

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00254/2015

Monday this the 26th day of March, 2018

CORAM:

**Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**

- 1 Mohammed Koya,
U.D.C., Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at ALHW Quarters,
Near Fiber Factory, Amini – 682 552.
- 2 K. Abdul Latheef,
Work Maistry, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Kulappinakkal,
Amini – 682 552.
- 3 P.I. Suharabi,
Peon, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Puthiyillam,
Amini – 682 552.
- 4 B. Mohammed Basheer,
L.D.C., Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Barali House,
Amini – 682 552.
- 5 T.K. Afthar Khan,
Junior Engineer (C), Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at ALHW Quarters, Amini – 682 552.
- 6 Jolly Ronald,
Foreman (C), Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Quarters, Amini – 682 552.
- 7 A.C. Saleena Beegum,
Work Maistry, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Ayshechetta House, Amini – 682 552.

- 8 H.M. Hameedathbi,
L.D.C., Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Hameedath Manzil, Amini – 682 552.
- 9 N. Devadasan,
Assistant Engineer (E), Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at ALHW Quarters, Amini – 682 552.
- 10 K.C. Rasheeda Beegum,
Work Assistant, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Koulekkallachetta House, Amini – 682 552.
- 11 A. Ali,
Seacunny, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Asummada House, Amini – 682 552.
- 12 A. Ukkas,
Seacunny, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Achada House, Amini – 682 552.
- 13 Cheriyaakoya,
Crane Operator, Andaman Lakshadweep Harbour Works,
Kadmath – 682 552,
Residing at Keechoda House, Kadmath.
- 14 M. Rajendran,
LDC, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at ALHW Quarters, Amini – 682 552.
- 15 C.M. George,
Junior Engineer (M), Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at ALHW Quarters, Amini – 682 552.
- 16 P. Kunhiseedi,
Senior Foreman, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at ALHW Quarters, Amini – 682 552.
- 17 K. Pookoya,
Masonry, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Koormel House, Amini – 682 552.

- 18 T. Nazer,
USM, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Thattathoda House, Amini – 682 552.
- 19 K. Abdul Muthalif,
Steno, Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at ALHW Quarters, Amini – 682 552.
- 20 C. Mohammed Shafi,
Assistant Engineer (C), Andaman Lakshadweep Harbour Works,
Amini – 682 552,
Residing at Kannol House, Amini – 682 552.
- 21 D. Chandrasekaran,
Junior Engineer (C), Andaman Lakshadweep Harbour Works,
Chetlath – 682 552,
Residing at ALHW Quarters, Chetlath.
- 22 P.A. Yaser Arafth,
Junior Engineer (C), Andaman Lakshadweep Harbour Works,
Kiltan – 682 552,
Residing at ALHW Quarters, Kiltan.
- 23 K.C. Mohanan,
Light House Assistant, Chetwai Light House,
Madu P.O., Orumanayoor (Via), Thrissur – 680 512.
- 24 M. Sreejesh Kumar,
Head Light Keeper (SS), Kadalur Point Light House,
P.O., Katalur, Via, Thikkodi, Pin – 673 529.
- 25 A.G. Babu,
Head Light Keeper (SS), Ponnani Point Light House,
Ponnani Nagaram P.O., Malappuram – 679 583.
- 26 P.P. Basheer,
Aged 59, S/o. Sayed Buhari,
Light House Attendant, Bitra Light House,
U.T. of Lakshadweep – 682 555,
Residing at Padipura House,
Bitra Island, Lakshadweep – 682 555.
- 27 T.P. Shaikoya,
Lower Division Clerk, ALHW, Amini Island,
Lakshadweep – 682 552,
Residing at ALHW Quarters, Amini – 682 552.

- 28 K.G. Binod,
Head Light Keeper (SS), Kaarati Light House,
U.T. of Lakshadweep – 682 555.
- 29 P. Zakkariya,
Aged 46, S/o. K.P. Hamza,
Lower Division Clerk, ALHW, Amini Island,
Lakshadweep – 682 552.
- 30 P. Anver Sadiq Ali,
Junior Engineer (C), ALHW, Amini Island,
Lakshadweep – 682 552.
- 31 K. Sayed Mohammed Koya,
S/o. Ahammed Koya M.,
Work Mantry, ALHW, Amini Island,
Lakshadweep – 682 552.
- 32 P.P. Siraj,
S/o. P. Pookoya,
U.S.M., ALHW, Amini Island,
Lakshadweep – 682 552.
- 33 B. Kunhikoya,
S/o. Aboosala Koya,
Watchman, ALHW, Amini Island,
Lakshadweep – 682 552.

