opt for compensatory off in respect of holidays spent on duty on board the vessel, he should be allowed the benefit of such off days

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within the stipulated time or suitable addition to his leave account should be made. Once compensatory off is opted to be availed thus, no HSA can be claimed in regard to those days in respect of which compensatory off is availed. In other words, pro rata disallowance of HSA for the days allowed as compensatory off would be perfectly in order. Granting of HSA and compensatory off should be regulated in the manner explained above. It has to be mentioned here that with the substitution of HSA with the normal rate of DA as per the Vth Pay Commission's recommendations, grant of DA should also be regulated vis-a-vis compensatory off in the same manner, consistent of course, with the rules regarding grant of DA.

16. In the conspectus of facts discussed above, the O.A. is disposed of with the following orders/directions:

The impugned order A-11 is set aside to the extent it has withdrawn Messing Allowance to the floating staff like the applicants and limiting the benefit of full Daily Allowance introduced as per the Vth Central Pay Commission's report. The applicants are entitled to Daily Allowance from the date of withdrawal of High Sea Allowance. The respondent-department is directed to grant Messing Allowance at the rate in force immediately prior to the introduction of full Daily Allowance in accordance with the Vth Central Pay Commission's recommendation. The impugned A-13 order to the extent it has limited the Daily Allowance at half the normal rate and withdrawn Compensatory Off is

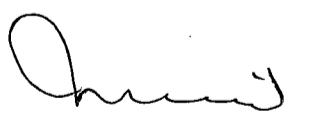
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set aside. The respondents are directed to consider our findings in paragraph 13 supra and formulate appropriate regulations with regard to matters concerning grant of Messing Allowance and Daily Allowance in view of the recommendations at para 8.27 of Vth Central Pay Commission's Report. The respondents are directed not to restrict the normal Daily Allowance until appropriate regulations after comprehensive deliberations are formulated. The floating staff who had opted for Compensatory Off in the place of High Sea Allowance are entitled to the benefit of Compensatory Off in respect of holidays spent on duty on board the vessel but such optees will not be eligible for HSA/Daily Allowance and Messing Allowance in regard to those days in respect of which Compensatory Off is availed.

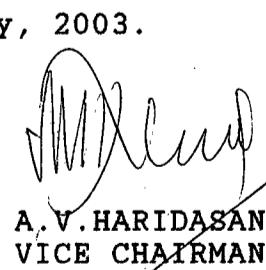
17. The respondent-department is directed to carry out the directions and given effect to the declarations given above within a period of four months from the date of receipt of copy of this order.

18. There is no order as to costs.

Dated, the 17th February, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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