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

+ **W.P.(C) 11872/2016**

% **Date of decision : 11th April, 2017**

ANJANA

..... Petitioner

Through

Mr. Abhay Kumar, Mr. Saurabh
Mishra and Mr. Himanshu, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through

Mr. Gigi C. George, Adv. with
Sh. S.S. Sejwal, Law Officer-CRPF

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT (ORAL)

GITA MITTAL, J.

1. With the consent of both the parties, the writ petition is taken up for disposal.

We have heard the ld. Counsels for the parties.

2. It is an admitted fact that the writ petitioner is serving as SI with the CRPF, who was posted at Delhi from October, 2010 till 31st October, 2012. During this period, the petitioner was granted House

Rent Allowance (HRA), Transport Allowance (TPT) apart from all other admissible benefits.

3. On 1st September, 2012, the petitioner was promoted and transferred on paper with the Group Centre Kooth (J&K). However, the petitioner remained attached with DS, CWG Cell of the Ministry of Home Affairs at New Delhi itself. The petitioner claims that she continues to remain in this position, which fact is disputed by the respondents. Be that as it may, so far as the present writ petition is concerned, this aspect need not detain us inasmuch as, the petitioner's grievance in the writ petition is confined to the period from 1st September, 2012 to 16th October, 2013. For this period of service, the petitioner has not been paid HRA and TPT.

4. The petitioner places reliance on orders passed in several writ petitions directing the respondents to make payment of HRA and TPT to similarly placed persons. In this regard, the following orders have been placed on record by the writ petitioner :

(I) Decision dated 16.11.2009 in WP(C) no.7582/2009
(page 30);

- (II) Decision dated 17.5.2010 in WP(C) no.20700/2005 **(page 17)**; and,
- (III) Decision dated 24.12.2010 in WP(C) no.8732/2010 **(page 17)**.
- (IV) Decision dated 18.3.2013 in WP(C) nos. 1731/2013, 1733/2013 and 1734/2013 **(page no.16)**;
- (V) Decision dated 10.3.2014 in WP(C) no. 1581/2014 **(page.30)**;
- (VI) Decision dated 11.8.2014 in WP(C) no. 5011/2014 **(page no.31)**

5. On behalf of the respondents Mr. George has contended that, it appears that these writ petitions were necessitated as the respondents were taking up the position that the concerned CRPF officials were disentitled to HRA and TPT as they stood released from Delhi.

6. We find that in the decision dated 18.3.2013 passed in WP(C) nos. 1731/2013, 1733/2013 and 1734/2013, this Court has reiterated the decision in the earlier writ petitions that employees, though posted outside Delhi, but who remained in Delhi on attachment basis, would

be entitled to various benefits permissible in accordance with the terms and conditions of service being rendered at Delhi. The Court had directed that the petitioners in these three writ petitions would be entitled to identical relief as were granted by the Court in the earlier writ petitions. After so holding, the Court had issued the following directions :

“The respondents are directed to comply with the terms of the order within two weeks. The respondents are also directed to ensure and create a mechanism which would verify such claims made and pass appropriate orders in a time bound manner preferably within eight weeks after receiving representations to avoid future litigation. Such mechanism shall also be created after consideration within eight weeks from today.”

7. Mr. George has drawn our attention to Office Memorandum dated 17th October, 2013 issued by the respondents wherein, the respondents claim to have framed a mechanism in compliance of the order dated 18th March, 2013. The relevant extract of this order relied upon before us reads as under :

“2. Accordingly, following mechanism has been framed to dispose of such claims during attachment/temporary transfer of officers/men with

offices/establishments other than their declared headquarters, at the rates as admissible at the place where they are on temporary transfer/attachment to avoid future litigations:-

- (i) Personnel on temporary transfer within 180 days will be entitled for DA as per provisions of SR-73.
- (ii) On further extension of temporary transfer period beyond 90 days, the place of temporary transfer may be declared as temporary headquarters under provisions of SR-59.
- (iii) On declaration of temporary headquarter personnel on temporary transfer will be eligible for HRA, Transport Allowance, etc.
- (iv) Such declaration of temporary headquarter will be done by Directorate General or concerned Head of Department as per existing instructions contained in FR/SRs.

3. The above provision will be effective prospectively from the date of issue of this order.”

It is urged by Mr. George that in view of the Office Memorandum dated 17th October, 2013, the petitioner is disentitled to payment of HRA and TPT for the period from 1st September, 2012 to 16th October, 2013 being a period prior to the issuance of the Office Memorandum.

8. We are afraid that we cannot agree with this position and that

the stand of the respondents is contrary to the decision of this Court. As a matter of principle this Court had found persons who though posted to a position outside Delhi, remain attached on duty in Delhi, entitled to the payment of HRA, TPT and other allowances, which are admissible at Delhi.

