* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 20.03.2012

\+ **W.P.(C) No.1124/2012**

Sepoy Yashpal Singh ... Petitioner

versus

Union of India & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.A.K.Panigrahi.
For Respondent : Mr.Sumeet Pushkarna & Mr.Gaurav Verma, Advocates

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.
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1. The petitioner has sought quashing of order dated 19th January, 2011 passed in O.A No.322/2010 by Armed Forces Tribunal, New Delhi and has also sought directions to the respondents to pay US$ 13,588 to the petitioner along with the interest at 24% per annum on the amount awarded to the petitioner as well as the cost of the proceedings.

2. The petitioner had filed an original application before the Armed Forces Tribunal, Principal Bench contending, inter-alia, that he is a Sepoy bearing No.4068111-P and that he had been in the service of DSC (MOD). The petitioner as a Sepoy was posted at the Embassy of

India, Dushanbe (Tajikstan) as a personnel of IIMT (AF) with effect from 16th February, 2007 to 22nd February, 2009 on deputation.

3. According to the petitioner, he was not informed about how much foreign allowance would be admissible to him nor was he asked to sign any form/contract before departing to the said destination.

4. Relying on a circular dated 17th November, 2003 of the Ministry of Defence, Government of India the petitioner had contended that as per the said circular the Sepoys and NCOs (Non Commissioned Officers) were entitled for foreign allowance as admissible to security guards. According to the petitioner, the petitioner, however, is entitled for the same foreign allowance as admissible to NCOs and he was paid less foreign allowance compared to what had been paid to the NCOs.

5. The petitioner, therefore, with other similarly situated Sepoys met the Joint Secretary and the Joint Chief and he alleged that he was assured that they would be paid the same foreign allowances as was paid to NCOs. The petitioner also gave a representation to the Commandant IIMT (AF) and raised a demand of US$ 13,558/-, however, no action had been taken by the respondents.

6. Petitioner also relied on a letter dated 1st May, 2009 of the Second Secretary (HOC) wherein it was allegedly admitted that the foreign

allowance for Sepoys and NCOs are the same. In the circumstances, the petitioner has claimed that the petitioner and other Sepoys have been discriminated against NCOs since all the Sepoys, including the petitioner, are entitled for the same foreign allowance as admissible to NCOs, however, the petitioner has been paid an amount of US$13,558/- less than the amount he is entitled to, which has been denied to him without any just and legally acceptable reason. In the circumstances, the petitioner claimed that an order for recovery of US$ 13,588/- be passed in his favor and that the interest at the rate of 24% per annum be also awarded to the petitioner on the amount which shall be found due to him.

7. Before the Principal Bench, the Armed Forces Tribunal the respondents contested the claim of the petitioner and filed a reply of the Captain Alifa Akbar working as Additional Officer, Incharge Legal Cell, Headquarter, Delhi area contending, inter-alia, that there are no arrears of foreign allowance payable to the petitioner. According to the respondents, the petitioner as a Sepoy was entitled to foreign allowance as applicable to a 'Security Guard' which was also intimated vide Ministry of External Affairs Office Memorandum WI(AD)/239116/09 dated 15th September, 2010. The respondents denied the date of induction of the petitioner as alleged by him to be wrong as according to the respondents he was inducted on 17th February, 2007. The petitioner was further alleged to have gone on deputation under ITEC norms.

Referring to the circular dated 17th November, 2003 which was relied on by the petitioner, it was contended that Sepoys in the Army while posted in Mission abroad on deputation under ITEC, etc. are entitled for foreign allowance at the rates admissible to a security guard and in case the Sepoys are posted against authorized vacancies of Sepoys, still they are entitled for foreign allowance at the rate admissible to a security guard. The respondents also distinguished the case of NCOs (Non Commissioned Officers) by contending that in case the NCOs are posted in missions abroad or on deputation under ITEC, they are entitled to foreign allowance at the rates as admissible to non gazetted officers (basic category in MEA), however, if NCOs are posted in missions abroad against authorized vacancies then they too are entitled for foreign allowance at the rates admissible to a security guard. The respondents categorically denied that the Sepoys are entitled to the same foreign allowance as are admissible to the NCOs. The respondents emphatically contended that since the entitlement of the petitioner as a Sepoy is of foreign allowance equivalent to the foreign allowance payable to a security guard, which in fact has been paid to him, therefore, he is not entitled for any more foreign allowance at a different rate payable to the NCOs and thus no arrears are due to the petitioner nor is the petitioner entitled for any interest. The Armed Forces Tribunal heard the pleas and contentions of the parties and held that in view of circular dated 17th November, 2003 the petitioner as a Sepoy was entitled for foreign allowance at the rate admissible to security guards and

