

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

OA 665/2014

Nb Sub Vinod Kumar Chauhan Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Rudrashish Bhardwaj, Advocate
For Respondents : Mr. Neeraj, Sr CGSC with
Mr. Rudra Paliwal, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under:-

*“(a) calling for the original records of the Applicant based on which he was posted in Delhi ‘Over and above’ the authorized strength of his unit by the Respondents and thereafter to direct them to release the CILQ/HRA benefits to his favour as per his entitlement since March 2011 till November 2014 in terms of the Applicant’s representation dated 15.07.2014.
(b) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”*

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 26.12.1995 and served at various field and peace stations during his tenure. From April 2009 until 12.03.2011, the applicant was posted at Ferozepur, Punjab. Subsequently, on 13.03.2011, he was attached to the 75 Medium Regiment. A

letter bearing No. A/10011/1/Arty 7 (B) dated 09.06.2011 was issued, directing that the applicant be employed over and above the authorized strength of the unit for duties with the Directorate General of Artillery (Artillery Coordination) at AHQ, New Delhi. His posting was formalized through Artillery Records Posting Order No. 1310/MF/099/RA-3 dated 16.06.2011.

3. The applicant was granted permission to live outside military quarters, as per 75 Medium Regiment Letter No. 500104/155/Q dated 03.08.2011, annexed to the counter affidavit as Annexure R-1. A draft Station Order was forwarded under Unit Letter No. 500104/91/Q dated 10.11.2011 for the grant of Compensation in Lieu of Quarter (CILQ) for the period from 13.03.2011 to 19.06.2011. However, Station Headquarters, Delhi Cantonment, returned the draft Station Order vide Letter No. 201/Gen/CILQ/Q5 dated 08.12.2011 (Annexure R-2, Exhibit-1), stating that CILQ is not admissible to personnel posted over and above the authorized strength of units in Delhi.

4. On 13.03.2013, the applicant submitted a representation to the Director General of Artillery (Artillery-1) requesting the grant of House Rent Allowance (HRA) or CILQ. According to the applicant, the representation was duly recommended by the said authority, but no action was taken. Meanwhile, the applicant was promoted to the rank of Naib Subedar on 01.05.2014. The

applicant submits that he submitted another representation on 15.07.2014, which was again recommended by Respondent No. 3 vide letter dated 23.07.2014. However, no further action was initiated by the Artillery Brigade (A). A reminder dated 01.08.2014 was also submitted, but it remained unanswered.

5. Aggrieved by the denial of CILQ and the inaction on his representations, the applicant has filed the present Original Application (OA) on 17.12.2014. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT Act, 2007.

CONTENTIONS OF THE PARTIES

6. The learned counsel of the applicant submitted that the applicant has served in the Indian Army with complete dedication and to the entire satisfaction of his superior officers without any blemish in his service, earning promotions up to the rank of Naib Subedar and discharging duties in both field and peace postings, including counter-insurgency areas.

7. It is further submitted by the learned counsel that the applicant was officially attached and later permanently posted to 75 Medium Regiment for duties with the Directorate General of Artillery (Artillery Coord), New Delhi, as per departmental order No. 1310/MF/099/RA3 dated 16.06.2011, thus entitling

him to corresponding benefits including CILQ. It is thus submitted on behalf of the applicant that despite fulfilling all conditions for CILQ/HRA entitlement and residing with family in Delhi with permission of the competent authority, the applicant was wrongfully paid only the Family Accommodation Allowance (FAA), applicable to unmarried personnel below 25 years.

8. The applicant submits that he submitted multiple representations dated 13.03.2013, 15.07.2014 and reminders, all of which were either recommended or endorsed by superiors but not acted upon by the respondent authorities, violating principles of administrative fairness. It was further submitted on behalf of the applicant that due to inaction by the respondents, the applicant has suffered a financial loss of Rs. 2,25,175/- (including Rs. 45,140/- as interest), despite residing on rent with family and incurring expenses for children's education. It is thus submitted on behalf of the applicant that having exhausted all departmental remedies and having been denied his legitimate dues, the applicant has been left with no alternative but to seek redressal before this Tribunal of his long pending grievance. The applicant further submits that the relief sought by the applicant is lawful, reasonable, and supported by relevant service conditions, and the applicant is entitled to the same along with applicable interest thereon.

