

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.**

O.A.No. 482 of 2010

Brigadier Moni Chandi

...Petitioner

Versus

Union of India & Others

...Respondent

For the Petitioner : Shri K. Ramesh, Advocate

For the Respondents: Shri R.Balasubramaniam, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)

ORDERS

09.02.2011

1. The petitioner by this petition has prayed that the respondent may be directed to quash and set aside IHQ Ministry of Defence Letter dated 12 May, 2010, IHQ Ministry of Defence letter dated 21.08.2009, PCDA, New

Delhi letter dated 13.08.2008, being inconsistent and misplaced with the actual matrix of facts of the case as also contrary to Govt. of India, Ministry of Defence letter dated 21.11.2006. He also prayed that respondent may be directed to release Overseas Allowance to the petitioner w.e.f. 01.10.2007 to 25.11.2007 and reimburse the total money recovered in the form of Overseas Allowance from 01.07.2007 to 30.09.2007 with penal interest.

2. Petitioner is a Brigadier and was selected and posted on a deputation as a Staff Officer for United Nations Mission in Lebanon and posted specifically at Strategic Cell at New York. The Ministry of Defence, Govt. of India approved the posting order and also laid down very explicitly that the Overseas allowances would be admissible for the officer for his tenure abroad vide its order dated 21.11.2006. Based on this, petitioner joined the posting w.e.f. 27.11.2006 to 25.11.2007. The officer was paid

regularly as per the terms and conditions of the Govt. letter dated 21.11.2006. But suddenly the Govt. of India passed an order that he would not be paid overseas allowance from 1.10.2007 to 25.11.2007 and also recovered the Overseas Allowance(OSA) already paid to the petitioner for the months from July to September, 2007. It is alleged that the logic behind this revision is on account of resolution passed by General Assembly, that Military Staff Officers in UN Missions who have troops under their command will be paid MSA, whereas the applicant was not in any UN Mission per se but posted on Deputation as a Staff Officer (SO) in the Strategic Cell at New York, and hence not covered by this resolution and the confusion was created suo motu by Principal Controller of Defence Accounts.

3. Therefore, petitioner has filed this petition that this amount should be released to the petitioner and no recovery should be effected.

4. This petition is opposed by the respondent who in reply have submitted that the petitioner was paid this Overseas Allowance from 25.11.2006 to 30.06.2007 in terms of the deputation order issued on 21.11.2006. Meanwhile, the United Nations constituted an internal Working Group to conduct a cost-benefit analysis of establishing separate status and conditions of service for United Nations Military Staff Officers. Accordingly, the UN implemented the Revised Support System on 28.6.2007, according to which Staff Officers posted in various UN Missions were made eligible to draw Mission Subsistence Allowance(MSA) instead of Overseas Allowance. The United Nations, therefore, stopped reimbursing the troop cost with reference to Staff Officers to Govt. of India. Since the OSA was to be paid from the amount reimbursed by the UN, and such reimbursement was stopped by the UN, the Staff Officers were no longer entitled to Overseas Allowance with effect from 1.7.2007.

The PCDA i.e. Respondent No.3 on receipt of this order stopped paying Overseas Allowance to all Staff Officers in UN Mission as they were to be paid MSA by the UN w.e.f. July, 2007. It is further submitted that consequent to the implementation of the decision, the OSA which was paid to all SOs from the period July, 2007 to September, 2007 was ordered to be recovered since they were paid MSA/DSA (Daily Subsistence allowance) during this period by the United Nations. The matter of the petitioner was examined and as the fresh terms and conditions of deployment of SOs did not permit the payment of OSA in addition to MSA, the excess amount paid as OSA from July to September, 2007 was recovered from the applicant.

5. Learned Counsel for the petitioner submitted that since petitioner had been sent to this Mission on 21.11.2006 and as per the terms of this appointment, he is entitled to draw Overseas Allowance along with Daily Subsistence

Allowance and the government cannot stop it and affect a recovery. This operates as a promissory estoppel.

6. Learned counsel for respondent submitted that there is no question of estoppel involved in this case as the money funded for payment of Overseas Allowance comes from the United Nations who changed their policy by order dated 28.6.2007 and same has been agreed by the Government of India. This is a contract between two high parties i.e. Government of India and United Nations and the United Nations are entitled to change their policy and revise the Support arrangements for the Staff Officers. All Staff Officers of the Lebanon Mission including the petitioner who was posted at New York, were denied Overseas Allowance w.e.f.01.07.07 since it was from this date that troop reimbursement was stopped by the UN for Staff Officers. Therefore, against this background, the payment of Overseas allowance was denied to the petitioner.

7. We have heard learned counsel for both the parties and perused the record. There is no gain saying that petitioner was sent on deputation on UN Mission and his terms of appointments make it abundantly clear that he was being sent on deputation to United Nations Mission in Lebanon (UNIFIL) as Staff Officer Strategic Cell, located in UN HQ New York. Petitioner was a part of the mission sent to Lebanon and he was placed as a Staff Officer at New York, where he was drawing Daily Sustenance Allowance as well as Overseas Allowance. The Daily Sustenance Allowance was paid by the UN while the Overseas allowance was paid by the Indian Govt., albeit fully reimbursed by the UN. Similarly, Overseas Allowance of staff officers posted at Lebanon was also stopped w.e.f. 01.07.07 and instead they were paid MSA. The only difference being that the petitioner, located at New York was paid DSA, while the staff officers at Lebanon were paid MSA. Both allowances i.e. MSA and

DSA, were paid by the UN, although DSA (paid to the petitioner) was at higher scale. Overseas Allowance, which was paid from the "UN Account" of troop reimbursement was stopped by the UN after the new policy was implemented by the UN on 01.07.07. Since such agreement is between two high contracting parties, and petitioner was going on a Mission on behalf of Government of India, and his allowances were to be reimbursed by the UN, any change in UN policy in order to bring about cost effectiveness cannot be objected to by Govt. of India. Therefore, Govt. of India had no choice but to revoke this payment. The principle of estoppel is not applicable in this case. There are two exceptions to the celebrated principle of estoppel. i.e. (1) there is no estoppel against the statute and (2) against the public policy. This is the public policy evolved by the two high contracting parties i.e. Govt. of India and United Nations. The United Nations has declined to reimburse the

overseas allowance to Staff Officers, therefore, Govt. of India has no option but to withdraw the payment of such allowance to the petitioner also.

8. Consequently, we don't see any reason to interfere in this petition and the same is dismissed and no order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS DHILLON]
Member (A)

New Delhi
9th February, 2011