

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.A.No.1645 of 2016
and
C.M.P.No.20397 of 2016

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,
National Disaster Response Force,
04th Battalion, Suraksha Campus Post,
Arakkonam, Vellore District,
Tamil Nadu - 631 152.
- Vs.
- R.Thiyagarajan
- ... Appellants
... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 08.08.2016 made in W.P.No.18220 of 2011 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 Appellants	:	Mr.K.Gunasekar, Central Government Senior Standing Counsel
For Respondent	:	Mr.R.Thiyagarajan, Party-in-person

J U D G M E N T

(Judgment of the Court was made by NOOTY.RAMAMOZHANA RAO,J.)

This Writ Appeal is preferred by the Union of India aggrieved by the decision rendered by the learned Single Judge in W.P.No.18220 of 2011 dated 08.08.2016, allowing the Writ Petition. The learned Single Judge declared that the writ petitioner was entitled for Deputation (Duty) Allowance and Special Allowance attached thereto for such period of deputation and the same cannot be refused.

2.Heard Mr.K.Gunasekar, learned Central Government Senior Standing Counsel appearing on behalf of the appellants and the respondent/ writ petitioner, who has preferred to appear in person.

3.The learned Central Government Senior Standing Counsel for the appellants would contend that payment of Deputation Allowance is not an automatic affair and it requires to be sanctioned/approved by the Ministry and only then, such allowances can be drawn and paid to the individuals. It is contended that the Ministry of Home Affairs, Disaster Management Division has passed orders on 14.01.2013, conveying the decision of the Competent Authority to grant Deputation (Duty) Allowance subject to the conditions specified therein. It is further contended that till such time, such a sanction has been made by the Ministry of Home Affairs, there is no way that Deputation (Duty) Allowance can be claimed by the writ petitioner/respondent herein. It is also contended by the learned Senior Standing Counsel for the appellants that the Special Allowance, which the learned Single Judge had directed the respondents to sanction to the writ petitioner is also not permissible.

4.The respondent/writ petitioner would contend that when once he has been ordered to serve outside his parent Cadre, the same amounts to deputation and consequently, he has to be paid Deputation Allowance automatically. He also places reliance upon the judgment rendered by a Division Bench of the Delhi High Court in W.P.(C).2532/2012 [Shri Brij Bhushan Vs. Union of India and ors.] in support of this plea.

5.Before we proceed further, it will be appropriate for us to take note of the provisions of the Disaster Management Act, 2005. The Parliament, with a view to provide for effective management of disasters and for matters connected therewith and incidental thereto, enacted Disaster Management Act, 2005 (Act 53 of 2005), henceforth, for brevity referred to as the 'Act'. The said Act extends to the whole of India.

6.Section 2 of the Act defines various expressions found in the enactment. The relevant expressions required to be noted by us are as under:

(d) "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

(e) "disaster management" means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—

(i) prevention of danger or threat of any disaster;

(ii) mitigation or reduction of risk of any disaster or its severity or consequences;

(iii) capacity-building;

(iv) preparedness to deal with any disaster;

(v) prompt response to any threatening disaster situation or disaster;

(vi) assessing the severity or magnitude of effects of any disaster;

(vii) evacuation, rescue and relief;

(viii) rehabilitation and reconstruction;

(i) "mitigation" means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation;

(1) "National Plan" means the plan for disaster management for the whole of the country prepared under section 11;

(m) "preparedness" means the state of readiness to deal with a threatening disaster situation or disaster and the effects thereof;

(p) "resources" includes manpower, services, materials and provisions;

7. Under Section 3 of the Act, an Authority known as National Disaster Management Authority is required to be established for the purpose of effectively securing the provisions of this Act. As is made clear from the very objectives, emphasis was laid for an institutional mechanism for drawing up, the monitoring and implementation of the disaster management plans, ensuring measures by various wings of Government for prevention and mitigating effects of disasters and also for undertaking a holistic, coordinated and prompt response to any disaster situation. Thus, the very purpose behind establishment of National Disaster Management Authority was to secure faithful implementation of the objectives, for which the enactment has been laid.