..... **Applicants**

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

- 1 Union of India,
Represented by the Secretary to the Government of India,
Ministry of Shipping, Department of Shipping,
Transport Bhavan, No. 1, Parliament Street,
New Delhi – 110 001.
- 2 The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works (ALHW),
Portblair, Andaman and Nicobar Isles,
Lakshadweep – 682 555.
- 3 The Executive Engineer,
Andaman Lakshadweep Harbour Works (ALHW),
Amini Island,
Union Territory of Lakshadweep – 682 552.

..... **Respondents**

(By Advocate – Mr. N. Anilkumar, Sr. PCGC)

This Original Application having been heard on 20.03.2018, the Tribunal on 26.3.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

OA No. 180/254/2015 is filed by Shri. Mohammed Koya and 32 others who are working in different posts under the Andaman Lakshadweep Harbour Works, aggrieved by the Show Cause Notice dated 05.12.2014, directing the applicants to remit the amount of excess payment made to them towards Hard Area Allowance (HAA) and Special Compensatory Allowance (SCA) for the period from November, 2011 to September, 2014, failing which the amount will be recovered in instalments from the applicants. The applicants have sought the following reliefs:

- (i) Call for the records leading to the issue of Annexure A8 and set aside Annexure A8.*
- (ii) Direct the respondents to not to effect any recovery pursuant to Annexure A8.*
- (iii) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.*
- (iv) Award the cost of these proceedings.*

2. The brief facts of the case are that the applicants had been availing both Hard Area Allowance as well as Island Special Duty Allowance while in service. With the adoption of 6th Central Pay Commission, Special Compensatory Allowance was adopted in the place of Special Duty Allowance. The respondents took a stand that the employees posted at Lakshadweep cannot draw both Special Compensatory Allowance (SCA) and Hard Area Allowance (HAA) simultaneously. They were required to opt for one of these allowances. Aggrieved, the applicants filed OA No. 494/2013 and connected cases before this Tribunal. The Tribunal considered the rival contentions and held as under:

“12. As can be seen from the above extracted Government decision on Special Compensatory Allowance(RL) that in case any other Special Compensatory Allowance is admissible at a particular place, the Central Government employees will have the option to choose the

allowance which benefits them the most. This provision in the aforesaid Government of India decision on Special Compensatory Allowance is making the Special Compensatory Allowance(RL) a distinct and separate financial benefit to all the Central Government employees which can be enjoyed either as the sole Special Compensatory Allowance or to opt the other special compensatory allowance which benefits them the most. In other words, the aforesaid Government of India decision makes it unambiguous that only the most beneficial of either of the Special Compensatory Allowance or Hard Area Allowance can be enjoyed by the Central Government employees who are entitled to it. Annexure A-2 O.M dated 29.8.2008 specifically allows its beneficiaries to enjoy the Island Special Duty Allowance in addition to Hard Area Allowance. It is for this reason that the respondents in their reply have stated that the applicants are entitled to draw Island Special Allowance in addition to Special Compensatory Allowance or Hard Area Allowance but they have to exercise an option in the matter of enjoying either Special Compensatory Allowance or Hard Area Allowance.

13. The aforesaid decision of the Government being a fiscal decision based on policy, this Tribunal feels that it is not proper to interfere with the said policy decision. As nothing was pointed out by the applicants about the unconstitutionality or mala fide motives or arbitrariness in taking such a decision, this Tribunal is of the view that in the light of the express provision in the Government of India decision regarding Special Compensatory Allowance quoted above, the respondents are justified in insisting on the government servants to exercise option of either the Special Compensatory Allowance or the Hard Area Allowance. Therefore, the recovery sought in cases where both the allowances were claimed by the applicants is only justifiable. Moreover, as held by the Hon'ble Apex Court in Chandi Prasad Uniyal v. State of Utharakhand AIR 2012 SC 2951, since the money involved is tax payers' money, any excess payment made can be recovered from the government employees concerned within a reasonable period.

