

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.9432 & 9433 of 2014

1.R.Sudhakaran
2.D.Vijayakumar
3.P.Raguraman,
4.R.Abdulla

.... Petitioners in W.P.No.9432 of 2014

1.S.Anandaraj
2.R.Rajeesh
3.R.Rajasegaran
4.P.Pushparaj
4.R.Panneerselvan
6.T.Rajarajasozhan
7.G.Janarthanan
8.N.Prasath
9.V.Tamilmaran
10.G.Pushparaj

.... Petitioners in W.P.No.9433 of 2014

Vs.

1.The Chief Secretary,
Government of Puducherry,
No.1, Gourbert Avenue,
Beach Road, Puducherry-605 001.

2.The Secretary to Government,
Home Department,
Government of Puducherry,
No.1, Gourbert Avenue,
Beach Road, Puducherry-605 001.

3.The Director General of Police,
Puducherry Police,
No.4, Dumas Street, Puducherry.

4.The Commandant,
India Reserve Battalion (IRBN),
PAP Complex, Gorimedu, D Nagar,
Puducherry.

5.The Secretary to Government,
Government of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi-110 001.

(R-5 is impleaded as per order
dated 16.04.2015 by TSSJ in
MP.Nos.1&1 of 2015 in
WP.Nos.9432 & 9433 of 2014)

..Respondents in both W.Ps

Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to direct the respondents to pay the Fixed Travelling Allowance to the petitioners with retrospective effect from the date of their completion of basic training in India Reserve Battalion, Puducherry i.e., from 17.04.2006, in the light of G.O.Ms.No.46, Home Department, Pondicherry dated 11.09.2006. Guidelines for setting up IR Battalions issued by the Ministry of Home Affairs, Central Government, New Delhi and in letter No.II.27011/10/2003/PF.II(i)/PF IV, Government of India, Ministry of Home Affairs, New Delhi dated 26.02.2004, within a stipulated time(prayer in both WPs).

For Petitioners ... M/s.K.Dakshayini Reddy for
Mr.P.Nethaji.

For Respondents ... Mr.Syed Mustafa, GA(Pondy) for R1
to 4
.. Mr.Su.Srinivasan, ASG for R5

ORDER

The petitioners have approached this Court seeking for the following relief:

'To issuance of a writ of mandamus to direct the respondents to pay the Fixed Travelling Allowance to the petitioners with retrospective effect from the date of their completion of basic training in India Reserve Battalion, Puducherry i.e., from 17.04.2006, in the light of G.O.Ms.No.46, Home Department, Pondicherry dated 11.09.2006. Guidelines for setting up IR Battalions issued by the Ministry of Home Affairs, Central Government, New Delhi and in letter No.27011/10/2003/PF.II(i)/PF IV, Government of India, Ministry of Home Affairs, New Delhi dated 26.02.2004, within a stipulated time.

2. The case of the petitioners is as follows:

All the petitioners have joined as Constables in the India Reserve Battalion, Puducherry on 01.04.2005 in the pay scale of Rs.3050-75-3950-80-4590. All the petitioners have successfully completed the basic training on 16.04.2006. While the Battalion was set up by the Government of India, the guidelines stipulated that pay and allowances of the persons belonging to India Reserve Battalion would be determined by the State and should be similar to personnel of State Armed Force. One of the allowances which has been granted to the State Armed Force, is the Permanent Travelling Allowance, which is otherwise known as Fixed Travelling Allowance vide G.O.Ms.No.46, Home Department, Pondicherry dated 11.09.2006, issued by the second respondent. The Government order provides for sanction of Permanent Travelling Allowance (hereinafter be referred to as PTA), to the categories of lower subordinates including technical staff in the Police Department, Puducherry. Originally when the PTA was granted to the State Armed Force, the PTA was fixed @ 625/- with effect from 01.04.2005. In view of Clause 3(d) part of the guidelines issued by the Government of India, the petitioners herein, who are the part of the India Reserve Battalion were also entitled to be paid PTA which was paid to the Police personnel and others in the State Armed Force. The case of the petitioners is that the persons who are serving in Puducherry Police were also provided with PTA. Further, the constables attached to the Border Security Force (BSF), Puducherry Police and the Puducherry Armed Force, who are serving in India Reserve Battalion, Puducherry on deputation were also in receipt of PTA. Only who are left out from the benefit of PTA are the persons like the petitioners herein, who are directly recruited as Constables in India Reserve Battalion. In the above circumstances, the petitioners have been requesting the Union Territory of Puducherry for grant of PTA, from the date when they become eligible on par with the other police personnel, who are covered under G.O.Ms.No.46, Home Department, Pondicherry dated 11.09.2006, which was given effect to from 01.04.2005. In spite of their representations, seeking parity in the matter of grant of allowance, there was no action forthcoming from the respondents.

