

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

A..

OA 999/2018

Maj Deepak Bhagat
VERSUS

..... Applicant

Union of India and Ors.

..... Respondents

For Applicant : Mr. Janak Rana, proxy for
Mr. IS Yadav, Advocate
For Respondents : Mr. R S Chhillar, Advocate

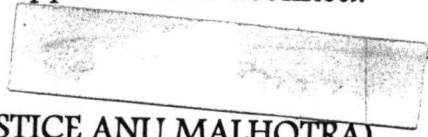
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HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER
08.04.2024

Vide our detailed order of even date we have allowed the OA 999/2018. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.


(JUSTICE ANU MALHOTRA)
MEMBER (J)


(LT GEN C. P. MOHANTY)
MEMBER (A)

OA 999/2018

For Applicant : Mr. I.S. Yadav, Advocate
For Respondents : Mr. R.S. Chillar, Advocate

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

Invoking Section 14 of The Armed Forces Tribunal Act, 2007,
the instant OA has been filed praying for the following prayers :-

- ## BRIEF FACTS

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on 12th December, 2009. The applicant was posted to Border Roads Organisation w.e.f 17th July, 2013 upto 11th March 2016 and located in a modified field area where Armed forces Personnel are granted Special Counter Insurgency Allowance (SCCIA). However, his claim for the said allowance under the provision of Army HQ letter No. 37269/AG/PS 3(a)/90/D (Pay/Services) dated 13th January, 1994 in implementation of the 4th Central Pay Commission recommendations was not granted.

CONTENTIONS ON BEHALF OF THE APPLICANT

3. The applicant submits that he was posted with 371 RMPL/52RCC of Border Road Organization and was taken on the strength on 17th June, 2013. He assumed the appointment on 17th June, 2013 and was granted the Special Compensatory Counter Insurgency Allowance (in modified field) with effect from 17th June, 2013, while the occurrence was published vide Pt II order No. 1/2013 dated 07th October, 2013. He was struck off on posting out on 11th March, 2016 and ceased to draw the SCCIA (in modified field) w.e.f. 11th March, 2016 vide Pt II order No. 02/2016 and the 371 RMPL/52 RCC was deployed in CI Ops in Modified Field Area vide HQ 16 Corps notification No. 16C/1/2013 dated 28th January, 2013, No. 16C/1/2014 dated 28th January, 2014 and NO. 16C/2/2015 dated 30th January 2015.

4. Leaned counsel for the applicant submits that the Army

Officers posted in the BRO are governed by the pay and allowance of Army as paid to them in the normal course and that the regulations of the BRO specifically stipulate that the Army officers posted to BRO shall be eligible for all the allowances entitled to the other Army Officers in that area. The applicant was also posted to BRO at the relevant time and the Regulation 18 of the Bro clearly stipulated that the applicant is entitled for all the allowances as admissible to the Army Officers posted in that area. The applicant submits that the Competent Authority issued the notification notifying the unit of the applicant to be located in Computer Insurgency Operations.

5. Learned counsel for the applicant further submits that the issue for grant of SCCIA to the Army Officers posted in BRO has already been adjudicated by the Regional Bench, Chandigarh of this Tribunal in the case of *Brig A.K. Bhutani Vs. Union of India in* (OA No. 144/2011 vide order dated 19th April, 2011) wherein the Hon'ble Tribunal held that SCCIA is entitled to the officers posted in BRO.

6. Learned counsel for the applicant submits that the respondents have violated the provisions of Article 14 and 16 of the Constitution as the applicant is similarly situated to *Brig A.K. Bhutani*.

CONTENTIONS ON BEHALF OF THE RESPONDENTS

7. Learned counsel for the respondents submits that the Border Roads Organization (BRO) was raised for construction of roads, in

border areas and maintenance of airfields and other works in the Border Areas to meet the requirement of Armed Forces. It is further submitted on behalf of the respondents that being an integral Part of Armed Forces, the officers and personnel posted to BRO are also on Extra Regimental Employment (for short as ERE) and are governed by the terms and conditions applicable to Armed Forces.

8. Learned counsel for the respondents further submits that the Government of India, Ministry of Defence vide its order No. 37269/CI/AG/PS-3(a)/121/D (Pay)/Service dated 13 January, 1994 has sanctioned special compensatory counter insurgency allowance (SCCIA) to troops deployed in counter insurgency operation. Accordingly Army Officers and personnel posted to BRO units were earlier entitled to Special Compensatory Counter Insurgency Allowance (SCCIA) w.e.f January, 1994 if the formation/units are inducted/de-inducted in/from highly active field area/CI ops in field area/CI ops in modified field area based on the notification issued by respective Corps HQrs indicating the status of the area of deployment.