8. Section 11 has outlined the national plan to be drawn for disaster management for the whole Country and the said plan was required to be drawn by the National Executive Committee in consultation with the State Governments, Expert Bodies and other Organisations working in the field of disaster management. The national plan was required to include measures to be taken for prevention of disasters or for mitigation of their effects, measures to be taken for preparedness and capacity building to effectively respond to any threatening disaster situations or disaster themselves. Capacity building is a great innovative measure contemplated by the statute so that any threatening disaster situation can be tackled effectively and expediently. Going by the expression "disaster management", which also includes capacity building, the whole emphasis of the objective behind enactment was to set forth an institutional mechanism, which can respond in real quick time, so that the disaster situation can be handled effectively and to the extent possible, the after effects thereof can be minimised.

9. For the purpose of capacity building, manpower is essentially required. For this purpose, the statute has authorised the Central Government to take measures and Chapter V of the Act has provided for such measures required to be taken in that direction.

10. Sub-section (2) of Section 35 of the Act has listed out the measures, which shall be undertaken by the Central Government and one amongst them being clause-(c) which ensures appropriate allocation of funds for prevention of disaster and mitigation by the Ministries or Departments of the Central Government, in particular, for development of plans and projects and also clause-(f) which authorised deployment of Naval, Military and Air Forces, other Armed Forces of the Union or any other civilian personnel, as may be required, for the purposes of this Act. Thus, Section 35 has provided for deployment of personnel of the Armed Forces of the Union for the purpose of capacity building measures.

11. Under Section 42 of the Act, the Central Government was required to constitute an institute called National Institute of Disaster Management consisting of several members. The said National Institute, for the discharge of its functions, may develop training modules, undertake research and documentation in disaster management and organise training programmes. It can also formulate and implement a comprehensive human resource development plan covering all aspects of disaster management. Thus, the National Institute is conceived for proper and effective planning of all aspects relating to the capacity building and also to institutionalise the training modules for acquiring appropriate skills and expertise in disaster management.

12. Chapter VIII dealt with National Disaster Response Force. It comprises of two sections, Sections 44 & 45, which read as under:

CHAPTER VIII
NATIONAL DISASTER RESPONSE FORCE

44. National Disaster Response Force.—(1) There shall be constituted a National Disaster Response Force for the purpose of specialist response to a threatening disaster situation or disaster.

(2) Subject to the provisions of this Act, the Force shall be constituted in such manner and, the conditions of service of the members of the Force, including disciplinary provisions therefore, be such as may be prescribed.

45. Control, direction, etc.—The general superintendence, direction and control of the Force shall be vested and exercised by the National Authority and the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director General of the National Disaster Response Force.

13. Under Section 44, the National Disaster Response Force, for providing specialist response under a threatening disaster situation or a disaster, was required to be constituted in the prescribed manner and the conditions of service of the members of the Force so established may also be prescribed.

14. Under Section 45, the general superintendence, direction and control of the Force has been vested in National Authority and the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director General of the National Disaster Response Force. Thus, while a command structure is contemplated, to be put in place for National Disaster Force making the Director General as over all in-charge of the said command, but the general superintendence, direction and control of the Force has been retained with the National Disaster Authority itself.

15. Chapter IX of the Act dealt with Finance, Accounts and Audit. Under Section 46 figuring in this Chapter, it is spelt out that the Central Government was required to constitute funds to be called the National Disaster Response Fund for meeting the expenditure liable to be incurred, for meeting any threatening disaster situations or disaster and to the said fund, an amount which the Central Government may, after due appropriation made by the Parliament by-law, be credited. Thus, it is clear that the Parliamentary control insofar as funding the National Disaster Response Fund is also retained when appropriation by law to be passed by the Parliament is contemplated. Similarly, Section 47 also required National Disaster Mitigation Fund to be constituted in the same manner as that of the National Disaster Response Fund under Section

46. Importantly, under Section 49 allocation of funds by Ministries and Departments was also contemplated and it reads as under:

49. Allocation of funds by Ministries and Departments.—(1) Every Ministry or Department of the Government of India shall make provisions, in its annual budget, for funds for the purposes of carrying out the activities and programmes set out in its disaster management plan.

(2) The provisions of sub-section (1) shall, mutatis mutandis, apply to departments of the Government of the State.

Thus, from the above scheme, it becomes clear that every Ministry or Department of Government of India was required to make a provision in the respective annual budget for funds for the purpose of carrying out activities and programmes set out in its disaster management plan.

16. Section 75 of the Act confers power on the Central Government to make rules for carrying out/notifying the same in the Official Gazette and sub-section (2) thereof, enables rules to be made to regulate the manner of constitution of the Forces and the conditions of services of the members of the Forces as provided for in sub-section (2) of Section 44 of the Act.

