

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

04.

O.A. No. 454 of 2011

Hav. Kareppa Sanak & Ors.

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

With O.A. Nos. 455, 515, 516, 517, 518, 519, 520, 521, 522, 524, 525, 526, 527, 528, 529, 530, 531, 567, 568, 569, 570, 571, 572, 573, 574, 575, 577, 578, 580, 581, 582, 583, 584, 585 OF 2011 & O.A. Nos. 15, 16, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 76 & 77 OF 2012.

With M.A. Nos. : 139, 130, 129, 128, 131, 143, 133, 142, 144, 135, 134, 136, 132, 140, 141, 137 & 138 OF 2012

For petitioner: Mr. Harish Maan with Mr. K.N. Sharma and Mr. Govind Sharma, Advocates.

For respondents: Mr. R. Balasubramanian, ASG

Ms. Shipa Singh, Advocate. (OA Nos. 454 & 521 of 2011 & O.A. No. 16 & 71 of 2012)

Mr. Ankur Chhibber, Advocate. (OA No. 529 of 2011)

Mr. Mohan Kumar, Advocate. (OA Nos. 516, 569 & 570 of 2011 and 63/12)

Ms. Jagriti Singh, Advocate. (OA Nos. 518 & 584 of 2011 and 60/2012)

Mr. S.K. Sethi, Advocate. (OA Nos. 526 of 2011 and 59 & 64 of 2012)

Mr. J.S. Yadav, Advocate. (OA No. 528 of 2011 & 15 of 2012)

Ms. Barkha Babbar, Advocate. (OA Nos. 520, 571 & 572 of 2011)

Mr. Ajai Bhalla, Advocate. (OA Nos. 567 & 568 of 2011)

Mr. Romit Pathak, proxy for Dr. S.P. Sharma, Advocate. (OA No. 515 of 2011)

Mr. Satya Sehrawat, Advocate. (OA No. 530 & 585 of 2011 and 65 of 2012)

Mr. Dalip Mehra, Advocate. (OA Nos. 455, 577 & 578 of 2011)

Mr. Vishwendra Verma, Advocate. (OA No. 580 of 2011)

Mr. V.S. Tomar, Advocate. (OA Nos. 573 & 574 of 2011 and 76/12)

Ms. Deepakashi Jain, Advocate. (OA Nos. 517, 581 & 582 of 2011 and 67 & 77 of 2012)

Mr. Anil Gautam, Advocate. (OA Nos. 524 & 525 of 2011)

Mr. Akash Pratap, Advocate. (OA No. 522/11 & 58/12)

Ms. Sandhya Kohli proxy counsel for Ms. Veronica Mohan, Advocate. (OA No. 531 of 2011 and 68 of 2012)

Ms. Sangeeta Tomar, Advocate (OA No. 519 & 575 of 2011 and 61 & 70 of 2012)

Ms. Manisha Singh, Advocate (OA No. 66/12)

Mr. K.S. Bana, proxy for Mr. Gaurav Liberhan, Advocate (OA No. 527 & 583 of 2011 and 69 of 2012)

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
04.04.2012

1. These batch of petitions involve similar question of law, therefore, all these petitions are disposed of by the common order. For convenient disposal of all these petitions, the facts given in the case of Sub/Clk Suresh Singh and Others Vs. Union of India (OA No. 530 of 2011) are taken into consideration.

2. Petitioners vide this petition have prayed that the impugned communications/orders dated 10.08.2011, 07.04.2011, 28.04.2011 and 25.05.2011 be quashed and set aside being illegal and unconstitutional. It is

also prayed that petitioners be declared entitled to receive Special Force Allowance as it being paid to them in terms of the orders dated 12.12.2002 and 20.07.2010 by virtue of working in HQ Est. 22 and respondents be restrained from making any recovery of the amount of Deputation Special Para Force Allowance already paid to the petitioners.

3. Petitioners are serving personnel in the Indian Army and looking to their performance, they were sent on deputation in HQ Est. No. 22 on different dates between the years 2008 and 2010 by the competent authority. On deputation, they were paid Deputation Allowance, Special Security Allowance and Hazard Pay but the same were denied to them, therefore, these petitioners along with other petitioners filed the present petitions before this Tribunal seeking aforesaid reliefs.

