

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 74/2018

Nk/MT Prafulla Bora

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. K P S Chauhan, Advocate with
Mr. Surya Pratap Singh Chauhan, Advocate

For Respondents

: Gp Capt Karan Singh Bhati, Sr. CGSC with
Maj Abhishek Kumar, OIC, Legal Cell

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

The applicant Nk/MT Prafulla Bora (14816065P) vide the present OA makes the following prayers:-

"Declaring the impugned communications / orders dated 15.09.2017, 07.04.2011, 28.04.2011, 27.05.2011 (Annexure A-1 to A-4) as illegal and unconstitutional and the same may kindly be quashed and set-aside;

(ii) Declaring the applicants fully entitled to receive Deputation Special Para Force Allowance (DESPF) as is being paid to them in terms of the orders dated 12.12.2002 and 20.7.2010 by virtue of their working in HQ Est. No.22.

(iii) Restraining the Respondents from making any recovery of the amount of Deputation Special Para Force Allowance (DESPF) already paid to the applicant and if any such recovery is subjected in pursuance to the orders impugned, the same may

kindly be ordered to be refunded with interest @ 18% p.a.

(iv) Any other relief as applicable to the applicant may be granted by the Tribunal.

(v) Cost to the Original Application may also be awarded in favour of the applicants."

2. The admitted facts as brought forth through the pleadings of the parties as also averred through the counter affidavit dated 11.07.2018 are to the effect:-

- The applicant was posted to **HQ Establishment No. 22 on deputation from Army Service Corps of Indian Army w.e.f. 29 March 2006 to 18 March 2009**. The Army personnel on deputation with Establishment No. 22 were entitled to Deputation Allowance @ 10% of Basic Pay and Hazard Pay in case they were deployed in an operational role near the border @ 15% of Basic Pay till implementation of the 4th Central Pay Commission.
- On implementation of 4th Central Pay Commission, Hazard Pay was discontinued.
- In addition to Deputation Allowance, w.e.f. 05 June 2006, all personnel of Special Frontier Force (SFF) were made eligible for Special Security Allowance (SSA) @ 15% of Basic Pay.
- Deputation Allowance and Deputation Special Para Force Allowance (DEPSPF) were introduced w.e.f. 12 Dec 2002 for

personnel posted in specialised unit, i.e., Special Group (SG) of Special Frontier Force (SFF) which is engaged in a particular hazardous job.

- Controller General of Defence Accounts (CGDA) while incorporating various allowances in its automation system, inadvertently linked the grant of Special Security Allowance with DEPSPF resulting in payment of Deputation Special Para Force Allowance which was not applicable to the applicant as he was not posted with Special Group.

CONTENTIONS RAISED

3. The applicant submits that the DEPSPF Allowance paid to him was in accordance with the relevant instructions order issued by the Competent Authority and there was no misrepresentation or fraud played by the applicant in getting the said allowance. The applicant then submits that the recovery sought to be made by the respondents from him is wholly illegal.

4. Vide order dated 12.01.2018 in the present OA and in OA 70/2018, OA 71/2018, OA 72/2018 and OA 73/2018, the respondents were directed not to recover any amount from the salary of the applicants till the next date of hearing, which order is in operation till date.

5. The respondents submit that the Deputation Allowance (DEPA) has already been deleted w.e.f. 11th October 2002 when Deputation Special Para Force (DEPSPF) was introduced and both the DEPA & DEPSPF, cannot be claimed.

6. The respondents further submit that the Directorate General of Security HQ Special Frontier Force (IG, SFF) observed vide letter No. 15216/HQSFF/P & A/2010/139 dated 12 January 2010 that the rate of Deputation Special Para Force (DEPSPF) being claimed by JCOS/ORs on deputation to Special Frontier Force (SFF) was Special Force Allowance (Hazard Pay) which was payable to the persons posted with the Special Group (SG) of the Cabinet Secretariat.

7. The respondents further submit to the effect that a case was taken up with Controller General Defence Accounts (CGDA) by the Deputy Director (AG), Directorate General of Security, Cabinet Secretariat, GoI, New Delhi, to streamline the situation to avoid heavy recovery at later stages by delinking Deputation Special Para Force (DEPSPF) with Special Security Allowance (SSA) (DGS letter No. 15216/HSSFF/AG/P&A/2011/426 dated 10 February 2011). Accordingly, CGDA agreed to delink Deputation Special Para Force (DEPSPF) DO II with Special Security Allowance (SSA) DO II by altering their pay system

program vide letter No. AT/I/13110/Vol VII dated 28 April 2011, where after it had been confirmed by the office of CGDA that recovery, if any, would be made in instalments and not in one lump sum to avoid heavy burden on the affected personnel.

