

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 06th February, 2023
Pronounced on: 28th March, 2023

+ W.P.(C) 12431/2022

SAJAKUMAR V AND ORS.

..... Petitioners

Through: Mr. A Sirajudeen, Sr. Advocate
with Mr. Bijo Mathew Joy & Mr.
Manu Krishnan, Advocates.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Sushil Pandey, Sr. Panel
Counsel & Mr. Vedansh Anand,
Govt. Pleader with Sub. Ram
Niwas & Nb. Sub. Shyam Singh
Negi for UOI.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The petitioners who are holding various positions in Group B and Group C category in General Reserve Engineer Force (GREF) under Ministry of Defence, Government of India, by way of this Writ Petition

under Article 226 of the Constitution of India, 1950 have sought issuance of directions to set aside Office Order dated 12.02.2021 and to regularize the period of absence due to COVID-19 Pandemic which may be treated as on duty, for all purposes.

2. The **facts in brief** are that the petitioners pursuant to a bilateral Trade Agreement between Government of India and Government of Bhutan were granted deputation and posted on foreign assignment to execute major projects relating to Roads, flyovers and airports in Bhutan. As a practice, the period of assignment to foreign country is two years. Additionally, the employees on special assignment to Bhutan are eligible to get Bhutan Compensatory Allowance (BCA) in addition to their usual entitlements. Because there are extra monetary benefits attached to this foreign assignment, the selection for BCA tenure is strictly based on a specific procedure which is carried out in an equitable manner, the selection criteria being the credentials, ability, medical status and grading in APAR as well as seniority. As per practice, an employee is entitled to get the foreign assignment in Bhutan only once in its career.

3. The petitioners were duly selected for foreign assignment to Bhutan under BCA tenure and were sent for execution of projects in Bhutan during the year 2018-19. The petitioners were entitled to avail Casual Leave of fifteen days on sanction during their assignment period and were not deprived of the benefit of BCA during this authorized and sanctioned casual leave period. However, in case of other leave of a period less than 60 days, BCA will be reduced by 50% for the period of leave. If the leave period is beyond 60 days, BCA was not payable.

4. The petitioners herein while on assignment in Bhutan, availed

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casual leave to visit their families in India. The exact dates of the leave availed by the petitioners is reflected as under:

S/ No	Name	Commence ment of assignment in Bhutan	Commence ment of Casual/ earned Leave	Date of Expiry of Casual/ earned leave	Date of Re- joining
1	Sajakumar. V	11.08.2019	10.02.2020	21.03.2020	21.09.2020
2	Sudarshan Manjhi	09.05.2019	05.02.2020	05.03.2020	20.09.2020
3	Gajendraprathap Singh	03.02.2019	24.02.2020	23.03.2020	04.10.2020
4	Niranjan Dharua	19.02.2019	20.02.2020	22.03.2020	20.09.2020
5	Prem Chand Ram	04.01.2020	11.03.2020	19.03.2020	03.08.2020
6	Gori Shankar Manjhi	29.08.2019	09.03.2020	14.03.2020	01.08.2020
7	Manoj Dhyani	24.12.2018	02.03.2020	21.03.2020	18.09.2020
8	Raj Kumar	30.11.2018	11.03.2020	19.03.2020	15.07.2020
9	Narayan Dass	02.04.2019	16.03.2020	03.04.2020	16.10.2020
10	Krishna Prasad	18.12.2019	11.03.2020	27.03.2020	10.08.2020
11	Ram Swarup	13.06.2018	11.03.2020	24.03.2020	07.08.2020
12	Jai Prakash	04.06.2018	29.02.2020	21.03.2020	07.08.2020
13	Ashok Kumar Sah	26.11.2019	02.03.2020	12.03.2020	20.09.2020
14	Dhirender Dutt	17.09.2019	11.03.2020	28.03.2020	05.10.2020
15	Om Prakash Singh	18.03.2019	09.03.2020	22.03.2020	18.09.2020
16	Rampal	08.03.2019	11.03.2020	09.04.2020	05.10.2020
17	Sarop Singh	21.02.2019	11.03.2020	28.03.2020	05.10.2020
18	Ram Singh	01.06.2018	11.03.2020	28.03.2020	07.08.2020
19	Baban Singh Ture	10.06.2019	10.02.2020	22.03.2020	20.09.2020

5. The entire world came under the wrath of Covid-19 Pandemic bringing the entire world to a standstill. The Royal Government of Bhutan declared a complete lockdown across Bhutan in the wake of Covid-19 Pandemic from 05.03.2020. In the mean while, a nationwide lockdown from 24.03.2020 was announced by Government of India. On account of the national lockdown, oral directions were issued by the respondents restraining the petitioners to enter Bhutan for re-joining the BCA tenure duty. The petitioners were therefore, stranded in their respective home towns and were unable to return to Bhutan on the expiry of their sanctioned leave. On account of the communication received by the petitioners, they were compelled to cancel their air tickets for their travel to Bhutan on their scheduled dates.