3. During the pendency of the writ petition, the fifth respondent herein, namely the Secretary to Government, Government of India, Ministry of Home Affairs, New Delhi has been impleaded as the 5th respondent. The petitioners would submit that the denial of PTA to them is, per se discriminatory, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. Since the petitioners and the other police personnel attached to the State Armed Force are identically placed, there cannot be any difference in the matter of payment of allowance. It is reiterated once again by the petitioners that the police personnel who are recruited in India

Reserve Battalion from other Force, have also been in receipt of PTA and therefore, there is no logic or justification for denying the said benefit to them alone. Since no action was taken by the respondents, the petitioners were constrained to approach this Court seeking reliefs as stated supra.

4. Upon notice, Mr.Syed Mustafa, learned Government Pleader (Pondy) entered appearance on behalf of the respondents 1 to 4 and Mr.Su.Srinivasan, the learned Assistant Solicitor General entered appearance for the fifth respondent.

5. Mr.Syed Mustafa, learned Government Pleader(Pondy) has strongly objected to the grant of relief as prayed for by the petitioners for the reason that the issue of payment of PTA to the police personnel attached to the India Reserve Battalion, which falls squarely within the domain of the fifth respondent and therefore, the prayer as sought against the Union Territory of Puducherry, cannot be maintained. According to him, the funds need to be allocated for such payment by the Union of India and in the absence of sanction from the fifth respondent, the claim of the petitioners as such, cannot be granted by the Union Territory of Puducherry. According to him, G.O.Ms.No.46, Home Department, Pondicherry dated 11.09.2006 covers only the police personnel, who are attached to Puducherry Armed Reserve and the same cannot be extended to India Reserve Battalion, where the petitioners were deployed, which Battalion was set up by the Ministry of Home Affairs, the fifth respondent herein vide instructions dated 26.02.2004. He would therefore, submit that the Union of India, the fifth respondent herein alone is competent to take a decision in the matter .

6. Mr.Su.Srinivasan, the learned Assistant Solicitor General of India appearing for the fifth respondent on the other hand would submit that the matters regarding pay and allowances, fall within the domain of Union Territory. Further, the recruitment/transfer etc. related to India Reserve Battalion is done by the State Government concerned and therefore, he would impress upon the Court that the Union Territory of Puducherry is competent to take the call on behalf of the Union of India. In the same breadth, he would also submit that the Union Territory of Puducherry has not deputed any officials to Government of India to have consultation in the matter with the fifth respondent and the matter can be sorted out if any of the official of the respondent, who was conversant with the subject is deputed to interact with the officials of the fifth respondent. In support of his contention, he would draw the attention of this Court the Official Memorandum dated 14.08.2017, in which, it is clearly stated that the matter is pending consideration with the Government of India.

