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

+ **W.P.(C) 9321/2015**

BIJENDRA SINGH BHATI

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ajay Digpaul, CGSC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **20.01.2020**

1. The Petitioner, who is serving as a Deputy Commandant in the Central Reserve Police Force ('CRPF'), has by way of this petition challenged the Office Memorandums ('OMs') dated 23rd December, 2008 and 16th April, 2009, issued by the Ministry of Home Affairs ('MHA'), Union of India (Respondent No. 1 herein). He also seeks a direction to the Respondents to grant to him Detachment Allowance ('DA') and Risk Allowance ('RA')/Hardship Allowance ('HA').

2. The brief facts are that the Petitioner joined the CRPF on 9th January, 2003. Whereas the Petitioner's "declared Headquarter" is at Neemuch, Group Centre, the Petitioner is presently deployed in the 195th Battalion, Barsoor District, Dantewara, Chhattisgarh, which is stated to have been categorized as a Left Wing Extremist ('LWE') area.

3. Based on the recommendations of the 6th Central Pay Commission ('CPC'), it was decided that that a scheme of allowances would be drawn up

for personnel of the Central Para-Military Forces ('CPMF') in the rank of Commandant and below, deployed in "difficult/Counter insurgency" and "high altitude" areas. Pursuant to the aforesaid decision, the impugned OM dated 23rd December, 2008 came to be issued. Clause (i) of the said OM classified those deployed in LWE areas as "Category B" personnel, who as per Clause (ii) were entitled to receive an RA/HA. However, by Clause IV, DA was not "admissible" to Category B who were to receive RA/HA. Further Clause VIII provided as under:-

"The CPMFs personnel shall have an option to choose either the existing compensatory allowances or proposed risk allowances"

4. In another OM dated 16th April, 2009 on the subject of RA/HA to CPMF personnel, it was provided that CPMFs deployed LWE areas would be entitled to RA "at rates equivalent to CI Ops in Modified Area Allowance admissible to Army". It further stated that CPMF personnel could exercise an "option" between receiving the newly framed RA/HA and the "existing package of compensatory allowances and detachment allowances".

5. The grievance of the Petitioner with the aforesaid OMs is that they constrain the Petitioner to opt for one of RA/HA and DA, failing to recognize that these were two different sets of allowances inasmuch as they served distinct purposes. The Petitioner avers that Rule 46 of the CRPF Rules encompasses his statutory right to detachment allowance whenever he proceeded on detachment duty from his Group Centre to another battalion. Such an allowance was akin to allowances given to Government Servants under Rules 49 and 50 supplementing the Fundamental Rules for being

away from one's headquarters and travelling. The Petitioner contends that such an allowance could not "substituted by any other allowance". The RA/HA, on the other hand, was specific to compensating for risk that accompanies being posted at places which were "difficult and hazardous" and by virtue of that, entailed a risk to the life of the personnel deployed in such areas.

6. Pursuant to the notice issued in this petition, when it was first listed for hearing on 30th September, 2015, the Respondents have filed a counter affidavit in which the contents of the impugned OM has been reiterated and it is stated that the DA is provided in order to meet "extra expenses" incurred by personnel when they are deployed in areas that are "far flung" from their headquarters.

7. In the rejoinder filed on behalf of the Petitioner, apart from reiterating the stand taken in the petition, it is stated that the Respondents have admitted to the Petitioner's case in the petition.

8. Today, when the matter was taken up for final hearing, the Petitioner placed reliance on the decision of this Court dated 10th April, 2019 in W.P.(C) 4151/2015 (*Vikram Singh v. Union of India*), wherein by an OM dated 17th October, 2001, the grant of Rational Money Allowance ('RMA') was made conditional on CRPF personnel giving up the DA payable under Rule 46 (c) of the CRPF Rules.

9. Upon perusing the aforesaid decision, the Court is of the view that it is

applicable to the case at hand. This is clear from a bare reading of para 14 of the decision where the Court, setting aside the OM dated 17th October, 2001, observed as under:

“14....Detachment allowance is payable as reimbursement for the expenses incurred by the individual when travelling and being away from the Headquarters. The instructions insisting that the CRPF personnel must opt for either the RMA or the detachment allowance appears to run contrary to Rule 46(c) of the CRPF Rules. In terms of the law explained in Supreme Court in *B. Rugmini Amma. v. B. S. Nirmala Kumari (2013) 11 SCC 262* administrative instructions cannot override the statutory provisions. In that case, it was held that “the clarification in GOI cannot be superseded or override the terms of the main order.” As far as the present case is concerned, the instructions seek to add a condition for availing RMA which Rule 46 (c) of the CRPF Rules does not. To that extent the administrative instructions have to give way to the statutory provision.”

10. In that view of the matter, the impugned OMs to the extent that they require the Petitioner to choose between the RA/HA and DA are hereby set aside. A direction is issued to the Respondents to grant to the Petitioner DA and RA/HA from the date on which the Petitioner became eligible for such allowances. The appropriate orders be issued within six weeks from today.

11. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 20, 2020/abc