9. Further, learned counsel for the respondents submits that due to objection raised by CAG of India regarding authorization of SCCIA to Armed Forces Personnel posted to BRO units on the pleas that they were not actually involved in CI operations and therefore the said allowance has been discontinued and orders were issued for

recovery vide Ministry of Defence DO letter NO. 16(1)/2006/D (Pay/Service) dated 2nd July, 2008 and corrigendum order dated 31st December, 2008.

10. Learned counsel for the respondents submits that the applicant was posted to 371 RMP under 52 RCC (GREF) from 120 Engr Regt and the officer was taken on strength (for short TOS) w.e.f., 15th June, 2013 and taken on ration strength (for short TORS) w.e.f., 17th June, 2013 vide 371 RMP/52 RCC PT II order No. 01/2023 dated 7th October, 2013. The respondents further submit that the SCCIA was not entitled to Army Officers & Personnel posted to BRO though the applicant was granted SCCIA w.e.f., 17th June 2013 vide 371 RMP/52 RCC PT II order No. 01/2014 dated 12th March, 2014 except for the period of leave based on the Corps notifications for the year 2013, 2014 and 2015 and that SCCIA was only ceased w.e.f., 11th March, 2016 when the applicant was posted out from 371 RMP/52 RCC (GREF).

11. Learned counsel for the respondents further submits that the case for non adjustment of SCCIA in respect of the applicant was also taken up with the higher authorities vide HQ 35 BRTF letter No. 1001/APFSC/121/E1A dated 15th November, 2016 and forwarded to HQ DGBR vide HQ CE (P) Beacon letter No. 170752/88/E1A dated 26th November, 2016. HQ DGBR vide their letter No. 18147/SCCIA/DGBR/T&C dated 9th December, 2016 received vide

HQ CE (P) Beacon letter No. 170052/96/E1S dated 20th December, 2016, stipulates that presently, SCCIA is being paid only to litigant Army Personnel who have got a judgment in their favour from the judicial forums.

12. As averred in the counter affidavit for the respondents, it is submitted that the applicant's case and the case of similarly placed Officers/PBORS for grant of SCCIA who are posted to BRO units in the designated area have already been referred to MoD (Pay/Services) Govt. for according sanction and that case is under consideration at MoD, and on receipt of the decision/Govt. order the same would be communicated to all concerned.

ANALYSIS

13. We have heard Ld. Counsels for the parties at length, and perused the documents placed on record. On an examination of the ORDER dated 19.04.2011 of the *Hon'ble Regional Bench, Chandigarh* of this Tribunal in *OA 144/2011 titled Brig A.K. Bhutani & Ors. v. UoI & Ors.*, we find that the applicant is a similarly placed individual, as the applicant Brig A.K. Bhutani in the aforesaid case we consider it essential to advert to Para 50 of the said order in Brig A.K. Bhutani & Ors (Supra) :-

"50. As a result of the foregoing discussion, we therefore conclude and hold the following :

(a) The military pay and allowances and also risk related concessions of the Applicants, who are combatants of the Regular Indian Army, are protected when they are posted by the Respondents to the Border Roads Organisation in terms of Regulation 18. The

ground that civilian staff is not being paid similar allowances cannot be held to be a valid ground to refuse military allowances to Regular Army personnel posted to BRO in light of the *ibid* Regulation as already held by the Principal Bench in TA No 87 of 2009 allowed on 25-02-2009 and already implemented by the Respondents.

(b) The Applicants face the same (if not more) threat and risk to their lives vis-à-vis other Army personnel in areas where Operation Rakshak is notified. This becomes even more prominent in light of the fact that deaths in militant attacks of Army personnel posted to BRO have clearly been notified as Battle Casualties and admitted to have occurred in Counter- Insurgency Operations in Operation Rakshak .

(c) We agree with the contention of the Applicants that if the bullets of militants do not discriminate between Army personnel posted in BRO vis-à-vis Army personnel posted in other establishments, then it is not correct on the part of the Respondents to indulge in discrimination as regards the admissible benefits. The fact that Army personnel posted to BRO have been killed on duty due to militant attacks and have also been awarded posthumous gallantry awards goes to show that they are very much a part of operations in the area and which is a fact not denied by the Respondents.