17. Under Section 76, the National Institute of Disaster Management with prior approval of the Central Government and by notification in the Official Gazette was also empowered to make regulations consistent with the said Act.

18. Under Section 77 of this Act, rules and regulations referred to under Sections 75 & 76 of the Act are required to be laid before each House of the Parliament, while it is in session for a total period of 30 days and if both the Houses agree for modification of the rules or regulations or both Houses agree that the rules or regulations should not be made, the rules or regulations shall thereafter have effect only in such modified form or be of no effect, as the case may be. Thus, Parliamentary control over the subordinate legislation in the form of rules and regulations is also provided for.

19. Exercising the power available under Section 75, the Central Government made the Disaster Management (National Disaster Response Force) Rules, 2008. These rules have been notified in the Government of India Gazette issue dated 14.02.2008. The Rules read as under:

1. Short Title and commencement.—

(1) These rules may be called the Disaster Management (National Disaster Response Force) Rules, 2008.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.-

(1) In these rules, unless the context otherwise requires,

(a) "Act" means the Disaster Management Act, 2005 (53 of 2005);

(b) "battalion" means a unit of the Central Para Military Force earmarked by that Force as a Battalion;

(c) "Central Para Military Forces" means the Central Para Military Forces constituted under:

(i) the Central Reserve Police Force Act, 1949;

(ii) the Border Security Force Act, 1968;

(iii) the Central Industrial Security Force Act, 1968 or

(iv) the Indo-Tibetan Border Police Force Act, 1992.

(d) "National Authority" means the National Disaster Management Authority established under sub-section (1) of Section 3 of the Act;

(e) "National Disaster Response Force" means the National Disaster Response Force constituted under sub-section (1) of Section 44 of the Act.

(2) Words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. 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 1/15/2002-DM-1/NDM-III(A), dated 19th January, 2006 shall be deemed to have been deputed in the National Disaster Response Force under these rules.

(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;

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 organisations or on contract basis.

(3) The personnel of a battalion deputed to the National Disaster Response Force under these rules shall remain ordinarily in such battalion for a period of five years;

Provided that not more than twenty-five per cent of the Force may be replaced in one year.

(4) Superintendence, direction and control of Force. - (1) The general superintendence, direction and control of the National Disaster Response Force shall vest in, and be exercised by the National Authority.

(2) The command and supervision of the National Disaster Response Force shall vest in the Director General of the National Disaster Response Force to be appointed by the Central Government.

(3) The Director General, National Disaster Response Force shall report to, and be under the administrative control of the Vice-Chairman of the National Authority.

5. The responsibility, training, skill, duties, etc.- The National Disaster Response Force shall be trained and equipped as a specialised force to carry out the disaster management related tasks and for dealing with threatening disaster situations or disaster.

6. Conditions of service.-

(1) The terms and conditions of service including disciplinary powers relating to the personnel deputed from the Central Para Military Forces to the National Disaster Response Force shall continue to be regulated by the provisions of the Act and the rules applicable to the respective Force and its services.

(2) The terms and conditions of service including disciplinary powers relating to the personnel appointed under the proviso to sub-rule (2) of rule 3 shall be governed by such rules as are applicable to the officers and employees of the Central Government of the same grade.

20. From a perusal of Rule 3, it becomes clear that the personnel deputed from the Central Para Military Forces by the Central Government in the Ministry of Home Affairs, vide their order dated 19.01.2006, shall be deemed to have been deputed to the National Disaster Response Force under these rules.

21. As can be noticed, the gamit of Central Para Military Forces is confined to those constituted under the Central Reserve Police Force Act, 1949, the Border Security Force Act, 1968, the Central Industrial Security Force Act, 1968 and the Indo-Tibetan Border Police Force Act, 1992. In other words, any one of the personnel forming part of these four Central Para Military Forces alone can be deputed to work as members of the National Disaster Response Force. Such of those personnel, who have been deputed on 19.01.2006, the date on which the National Disaster Response Force was constituted for the first time, are deemed to have been deputed to the said force. Whereas, in juxtaposition to this arrangement under

sub-rule (2) of Rule 3, the Central Government was authorised, in consultation with the National Authority, to 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. Thus, for providing the necessary manpower required by the National Disaster Response Force, by virtue of acquisition of skills, capabilities, qualifications, experience of handling disaster and their management and possessing such other technical qualifications as may be prescribed by such men and whose services are required by the National Disaster Response Force, they may be deputed by the Central Government in consultation with the National Authority. In other words, while the initial constitution of the Force is undertaken by the Ministry of Home Affairs by drawing personnel from any or all the four Para Military Forces specified in Rule-2, the subsequent enlistment of the members of the National Disaster Response Force is only by way of deputation from the Central Para Military Forces based upon the needs of the Force or the special requirements of it.

