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

+ **W.P.(C) 2113/2018**

KANWALJIT SINGH Petitioner
Through Dr. S.S.Hooda, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Satyendra Kumar, Advocate

+ **W.P.(C) 7108/2019**

PAWAN MALIK & ORS Petitioners
Through Dr. S.S.Hooda, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Sarvan Kumar Shukla,
Advocates for Respondents No.1 to 4
Ms.Nidhi Mohan Parashar, GP &
Mr. Shakya Sen, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
03.09.2019

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Dr. S. Muralidhar, J.:

1. These two sets of common petitions seek identical relief concerning the amount of Overseas Subsistence Allowance (OSA) payable to personnel of the Formed Police Units (FPUs) that are part of the United Nations Formed

Police Units (UNFPU) deployed in Peace-Keeping Missions by the United Nations (UN). Accordingly, these petitions are being disposed of by this common judgement.

2. In the first petition, W.P. (C) 2113 of 2018, the Petitioner who is currently a Commandant in the Border Security Force ('BSF') and posted as Contingent Commander of the Indian Formed Police Unit-II (IFPU-II) in the Democratic Republic of Congo has filed this petition challenging an Office Memorandum dated 18th September, 2017 revising the rate of Overseas Subsistence Allowance ('OSA') uniformly for personnel of all ranks i.e. Gazetted Officers (GOs), Subordinate Officers (SOs) and Others (ORs) as US\$ 1410.

3. The second petition WP(C) 7108/2019 is by 30 Petitioners are serving in the ranks of Commandants, Second In Commands, Deputy Commandants, Assistant Commandants, Inspectors, Sub-Inspectors and Assistant Sub-Inspectors in the Border Security Force and Indo Tibetan Border Police and are currently part of UNFPUs posted in the Democratic Republic of Congo as part of the UN Peace-Keeping Missions.

4. The Petitioners state that FPUs are part of the United Nations Police (UNPOL) that is deployed in Peace-Keeping Missions by the United Nations. The primary function of the FPU is providing support to the UN operations and ensuring the safety and security of UN personnel and missions, primarily in public order management. An FPU consists approximately 140 members with a well laid out and exclusive Command

and Logistics element.

5. At the time that the Petitioner proceeded to Congo as part of the FPU, OSA was being paid at the following rates:

“RANK	OSA
GOs	US\$ 2120
SOs	US\$ 1600
ORs	US\$ 1251”

6. As already noticed herein before by the impugned OM dated 18th September, 2017 the above rates have been revised to a uniform rate of US\$ 1410 for officers of all ranks. The Petitioner seeks to draw comparison with the OSA paid to members of the Indian Armed Forces by the Ministry of Defence where officers are paid OSA US \$ 2200, JCOs \$ 1650 and ORs \$ 1288.

7. The case of the Petitioner is that officers of different ranks have different responsibilities and duties. The OSA consists of two different, separate and distinct components i.e. the standard rate of reimbursement given by the UN and the additional payment made by the Ministry of Home Affairs (MHA), Government of India. For instance, for GOs the standard rate of reimbursement by UN was US \$ 1332 and the additional payment is US\$ 808, thus making a total of US\$ 2120. It is stated that with the revision of reimbursement rates by the UN to US\$ 1410 with effect from 1st July, 2017 the above corresponding revision was effected by the MHA by the OM dated 18th September, 2017. In effect, MHA has stopped paying any extra sum to the GOs and SOs and has stopped making profit from reimbursement

in case of ORs.

8. The representation dated 7th September, 2017 by the Petitioner in W.P. (C) 2113 of 2018 to the MHA seeking enhancement of the OSA was rejected with the decision 'not agreed to' which was communicated to the said Petitioner by letter dated 10th January, 2018.

9. The Petitioners contend that they had a legitimate expectation that the OSA prevailing at the time of their deployment to Congo would continue till the end of the mission. However, the OSA rates were revised retrospectively and during the mission, which has also lowered the morale of the personnel involved. It is in these circumstances that the writ petitions have been filed.

