

**Central Administrative Tribunal
Ernakulam Bench**

**OA/181/00590/2017 &
OA/181/00691/2017**

Friday, this the 22nd day of February, 2019.

CORAM

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

I. OA/181/00590/2017

A.K.Sathrambi, aged 62 years
W/o Attakoya
Retired U.D.Clerk,
PWD Division, Kalpeni.
Residing at Alikkakkadu House
Kalpeni, UT of Lakshadweep.

Applicant

[Advocate: Mr.M.R.Hariraj]

versus

1. Administrator
Union Territory of Lakshadweep
Kavaratti-682 555.
2. Director of Services
Union Territory of Lakshadweep
Kavaratti-682 555.
3. Secretary, Rural Development
Union Territory of Lakshadweep
Kavaratti-682 555.
4. Union of India represented by
the Secretary to Government of India
Ministry of Rural Development,
New Delhi-110 001.

Respondents

Advocates:

[Mr.S.Manu for R1 to 3]

[Mr.Thomas Mathew Nellimoottil, Sr.PCGC for R4]

II. OA/181/00691/2017

1. Yacoob K., aged 61 years
S/o Muhammed
Multi Skill Employee (Retired)
S.B.School, Kalpeni, U.T.of Lakshadweep,
residing at Kunninumel, Kalpeni-682 557.
2. B.C.Anver, aged 61 years
S/o Hassainar T.,
Lower Division Clerk (Retired)
Community Health Centre, Amini
U.T. of Lakshadweep,
residing at Baliyachada House,
Amini-682 552.
3. G. Amina, aged 65 years
Multi Skill employee (Retired)
Women and Child Development Office
U.T. of Lakshadweep,
residing at Gabrughe House
Minicoy-682 559.
4. T.P. Hameedath, aged 54 years
S/o Khader Haji P.C.
Upper Division Clerk (UDC)
Office of the Asst. Director of (F)
U.T. of Lakshadweep,
residing at Theklapura House
Agatti-682 553.
5. P.P. Seethikoya, aged 58 years
S/o Muhammed
Multi Skill Employee (MSE)
Office of the Govt. Senior Secondary School
U.T. of Lakshadweep,
residing at Pallipuram House
Kavaratti-682 555.
6. P.A.Siddique, aged 50 years
S/o Khojan
Multi Skill Employee (MSE)
Office of the Village (Dweep) Panchayath
U.T. of Lakshadweep
residing at Puthiya Alikom House
Kavaratti-682 555.
7. M. Salih, aged 49 years
S/o Khojan

Office of the Directorate of Animal Husbandry
U.T.of Lakshadweep,
residing at Muchiyam (Alimel) House
Kavaratti-682 555.

8. T.P. Syed Mohammed, aged 44 years
S/o Kunhikoya
Office of the Port, Shipping & Aviation,
residing at Thithiyapura House
Kavaratti-682 555.
9. Fathima, aged 45 years
W/o P.A.Siddique
residing at Puthiya Alikom House
Kavaratti-682 555.
10. Jamaila, aged 25 years
D/o P.A. Siddique
W/o Farook
residing at Thekkala Illam
Kavaratti-682 555.

Applicants

[Advocate: Mr. Hariraj M.R.)

versus

1. Administrator
Union Territory of Lakshadweep
Kavaratti-682 555.
2. Director of Services
Union Territory of Lakshadweep
Kavaratti-682 555.
3. Secretary, Rural Development
Union Territory of Lakshadweep
Kavaratti-682 555.
4. Union of India represented by
the Secretary to Government of India
Ministry of Rural Development,
New Delhi-110 001.

Respondents

Advocates:

[Mr.S.Manu for R1 to 3]

These two OAs having been heard together on 16th February, 2019, this Tribunal delivered the following common order on 22.02.2019:

ORDER

By E.K.Bharat Bhushan, Administrative Member

These two OAs are filed by erstwhile employees of District Rural Development Agency (DRDA) who were absorbed under the service of respondent No.1, consequent to a decision taken at the level of respondent No.4 in 1999. In OA No.691 of 2017, there are 10 applicants who are working in various capacities under the 1st respondent and OA No. 590 of 2017 is filed by a retired Upper Division Clerk under the 1st respondent. The prayer contained in the two OAs is for grant of pension and pensionary benefits reckoning the service of the applicants in DRDA, on their being absorbed in U.T. Administration. They are further aggrieved by the order cancelling MACP benefits granted to them and by the steps taken by the respondents to recover amounts from the pay and allowances for alleged wrong payments on grant of MACP, now ordered to be withdrawn.

2. The applicants commenced service as employees in DRDA. The said agency is a government controlled one, functioning under the 4th respondent and the agency works under the 1st respondent for Rural Development. The employees for DRDA were to be provided by the State Governments/Union Territories concerned, with the funds for the project being provided by Union of India.