22. Sub-rule (3) of Rule 3 makes it clear that the personnel of a Battalion deputed to the National Disaster Response Force shall remain ordinarily in such Battalion for a period of 5 years, provided, that, not more than 25% of the Force may be replaced in one year. Thus, while the National Disaster Response Force is ordered to be structured on a command basis to function under the over all control of the Director General, at the same time, the Battalion structure formed in the parent Para Military Force concerned is to be maintained as it is.

23. Under Rule 6, the terms and conditions of service, including disciplinary powers relating to the personnel deputed from the Central Para Military Forces to the National Disaster Response Force shall continue to be regulated by the provisions of the Act and the rules applicable to the respective Force and its services. While sub-rule (2) of Rule 6 makes it clear that the terms and conditions of service including disciplinary powers relating to the personnel appointed under the proviso to sub-rule (2) of Rule 3 shall be governed by such rules as are applicable to the officers and employees of the Central Government of the same grade.

24. Thus, a comprehensive reading of the aforementioned rules brings out a kind of dual control over the members of the National Disaster Response Force. Primarily, the dual control system is contemplated because the National Disaster Response Force, is a kind of loosely knit Organisation. It essentially draws the required manpower by way of deputation. In other words, the personnel will be drawn from the Central Para Military Forces and they will be retained for a certain duration and thereafter, repatriated back to the parent Para Military Force. Only in the event of non-availability of

personnel with the required technical qualification and experience, the Central Government has been authorised to appoint such personnel, through the method of deputation from other organisations on contractual basis, as provided for under proviso to sub-rule (2) of Rule 3. Otherwise, from one Central Para Military Force or the other or the personnel belonging to Armed Forces such as Military, Navy or Air Force can be drawn to the NDRF. While the command superintendence of the National Disaster Response Force vests in the Director General, the personnel drawn to the National Disaster Response Force continue to form part of the Battalion formed in its parent Para Military Forces/Military Forces as the case may be.

25. The distinction between sub-rule (1) and sub-rule (2) of Rule 3 is only for a limited operational purpose. Since the Force was constituted for the first time on 19.01.2006, the Ministry of Home Affairs of the Central Government has been entrusted with the task of constituting the initial Force and hence, the personnel drawn by the Ministry of Home Affairs for constituting the said National Disaster Response Force are deemed to be deputed from the Central Para Military Forces concerned. Whereas, the personnel drawn under sub-rule (2) of Rule 3 are those whose services have been sought for and secured for the purposes of effectively discharging the onerous task assigned to the National Disaster Response Force. That is the reason why Rule 6 brought out the situation to deal with both these varieties of personnel. While sub-rule (1) of Rule 6 will be applicable to those who are deemed to have been deputed under sub-rule (1) and also those who have been deputed under sub-rule (2) of Rule 3, while sub-rule (2) of Rule 6 dealt with those whose services have been secured by the Central Government from other Organisations on contractual basis.

26. In the instant case, the respondent/writ petitioner joined the services of Central Industrial Security Force as Constable on 01.08.1999. He was drawn to the National Disaster Response Force Battalion on 17.04.2008 and he worked as such with effect from 18.04.2008. He worked as a member of the same Battalion upto 07.10.2011 (i.e.) for a period of little more than three years. It is for this period, he sought for payment of Deputation (Duty) Allowance and the Special Allowance attached thereto.

27. The question to be answered in this case is whether such Deputation (Duty) Allowance is permissible and payable to the respondent/ writ petitioner for the period of service rendered prior to 14.01.2013.