6. The nationwide lock down was relaxed in India with effect from 01.06.2020. However, the lock down in Bhutan continued and stringent quarantine provisions were clamped on the international visitors. The Government of Bhutan notified that in every batch of quarantine facility in Bhutan, only 12 persons would be accommodate from GREF and the quarantine period in Bhutan was for a period of 21 days. Since the number of persons, outside Bhutan on leave during the ibid period, were more than 120 persons, the chances of being included in the batch of 12 persons were bleak. The Addl. Director General of Border Roads (NW) recommended and suggested that the employees may stay in their home town till public transport facility was restored and the leave period may be treated as special casual leave as per their letter No.13003/Gen/ADGBR(NW)/22/E1A dated 03.06.2020.

7. The respondent No.3 the Chief Engineer, HQ again recommended

that the absence beyond 01.06.2020 onwards till the date of reporting back may be regularised as special leave without BCA and the BCA tenure may be extended accordingly subject to maximum of 24 months as individuals were unable to rejoin the duty due to departmental constraints.

8. The Indian Army has regularised the period of absence from 01.06.2020 as Special Casual Leave untrammelled by the fact that the official lockdown was relaxed on 31.05.2020 in India as per Ministry of Defence (Army) letter No. B/33040/AG/PS-2(b) dated 09.07.2020. The Government of India issued narratives with regard to regularisation of the period of absence from duty during Covid-19 Pandemic lock down period. The DoPT issued its OM. F No.14029/5/2019-Estt (L) (Pt.2) dated 28.07.2020. According to this OM the employees who were on leave just prior to the announcement of lockdown are deemed to have rejoined duty on the expiry of leave period. The entire period of lock down is treated as deemed duty for all purposes and the employees are entitled to draw full pay and allowances without any diminution.

9. The period from 24.03.2020 to 31.05.2020 which was a complete Lockdown period, in terms of the aforementioned circulars, is to be treated as on duty for which the petitioners have no grievance.

10. The grievance is in respect of the absence of the petitioners from duty beyond 01.06.2020 on the specific instructions from the concerned authorities. DGBR respondent No. 2 has issued the Office Order No.18379/Leave/DGBR/T&C dated 12.02.2021 regularizing the period of absence beyond 31.05.2020 i.e. from 01.06.2020 till the date of actual rejoining as eligible leave by granted EL/HPL/EOL etc as per the existing leave rules. The respondent No.1/ Union of India has empowered the

respective departments to take appropriate decision in respect of period of absence from 01.06.2020 based on case-to-case basis as per their letter No.13020/1/2019-Estt (L) dated 01.03.2021. This OM does not cover all specific circumstantial problems faced by the employees of Government of India and an interpretation of circumstances in congruence with clarification made in the above OM is adoptable. However, the 2nd respondent has failed to take any decision.

11. The supervening impossibility on account of Covid-19 Pandemic was the only reason which prevented the petitioners from rejoining their duty at Bhutan despite the lifting of the national lockdown and the petitioners cannot be held responsible for the delay in reporting for duty. The respondent No.4 the Commander HQ 19 BRTF, has recommended that the case may be taken up with GOI through DGBR to regularise the overstay leave period of the personnel beyond 01.06.2020 and to make BCA Allowance applicable. Despite the recommendations made by the Authority, the parent units of the petitioners have regularised the period of absence as eligible leave and forwarded the nominal roll of employees along with casualty publication as per respondent No.4 letter No.1241/Misc/27/E1B dated 12.08.2021.

12. Likewise, 64 RCC (GREF) a unit under respondent No.3 has also recommended the case of employees for regularisation of their absence period as Special (Covid) Casual Leave without financial loss as per their letter No.1101/Gen/21/E1C dated 27.08.2021. However, no steps have been taken either by respondents No. 2, 3, and 4.

13. Aggrieved, the first petitioner and other petitioners submitted a representation dated 21.09.2021 to the respondent No.5 to review the

regularisation of absence period against their leave account. The representation has been disposed of by respondent No.5 vide letter No.1011/Gen/05/E1 dated 28.09.2021 stating that the absence period during Covid-19 pandemic has already been published in accordance with the directions of higher authority. It was further stated that the case was being taken up with respondent No.2 for obtaining sanction from competent authority recommending payment of pay and allowance to individuals during the period of absence. As and when the directions are received, the same shall be intimated to all concerned for regularisation/re-publication of DoPT accordingly. However, no further progress has been intimated to the petitioners till date.

14. The petitioners aggrieved by the response to the representation, gave a Legal Notice dated 28.11.2021, but the same has not evinced any response from the respondents. The respondent No.3, however, vide his communication dated 12.02.2022 has responded reiterating that the period of absence can only be treated as eligible leave (Earned Leave) in the absence of any specific orders, though the matter is under consideration and no final decision has been taken.