3. The applicants in the two OAs were appointed after regular recruitment process by the Lakshadweep Administration and their appointments were regularized from the date of their initial engagement. However, in 1997, the 4th respondent decided to discontinue the agency and merged its activities with State

Governments. While many States immediately implemented the directions and absorbed the employees of DRDO in the respective State Governments, the same got delayed in the Union Territory of Lakshadweep. The applicants represented their case in 1997 itself but it was to no avail. While the State Governments which absorbed the employees gave them all benefits on par with State Government employees, the respondents, in the case of Lakshadweep Administration, unreasonably insisted that the applicants should give an undertaking agreeing to give up their service under DRDA for the purpose of pension. For the employees, this was a Hobson's choice but they willy-nilly agreed to do so as they had no other option.

4. Even after the applicants were absorbed in various departments of the Lakshadweep Administration, they continued to represent that their services may be considered for pension and other benefits. They were pleased to see that the Lakshadweep Administration also supported their case, as is evident from Annexure A1. On further delay, the applicants approached this Tribunal which ordered as per final order dated 29.01.2011 in OA 132/2010 (Annexure A2) that the case of the applicants to switch over to the CCS (Pension) Rules may be considered. Again, the applicants' case was strongly recommended by the 1st respondent as per communication dated 17.4.2015 (Annexure A3). Meanwhile, some of the applicants were granted MACP placements, reckoning their service in DRDA also. A copy of the order dated 26.6.2015 in this regard is available at Annexure A4.

5. Now many of the applicants have already retired on completion of their service. The 4th respondent in the meanwhile informed that as the recruitment of

DRDA employees has been done by the Lakshadweep Administration, it is upto that Administration to take a decision on the question of their pension and service conditions (Annexure A5). But there is no positive action on the part of the Lakshadweep Administration in this regard.

6. Now an order has been issued (Annexure A6 - impugned) dated 19.7.2017 cancelling the MACP placement already granted to the applicants on the ground that their service in autonomous bodies is not to be counted for MACP benefits and the placement granted earlier had been the result of a mistake.

7. It is stated that applicants 2, 4, 5 and 6 are adversely affected by Annexure A6. Smt. A.K.Sathrambi who filed OA No.590/2017 was also affected by Annexure A6 but she has obtained a stay on implementation of Annexure A6 to the extent it affects the applicants therein (Annexure A7).

8. As grounds, it is stated that the impugned order has been issued without notice to the affected personnel. The stand of the 1st respondent has been contradictory to the extent that on one hand, the Lakshadweep Administration had been recommending their case and on the other, cancelling the MACP benefits which had been issued on the basis of themselves being convinced of their merit. The applicants cannot be refused the benefits based on an undertaking which is extracted from them, given their uncertain future at that time. A reasonable pension after long years of service is a benefit which is eagerly awaited by all who superannuate. It is a necessary social security measure which should not be denied on the basis of an interpretation. In DRDA, when it was wound up, the employees had no problems in finding placement in the respective State Governments. However, only in the case of Lakshadweep

Administration are the employees being denied their DRDA service.

9. Respondents 1 to 3 have filed a reply statement. It is maintained that DRDA was an autonomous body registered under the Societies Registration Act 1860 and when the agency was wound up, the employees therein were absorbed under the U.T. Government, accepting the condition that they will not claim any pensionary benefits or claim that their previous service under DRDA is to be counted. A copy of the undertaking executed by the applicants in OA 691/17 is at Annexure R1(a). The considered stand of the respondents is that the applicants are not eligible for any pensionary benefits due to their service rendered under DRDA. It is admitted that MACP benefits were disbursed to these employees but it was a result of an error which is sought to be corrected.

10. The decision to seek absorption of these employees in various State Governments/UT Governments had been a considered one, taken at appropriate level in Government of India. While the absorption in other places was completed without any hitch, in the case of U.T.L. Administration, it took some time. This was on account of the fact that the Cadre Controlling Authority of Lakshadweep being Ministry of Home Affairs, posts had to be created before they could be absorbed. After due deliberation, it was decided to absorb these employees after they had executed an undertaking on non-judicial stamp paper that they shall not claim any benefits relating to their past service.

11. It is true that U.T.L. Administration had addressed the 4th respondent seeking grant of benefits of pension scheme for these employees but the same was returned requesting the Lakshadweep Administration itself to take a considered view on their request.

12. In the reply statement filed on behalf of the respondents 1 to 3, the only clear averment made is that the MACP benefits had been disbursed to the applicants due to an error. It is not denied that the respondents have strongly recommended their case to respondent No.4. However, respondent No.4, as per Annexure A5, replied that the Union Territory of Lakshadweep may take appropriate action in the matter as the Ministry of Rural Development, Govt. of India does not have any role in recruiting/governing the service conditions of DRDA employees.

13. Heard Sri Hariraj M.R., learned counsel on behalf of the applicants in both OAs and the Standing Counsel for Lakshadweep Administration on behalf of the respondents, Union Territory. In so far as the claims of the applicants are concerned, it is seen that respondents 1 to 3 are themselves convinced about the reasonableness of the demand. DRDA was an experiment in managing rural development which was introduced in the late '80s and which continued for the next decade or so. The project was to authorize the society as a channel for routing development funds to the field so that maximum benefits are reaped. With the drawing up of the Panchayat regulations, it was thought fit that this agency may be wound up. For the most part, these employees were all existing State Government employees who were brought on deputation. However, it is seen that in the case of the Lakshadweep Administration, all the employees involved in these two cases were all recruited for the purpose and they were absorbed in various departments under respondent No.1.