28. A careful analysis of the provisions of the Act have clearly brought out that the National Disaster Response Force, which is constituted in terms and in accordance with Section 44 of the Act and by the very nature of making available

personnel from the Para Military and Military Forces to comprise the said Force, makes it a loose knit Organisation with preparedness for the purpose of tackling the issues arising out of disaster management and rendering the necessary relief and rehabilitation work in real quick time. It is also appropriate for us to bear in mind that under Section 49 every Ministry or Department of Government of India was required to make provision in its annual budget for funds for the purpose of carrying out the activities and programmes set out in the Disaster Management Plan. In other words, each Department or the Ministry is also required to make provisions in its own budgetary allocation for funds to be expended for carrying out the activities and programmes laid down in the National Disaster Management Plan. While keeping the above provisions in mind, when we examine Rule 3 of the National Disaster Response Force Rules, it becomes clear that initially the responsibility to constitute the Force was laying with the Ministry of Home Affairs and accordingly, the Force was originally constituted on 19.01.2006 by the said Ministry, but it is thereafter, left to the Central Government, to draw personnel from one or the other Central Para Military Forces to the National Disaster Response Force. They could be so drawn on deputation basis only, because they are not appointed on regular or temporary basis to NDRF. All such personnel continue to be employees and form part and parcel of one CPMF or Armed Force or the other.

29. The difference between those drawn by the Ministry of Home Affairs under sub-rule (1) of Rule 3 and those who have been deputed under sub-rule (2) of Rule 3 does not carry much of a legal significance. It merely implied a notional concept of deemed deputation for such of those personnel who have been drawn by the Ministry of Home Affairs. That was because, when an Organisation is already existing, some one from some other Ministry or Department can be deputed to such an existing organisation or department, but, where a Department is sought to be established for the first time, like in the instant case, constituting the National Disaster Response Force on 19.01.2006, the concept of deputation of personnel from one Department to NDRF is not available. As a result, a fiction is introduced by the Rule Making Authority duly treating all those personnel deputed by the Ministry of Home Affairs for the purpose of constituting the said force on 19.01.2006, to be treated to have been deputed. Thus for the purpose of legal significance, there is no distinction between a deemed deputation and an actual deputation of personnel.

30. We also need to notice that under the proviso to sub-rule (2) of Rule 3 where personnel are not available with the required technical qualifications and experience, the Central Government may appoint such personnel through deputation from other Organisations on contract basis. This makes the position clear that the personnel can also be drawn to National Disaster Response Force from not necessarily the Armed Forces

or Para Military Forces for want of suitable men, the personnel can also be drawn from other Departments or Organisations on deputation basis. From a comprehensive reading of Rule 3, it becomes crystal clear that personnel are drawn to NDRF only on deputation basis from one source or the other.

31. In this context, if we look at the provisions contained in Central F.R. 9, a far clearer picture would emerge. It is defined therein that "Cadre" means the strength of a service or a part of a service sanctioned as a separate unit and "duty" includes various kinds and varieties of times spent by the Government servant.

32. F.R. 9 (25) dealt with "Special Pay" as an addition to the emoluments of a post of a Government servant granted in consideration of (a) the specially arduous nature of duties; or (b) a specific addition to the work or responsibility. The Deputation (Duty) Allowance is therefore in the nature of a Special Pay. For the purpose of regulating the grant of Deputation (Duty) Allowance where a Central Government servant gets transferred to other Government Departments, a comprehensive set of instructions have been provided in Appendix - V of the F.R.

33. But however, Section 1 of Appendix - V dealt with deputation by way of transfer to foreign service, to ex cadre posts under the Central Government/State Governments/Public Sector Undertakings/Autonomous Bodies, Universities/Union Territory Administration, Local Bodies, etc. Section 2 dealt with cases where the Officers are drawn on Central Staffing Scheme to the Central Secretariat. While Section 3 of Appendix - V dealt with the restrictions on deputation to Central Public Sector Enterprises and Section 4 dealt with the revision of rates of Deputation (Duty) Allowance upon the appointment as Personnel Staff of the Ministers. While Section 5 dealt with standard terms of deputation.

34. Appendix - VI of F.R. dealt with deputation to posts outside the Country.

35. What now emerges is, that, the Deputation (Duty) Allowance becomes payable only upon the sanction being accorded in that regard. Therefore, the learned Central Government Senior Standing Counsel has brought to our notice the fact that the Ministry of Home Affairs has sanctioned payment of Deputation (Duty) Allowance only on 14.01.2013. The Ministry of Home Affairs has, infact, issued the said sanction order with the prior concurrence of Ministry of Finance (Department of Expenditure).