14. However respondents shall effect the actual recovery only after giving individual notices to the applicants and after taking decision on their replies, including the hardships- if any- suffered by them by such recovery - as envisaged in the DoPT instructions issued subsequent to the Uniyal decision

15. Accordingly, the O.As are dismissed. The parties shall suffer their own costs."

3. Accordingly, Respondent No. 3, Executive Engineer (Civil), Amini directed the applicants vide order dated 27.10.2014 to submit their option. Vide Annexe A8 impugned order, Respondent No. 3 further directed the applicants to remit excess payment made in lumpsum,

failing which it will be recovered in 12 monthly instalments. The recovery commenced despite representations made and the applicants submit that the recovery is opposed to the decision of the Hon'ble Supreme Court in CA No. 11527 of 2014 (*State of Punjab and others Vs. Rafiq Masih (White Washer) dated 18.12.2014*).

4. As grounds, the applicants argue that the recovery ordered is violative of the decision of the Hon'ble Supreme Court in *Sahib Ram vs. State of Haryana – 1995 Supp 1 SCC 18*, *Shyam Babu Verma Vs. Union of India – 1994 (2) SCC 521*, *Registrar Cooperative Societies, Haryana and others Vs. Israel Khan and others – 2010 (1) SCC (L&S) 1123*, *Purushotam Lal Das Vs. State of Bihar – (2006) 11 SCC 492* and *Bihar SEB vs. Bijay Bahadur – (2000) 10 SCC 99*. Since the applicants had been asked to exercise their option in 2014, the recovery effected w.e.f 2011 onwards is unjustified and opposed to equity and fair play.

5. The respondents in the reply statement have given the genesis of the dispute. The applicants are not entitled to draw both allowances simultaneously. In addition to Hard Area Allowance, 25% of the basic pay was allowed as Special Compensatory Allowance w.e.f. 01.04.2014 with a condition that in places where more than one Special Compensatory Allowance is admissible, the Central Government employees posted in such stations will have the option to choose the allowance which benefits them most. Once the regulations regarding the same were published, the applicants had challenged the same by filing the OA No. 494/2013. It was dismissed with an observation that the recovery shall be effected only after giving individual notice to the applicants and hearing them. Accordingly, Annexure A8 notice dated 05.12.2014 has been given to the applicants. In the case of Chandi Prasad Uniyal (supra), the Hon'ble Supreme Court made it clear that the recovery should be made in all cases of over payment barring few exceptions of extreme hardship. Here, no such hardship can be claimed as recovery has been proposed over 12 monthly installments.

6. Shri. Vishnu S. Chempazhanthiyil, learned counsel appearing for the applicants and Shri. N. Anilkumar, learned Senior Panel Central Government Counsel have been heard and all documents/records perused.

7. Admittedly, the Judgment of the Hon'ble Supreme Court in ***White Washer's case*** squarely holds the field in the matter of recovery of sums from employees. The said judgment concludes:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

8. The order of this Tribunal had been before ***Rafiq Masih's case*** and hence would stand modified to the extent that the recovery ordered will be subject to the conditions imposed by ***Rafiq Masih***.

9. The respondents are directed to ensure that the recovery in respect of employees falling within any of the categories clearly indicated by the Apex Court's decision would be impermissible. If there are employees who do not fall in these categories, recovery can be resorted to in accordance with the decision of this Tribunal in OA No. 494/2013. OA is disposed of with the above directions. No order as to costs.

(E. K. Bharat Bhushan)
Administrative Member

(U. Sarathchandran)
Judicial Member

List of Annexures of the Applicants

- Annexure A-1 - True copy of O.M. No. 12/4/2008-E.II(B) dated 29.08.2008 issued by the Ministry of Finance, Union of India.
- Annexure A-2 - True copy of the O.M. No. 12(4)/2008-E.II(B) dated 09.11.2011 issued by the Ministry of Finance, Union of India.
- Annexure A-3 - True copy of relevant portion of the Gazette of India.
- Annexure A-4 - True copy of the O.M. No. 12(1)/E.II(B)/03 dated 01.03.2004 issued by the Ministry of Finance.
- Annexure A-5 - True copy of Office Note No. DCE/KVT/ESTT/160/2076 dated 12.06.2013 issued by the 3rd respondent.
- Annexure A-6 - True copy of common order in O.A. No. 494/2013 1537/2014 dated 05.12.2014 issued by the 4th respondent.
- Annexure A-7 - True copy of the order No. EE/AMN/Estt/5(3)/1316/2014 dated 27.10.2014 issued by the 4th respondent.
- Annexure A-8 - True copy of order No. EE/AMN/Estt/5(3)/1537/2014 dated 05.12.2014 issued by the 4th respondent.
- Annexure A-9 - True copy of the judgment dated 18.12.2014 in C.A. No. 11527/2014 of the Hon'ble Supreme Court of India.

List of Annexures of the Respondents

Nil