according to the contentions of the respondents the foreign allowance at the rate as applicable to the security guard has in fact been paid to the petitioner. The Armed Forces Tribunal, Principal Bench, however, held that if the calculation has not been made correctly for the payment of foreign allowance to the petitioner at the rate as applicable to the security guards and if there is a difference, it ought to be made good within four weeks. The Tribunal held in the order dated 19th January, 2011 as under:-

> "6. In view of the Circular issued on 17th November 2003 by the Ministry of Defence, persons who are going under the aforesaid scheme will be paid foreign allowance at the rate admissible to Security Guards and accordingly the amount has already been released and paid to the petitioner. As per the reply given by respondents, it is clear that petitioners will be entitled to rates as are admissible to Security Guards and the amount is stated to have been paid but if the calculation has not been made correctly then authorities may recalculate the amount payable to the petitioners as admissible to Security Guards and if there is any difference it may be made good to the petitioners within four weeks."

8. The petitioner has challenged the order of the Armed Forces Tribunal, Principal Bench contending, inter-alia, that NCOs and Sepoys are covered under the same basic pay scale of Rs.5200-20,200/- as per the recommendations of the 6th Pay Commission and, therefore, paying differential foreign allowance to Sepoys and NCOs is in violation of Article 14 of the Constitution of India and thus, the petitioner as a Sepoy is entitled to the same rate of foreign allowance as admissible to

NCOs by circular dated 17th November, 2003. Reliance is also placed on the letter dated 1st May, 2009 allegedly containing the admission by the respondents, that the Sepoys and NCOs are entitled for the same foreign allowance.

9. Mr.Sumeet Pushkarna has appeared on behalf of respondents on advance notice and has emphatically refuted the pleas and contentions raised by the petitioner. The learned counsel has contended that from the perusal of the circular dated 17th November, 2003 of Ministry of Defence, Government of India it cannot be inferred or the same cannot be construed to mean that the Sepoys are entitled for the same allowances as are admissible to the NCOs. He also refuted the plea of the petitioner that since the basic pay scale of NCOs and Sepoys is Rs.5200-20,200/-, therefore, they are entitled for the same foreign allowances.

10. Learned counsel contended that no such plea was raised by the petitioner before the Tribunal and such a plea which had not been raised before the Tribunal cannot be allowed to be raised for the first time before this Court while challenging the order of the Tribunal invoking the power of this Court under Article 226 of the Constitution of India. The learned counsel also denied that from the letter dated 1st May, 2009 of the Second Secretary of Embassy of India (HOC), Dushanbe (Tajikstan), it can be inferred that the Sepoys, including the

petitioner, are entitled to receive the same amount of foreign allowance as was admissible to NCOs. He contended that the said circular only contemplated that if NCOs have been paid a higher rate of foreign allowance then the foreign allowance paid at the higher rate has to be refunded by them. He contended that the said circular categorically stipulates that it was not only a case of paying higher rates of foreign allowance to the Sepoys but perhaps a case of recovery from the NCOs.

11. This Court has heard the learned counsel for the parties in detail. The circular dated 17th November, 2003 of Ministry of Defence is as under:-

> "Subject: Refixation of pay and consequential adjustment in Foreign Allowance of Defence Service Officers and PBORs serving in Missions/posts abroad.
> Sir,
> This Ministry's letter No.4(1)/98/D(Pay/Services) dated 19th May, 1999 is amended as follows:-
>
> The last sentence in para '6' of the letter may be omitted and replaced by the following sentence.
>
> "JCOs and NCOs in the Army and their equivalents in Navy and Air Force, while on posting in our missions abroad or on deputation under ITEC etc. would be entitled to Foreign Allowance at the rates as admissible to a non-gazetted official (basic category in MEA). Sepoys in the Army and their equivalents in Navy and Air Force, while on posting in our Missions abroad or on deputation under ITEC etc. would be, as before, entitled to Foreign Allowance at the rates as admissible to a Security Guard. However, NCOs and Sepoys in the Army and their equivalents in Navy and Air Force while on posting in our Missions abroad against authorized vacancies of Sepoys and equivalents will be allowed Foreign Allowance at the rates admissible to a Security Guard."