10. The contention of Dr. S.S. Hooda, learned counsel for the Petitioners is as under:

i) The impugned OM equates the work carried out by the GOs, SOs to the work carried out by ORs when in fact higher ranks discharge additional duties and their selection is based on more stringent standards. They have additional responsibilities.

ii) There is a violation of Article 14 of the Constitution since unequals are sought to be treated equally.

iii) There was a legitimate expectation that the OSA rates prevailing at the time of deployment would continue till the end of the mission.

iv) Since the FPU's carried out the same work done by members of the Indian Armed Forces and they served in the same mission, there should be no disparity in the matter of OSA.

11. In the counter affidavit filed in response to the notice issued in the present petition it is denied by the Respondents that there is any violation of Article 14 of the Constitution. It is stated that

“consequent upon the approval of General Assembly Resolution 67/261 based on the recommendation of Senior Advisory Group and Troops Cost Reimbursement Survey, a single rate of reimbursement on account of Troop Cost has been introduced by the UN w.e.f. 1st July' 2014 and the revised rates were to be paid in three phases as under. A copy of PMI to UN E-Fax No. 124 dated 15th Oct' 2014 is annexed herewith and marked as Annexure R-2.

- i) From 1st Jul 14 to 30th Jun'16 = US\$ 1332 per person/pm
- ii) From 1st Jul' 16 to 30th Jun'17 = US\$ 1365 per person/pm
- iii) From 1st Jul'17 onwards = US\$ 1410 per person/pm”

12. Correspondingly the enhanced OSA was re-distributed amongst GOs and SOs and ORs with effect from 1st July, 2014. It is stated that MHA has ordered the revision of the rank wise OSA by the impugned OM. As far as the MOD is concerned, it revised the OSA payable to the troops by giving enhanced rate, while the existing rate of OSA has been continued for GOs and JCOs. It is pointed out that the fixing of the OSA is the matter of discretion and that the impugned OM is in accordance with the relevant rules and instructions.

13. Dr. Hooda placed reliance on the decision in *Federation of All India*

Customs and Central Excise Stenographers (Recognised) and Others vs. Union of India AIR 1988 SC 1291. The said decision dealt with the issue of equal pay for equal work. The question was whether the demand by the Stenographer Grade-I attached to the officers in the pay scale of Rs. 2500-2750 (Level-I) for parity with the pay scale of Stenographers attached to Joint Secretaries and officers above the rank was tenable? The submissions turned on the recommendations of the 4th Pay Commission. The Supreme Court declined the plea after noticing that the differentiation was justified in view of the nature and type of the work done and that it was on an untenable basis.

14. In the present case, the issue is not about equal pay for equal work. It is about grant of an allowance for being posted as part of the FPU serving the UN Mission. The Court does not find that any comparison can be drawn between the two situations. Clearly the OSA is an additional payment over and above the salary. The Court sees no ground therefore for invoking the principles of equal pay for equal work here.

15. There is also no occasion to draw a distinction in the quantum of OSA based on the rank of the concerned officer. Clearly the salaries of the officers would be commensurate with their respective ranks.

16. Likewise, the Court finds that the reliance by the counsel for the Petitioners on the decision of the ***State of Punjab v. The Senior Vocational Staff Masters Association (2017) 9 SCC 379*** is also misplaced. There again the issue was the distinction in pay between vocational masters and

vocational lecturers. The Court again does not find any relevance of the said decision to the facts of the present case.

17. There is no case made out for Article 14 of the Constitution to urge that unequals have been treated equally. In the context of payment of OSA, payable uniformly to all personnel serving at a particular location as part of the UNFPU such a plea cannot be entertained. The impugned OM was triggered by the revision by the UN of its contribution and therefore there was a rational basis in deciding to make the OSA uniform for all personnel irrespective of their ranks. This has nothing to do with the pay of the officers which continues to be governed by the provisions of the Fundamental Rules ('FR').

18. Further, no comparison can be drawn between the Petitioners who belong to the para-military forces and the members of the armed forces. There has always been a distinction between the two in matters of pay and allowances.

19. The Court finds no merit in these petitions and they are dismissed as such.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 03, 2019

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