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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.2862/2012 & CM No.9283/2012

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Date of decision: 8th July, 2013

GP. CAPT. JOE EMMAUEL STEPHEN Petitioner
Through Mr.S.C. Malhotra, Adv. with
Mr.Arijit, Adv.

versus

COMMANDANT (PERSONAL) DIRECTORATE
GENERAL OF BSF AND ORS Respondents
Through Mr.Ravinder Agarwal, CGSC

AND

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W.P.(C) No.4268/2012

WG. CDR. S.K.SAINI Petitioner
Through Mr.S.C. Malhotra, Adv. with
Mr. Arijit, Adv.

versus

COMMANDANT (PERSONAL) DIRECTORATE
OF GENENAL OF BSF AND ORS Respondents
Through Mr.B.V. Niren, CGSC for R-1.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (ORAL)

1. The petitioners in these two writ petitions were commissioned as pilots in the Indian Air Force. After his promotion to the rank of Group Captain, Joe Emmanuel Stephen-the petitioner in WP (C) No.2862/2012 was sent on deputation to the Border Security Force (BSF), Air Wing as Captain/Pilot which position he assumed on 11th January, 2010.

2. So far as the Wing Commander S.K. Saini, the petitioner in WP (C) No.4268/2012 is concerned, while working in this rank, was also sent on deputation to the Border Security Force, Air Wing as Co-Pilot.

3. Group Capt. Joe Emmanuel Stephen has complained that the Ministry of Home Affairs by its letter dated 11th May, 2007 has extended the status of Deputy Inspector General (DIG) to the post of Captain/Pilot, which an officer of the rank of Group Captain from the Indian Air Force was fulfilling. In terms of the letter of the Ministry of Home Affairs dated 11th May, 2007, such Captain/Pilot while posted with the BSF Air Wing on deputation was allowed the usage of BSF service vehicle as well as the flag/star plate to which a BSF officer in the rank of DIG was entitled.

4. The petitioner received these benefits when he was initially appointed. However, w.e.f. June, 2010, the petitioner was not permitted to usage of flags/star plate on the BSF vehicle assigned to him and he was thereby denied the status of the DIG despite equivalence by the Ministry of Home Affairs in their circular dated 11th of May, 2007.

5. The petitioners Group Captain Joe Emmanuel Stephen as well as Wing Commander S.K. Saini, have also complained that despite their expressing unwillingness to be parties to Seema Prahri Beema Yojna (SPBY), the respondents effected unwarranted deductions towards premium payable to the Life Insurance Corporation towards this scheme and the petitioners were entitled to full refund thereof.

6. As the respondents failed to address the petitioners' grievance in this regard, the petitioners were compelled to file these writ petitions. Both the petitioners have made a grievance that while serving with the Flying Branch of the Indian Air Force, they are entitled to flying pay, the amount whereof has been fixed keeping in view the rank held by the officer. Thus, an officer in the rank of Wing Commandant and Group Captain would get Rs.14,000/- which after 1st January, 2011 stands increased to Rs.17,500/- (as the DA is being released at 51%, consequently the flying pay has been increased by 25%) towards the flying pay.

7. We are informed that pilots in the Border Security Force are paid flying incentives, the rates whereof have been fixed based on type of aircraft, to be flown by the pilot. Thus a pilot in the BSF Air Wing who is flying MI 17 helicopters, is paid flying incentive of Rs.1800/- per hour in addition to the pay and allowances being otherwise admissible to them.

8. The petitioners' contention is that so far as the pay and allowances of Indian Air Force officers serving with the BSF Air Wing are concerned, they are

entitled to full pay and allowances which would include their basic pay; the flying pay as well as the other allowances from the Indian Air Force. Additionally, for every flying hour undertaken by the pilot (flying BSF aircraft), he would be entitled to flying incentives at the above rates.

9. We may note that so far as the officers who are sent on deputation from the Indian Air Force to the Border Security Force, Air Wing are concerned, the terms and conditions of their appointment are governed by the Memorandum of Understanding (MOU) dated 8th February, 2008, the relevant paras 43 to 45 whereof reads as follows:-

“43. Pay & Allowance IAF deputationists would continue to draw the pay and allowances as they were entitled and drawing in the IAF with deputation allowance as per GOI instructions. They may claim in addition flying and technical incentives at par with BSF Air Wing personnel with a minimum amount equal to the flying pay admissible in IAF from time to time.

44. Status of IAF Officers IAF officers will wear their uniform and carry their own rank and badges. However, IAF deputationists to BSF Air Wing will be extended the facilities of corresponding post of BSF Air Wing personnel as laid down in MHA letter no.17/27/74-ORG/BSF/PF-1 dated 11 May 07. Rank wise status of IAF officers of other branches on deputation to BSF Air Wing vis-a-vis BSF officers shall be the same as that of IAF flying branch officers.

45. Insurance Cover IAF deputationists can avail Seema Prahari Beema Yojna/LIC while on deputation subject to contribution made by deputationists as per prevailing rates and other conditions laid down by Insurance Company in addition to the existing AF GIS cover.”

