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

Date of decision : 16.09.2019

+ W.P.(C) 4508/2018

SANJAY GUPTA

..... Petitioner

Through: Petitioner-in-person.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Nikhil Goel, Standing Counsel
with Mr. Dushyant Sarna & Mr. P.
Harold, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

The petitioner, who appears in-person, is aggrieved by order dated 09.10.2017 by which the OA filed by the petitioner seeking special allowance on his having been posted at the headquarters, has been dismissed. The relevant portion of the impugned order reads as under:

“4. ... I am also informed by the respondents’ counsel that there are large number of similarly placed officers, and that payment or otherwise of Headquarter Allowance has to be decided, keeping in view the financial implications as well. This being a policy matter, which is still under consideration of the respondents, I refrain from interfering with the impugned order dated 06.01.2015 of the respondents, which is a fairly reasoned one. The plea of the applicant that he has been discriminated

against appears unfounded. The O.A. is accordingly dismissed. No costs.”

2. The petitioner submits that as of now, the respondent has passed a speaking order on 10.07.2019, again denying Headquarter Allowance to the petitioner.

3. Mr. Nikhil Goel, learned Standing Counsel for the respondent submits that this allowance has been disallowed to the petitioner, and to a large number of similarly situated persons, since these persons were posted to the headquarters only awaiting the cadre re-structuring. Mr. Goyal contends that in the year 2000, the employees of Department of Telecom (DoT) were transferred to BSNL ; and an option was given to such employees to either seek absorption in BSNL or to continue on deputation. The petitioner, alongwith other similarly situate persons, chose to continue on deputation for 10 years. At the time when they were to be repatriated, cadre re-structuring was happening for five to six months, so they were only posted to the headquarters but performed no work.

4. It is the stand of the petitioner that his posting at the headquarters was an involuntary act as far as he is concerned ; and thus he should be entitled to the allowance which other similarly situate persons of Indian Telecom Services (ITS) have been granted.

5. Mr. Goyal, counsel for the respondent submits that there is no justification for grant of such allowance, even if it was wrongly paid to certain other persons. He states that in view of the definition of ‘Special Pay’ in Fundamental Rule 25 and also having regard to the fact that, admittedly, during cadre re-structuring none of these officers performed any

duties, they are not entitled to grant of such allowance. Counsel refers to para 26 of '*Union of India & Ors. vs. M. K. Sarkar*' reported as (2010) 2 SCC 59 to quote :

“26. ... When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief.”

6. At this stage, the petitioner submits that he does not wish to press this petition and would assail the reasoned order dated 10.07.2019 passed by the respondent.
7. Accordingly, the present writ petition is disposed of.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 16, 2019/uj