(d) The Applicants are entitled to Counter-insurgency Allowances at par with other Army personnel while posted in designated areas where Counter-Insurgency Allowances are being paid to the latter. The same is strengthened by the fact that the Respondents have not denied the payment of the said allowances to Army personnel posted in Military Engineering Services (MES) having no direct operational role and also to officers of the Judge Advocate General's department and the Army Postal Service.

(e) The expertise and responsibility of identifying risk for grant of risk related allowances in designated areas' is of Respondent No 1 in conjunction with military authorities and such identification and expertise cannot be usurped by auditing staff. The notifications issued by the military formations, as was being done in the past, or by the Directorate General of Border Roads as per Annexure A-7 identifying BRO units situated in areas designated as Counter-Insurgency Areas for other Army units shall be sufficient for the purpose. Even in the future the military authorities or Directorate General BRO shall evaluate the risk faced by personnel in designated areas by carrying out the exercise in an objective manner without being swayed by extraneous observations. It was incorrect for the Respondents to have directed the military authorities for discontinuance of notifications to this effect. Regular Army personnel posted to BRO shall continue to remain entitled to Counter-Insurgency Allowance till the time Regular Army personnel of other military establishments remain entitled to it in the same designated areas. This assumes even higher significance since it is admitted by the Respondents that Army personnel posted in BRO are even more vulnerable to insurgent threats than those posted to other formations.

(f) The Respondents may not indulge in a hyper-technical or surgical approach in identification of troops who are involved in Counter-Insurgency Operations since such an approach can lead to

absurd and demoralizing consequences. The stand of the Respondents has been contrary to their own internal position wherein they had fully agreed on the operational role of the Applicants and the fact that they are even more vulnerable than Army personnel posted to non-BRO establishments. It is observed that the Counter-Insurgency Allowances should be made admissible in a general area keeping in view the risk faced and not on technical aspects that abide only to the letter and not to the spirit of such risk-related allowances."

14. Further, we find it pertinent to refer to Letter no. 18147/SCCIA/DGBR/T&C dated 09.12.2016 addressed by Dte General Border Roads to HQ CE (P) Beacon, reproduced as under:

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Fax: 011-25696026
Visit us: <http://bro.dgbr.org>
Bhawan
E-mail: bropera@nic.in

Dte General Border Roads
Seema Sadak
Ring Road, Delhi Cantt,
New Delhi 110010

18147/SCCIA/DGBR/T&C

09 Dec 2016

HQ CE (P) Beacon
Pin-931708
C/o 56 APO

NON ADJUSTMENT OF SCCIA IN
RESPECT OF IC-72116 MAJ DEEPAK
BHAGAT OF 52 RCC

1. Reference your letter No. 170052/88/E1A dated 25 Nov 2016.
2. In this connection, it is intimated that, presently Special Compensatory Counter Insurgency Area (SCCIA) allowance is being paid only to litigant Army personnel of various court cases, where judgement has been delivered in favour of the petitioners/applicants.
3. The case for grant of SCCIA allowance to other similarly placed Army Officer/PBORs (i.e. non petitioners/applicants) posted with BRO units in the designated areas have already been referred to MOD (Pay/Services) Govt for according sanction. The case is under consideration at MoD. On receipt of decision/Govt order, same will be communicated to all concerned.

Sd/-
(S B Sharma)
Sr. Adm Officer
Offg Joint Director/T&C
For DGBR

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15. It is unfortunate to observe that an officer of the Armed Forces

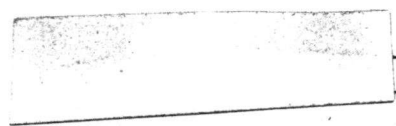
has to run to judicial forums to seek his entitlement, for which he is entitled by virtue of his right and service to the organization, on the pretext that he shall be granted access to his entitlement only when he has a judgement in his favour, granted by a judicial forum.

16. We allow the present OA 999/2018, and direct the respondents to grant the benefit of SCCIA allowance and all other consequential benefits to the applicant within a period of three months from the date of this order, *failing which*, the respondents would be liable to pay interest @ 6% p.a. on the arrears due from the date of this order.

17. Consequently, this OA 999/2018 is allowed.

Pronounced in the open Court on the 8th day of April, 2024.


(LT GEN C.P. MOHANTY)
MEMBER (A)


(JUSTICE ANU MALHOTRA)
MEMBER (J)

Priya Sharma-1