ANALYSIS

8. OA 454/2011 was filed by **Hav Kareppa Sannaik and nine other applicants** on 19.10.2011 with prayer clauses (ii) and (iii) thereof being identical to the prayers made in the present OA. Vide order dated 04.04.2012 in OA 454/2011 of the AFT (PB) New Delhi, it was observed vide paras 1, 2, 3, 6, 7, 8 and 9 to the effect:-

"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. XXX

5. XXX

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 be available to all personnel except posted to Special Group of SFF i.e. "4 Vikas Battalion"

9. Thus, apparently in terms of order dated 04.04.2012 in OA 454/2011 of this Tribunal, it was directed that though the payment of the Deputation Special Para Force (DEPSPF) had been made under a bonafide mistake and though the petitioners of the

said OA had been overpaid, the petitioners thereof were not responsible for the mistake and it would not be proper to effect recovery from the petitioners at that distance of time and cause great economic hardship to them.

10. It was further observed thereby vide the order dated 04.04.2012 in OA 454/2011, that the petitioners had not drawn by playing fraud but they had been paid this amount due to bonafide error on the part of the respondents and thus in these peculiar circumstances, the recovery was waived. It was further held thereby that in as much as the mistake had been corrected, the benefit of Special Force Allowance was made applicable to the personnel of the Indian Army posted to SFF units i.e. 4 Vikas Battalion only and it was directed further that in future, it would not be available to all personnel except posted to Special Group of SFF i.e. "4 Vikas Battalion".

11. In reply to a specific Court query, during the course of hearing dated 09.12.2024, it was submitted on behalf of the respondents that the order dated 04.04.2012 in OA 454/2011 of this Tribunal has not been challenged by the respondents. **Apparently, the same has thus attained finality.**

12. A submission was however made on behalf of the respondents that the amount that has been paid to the applicant was in excess and a burden on the exchequer.

13. It is essential to observe that the order dated 04.04.2012 in OA 454/2011 of this Tribunal is in facts, wholly *pari materia* to the facts of the instant case. As laid down by the Hon'ble Supreme Court in **Uttaranchal Forest Rangers' Assn. (Direct Recruit) vs State of UP** (2006) 10 SCC 346 adverting to its verdict in **State of Karnataka and Ors vs C. Lalitha** (2006) 2 SCC 747, it has been observed that service jurisprudence evolved by the Hon'ble Supreme Court postulates that all the persons similarly situated should be treated similarly.

14. It is also essential to advert to the verdict dated 09.12.2024 of the Hon'ble Supreme Court in **Lt. Col. Suprita Chandel vs Union of India and Ors.**, in Civil Appeal No. 1943/2022 whereby it was observed vide paras 14, 15 and 16 thereof to the effect:-

"14. It is a well settled principle of law that where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court. [See Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others, (1975) 4 SCC 714].

15. In K.I. Shephard and Others vs. Union of India and Others, (1987) 4 SCC 431, this Court while reinforcing the above principle held as under:-

“19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners.”

(Emphasis Supplied)

16. No doubt, in exceptional cases where the court has expressly prohibited the extension of the benefit to those who have not approached the court till then or in cases where a grievance in personam is redressed, the matter may acquire a different dimension, and the department may be justified in denying the relief to an individual who claims the extension of the benefit of the said judgment.”

15. Thus, in as much as the applicant herein is similarly placed as the applicants in OA 454/2011 and as the applicant admittedly was sent on deputation in Headquarters, Est. No. 22 on 29.03.2006 to Chakrota Headquarter MT 29.03.2006 to 29.03.2009, **which has not been refuted by the respondents through their counter affidavit dated 11.07.2018**, in terms of the order dated 04.04.2012 in OA 454/2011 of this Tribunal, the recovery of the excess payment of the Deputation Special Para Force (DESPF) from the applicant who was posted to Est. No. 22

and specifically to Chakrota Headquarter MT 29.03.2006 to 29.03.2009, cannot be made by the respondents and has to be waived and is thus waived.

16. Vide judgment dated 18.12.2014 in CA 11527/2014 by the Hon'ble Supreme Court in **State of Punjab and others etc vs Rafiq Masih (White Washer) etc** it has been observed vide para 12 thereof to the effect:-

"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."

17. Vide judgment dated 02.05.2022 in CA 7115/2010 by the Hon'ble Supreme Court in **Thomas Daniel vs State of Kerala & Ors**, it has been observed vide para 14 thereof to the effect:-

"14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General."

In as much as there was no fraud practiced by the applicant in obtaining Deputation Special Para Force (DEPSPF), which was admittedly paid by the respondents to the applicant erroneously, the recovery of the said amount cannot be effected by the respondents as it would be wholly iniquitous and harsh and is thus waived as directed hereinabove in para no. 15.

18. The OA 74/2018 is thus disposed of accordingly.

Pronounced in the open Court on 20 day of December, 2024.

[RASIKA CHAUBE]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

AP