9. We also note that the respondents have accepted this position before this Court in WP(C) 1581/2014 *Malik Juned Ahmed v. Union of India & Ors.* decided on 10.3.2014, which was allowed on the statement of the counsel for the respondents. We extract hereunder the statement, which was made on behalf of the respondents and the order passed by the Court (**page 30**):

*“Notice. Learned counsel for the respondents No.1 to 3 accepts notice and states, on instructions, that in view of the **judgments of this Court** including the judgements in the case of Jayashankar M N vs. Union of India in WP(C) No.7582/2009 **decided on 16.11.2009** and in W.P.(C) 1731/2013 titled Insp. (M) Harvinder Singh vs. Union of India and Ors., W.P.(C) 1733/2013 titled SI (M) Suresh Kumar vs. Union of India and Ors. and W.P.(C) 1734/2013 titled SI (M) Nakchhed Prasad vs. Union of India and Ors. **decided on 18.03.2013**, the respondents are inclined to allow to the Petitioner the transfer*

benefits/allowances i.e. HRA/TPT etc. With effect from the date of his attachment in Delhi from 23.04.2012 to 07.09.2013.

In view of this, nothing further survives to be considered in the present writ petition and the same is accordingly disposed of. The needful be done by the respondents latest within six weeks.

As prayed, copy of the order be given dasti to learned counsel for the parties.”

(Emphasis by us)

The period covered by the above judgment includes the period before the Office memorandum dated 17th October 2013. The order stands passed on 10.3.2014, i.e. after the issuance of the Office memorandum.

10. Similarly WP(C) 5011/2014 ***Uttam Singh v. Union of India & Ors.*** was allowed by the Court vide order passed on 11th August, 2014, holding as follows :

“Although before approaching the Court, the petitioner should have filed his representation before the concerned authorities, so that at least the Court could have the advantage of knowing the stand of the respondents in cases of such nature where the legal position has already been crystallised based on number of judgments. We

also note with anguish and concern that in many cases the respondents are seen to be not following the mandate of the law and identically placed employees keep rushing to the court although their grievances can be redressed at the level of the decision making authority of the respondents, based on the settled legal position. Such a conduct of the concerned officers of the respondents cannot be appreciated as not only it causes grave harassment to such a petitioner but also puts him to unnecessary expenses and above all, the work of the Court also gets increased.

So far as the present writ petition is concerned, there cannot be any dispute that in the light of the judgments referred above, the petitioner is entitled to grant of HRA/TPT allowance despite the fact that on paper, he was posted at various other destinations but was discharging his duties at the Headquarters at New Delhi. We therefore, put the respondents on a caution that in future, we will have to take a very strict view at least in those cases, where the legal position has been settled but yet the employees are made to rush to the court seeking identical reliefs.”

(Emphasis by us)

11. It is undisputed that the respondents have complied with the mandate of the judgments of this Court in the above cases.
12. The respondents cannot adopt a pick and choose policy, granting the benefits to some personnel while denying the same benefits to others similarly situated. We may note that the entitlement

to the HRA and TPT is premised on the fact that though posted on paper outside Delhi, the personnel continues to render service in Delhi. Such entitlement cannot be dependent on the stipulation in the Office Memorandum dated 17th October, 2013 that the same would be prospective.

13. The Office Memorandum dated 17th October, 2013 purports to have been issued in compliance of the order dated 16th March, 2013 passed in WP(C) no.1731/2013 and other connected writ petitions. No such reservation that the benefit would be available after a particular date was permitted by the Court and the orders also included HBA & Transport Allowance for the period of the service rendered by the petitioner prior to the filing of this writ petition.

14. It may also be noted that this Court has been passing decisions as far as back from 16th November, 2009 in WP(C) no.7582/2009. The legal position stood crystallized thereby. The present writ petition reflects a hopeless situation that despite repeated orders by the Court, the respondents are not abiding by the principles laid down therein and are compelling CRPF personnel to approach this Court.

15. So far as the applicable legal principle is concerned, the same stood settled, as back as in 2009. It is trite that failure to comply with the law laid down renders the person responsible for action under the Contempt of Court Act. It is made clear that the respondent shall abide by the law laid down by this Court in the aforesaid decisions. In case, personnel are compelled to seek legal redressal because of non-compliance of law laid down by the Court, the same may invite appropriate action for non-compliance thereof.

16. In view of the above discussion:

- (I) the respondents are directed to compute the HRA and TPT admissible to the petitioner for the period from 1st September, 2012 to 16th October, 2013 within a period of four weeks from today and communicate the same to the petitioner. The same shall be thereafter forthwith paid to her. Needless to say, in case the petitioner is aggrieved by the computation or any action of the respondents, it shall be open to her to assail the same by appropriate legal remedy.

This writ petition is allowed in the above terms.

Dasti.

GITA MITTAL, J

ANIL KUMAR CHAWLA, J

APRIL 11, 2017/rc