9. *Per contra*, the learned counsel for the respondents submitted that since the applicant was posted on over and above authorized strength, the applicant is entitled to only Family Accommodation Allowance (FAA) @10% of basic pay, grade pay and military service pay and accordingly the applicant was granted FAA. Furthermore the learned counsel placed reliance on the Government of India policy letter No. 10(55)/98/D(Q&C) dated 18.11.2008, wherein it is mentioned that HRA shall be payable to PBOR who are borne on the authorized married establishment of the Unit/Establishment/Station and hence the applicant is not entitled for the grant of CILQ/HRA.

10. It is submitted on behalf of the respondents that as per the clarification provided by Station Headquarters, personnel posted over and above the authorized strength were considered eligible only for Family Accommodation Allowance (FAA), calculated at 10% of Basic Pay, Grade Pay, and Military Service Pay. Consequently, Daily Order Part II was issued granting FAA, as confirmed by Unit Letter No. 500104/101/Q dated 08.12.2015 (Exhibit 06 of Annexure R-3).

ANALYSIS

11. We have heard the parties at length and perused the various documents produced before us by both the parties.

12. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the considered view that the applicant was previously attached to 67 Fd Regiment (36 Med Regt) and had been attached to 75 Med Regt on 13.03.2011 on over and above their authorized strength for working with IHQ of MoD (Army) Arty-1) and thereafter this attachment was converted into a permanent posting at 75 Med Regt vide order No. 1310/MF/099/RA3 dated 16.06.2011.

13. As per the MoD policy letter on Extension of House Rent Allowance to Personnel below officer Rank dated 18.11.2008, the applicant is not authorized for HRA/CILQ and is authorized for Family Accommodation Allowance (FAA) in accordance with Para 4 of the ibid letter. The relevant Para 4 of the said letter is reproduced herein below:-

“4. All PBOR not held on authorised married establishment will be entitled to family accommodation allowance. The rate of Family Accommodation Allowance shall be the minimum of HRA rate applicable. The pay for this purpose will include Pay in Pay Band, Grade Pay & MSP.”

14. It is however important to observe that the applicant was attached to 75 Med Regt, to work with IHQ of MoD (Army) Arty-1) by a lawful order of the respondents and was not attached on his own request. The order of Arty Records dated 16.06.2011 reads as follows:-

"ARTILLERY RECORDS POSTING ORDER NO. CIK 80/067/2011

(illegible)
SOS/POST

REGD BY

1310/MF/099/RA-3

Artillery Records
Nasik Road Camp
PIN – 422102
APS PIN – 908802
16 Jun 2011

Comd HQ

Fmn

Unit/Est

HQ Western Comd (Arty)
PIN – (illegible)
- 925767
c/o 56 APO

HQ 2 Arty Bde
PIN – 926907
c/o 56 APO

67 Fd Regt
PIN
c/o 56 APO

POSTING: CLKs (SD)

1. The following posting is hereby ordered:

| S.No. | Army No. Rank Name | From | To | To Report By |
|-------|--|---|--|--------------|
| (a) | 15126649X Hav Clk (SD) Vinod Kumar (At 67 Fa Regt) | 67 Fd Regt (Presently att with 36 Med Regt working with ADG Arty (B) Sectt. as PA) | 75 Med Regt (on over and above their auth for working with IHQ of MoD (Army) Arty-1) | Forthwith |

[Tenure to be counted wef on the date of att i.e. wef 13 Mar 11]
(Auth: IHQ of MoD (Army) letter No. A/10011/1/Arty 7(B) dt 09 Jun
2011) – PVC

2. No representation for cancellation/deferment of posting will be entertained and completion report will be submitted to this office by due date.
3. A copy of move order will be sent to all concerned incl. this office i.e. Arty Records (RA-3). Personal occurrences will be notified in Part II Orders and returns adjusted accordingly. FS docs will be desp. to new unit within one month on exec of posting.
4. Pl ack

Signed:
(Jorawar Singh)
Lt Col
SPO
For OIC Records"

