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

Decided on : 11.08.2015

\+ **W.P.(C) 2532/2012**

SHRI BRIJ BHUSHAN ……Petitioner

Through: Sh. Bijender Singh, Advocate.

Versus

UNION OF INDIA AND ORS. ……..Respondents

Through: Sh. Vikram Jetly, CGSC with Sh. M. Nagarajan, AC with Sh. B.B. Biswas, SI (Min).

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner seeks directions to the respondents, i.e the Union of India and the National Disaster Response Force ("the Force") to release deputation allowance payments, claimed for the period 24-07-2008 to 20-03-2012, when he was on deputation.

2. The Petitioner was, at the relevant time, employed in the Central Industrial Security Force ("CISF"). He was sent on deputation to the Force, where he reported on 24-07-2008. He continued with the deputation and after the expiry of his tenure, was repatriated to his parent employer, CISF. Since the respondents did not settle his claim for deputation allowance, he approached this court on an earlier occasion, under Article 226 of the Constitution of India. That petition was disposed off on 21-11-2011 directing the respondents to treat the averments and pleadings as a

representation and issue an appropriate order. By a letter dated 15th February, 2012, the Force rejected the petitioner's request for deputation allowance, citing the rescission of an earlier order (dated 3-12-2009). That earlier order of 3-9-2008 stated that deputation allowance would be admissible to such employees, sent on deputation.

3. It is contended by Mr. Bijender Singh, learned counsel that the impugned rejection letter is untenable because it is premised on the ground that those deputed to the Force after its formation – and after the Rules were framed under its parent Act- were "deemed deputationists". Counsel relied on Rule 3 of the Disaster Management (National Disaster Response Force) Rules, 2008 (hereafter "the Rules") framed under the Disaster Management Act, 2005. He argued that those sent initially on deputation were deemed to be deputationists, under Rule 3 (1). Emphasizing that till date the Rules did not provide for a permanent cadre, but rather that the Force is a permanent organization comprising of floating personnel, gathered from various eligible candidates already employed, learned counsel submitted that deputation was the only source of recruitment in the Force. Thus, employees like the Petitioners who joined after the formulation of the Rules were covered by Rule 3 (2), it was contended that the entitlement to deputation allowance clearly existed. It was also submitted that the earlier interpretation and understanding of the Force and the Central Government as to entitlement of such personnel on deputation to allowance was correct; the withdrawal or rescission letter dated 15-01-2010 was erroneous and unjustified.

4. The letter dated 3rd December 2009 relied upon by the Petitioner states as follows:

"1. Personnel deputed in NDRF battalions from the Central Para Military Forces are employees of the Central Government on appointment by transfer on a temporary basis, outside their normal field of deployment (which was under a Central Para Military Force) and are appointed in public interest.

2. The only method of appointment envisaged under the Disaster Management (NDRF) Rules, 2008, for these personnel is by deputation [Rule 3 (1) (2)]

12. Keeping the above in view, it is established that all the personnel of NDRF battalions are entitled to Deputation (Duty) Allowance as prescribed vide Govt. of India, Department of Personnel and Training, OM No. 2/22(B)/2008- Estt(Pay-II), dated 3rd September, 2008.

13. The Commandants of NDRF battalions to take further necessary action as above."

5. It is submitted that the entire stand of the respondents that the Petitioner was a deemed deputationist is erroneous and misconceived. The characterization of those sent by an order dated 19th January, 2006 shall be deemed to have been deputed on "deemed deputation" is without substance. The Petitioner submits that the clarification issued on 16-05-2011 in this regard is erroneous. Contending that the plea of distinction between those on deputation and those on deemed deputation, being specious, learned counsel submitted that the only known method of inducting personnel in the Force is through deputation. Personnel, inducted initially, were covered by Rule 3 (1), because they were deputed before the rules were framed. For all later times, the only known channel of induction was deputation from other organizations. In such case, the Force could not make an artificial distinction and deny the deputation allowance otherwise admissible under the rules.

6. The respondents argue that though the Petitioner was deputed to the Force, it was after 2008. He has to be treated as a deemed deputationist because he opted for posting, unlike those who were inducted earlier at the time of formation of the Force, prior to framing of the rules. It was contended that the entitlement to deputation allowance, to the personnel posted with NDRF on deemed deputation basis in terms of the order of 3rd September, 2008 was later rescinded on the direction of Ministry of Home Affairs since deputation allowance under the notification was admissible to only those on deputation while, in the present case the petitioner was posted with 3rd Battalion NDRF on deemed deputation basis.