36. But however, we must, at this stage, also take note that an attempt was made much earlier by the Director General of the National Disaster Response Force for securing payment

of Deputation (Duty) Allowance to the personnel drawn. But however, those proposals have not been approved and the Ministry of Home Affairs, through their communication dated 15.02.2012, have sought for justification and reasons for payment of Deputation (Duty) Allowance. In response to this communication dated 15.02.2012 of the Ministry, the Director General, National Disaster Response Force, through his communication dated 08.05.2012, furnished the answers for various queries raised by the Ministry. It is brought out therein that 8 Battalions of Central Para Military Forces were earmarked to be converted as Specialist Battalions for National Disaster and for providing the necessary relief and rehabilitation measures and it appears, a Steering Committee was constituted in the Ministry of Home Affairs on 19.09.2003 for reviewing and creating capacities for tackling emergencies and for securing disaster response. When the minutes of the Steering Committee were circulated on 29.10.2003, the Central Para Military Forces converted their respective Battalion personnel into National Disaster Response Force in terms of Section 44 of the Act. Since those personnel were already constituted as National Disaster Response Force for specialist response, the notification dated 19.01.2006 constituted them as National Disaster Response Force itself. That was the reason why the notional concept of deemed deputation was introduced in sub-rule (1) of Rule 3.

37. The communication of the Director General has pointed out clearly that those who have been drawn to the National Disaster Response Force after 2008 are deputed, as such, as there is no other alternative, except to depute them to the National Disaster Response Force. It was brought out that mandate of the National Disaster Response Force is essentially different from the mandate assigned to the Central Armed Para Military Forces. The National Disaster Response Force is mandated to be a multi disciplined, multi skilled, highly technical force prepared in all respects to deal with all types of disasters, including those caused by natural factors as well as man-made disasters. Hence, National Disaster Response Force is a stand-alone Force. In that view of the matter, the Director General has offered the justification for the purpose of sanction of Deputation (Duty) Allowance to National Disaster Response Force personnel. It is pursuant to the justification offered by the Director General of National Disaster Response Force on 08.05.2012, the Ministry of Home Affairs has re-examined the matter and then took up the issue with the Ministry of Finance (Department of Expenditure) and secured their concurrence for conveying sanction of payment of Deputation (Duty) Allowance to National Disaster Response Force personnel.

38. It will also be appropriate for us to notice that the Ministry of Personnel Public Grievance & Pensions, Department of Personnel & Training, through their Office Memorandum dated 17.06.2010, has furnished detailed instructions for regulating

pay, Deputation (Duty) Allowance, tenure of deputation/foreign service and other related terms and conditions.

39.A reading of paragraph - 2 of this Office Memorandum has clearly brought out that with a view to consolidate the various orders issued by the said Departments since 05.01.1994, the present instructions have been issued. These orders were rendered applicable to all Central Government employees, who are regularly appointed on deputation/foreign service terms in accordance with the Recruitment Rules of ex-cadre posts under the same or some other Departments of Central Government or under the State Governments/Union Territories Administration/Local Bodies or Central/ State Public Sector Undertakings/Autonomous Bodies, etc.

40.Paragraph 2.2.2(e) thereof makes it clear that appointments of the nature of deemed deputation or transfers to ex-cadre posts made in exigencies of service, with a specific condition that no Deputation (Duty) Allowance will be admissible (i.e.), by way of interim arrangement in the event of conversion of a Government Office/Organisation or a portion thereof into a Public Sector Undertaking or Autonomous Body and appointments to the same post in another cadre, these instructions do not apply. Paragraph 3.3.1 has set out the scope of terms of deputation, which reads as under:

"3.1 The terms of deputation/foreign service will cover only those appointments that are made by transfer on a temporary basis provided the transfer is outside the normal field of deployment and is in public interest. The question whether the transfer is outside the normal field of deployment or not will be decided by the authority which controls the service or post from which the employee is transferred."

41.In our opinion, the personnel who have been drawn to National Disaster Response Force are clearly drawn on a temporary transfer basis, as annually one-fifth of the National Disaster Response Force personnel drawn on deputation basis are required to be replaced. Those personnel drawn to the National Disaster Response Force are liable to be treated to have been deputed. It will also be appropriate to notice the administrative approval for constitution of the National Disaster Response Force made available by the Ministry of Home Affairs on 19.01.2006. In paragraph 2, while conveying the administrative approval of the Government to constitute National Disaster Response Force, it has been set out therein as under:

"Strength and Composition of NDRF battalions

2. The NDRF will be constituted by upgradation/conversion of 8 (eight) standard battalions of Central Para Military Forces (i.e. two battalions each from BSF, ITBP, CISF, CRPF) into Disaster Response battalions. All the eight battalions will

be trained and equipped for responding to natural disasters. Four of these eight battalions will also be trained and equipped for response to Nuclear, Biological and Chemical (NBC) emergencies.”

