

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No. 18220 of 2011

R. Thiyagarajan
Constable GD/No.994850540
CISF Unit, 4 NDRF BN
Suraksha Campus Post
Arakkonam
Vellore District
Tamil Nadu - 631 152 .. Petitioner

Versus

1. Union of India
represented by its Secretary to Government
Ministry of Home Affairs
New Delhi

2. The Director General
National Disaster Response Force
Head Quarters
R.K. Puram
New Delhi - 110 066

3. The Director General
Central Industrial Security Force
Head Quarters
CGO Complex
Lodhi Road
New Delhi - 110 003

4. The Deputy Inspector General
Central Industrial Security Force
South Zone Head Quarters
Besant Nagar, Chennai - 600 040

5. The Commandant
4 National Disaster Response Force Battalion
Suraksha Campus Post
Arakkonam, Vellore District
Tamil Nadu - 631 152 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus to direct the respondents to pass orders on the representation of the petitioner dated 20.07.2011 and to pay deputation duty allowance and special allowance with effect from 18.04.2008 together with interest.

For Petitioner : Mr. R. Thiyagarajan
Petitioner-in-Person
For Respondents : Mr. K. Gunasekaran
Additional Central
Government Standing Counsel

ORDER

The petitioner joined as Constable on 01.08.1999 in the Central Industrial Security Force (in short CISF) and completed the basic training for 9 months at Arakkonam, Tamil Nadu. According to the petitioner, he served all over India upto 17.04.2008 including hard and difficult area. While so, on 18.04.2008, the petitioner was transferred to the National Disaster Response Force Battalion under the fifth respondent and such order was passed without the consent of the petitioner. As per the Disaster Management Act, 2005 and National Disaster Response Force Rules 2008, the petitioner is entitled to deputation (duty) allowance and Special allowance or other appropriate allowance on par with those serving in Central Paramilitary Force and Special Protection Group. In this connection, the petitioner relied on an Office Memorandum dated 03.09.2008 issued by the first respondent wherein it was stated that deputation (duty) allowance has to continued to be paid in case of appointments made in public interest outside the normal field of deployment. The petitioner also, by citing the above Official Memorandum dated 03.09.2008 submitted a representation dated 20.07.2011 for disbursement of the deputation allowance and special allowance, but so far it has not been considered with effect from 03.09.2008, but the said representation has not been considered by the respondents. The petitioner has therefore filed this writ petition before this Court.

2. The petitioner/Party-in-Person submits that when deputation has been made in public interest outside the normal field of deployment, that too without his consent, then he is entitled for Deputation (Duty) Allowance and it cannot be refused by the respondents. The petitioner/party-in-person has also relied on the Order dated 11.08.2015 passed by the Delhi High Court in WP (C) No. 2532 of 2012 wherein the Delhi High Court, by referring to a letter dated 03.12.2009 held that all the personnel of NDRF battalions are entitled to Deputation (Duty) Allowance as prescribed vide Government of India,

Department of Personnel and Training, OM No.2/22(B)/2/08 Estt. (Pay-II) dated 03.11.2008. Therefore, the petitioner/party-in-person prayed this Court to issue appropriate direction to the respondents to pay him the Deputation (Duty) Allowance and Special Allowance as prayed for in this writ petition.

3. The learned counsel for the respondents, by placing reliance on the counter affidavit of the fifth respondent, would contend that the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training issued an Office Memorandum dated 03.09.2008 has issued guidelines for drawal of deputation allowance to the officers of Group-A alone and the petitioner cannot make claim for drawal of such deputation allowance. The learned counsel for the respondents further stated that the petitioner was intimated vide Letter dated 23.07.2011 that in accordance with DG NDRF HQrs, New Delhi Message No.1-17018/Estt-P&T/NDRF/2011-462 dated 28.01.2011, the case for deputation allowance has been taken up with the Ministry of Home Affairs who is the competent authority and the decision is awaited. In the meanwhile, the petitioner has approached this Court and filed the present writ petition. The learned counsel for the respondents further submitted that as per the Order dated 19.01.2006 passed by the Ministry of Home Affairs, Government of India, the personnel deputed from the Central Paramilitary Forces by the Central Government shall be deemed to have been deputed in the National Disaster Response Force under these Rules and in such event, they are not entitled for payment of deputation (duty) allowance or special allowance. The learned counsel for the respondents therefore prayed for dismissing the writ petition.

4. I heard the petitioner/party-in-person and the learned counsel for the respondents. An identical case came up for consideration before the Delhi High Court in WP (C) No. 2532 of 2012. In that case, the petitioner therein was sent on deputation on 24.07.2008 and after expiry of the term of deputation, he was repatriated to the parent employer - CISF. After returning to his parent department, the petitioner claimed for payment of Deputation (Duty) Allowance and special allowance for the period of service rendered in the department other than his parent department. The Department contended that the petitioner was a deemed deputationist and in such event, he cannot be entitled for payment of deputation (duty) allowance and special allowance. The Delhi High Court, rejecting the contention of the respondents therein held that the petitioner was not deputed as an interim arrangement to contend that he is not entitled for such allowance. When the petitioner was deputed for a considerable length of time, he is entitled for the allowance. In Para No.12 and 13 of the order dated

11.08.2015, the Delhi High Court held as follows:-

"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 discussions, 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."

5. Admittedly, the petitioner herein was deputed to National Disaster Response Force and such order of deputation was passed without the consent of the petitioner. While so, it can be construed that the deputation has been made in public interest outside the normal field of deployment and in such event, the petitioner is entitled for Deputation (Duty) Allowance. In fact, in the Office Memorandum dated 03.12.2009, in paragraph No.6, it is clearly stated that persons appointed

on deputation in the public interest are entitled to the deputation (duty) allowance. This is further reiterated in para No.12 stating that "keeping the above in view, it is established that all the personnel of NDRF battalions are entitled to Deputation (Duty) allowance as prescribed vide Government of India, Department of Personnel & Training. OM No.2/22(B)/2008-Estt (Pay-II) dated 03.09.2008." This would indicate that when a person was sent on deputation, he is entitled for payment of Deputation (Duty) Allowance and Special allowance attached thereto for such deputation and it cannot be refused by the department.

6. For all the reasons mentioned above, the writ petition is allowed as prayed for by the petitioner. The respondents are directed to confer all consequential benefits on the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rsh
To

1. The Secretary to Government
Ministry of Home Affairs, Union of India,
New Delhi
2. The Director General
National Disaster Response Force
Head Quarters
R.K. Puram
New Delhi - 110 066
3. The Director General
Central Industrial Security Force
Head Quarters
CGO Complex
Lodhi Road
New Delhi - 110 003
4. The Deputy Inspector General
Central Industrial Security Force
South Zone Head Quarters
Besant Nagar, Chennai - 600 040

5. The Commandant

4 National Disaster Response Force Battalion
Suraksha Campus Post
Arakkonam, Vellore District
Tamil Nadu - 631 152

+1 CC to Mr. R. Thiyagarajan, Advocate, Sr.No.44985

+1 CC to Mr. K. Gunasekar, Advocate, Sr.45471

WP No. 18220 of 2011

TM (CO)

MD : 14/09/2016



WEB COPY