7. The respondents also rely on OM No. No. 6/8/2009-Esti. (Pay II) dated 17th June, 2010, particularly the following term (Para 2.2):

> (*e) Appointments of the nature of deemed deputation or transfers to ex-cadre posts made in exigencies of service with the specific condition that no deputation (duty) allowance will be admissible — e.g. (i) interim arrangements in the event of conversion of a Government office/organisation or a portion thereof into a PSU/ autonomous body or vice-versa; and (ii) appointments to the same post in another cadre."*

Analysis and Conclusions

8. Rule 3 (1) of the Rules of 2008 reads as follows:

> *"**Constitution of Force:** (1) The personnel deputed from the Central Para Military Forces by the Central Government in the Ministry of Home Affairs vide Order number 1/15/20002-DM/NDM-III(A), dated the 19th January, 2006 shall be deemed to have been deputed in the National Disaster Response Force under these Rules"*

9. As is evident, the above provision deals with personnel deputed from

Central Para Military Forces by an order dated 19th January 2006- at a time when concededly the Rules were not in force. It is they, who are described as employees *"deemed to have been deputed."* The petitioner in the present case joined the Force on 24-07-2008, i.e after the rules were brought into force (13-02-2008). For employees/personnel like him, Rule 3 (2) and not Rule 3 (1) applied. Rule 3 (2) reads as follows:

> *"(2) The Central Government may, in consultation with the National Authority, depute, as and when required, such number of personnel from the Central Para Military Forces to the National Disaster Response Force for the purposes of disaster management, having skills, capabilities and qualifications and experience of handling disaster and their management and such other technical qualifications as prescribed by the Central Government in this behalf.*
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> *Provided that in the case of non-availability of personnel with the required technical qualification and experience, the Central Government may appoint such personnel through deputation from other organizations…"*

10. It is thus evident that those initially brought into the Force were termed as "deemed deputationists" and described as such under Rule 3 (1). Those brought in later, after initial constitution of the Force, by virtue of the notification of 2006 and after rules were framed, personnel from other services, having special skills and expertise in various relevant areas and disciplines, on deputation basis.

11. The Rules do not envision a permanent employment force or permanent cadre within the Force. Rather, the Force is a permanent establishment, manned by those sent to it for a finite time on deputation. Those deputed are chosen for their abilities and expertise in specific areas

relevant to the Force's field of activity, i.e Disaster Management. In the circumstances, the plea that the class of employees to which the petitioner belongs, i.e deputed after constitution of the Force, are disentitled to deputation allowance, is both specious and arbitrary. Entitlement to the allowance also is not a matter for the Force to grant or deny, considering that it is only a borrowing organization; the terms of the deputationist's permanent employment are relevant.

12. In this context, the reliance by the respondents, on Para 2.2 of the OM dated 17th June, 2010 in this court's opinion, is irrelevant. Whilst that stipulation is by way of a disqualification, we fail to see how it applies in the facts of the present case. The first contingency, i.e where an employee is deputed on an interim arrangement (*"in the event of conversion of a Government office/organisation or a portion thereof into a PSU/ autonomous body or vice-versa"*) cannot apply. The petitioner was not sent by way of interim arrangement in the event of any Government office getting converted into a Public Sector Undertaking or autonomous body. The respondents' argument appears to be that the Force was at the stage of conversion into an autonomous body or a PSU and consequently, the Petitioner was ineligible for deputation allowance. However, we do not find force in this contention. The terms "PSU" and "autonomous body" have definite connotation, and cannot be so construed to include a statutory body created under an Act of Parliament of 2005 and by way of a special force. Furthermore, the respondents also do not state anywhere that the Petitioner fulfilled the second condition, i.e deputation to the same cadre. All along the respondents' plea had been that the petitioner was a "deemed deputationist" under Rule 3(1) and consequently disentitled to deputation

allowance.

13. In the light of the foregoing discussion, we hold that the petitioner is entitled to the reliefs claimed, i.e. deputation allowance for the period 24-07-2008 and 20-03-2012. A direction is issued to the respondents to ensure that the petitioner is released the deputation allowance and connected monetary benefits which he was entitled to for the said duration of time he spent in the force, within six weeks from today. The writ petition is allowed in these terms.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

AUGUST 11, 2015