42. From a conspectus of the notification dated 19.01.2006 and the Office Memorandum dated 17.06.2010, an apprehension still can be entertained as to whether the personnel drawn under Rule 3 of the National Disaster Response Force Rules are liable to be treated as deputationist at all, while National Disaster Response Force itself has been constituted by way of upgradation/conversion of eight standard Battalions of Central Para Military Forces (i.e. two battalions each from BSF, ITBP, CISF, CRPF) into Disaster Response battalions. But nonetheless, a new entity called National Disaster Response Force came to be constituted with effect from 19.01.2006. When once the personnel of eight Battalions drawn from the four Para Military Forces have not been treated as permanently belonging to the National Disaster Response Force, but are allowed to function with the National Disaster Response Force only for a specified period, while at the same time, their general superintendence and disciplinary control is allowed to be retained by the parent Organisation, it presupposes that all such men of the eight Battalions of the Central Para Military Forces are liable to be treated as only notionally deputed to National Disaster Response Force. In such an event, as per the Office Memorandum dated 17.06.2010, payment of Deputation (Duty) Allowance, other Special Allowance becomes clearly payable. Hence, the sanction accorded by the Ministry of Home Affairs on 14.01.2013 is a formal acceptance accorded to the principle which requires payment of such Special Allowance.

43. We are, therefore, of the view that payment of Deputation (Duty) Allowance cannot be confined to the personnel who are drawn and existing as on 14.01.2013 or for the subsequent period, but, it shall be rendered applicable to all such personnel who are drawn pursuant to the notification dated 19.01.2006 of the Ministry of Home Affairs and thereafter onwards, as well. In other words, all such personnel who rendered service to National Disaster Response Force from 19.01.2006 upto 13.01.2013 are also entitled for payment of Deputation (Duty) Allowance, other Special Allowance.

44. Normally, when a Writ Petition is instituted seeking payment of Deputation (Duty) Allowance, after completing the deputation period, perhaps a reservation can be expressed with regard to the right to receive such payment of money. As any such monetary claims must be made at the relevant point of time and not after the event is fulfilled.

45. In the instant case, the Writ Petition itself has been instituted in 2011, after the writ petitioner has completed

his deputation and after he has received the movement order dated 07.10.2011, relieving him from the duties of the National Disaster Response Force. But nonetheless, as we have seen the provisions of the Act, each Department itself has been authorised to make a provision for budgetary sanction. In other words, each Department, as already required by law, has to make a provision for meeting the necessary expenditure for accomplishing the task of National Disaster Management Plan. In other words, sanction of money by way of appropriation by Parliament by-law is already contemplated and provided. Even otherwise, the Ministry of Home Affairs can make an appropriate provision for drawing and disbursing the Deputation (Duty) Allowance to the deputed personnel as held by us now.

46. We are of the opinion that only one Special Allowance, known as Deputation (Duty) Allowance is admissible, but not two separate allowances called Deputation (Duty) Allowance and also a Special Allowance. Therefore, the order passed by the learned Single Judge requires to be modified to the extent of ordering payment of Deputation (Duty) Allowance as well as Special Allowance. The writ petitioner would be entitled to be paid only Deputation (Duty) Allowance, which itself is a Special Allowance, but is not entitled for payment of any other Special Allowance, additionally. To this extent, the order passed by the learned Single Judge requires modification and to that extent, the Writ Appeal stands allowed. But in all other aspects, it fails.

47. We therefore, hold that all the personnel drawn to National Disaster Response Force on and from 19.01.2006 upto 13.01.2013 are also entitled to be paid with the Deputation (Duty) Allowance and the Central Government, Ministry of Home Affairs and the Director General of National Disaster Response Force need not drive all such personnel to one Court or the other in the Country for securing the said payment. It shall be the aim of the Central Government to make available such allowance to whomsoever it becomes liable to be paid irrespective of the fact as to whether one approaches the Court or not. Curtailing unnecessary litigation is also one of the objectives which the Central Government shall endeavour. Hence, we hope and trust that necessary arrangements would be made by the Central Government in it's, Ministry of Home Affairs through its Director General, National Disaster Response Force for drawing and disbursing the Deputation (Duty) Allowance to all personnel who rendered service to National Disaster Response Force ever since 19.01.2006 upto 13.01.2013.