14. Possibly, by way of abundant caution, an undertaking was extracted from these employees that they shall not seek consideration of their service with DRDA. As the number of these employees was so limited, this must have been done in order to avoid any dispute with regard to seniority of the existing employees. However, a mechanical implementation of this condition ensured that these people, despite their substantial service in a government supported venture, were not eligible for any pension and they also had the misfortune of seeing the MACP benefits granted to them withdrawn. As pointed out, the Lakshadweep Administration is convinced about the genuineness of the claim, as otherwise, they would not have recommended the same to respondent No.4. Unfortunately, Union of India washed their hands off the matter by replying that the U.T.L. Administration may act as they deemed fit and the recommendation made by U.T.L. of their case leaves us, in no doubt, as to where the sympathy lies. We feel that the services of these personnel under DRDA, where they were involved with government related activity utilizing entirely government funds, cannot be extinguished by technicalities. We are of the view that the OAs have merit on its side and they succeed. The service of the applicants under DRDA is to be taken into account while considering pension and pensionary benefits. They are also entitled to MACP benefits and there shall be no recovery of the disbursed amount/benefit. Any amount recovered is to be returned to the applicants with interest at the relevant GPF rates. Both OAs stand disposed of.

[Ashish Kalia]
Judicial Member

[E.K.Bharat Bhushan]
Administrative Member

Annexures filed by the applicant in OA 590/17:

- Annexure A1: Copy of appointment order dated 18.10.1989.
- Annexure A2: Copy of order No.15(13)/Estt/87-DRDA/157 dated 30.5.1994.
- Annexure A3: Copy of order No.1/4/Estt/97-DRDA(L) dated 11.6.1999.
- Annexure A4: Copy of O.M.No.1/25/94-DRDA dated 31.10.2006.
- Annexure A5: Copy of DO No.R20015/47/2006-07/DRDA dated 4.7.2008.
- Annexure A6: Copy of DO 15/4/Estt/2005-DRDA(L)/1008 dated 5.11.2009.
- Annexure A7: Copy of final order dated 21.9.2011 in OA 132/2010.
- Annexure A8: Copy of order No.12/02/2006 dated 17.4.2015.
- Annexure A9: Copy of order No.19/18/2009-Estt (Vol.IV) dated 26.6.2015.
- Annexure A10: Copy of representation dated 22.12.2015.
- Annexure A11: Copy of order No.R 20015/08/2015 DRDA dated 15.3.2016.
- Annexure A12: Copy of representation dated 16.3.2016.
- Annexure A13: Copy of representation dated 26.6.2016.
- Annexure A14: Copy of representation dated 22.10.2016.
- Annexure A15: Copy of representation dated 12.1.2017.
- Annexure A16: Copy of office order No.19/1/2016-Estt/3062 dated 19.7.2017.
- Annexure A17: Copy of office order No.19/1/2016-Estt/3062 dated 19.7.2017.

Annexures filed by the respondents:

- Annexure R1(a): Copy of order F.No.12.2.2006-Services (2) dated 10.10.2008 issued by the Lakshadweep Administration.
- Annexure R1(b): Copy of the letter F.No.9/4/2008-RTO dated 10.11.2008 issued by the Administration.
- Annexure R1(c): Copy of the undertaking given by the applicant before joining Lakshadweep Administration as UD Clerk.
- Annexure R1(d): Copy of letter F.No.PF/29/NPS-PAOL/1273 dated 7.10.2016 issued by the Administration.
- Annexure R1(e): Copy of letter F.No.PF/29/NPS/2016-PAOL dated 19.4.2017 issued by the Administration.
- Annexure R1(f): Copy of reminder sent to the Ministry by the Administration.
- Annexure R1(g): Copy of letter dated 15.3.2016 issued by the Ministry of Rural Development, New Delhi to the Administration.

Annexures filed by the applicants in OA 691/17:

- Annexure A1: Copy of DO 15/4/Estt/2005-DRDA(L)/1008 dated 5.11.2009.
- Annexure A2: Copy of final order dated 21.9.2011 in OA 132/2010.
- Annexure A3: Copy of order No.12/02/2006 dated 17.4.2015.
- Annexure A4: Copy of order No.19/18/2009-Estt (Vol.IV) dated 26.6.2015.
- Annexure A5: Copy of order No.R.20015/08/2015 DRDA dated 15.3.2016.
- Annexure A6: Copy of office order No.19/1/2016-Estt/3062 dated 19.7.2017.
- Annexure A7: Copy of interim order dated 24.7.2017 in OA 590/2017.

Annexures filed by the respondents:

- Annexure R1(a): Copy of the undertaking executed by the applicants.
- Annexure MA1: Copy of the death certificate dated 3.12.2018.