10. This MOU was revised on the 19th of May, 2010, however, there is no

material change to the above terms. Upon denial of the benefits of the flying incentives, the amounts of the petitioners having been wrongly contributed towards Seema Prahari Beema Yojana/LIC and failure of the respondents to refund the amounts which have been deducted towards SPBY/LIC, the petitioners have been compelled to file the present writ petitions.

11. The above narration shows that in terms of the MOU dated 8th February, 2000 and the circular dated 11th of May, 2007, were entitled to all benefits which were admissible to them as pilots with the Indian Air Force which included flying pay. Upon their joining BSF Air Wing on deputation, they became entitled to the benefits in terms of the Memorandum of Understanding dated 8th February, 2008 as revised on 19th May, 2010.

12. As noted above, para 43 of the MOU dated 8th February, 2008 provided the payment of flying incentives to the Indian Air Force pilots posted with the BSF Air Wing.

13. The BSF, however, has taken the position that flying incentives was required to be adjusted out of the flying pay which was admissible to Indian Air Force pilots who were posted with them and so proceeded in the matter. It is stated that flying pay was being adjusted out of the flying incentives.

14. This issue was the subject matter of protracted correspondence between the petitioners on the one hand and the Border Security Force on the other and has remained a vexed issue.

15. Today, Mr. Ravinder Aggarwal, learned standing counsel for the Central

Government has handed over a copy of the communication dated 13th June, 2013 which has taken into consideration this issue. In the context of implementation of the aforesaid Memorandum of Understanding between the Ministry of Home Affairs and the Ministry of Defence for deputation of the Indian Air Force Officers to the Border Security Force-Air Wing, it has issued the following clarification regarding flying pay and flying incentive thereto:-

“Having been gone through the policy related to the subject matter, it is stated that flying pay and flying incentives are of a difference allowance which are being paid to Air Force officers/other personnel who come to BSF on deputation and there is no overlapping between the above two allowances. Henceforth, flying incentive would be paid according to the rate as applicable in force and it would not be restricted to flying pay as was alone earlier.

It is pertinent to mention here that past case related to the above matter may also be reviewed.”

16. The respondents have thus taken a stand that an officer of the Indian Air Force flying wing posted on deputation to the BSF Air Wing is entitled to the flying incentive in addition to the flying pay which he was getting while flying for the Indian Air Force. The respondents have also taken the decision that past cases would require to be reviewed in the context of this decision.

17. In view thereof, no dispute remains with regard to the entitlement of both the petitioners to the flying incentives. Flying incentives have to be issued in addition to flying pay to the petitioners who are Indian Air Force pilots and have been sent on deputation to the BSF Air Wing.

18. The second issue which has been raised in the present writ petition relates to the legality of the deductions effected towards the premium payable towards the Seema Prahari Beema Yojana of the LIC which has been effected from the pay and allowances of the petitioners despite their expression of unwillingness for the same.

19. So far as the Group Captain J.E. Stephen is concerned, the respondents submit that he had assumed charge in the BSF, Air Wing on deputation as Captain/ Pilot on 11th January, 2010 and had expressed unwillingness to participate in the afore-noticed insurance scheme only on 28th February, 2010. By this time, the respondents had effected deduction of the first instalment which was payable to SPBY/LIC. It is explained that on receipt of Group Captain J.E. Stephen's unwillingness, the respondents have not deducted any other amount. It is explained by learned counsels that the deduction which is effected towards the SPBY scheme is bi-annual and so far as the petitioner was concerned, deductions have been effected till February, 2011. No deductions were effected in the second bi-annual instalment and the deduction was effected upto August, 2011. However, in view of the petitioner's objections, the respondents have submitted that they refunded the amount deducted in August, 2011. The above narration would show that the respondents have, therefore, deducted amounts from the salary of the petitioner-Group Captain J.E. Stephen.

20. It is submitted by Mr. Malhotra, learned counsel for the petitioners

that given the paltry nature of the deduction towards the Seema Prahiri Beema Yojana, the petitioner in WP (C) No.2862/2012 does not press the recovery thereof in these proceedings. We note that the submissions in this regard have been made only in view of the arbitrariness and illegal action of the respondents so far as Group Captain J.E. Stephen is concerned.

21. We may now come to the third area of controversy. Group Captain J.E. Stephen has claimed that he was sent on deputation to the post & rank of DIG in the BSF Air Wing. Other officers of the Indian Air Force were also posted in the rank of DIG though in the BSF General Duty Branch. The petitioner was initially given all benefits commensurate with his posting in the rank of DIG in the Border Security Force which included the flag and star on the vehicle as per the entitlement of the DIG in the Border Security Force. It is submitted that the respondents arbitrarily withdrew this facility without even passing a formal order w.e.f. June, 2010 and did not restore the same despite repeated representations of the petitioners.

22. We may note that Group Captain J.E. Stephen was repatriated on 10th January, 2013 to the Indian Air Force on completion of his tenure on deputation. However, Mr. S.C. Malhotra, learned counsel for the petitioners has pressed this issue for the reason that the same is likely to arise again in view of the stand taken by the respondents.