7. Although it appears that the Government of Puducherry and the Union of India have been taking contrary stand as to who was ultimately responsible for sanctioning the amount towards PTA, from the statement made by the fifth respondent in their reply dated 04.09.2017, it is very clear that it is the responsibility of the State Government for making pay and allowances to the police personnel attached to India Reserve Battalion. Paragraph No.3 of the reply affidavit filed on behalf of the fifth respondent herein, is extracted hereunder:

3. The following is submitted on behalf of The Government of India, Ministry of Home Affairs:-

(a) Government of India has sanctioned one IR Bn to Government of Puducherry vide letter No.II-27011/10/2003-PF.II(vii) dated 16.10.2003 (copy enclosed). This IR Bn has been raised by the State Government and maintained within the scope of sanction. Under the scheme of India Reserve (IR) Battalions, the Government of India meets the standard cost of raising of IR Bns. by way of 100% grant-in-aid to the State Government subject to actuals. As far as the State Government is concerned, in addition to the annual recurring expenditure for this IR Bn, the State has to incur Capital expenditure for providing the basic infrastructure to the Bn. The expenditure on the Bn after initial raising is borne by the State Government. The administrative matters like promotion, pay and allowances, recruitment, transfer etc. related to their IR Bn is done by the State Government concerned.''

8. The learned counsel for the petitioners would submit that the Union Territory of Puducherry cannot shirk its responsibility of not providing PTA, to the police personnel attached to the India Reserve Battalion, when such allowances are being paid to all the police personnel, employed in the Union Territory of Puducherry, the stand taken by the Union Territory of Puducherry is not well founded and the same is misconceived and cannot stand to the test of judicial scrutiny. She would further submit that the contention of the Union Territory of Puducherry that adequate funds is lacking for payment of PTA to the police personnel attached to India Reserve Battalion, cannot be a valid excuse or reason for denying the same, which is otherwise the legitimate right of the petitioners to receive such allowance on par with the other similarly placed police personnel. Such stand is being taken by the Union Territory of Puducherry, only to negate the constitutional right of the petitioners to be treated equally in the matter of payment of allowances.

9. This Court, having given its anxious consideration to the rival submissions and upon perusing the pleadings and the materials placed on record, is of the considered view that the contention put forth on behalf of the Union Territory of Puducherry cannot be countenanced both in law or on facts.

10. As rightly contended by the learned counsel for the petitioner that the stand taken by the Union Territory of Puducherry is not only unreasonable and misconceived, but the same is preposterous and cannot be a valid contention under any circumstances.

11. In view of the above narrative, and also in view of the fact the police personnel who, belonging to other Force, when they are deputed to serve in India Reserve Battalion and they are in receipt of PTA, this Court does not see any iota of justification for denying such benefit to the police personnel actually and directly recruited to serve in India Reserve Battalion. The non-grant of PTA to the petitioners per se is discriminatory, arbitrary, unjust and mala fide and therefore, the stand adopted by the Union Territory of Puducherry is liable to be brushed aside as completely devoid of merits. While holding so, this Court is of the view that it is up to the Union Territory of Puducherry to take up the issue with the fifth respondent for necessary sanction of PTA to the police personnel deployed in the India Reserve Battalion in the Union Territory of Puducherry and in case, for grant of such benefit, necessary instructions or guidelines may be framed in that regard. In any event, it is the ultimate responsibility of the Union Territory of Puducherry to grant the Permanent Travelling Allowance as paid to the other police personnel deployed in State Armed Force.

12. In the light of the above, the relief as prayed for in the writ petition is granted and the respondents are directed to grant Permanent Travelling Allowance as admissible which is being paid to other police personnel attached to State Armed Force, with effect from the date when the petitioners became eligible for such allowance. Such allowance shall be paid along with arrears to the petitioners, who are entitled to such allowances, which is revised from time to time and the Union Territory of Puducherry is directed to continue this payment. Such exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order.

13. With the above direction, the writ petitions stand disposed of. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The Chief Secretary,
Government of Puducherry,
No.1, Gourbert Avenue,
Beach Road, Puducherry-605 001.

2.The Secretary to Government,
Home Department,
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No.1, Gourbert Avenue,
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5.The Secretary to Government,
Government of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi-110 001.

+2cc to Mr.P.Nethaji, Advocate in sr.no.66962

W.P.Nos.9432 & 9433 of
2014

RR(CO)
NR 03/10/2017