4. We have heard both the parties and perused the record. So far as the question of Deputation Allowance is concerned, learned counsel for the respondents fairly submitted that matter is pending with Government for favourable consideration. He further submitted that due to bonafide error in implementing sixth pay commission, this benefit of Deputation Allowance has inadvertently been left out while feeding the data in computer and Government has already taken a decision to release Deputation Allowance to the petitioners and matter is under process. We hope and trust that decision to this effect will be taken by the Government expeditiously as far as possible within 3 months from the date of this order and payment of Deputation Allowance will be released to the petitioners.

5. So far as the payment of Special Security Allowance is concerned, there is no dispute on this aspect as petitioners are getting this benefit as admitted by learned counsel for the petitioners.

6. Now the only dispute remains with regard to payment of Hazard Pay, which is now known as "Special Forces Allowance" and only paid to the personnel posted to Special Group of Special Frontier Force (SFF) i.e. "4 Vikas Battalion" in terms of Government of India order dated 03.06.2002. Learned counsel for the respondents submitted that earlier due to bonafide error this allowance was paid to all the personnel posted to SFF to which they were not entitled.

7. In this connection, learned counsel for the respondents invited our attention to the paragraph nos. 7 & 8 of the reply which are reproduced as under;

"7. That however it is stated that the Specimen DO Part II Format for payment of allowances to army personnel serving with Special Group, SFF with Description "DEPSPF" i.e. Deputation to Special Force of SFF was introduced at Serial No. 89 of Appendix-J to Manual to Documentation of JCOs/OR. The components of DEPSPF are Deputation Allowance and Hazard Pay. However, as per Office of CGDA, Computer Centre letter No. Mech/EDP/402/Vol.26 dated 21.05.2008 (copy attached and marked Annexure R-5) Special Security Allowance has been interlinked with the above mentioned DEPSPF inadvertently, as the Hazard Pay along with SSA can be paid to JCOs/ORs posted with Special Group only. The publication of DO Part II orders of DEPSPF with SSA has resulted in over payment to JCO/ORs posted in HQ 22 Establishment Units other than Special Group i.e. 4 VIKAS leading to heavy recovery at the time of retirement.

8. *That as Hazard pay was wrongly paid to all JCOs /ORs on deputation to SFF, the office of CGDA vide letter dated 28.4.11 (copy attached and marked Annexure R-6) had intimated Director General SFF that the ORs Pay System Programs would be modified and as such, that Special Security Allowance would be admissible to all JCOs/ORs of the Indian Army posted to SFF, and Hazard Pay would be paid to JCOs/ORs of Indian Army posted to Special Group units i.e. 4 Vikas only. The Director General SFF was also requested to provide a list of PBORs of the Indian Army posted to SFF belonging to Special Group and others from 1.1.2006 onwards, and also to intimate the allowances paid to these individuals. The DG of Security forwarded the list of JCOs/ORs posted with Units of SFF other than Special group w.e.f. 1.9.2008 vide their letter No. 15216/HQSFF/AG/P&A/2011/1233 dated 11.5.2011 and list of JCOs/ORs posted with Special Group of SFF w.e.f. 1.1.2006 vide letter No. 15216/HQSFF/AG/P&A/2011 dated 21.6.2011."*

8. Learned counsel for the respondents have tried to justify that this mistake occurred at the time of feeding date in the computer while implementing Sixth Pay Commission which resulted in over payment to all personnel posted in HQ 22 Establishment units and this mistake came to be detected later on, therefore, over payment is sought to be recovered from these personnel to which they were not entitled to receive.

9. It is true that due to bonafide error on the part of the respondents, petitioners are being over paid but the petitioners are not party to this mistake. May be under bonafide impression this amount has been paid to the petitioners and now being sought to be recovered but the petitioners are not responsible for this mistake. It will not be proper now to effect recovery from

the petitioners at this distance of time. It will cause great economic hardship. In fact, the petitioners have not drawn by playing fraud but they have been paid this amount due to bonafide error on the part of the respondents. In these peculiar circumstances of the case, the recovery in the present case is waived, however since the mistake has now already been corrected, the benefit of Special Force Allowance will only be applicable to the personnel of the Indian Army posted to SFF units i.e. 4 Vikas Battalion only. Therefore, now in future, it will not available to all personnel except posted to Special Group of SFF i.e. "4 Vikas Battalion"

10. All petitions and MAs stand disposed of with aforesaid directions. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 04, 2012
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