



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

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Date of decision: February 29, 2024

+ W.P.(C) 2210/2007

(6) **BIRENDRA SINGH & ORS.**

..... Petitioners

Through: Dr. Kedar Nath Tripathy, Advocate

Versus

UOI & ORS.

..... Respondents

Through: Mr. Bhagwan Swaroop Shukla,
CGSC with Mr. Sarvan Kumar and
Mr. Adarsh Pandey, Advocates for
UOI with Smt. Kamlesh Rani
Dy.Jag. (ITBP) and Ram Niwas,
HQ DGDR

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

1. As per facts, in the year 2004, the Border Roads Organisation¹ was tasked by the Government of India to carry out upgradation/ construction of a road between Zaranj and Delaram in Afghanistan. To provide adequate security cover for the project, a team of at least 250 Indo-Tibetan Border Police² personnel including the petitioners herein was selected and deployed in Afghanistan. Also to carry out the project effectively, the rank/ trade wise entitlement of Foreign Allowance³ in respect of ITBP personnel deployed for the aforesaid project was fixed as

¹hereinafter referred to as 'BRO'

²hereinafter referred to as 'ITBP'

³hereinafter referred to as 'FA'



per Appendix E to the Border Roads Development Board⁴ letter No. BRDB/03/170/2004-GE-1 dated 30.03.2005 as under :

S.No.	Category	Foreign Allowance in US\$ Per Month
2.	Inspector/GD	1074
3.	Sub-Inspector/GD	1074
4.	Head Constable/Constable	550

2. The petitioners, feeling aggrieved by the disparity in granting FA to them as compared to the amount granted to similarly placed/ ranked personnel of the BRO, made two representations dated 06.11.2006 and 02.01.2007 to the appropriate authorities. Hearing no response thereto, the petitioners filed the present petition under Article 226 of The Constitution of India seeking issuance of a direction to the respondents to pay them FA commensurate to their counterparts in the BRO i.e. FA @ 1074/- USD per month as payable to Group-C officials in the BRO.

3. In light of above, learned counsel for the petitioners submits that the respondents have acted in an irregular and discriminatory manner as the Group 'C' employees in the BRO drawing the same pay scale and on the same rank as the petitioners herein have been granted FA @ 1074/- USD per month, whereas, the petitioners being similarly situated Group 'C' employees in the ITBP drawing the same pay scale and in the same rank, have been, wrongly, granted FA @ 550/- USD per month. He submits that though the benefits of the '*Hardship Allowance*' have been made applicable to the personnel deployed at the Indian Embassy, Kabul,

⁴hereinafter referred to as '**BRDB**'



however, the same has not been extended to the petitioners, even though they are working in more challenging conditions.

4. *Per Contra*, learned counsel for the respondents submits that as per the MEA letter No.J-II/239/7/03 dated 04.02.2004, the FA payable to ITBP personnel stationed at Afghanistan has been fixed at the same level based on rank equivalence as is payable to the personnel deployed at the Indian Embassy in Kabul and thus, there is no discrimination against the petitioners. He then submits that the FA payable to the personnel serving in the BRO and ITBP has already been increased at the rate of 12% with effect from 01.11.2005 vide Sectt. BRDB letter No. BRDB/03/170/2004/GE-1 dated 06.03.2007. He lastly submits that the revision of FA in respect of Constables/ Head Constables of the ITBP at par with the FA so fixed for Non-Commissioned Officers of the Indian Army has already been taken up with the concerned authorities vide internal note dated 15.11.2006 and the same is pending approval.

5. This Court has heard the learned counsel for the parties and has also perused the documents on record.

6. A perusal of the record reveals that though the present petition was filed way back in 2007, it was initially dismissed in default and for non-prosecution vide order dated 28.03.2016, only to be restored on 18.07.2016 and thereafter, once again, vide order dated 20.12.2022, the present petition was again dismissed in default and for non-prosecution only to be restored on 13.01.2023.

7. *Admittedly*, the BRO had fixed the entitlement of FA in terms of rank/ trade-wise in respect of ITBP personnel, including the petitioners,



deployed for the concerned project and accordingly fixed a consolidated sum of remuneration per month for them.

8. Learned counsel appearing for the respondents in his written submissions clarified that prior to the filing of the present petition, as per Sectt BRBD letter dated 30.03.2005, rank/ trade-wise entitlement of FA in respect of GREF, Army, DAD and ITBP personnel was fixed as under:

- (a) *Non Gazetted Officials except Group 'D'- 1074 US\$ pm employees of GREF, JCO/NCO of Army, Sr. Auditor, Auditor/Clerk of DAD, Inspector GD Sub Inspector/GD of ITBP.*
- (b) *All other Group 'D' employees of REF- 524 US\$ pm.*
- (c) *Sepoy of Army and Head Constable/-550 US\$ pm Constable of ITBP.*

9. However, vide an internal note dated 15.11.2006, the Head Constables of ITBP barring the Sepoys of Army and the Constables of ITBP like the petitioners herein, were given parity with the entitlement fixed for other Non Commissioned Officers of the Army for FA @ 1074/- USD per month.

10. Since the above is a policy decision taken by the respondents, the scope of judicial review by this Court under Article 226 of The Constitution of India is extremely minimal. That the respondents chose only the Head Constables of the ITBP and not the Constables of ITBP or the Sepoys of Army is a matter of sheer discretion exercised by the respondents being the appropriate authority.

11. As per settled law, while dealing with a petition under Article 226 of The Constitution of India, this Court cannot interfere with the policy



making process or the policy decision, save and except of, there is something against the extant policy or the procedure followed is vitiated or there is a violation of principles of natural justice or any other similar mitigating circumstances or like.

12. Thus, this Court being mindful of the aforesaid circumstances, has to sparingly exercise its powers under Article 226 of The Constitution of India, only whence it is required and not otherwise.

13. In view thereof, in the considered opinion of this Court, since there is no element of any allegation qua any bias or mala fide or non-following of the principles of natural justice, procedures, rules, regulations or like levelled by the petitioners against the respondents anywhere in the present petition, thus, there is no need felt for this Court to dwell any further.

14. Accordingly, for the aforesaid reasons, the present petition is dismissed with no order as to costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

FEBRUARY 29, 2024/rr