15. The applicant was initially attached to the 75 Medium Regiment in furtherance of an Official direction issued by the respondents dated 09.06.2011 and then later on posted permanently vide departmental order dated 16.06.2011, that the tenure was to be counted w.e.f. the date of attachment i.e. w.e.f. 13.03.2011 It is also pertinent to note that vide 75 Medium Regiment Letter No. 500104/155/Q dated 03.08.2011 (annexed to the counter affidavit as 'Annexure R-1') the applicant was granted permission to live outside the military quarters. The relevant extracts of the said admitted letter are reproduced herein below:-

75 Med Regt
(Basantar River)
Pin-925775
c/o 56 APO

500104/155/Q

03 Aug 2011

List B

PERMISSION FOR OUTLIVING: PBOR

1. Sanction of Commanding officer is hereby accorded to the following pers to att with you subunit to live in civil:-

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

| S.No | Army No., Rank & Name | Att with |
|----------|--|--|
| (a)..... | | ... |
| (b)..... | | |
| (c) | No. 15126649X Hav/Clk (SD) Vinod Kumar Chauhan | Director General of Arty (Arty-1) GS Branch IHQ of MoD (Army) New Delhi- 110105 |
| (d) | | |
| (e) | | |
| (f) | | |

| | | |
|-----|-------|-------|
| (g) | ..... | ..... |
| (h) | ..... | ..... |
| (i) | ..... | ..... |
| (j) | ..... | ..... |
| (k) | ..... | ..... |

2. Subunit will ensure that loc state and (not legible)... the above indl should be available and selected house meets all safety, security and Hyd criteria. Indl will meet att NCO, BHM and S/JCO on every Monday and will spk to SM on every Sat.

3. The sanctioned accorded is only for the attachment period

Sd/-
(didar singh)
Capt
QM"

16. Thus, the contention of the respondents that the applicant was posted over and above authorized strength and is accordingly not entitled for HRA/CILQ in view of the Government of India policy letter No. 10(55)/98/D(Q&C) dated 18.11.2008 cannot be sustained as the respondents themselves initially issued the attachment order to the applicant and then later on posted him permanently over and above the authorized strength.

17. Even if the applicant was posted over and above the authorized strength, it cannot be overlooked that the applicant had served at par with those who were within the authorized strength and nothing contrary to this effect has been brought on record by the respondents.

18. Since the applicant was posted over and above the authorized strength by the respondents themselves and not on his

personal request, the respondents cannot deny the corresponding benefits to the applicant like HRA/CILQ as the applicant was granted permission to live outside the military quarters as brought out in Annexure R-1 to the counter affidavit, the relevant extracts of which have been reproduced herein above and the applicant had incurred personal expenses on accommodation and other necessities. The respondents ought not to have posted the applicant over and above the sanctioned strength in the first place and once having so posted the applicant for their bonafide requirements cannot take advantage of their own wrong and deny him the corresponding benefits in light of the same.

19. The plea taken by the counsel for the respondents is against the principles of natural justice and equity as equals cannot be treated unequally and hence the respondents cannot be allowed to take advantage of their own order and the applicant cannot be made to suffer for the action on part of the respondents. Thus, the applicant is entitled to CILQ/HRA benefits in his favour as per the entitlement in the prevalent rules, applicable to all those who were within the authorized strength, for the grant of CILQ/HRA for the period March, 2011 till November, 2014.

CONCLUSION

20. On a consideration of the submissions of either side and after analyzing the facts and circumstances of the case in hand,

we hold that the applicant is entitled to be granted the CILQ for the period from 13th March, 2011 to 09 November, 2014 after adjusting the amount already received by the applicant towards FAA for the aforesaid tenure, and it is so directed. Amount of the CILQ as per prevalent rate and rules shall be disbursed to the applicant within a period of three months of receipt of this order failing which it shall earn interest @ 8% p.a. till the actual date of payment.


21. Consequently, the O.A. 665/2014 is allowed.

22. No order as to costs.

23. We consider it essential that a copy of this order be forwarded to the Military Secretary and QMG of the Integrated Headquarters (Army) to review their policy of posting personnel over & above the authorized strength and the corresponding grant of HRA/CILQ to such personnel. Copy of this order be thus sent by the Registry of the AFT (PB) New Delhi accordingly.

Pronounced in open Court on this 24th day of July, 2025.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

/nmk