23. The respondents have urged that the petitioner Group Captain Shri J.E. Stephen was not entitled to these benefits for the reason that he was

wearing the uniform of the Indian Air force even though he was having the benefit of a Border Security Force vehicle as well as a driver from the BSF.

24. So far as this question is concerned, the petitioner places reliance on para 44 of the Memorandum of Understanding dated 8th February, 2008 executed between the Ministry of Defence and Ministry of Home Affairs which reads as follows:-

“44. Status of IAF Officers IAF officers will wear their uniform and carry their own rank and badges. However, IAF deputationists to BSF Air Wing will be extended the facilities of corresponding post of BSF Air Wing personnel as laid down in MHA letter no.17/27/74-ORG/BSF/PF-1 dated 11 May 07. Rank wise status of IAF officers of other branches on deputation to BSF Air Wing vis-a-vis BSF officers shall be the same as that of IAF flying branch officers.”

25. A bare reading of the above would show that Indian Air Force Officers who are sent on deputation to the Border Security Force are required to wear the uniform and carry their own rank and badges. It is, however, clearly stipulated that such deputationists to the BSF, Air Wing will be extended the facility of the corresponding post of BSF, Air Wing Personnel as laid down in the MHA Letter no.17/27/74-ORG/BSF/PFA dated 11th May, 2007.

26. Thus, it is apparent that the Indian Air Force deputationists to BSF have been accorded special status and it is inherent in para 44 of the MOU dated 8th February, 2008 above that the Indian Air Force deputationists to the BSF Air Wing are required to be extended all facilities of the corresponding post of the BSF Air Wing. So far as the uniform is concerned, the Indian Air Force officers

are required to wear their own uniform and carry their own rank and badges in terms of para 44.

27. As per the Ministry of Home Affairs letter dated 11th May, 2007, a Group Captain in the Indian Air Force is equivalent to the Deputy Inspector General of the Border Security Force. A Group Captain of the Indian Force who is posted on deputation to BSF, Air Wing would, therefore, be entitled to the same benefits and all facilities which are admissible to the DIG.

28. There is yet another circumstance which compels us to so declare. The petitioner has placed before this court the respondents' reading of para 44 of the Memorandum of Understanding and its implementation. Not only was that the benefit initially extended to the petitioner but the respondents have been consistently advancing all benefits which are admissible to DIGs of the BSF to the deputationists of the Indian Air Force. In this regard, the petitioner has drawn our attention to the cases of Group Captain M. Rawat & Group Captain (Retd.) K.M. Reddy who were posted on deputation with the BSF Air Wing and were given the benefit of all facilities as were admissible to a DIG. The petitioner has filed an affidavit of Group Captain (Retd.) K.M. Reddy in this regard which has submitted that during his tenure with BSF till 21st July, 2009, though he was wearing the Air Force uniform as required, he was still authorised to use a BSF vehicle for all official duties with flag and stars in terms of Ministry of Home Affairs letter dated 11th May, 2007.

29. The petitioner has also placed on record affidavits of Wing Commander

Mahesh Singh Bhandari and Wing Commandar Pradeep Bishnoi who have stated that during their tenure with the BSF Air Wing, though the Indian Air Force Officers continued to wear their Air Force uniform and carrying their own rank and badges, yet they were extended all facilities of the corresponding posts of the BSF-Air Wing personnel, the equivalence stood laid down in the MHA letter dated 11th May, 2007.

30. The respondents had taken time to verify the correctness of the submissions made in these affidavits. Nothing to the contrary has been placed on record.

31. We have, therefore, no hesitation in concluding that the respondents were treating the letter dated 11th May, 2007 as well as clause 44 of the Memorandum of Understanding dated 8th February, 2008 as binding and had implemented the same even qua the petitioner Group Capt. Joe Emmauel Stephen. However, the facilities which were advanced to the petitioner were arbitrarily and illegally withdrawn from him for no justifiable reasons.

32. Inasmuch as the petitioner as Group Captain has been repatriated, no directions qua in terms of para 44 and MHA letter dated 11th May, 2007 are required to be passed in his case. However, the respondents shall ensure that they strictly abide by requirements of MHA letter dated 11th May, 2011 as well as para 44 of MOU dated 8th February, 2008 qua Indian Air Force officers who are sent on deputation to the Border Security Force.

33. In view of the above discussion, we direct as follows:-

(i) The respondents shall effect computation of the arrears admissible to the

petitioners in terms of the letter dated 13th June, 2013 within eight weeks from today and communicate the calculations as well as amount thereof to the petitioner forthwith.

(ii) The respondents shall ensure that payment of the amounts found due and admissible to the petitioners are effected within a further period of four weeks thereafter.

(iii) The petitioners shall be entitled to costs of these petitions which are assessed at Rs.15,000/- each which shall be paid within four weeks from today.

These writ petitions are allowed in the above terms.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

JULY 08, 2013

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