> 2. This issues with the concurrence of the Ministry of External Affairs vide their ID No.Q/FD/6910/5/2000 dated 3.11.2003 and 12.11.2003 and with the concurrence of the Finance Division of this Ministry vide their ID No.5/9/2003/1238-AG/PA dated 17.11.2003.
>
> Yours faithfully
>
> (R.K.Grover)
> Under Secretary to the Government of India

12. Perusal of the said circular unequivocally reflects that JCOs and NCOs in the Army and other forces and Sepoys in the Army have been treated differently. JCOs and NCOs in the Army and any other forces on posting in missions abroad or on deputation under ITEC are entitled to foreign allowance at the rate as admissible to non gazetted officials (basic category in MEA) whereas Sepoys on posting in missions abroad or on deputation under ITEC are entitled for foreign allowance at the rate admissible to security guards.

13. Though a slight deviation has been made in case of NCOs posted in missions abroad against the authorized vacancies which makes them entitled for foreign allowances at the rates admissible to a security guard, whereas, the Sepoys, whether appointed to the mission abroad or on deputation to ITEC, etc. or posted to a mission abroad against the authorized vacancies of Sepoys, are entitled for foreign allowance at the rates admissible to a security guard.

14. The said circular cannot be construed to mean that the non commissioned officers of the Army are entitled for the same foreign allowance as are admissible to the Sepoys. Though the NCOs posted in the missions abroad against authorized vacancies are entitled for foreign allowances at the rates admissible to a security guard which is the rate also admissible to the Sepoys posted in mission abroad on deputation under ITEC, etc. or posted against the authorized vacancies at the rate admissible to security guards. However, from this no inference cannot be drawn that if the NCOs have been paid foreign allowance at the rate different than the rate payable to the security guards then the Sepoys shall also be entitled for foreign allowance at the rate as has been paid to NCOs. The learned counsel for the petitioner has referred to a representation made by one of the Sepoys, Yashpal Singh, whose circumstances are similar to that of the petitioner who has admitted in his representation dated 23rd August, 2007 that the Sepoys have been paid foreign allowance at the rate of US$ 580 from 16th February, 2007 to September, 2007; US$ 602 from October, 2007 to November, 2008 and US$ 778 from December, 2008 to 16th February, 2009. Even according to the petitioner if the foreign allowance has been paid at the said rate, the petitioner as a Sepoy cannot claim foreign allowance at whatsoever rate paid to NCOs. According to the allegations of the petitioner, the NCOs have been paid US$ 1155 for the period 16th February,2007 to September, 2007; US$ 1155 from October, 2007 to November, 2008 and US$ 1386 from

December, 2008 to 16th February, 2009. Since there is nothing to show that the petitioner as a Sepoy was entitled for foreign allowance at the rate as was admissible to NCOs, therefore, if the NCOs for any reasons illegal or irregular have been paid foreign allowance in excess, the petitioner cannot claim the foreign allowance at the same rate as was paid to the NCOs, which in any case the respondents had taken a decision to get the refund of the overpaid foreign allowance from such NCOs.

15. From the circulars relied on by the petitioner, his only plea which has been established is that he is entitled for foreign allowance equivalent to foreign allowance admissible to the security guard which in fact has been paid to him and, therefore, the petitioner cannot have any grievance in the facts and circumstances. The Tribunal has already held that in case the calculation is not correct regarding payment of foreign allowance at the rate admissible to the security guards, the differential amount between the amount payable to the security guards and the amount payable to the petitioner, a Sepoy, be paid to him within the time granted by the Tribunal. The petitioner has not denied in the writ petition that he has been paid foreign allowance at the rate which is payable to the security guards. In the totality of the facts and circumstances and for the foregoing reasons, therefore, the learned counsel for the petitioner has not been able to make out any illegality, irregularity or perversity in the order of the Tribunal dated 19th

January, 2011 passed in O.A No.322/2010 titled as 'Sepoy Yashpal Singh v. Union of India & Ors.' so as to entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

March 20, 2012
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