48. Before we part with this case, we require to make certain observations. It is not always necessary for a litigant to engage the services of a trained professional Advocate. Some of the litigants are fairly confident about their ability to articulate their grievance. Some of them are

also confident in their ability to bring forth the legally enforceable rights available to them. They may not, hence, require the assistance of another professional known as Advocate. But however, even such clients who prefer to appear in person and argue their cases are also entitled to be put certain questions by the Court, before a firm opinion can be formed by the Court with regard to the entitlement of the right sought to be enforced. But no litigant has the right to shout at the Court and pass remarks at the Court it is not encouraging a party in person to appear and plead. Courts, by choice, encourage or discourage none. It is rather unfortunate that we had a bitter experience at the hands of the respondent, who preferred to appear in person. He has the timidity to characterise some of the questions put by us as irrelevant questions. All because he is not able to provide an effective answer. We only hope that such a bad experience would not befall on us once again.

49. We grant a maximum of six months time, for the Central Government to work out and make the necessary payment to all the personnel. The Writ Appeal stands disposed of to the extent indicated by us. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

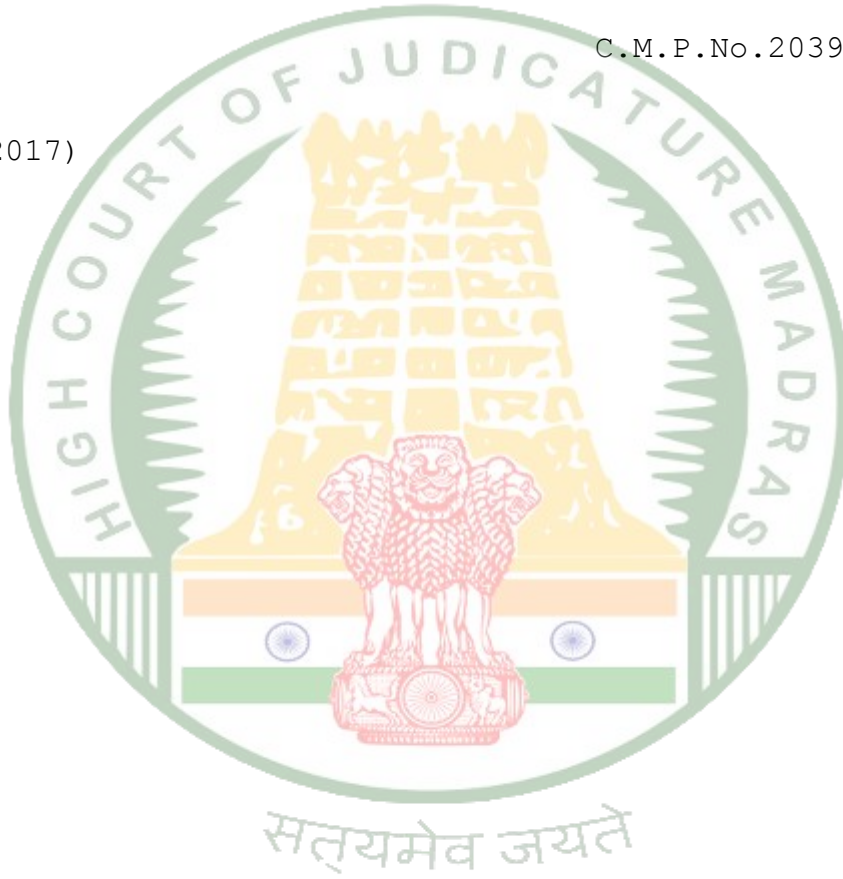
1. The Secretary to Government,
Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
National Disaster Response Force
Head Quarters, R.K.Puram,
New Delhi - 110 066.
3. The Director General,
Central Industrial Security Force,
Head Quarters, CGO Complex,
Lodhi Road, New Delhi -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

5. The Commandant,
National Disaster Response Force,
04th Battalion, Suraksha Campus Post,
Arakkonam, Vellore District,
Tamil Nadu - 631 152.

+1cc to Mr.K.Gunasekar, Advocate, S.R.No.11262
+1cc to Mr.R.Thiyagarajan, Advocate, S.R.No.11016

W.A.No.1645 of 2016
and
C.M.P.No.20397 of 2016

EV(CO)
CA(12/04/2017)



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