

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19816 of 2016

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1. NTPC Executive Association, Barh through its President Ashok Kumar Singh having its Office at NITPC Campus, Barh, P.S. NTPC Thana Barh, District - Patna

2. Shri Ashok Kumar Singh, President, NTPC Executive Association, Barh, Son of Shri Y.P. Singh, Resident of NV -1, Room No. 24, NTPC Township, P.S. NTPC Thana Barh, District - Patna

3. NTPC Employees Union, Barh through its President having its office at NTPC Campus, P.S. NTPC Thana Barh, District - Patna

4. Shri ShiShankar Singh, President NTPC Employees Union, Barh, Son of Late Ramadhin Singh, Resident of Quarter No. B- 1/6, NTPC Township, P.S. NTPC Thana Barh, District - Patna

.... Petitioner/s

Versus

1. National Thermal Power Corporation Ltd., NTPC Bhawan, Core - 7, Scope Complex, 7 Industrial Area, Rodhi Road, New Delhi - 110003 through its Chief Managing Director

2. The Chief Managing Director, National Thermal Power Corporation Ltd., NTPC Bhawan, Core - 7, Scope Complex, 7 Industrial Area, Rodhi Road, New Delhi - 110003

3. The Director (Human Resource), National Thermal Power Corporation Ltd., NTPC Bhawan, Core - 7, Scope Complex, 7 Industrial Area, Rodhi Road, New Delhi - 110003

4. The Group General Manager, NTPC, Barh, P.S. NTPC Thana Barh, District - Patna, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Adv. Mr. S.S. Sundram, Adv. Mr. Vikash Kumar, Adv.
For the Respondent/s	:	Mr. Anil Kumar Sinha, Adv. Mr. Vinod Kanth, Sr. Adv. Mr. Anil Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-07-2017

Heard learned counsel for the parties.

In the nature of the order this Court proposes to pass it would not be required to delve deep into the merits of the case for the



present.

The writ petition has been filed in a representative capacity by the N.T.P.C. Executive Association through its President and the NTPC Employees Union also through its President espousing the cause of their respective members. The grievance so raised stands discussed in paragraph 1 to the writ petition and which inter alia seeks a direction to the respondents to refrain from deducting/recovering 20% Additional Special Compensatory Allowance/ Field Compensatory Allowance paid to the members of the petitioner's Association/Union with effect from November, 2014 to September, 2016, whereafter the payment has been stopped. The petitioners also alongside have prayed for a direction to the respondent to allow the said benefit to the member of the petitioner Association/Union.

A counter affidavit has been filed on behalf of the respondents and learned Senior counsel in reference to the statement present at paragraph 4(iv),(v),(vi) and (vii) submits that from the date the commercial operation commenced in the unit to which the petitioners belong, in view of the policy decision of the Corporation, they were not found entitled to the allowance in question. The statement so relied upon is reproduced hereinbelow for ready reference.

“4(iv) Thereafter Corporate HR circular no.739/2013 dated 08.11.2013 was issued, in terms of which the FCA & SCA was amended as ‘Special Allowance (Difficult and Far flung Areas) and payment was regulated as per the



categorization of site. As per said categorization, Barh site was placed in category A with special allowance of 10% of Basic pay per month. However as per clause 2.0 this payment shall be subject to recovery in case approval for payment of Special Allowance @ 10% of basic pay for serving in the difficult and far flung areas is not granted by the Government. Further the Other Locational Allowances were to continue in the pre-revised 1997 structure.

(v) Hence, it is submitted that payment of additional SCA (FCA in case of executives vide Corporate HR Circular No. 667/2009 dated 16.09.2009) @ 20% of pre-revised basic would not be payable to employees posted at NTPC-Barh from the date of commercial declaration of the Unit –IV i.e.- 14.11.2014.

A photocopy of the circular dated 07.07.2010 and 08.11.2013 is being annexed hereto as an marked as **Annexure R/3 & R/4** to this Counter affidavit.

(vi) It is submitted that in the present case also, as the commercial Operation of the first Unit (Unit No.4) of the plant commenced on 14.11.2014 therefore under the above mentioned Policy of NTPC as expressed in the various circulars mentioned herein above, the executives and workmen employed at the NTPC Barh, STPP are not entitled to receive additional SCA/FCA @ 20% of the basic pay after the date of commercial operation.

(vii) It is submitted that in advertently the said employees, allegedly represented by the petitioners, were continued to be paid the additional FCA/SCA even after 14.11.2014 and the said employees were not entitled to the said amounts. It is in these circumstances that the present recovery in 10 easy installments is being made.”

While on the contest, it is not in dispute that although a decision has been taken by the Corporation to stop the payment of the allowances in question to these petitioners on grounds so mentioned



above, but such decision has been taken ex parte and without an opportunity of hearing to the members of the petitioner's association/union. In fact the decision has gone further to even take steps for recovery of the amount paid to the members of the petitioner's association/union for the period November, 2014 to September, 2016 but again without any opportunity to them to defend themselves.

While it is the contention of the petitioners as espoused by the learned Senior counsel that they are yet entitled to this allowance , the submissions have been contested by learned Senior counsel for the Corporation in reference to the policy decision taken by the Corporation. As I have noted, it is not in dispute that the action complained of by the petitioners have been taken ex-parte and without opportunity of hearing. In my opinion even if the purported action is in accordance with policy decision of the corporation but when a privilege granted to the employees is withdrawn retrospectively, it vests a right of hearing and which has been denied.

Be that as it may, since the policy decision is not put to question in this writ petition and the petitioners Association/Union on behalf of its members yet claim the allowance in question on their entitlement while complaining against the recovery proceeding, I for the present, deem it proper to dispose of the writ petition with the



liberty to the petitioner Association/Union to espouse the cause of its members by raising their grievance before the respondent No.3, the Director, Human Resources, NTPC which according to learned counsel for the Corporation would be the appropriate authority to examine the grievance and it goes without saying that any such grievance being raised by the petitioners within a period of eight weeks from today, should be considered and disposed of in accordance with law by the respondent no.3 with due opportunity of hearing to the representative of the petitioner Association/Union. It again goes without saying that until disposal of grievance so raised, the Corporation would be restrained from carrying out any recovery proceedings. It also goes without saying that if the petitioner(s) Association/Union fail to raise their grievance within the period of 8 weeks so granted, the respondent Corporation would be free to take recourse to the exercise in consonance with the lawful procedure.

The writ petition is disposed accordingly.

It is made clear this court is not expressed any opinion on the merits of the rival claim(s).

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.08.2017
Transmission Date	NA

(Jyoti Saran, J)