15. It is asserted that the petitioners had been always willing to rejoin their duty immediately after the lifting of lockdown on 31.05.2020, but were unable to join for want of instructions for travel to Bhutan. Therefore, the period of absence from 01.06.2020 onwards till they resumed their duties be treated as Special Covid Leave. It is explained that the petitioners do not have sufficient Earned Leave as against their credit for the respective period and the same shall be treated as Extra Ordinary Leave (EOL) which would lead to an irreparable injury and loss and

miscarriage of justice. Had the leave been not debited from their account, they would become eligible for leave encashment as per the provisions of CCS (Leave) Rules.

16. The similar benefit of treating this period of absence as Special Covid Leave has already been extended to Army personnel and the petitioners being part of the same homogeneous group, are entitled to be treated alike. Treating them differentially would amount to violation of Article 14 of the Constitution of India. Reliance has been placed on the principles enshrined by the Supreme Court in Federation of Hotel & Restaurant Association of India vs. Union of India (1989) 3 SCC 634, wherein it was observed that “*Differentia must have a rational nexus with the object sought to be achieved by the law*”.

17. A prayer is, therefore, made that the absence period beyond 31.05.2020 may be regularised as Special Casual Leave on account of Covid-19 Pandemic and may not be adjusted against the eligible leaves available in the accounts of the petitioners by granting EL/HPL/EOL as per the existing leave rules.

18. The respondent No. 1/ Union of India, in its **counter-affidavit** has stated that the situation has arisen because of extraordinary circumstances which are beyond the control of the Department and there is no lapse on the part of the Department as the leave regularisation has been done in accordance with the Office Memorandum. In the absence of any government order or notification directing that the period of absence beyond 31.05.2020 be treated as Special Casual Leave, the answering respondent is unable to extend the benefit to the petitioners. The pay and allowances of the petitioners have already been granted as applicable

during the period of regularised leave except Bhutan Compensatory Allowance which is not applicable during the leave period as the petitioners were not deployed in Bhutan on duty during the leave period. The justification is made by reference to Abhijit Ghose Dastidar vs. Union of India & Ors., where the pay and allowance redressal is held to be governed by the principle of “No work no payment”.

19. It is further contended that Ministry of Defence (Army) Letter No. B/33040/AG/PS-2(b) dated 09.07.2020 is not applicable to the members of GREF. The period of absence up to 31.05.2020 has been regularised as Special Casual Leave in accordance with the clarification received from Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Office Memorandum No.14029/5/2019-Estt (L) (Pt.2) dated 28.07.2020.

20. It is further explained that in order to mitigate the risk and prevent the spread of Covid-19 virus, Royal Government of Bhutan had issued a Notification suspending all the visitors by Air/road/rail from countries affected by Covid-19 till further orders vide Notification No. Tha (01)/2020/2136 dated 06.03.2020. Due to non-allotment of required quarantine vacancy by Royal Government of Bhutan and inadequate accommodation in staging camps at the India side at Jaigaon and Daranga, entry of GREF officers/ personnel into Bhutan could not be materialized. According to the allotment of quarantine vacancy by Royal Government of Bhutan Project Dantak, the personnel including petitioners were called according to their seniority/ work requirement basis. The petitioners were not allowed to join their duty after expiry of sanctioned leave due to the compelling reasons which were beyond the control of the Department.

21. It is admitted that the recommendations have been made by Commander, 19 BRTF with HQ DGBR for regularization of leave period beyond 31.05.2020, but in absence of any specific Government Orders in respect of the absence period beyond 01.06.2020, the leave of the petitioners has been regularized by granting them EL/HPL as available to their credit. It is submitted that there is no merit in the present petition which is liable to be dismissed.

22. Submissions heard.

23. Admittedly, the petitioners who were the employees of GREF, had been sent for foreign assignment to Bhutan for a period of two years. The petitioners had taken their casual leave as per their entitlement from the dates which have been specified in the Chart reproduced above. However, while on leave, Covid-19 Pandemic struck the world resulting in imposition of a lockdown by the Royal Government of Bhutan w.e.f. 05.03.2020 and the Government of India also announced a nationwide lockdown w.e.f 24.03.2020. The petitioners who had come to India on their sanctioned leave were unable to travel back to resume their duties in Bhutan after expiry of their sanctioned leave. Therefore, they continued to be in India and after the lockdown was lifted from 31.05.2020, they were sent back in batches in accordance with the Notification of Bhutan which permitted them to return in batches of 12 with the quarantine period of 21 days. The petitioners, therefore, resumed their duties as and when permitted and deployed by Government of India in accordance with the Notification of Royal Government of Bhutan.

24. The Government of India has regularized the leave absence up to 31.05.2020 for all the government employees as Special Covid Leave.

Accordingly, the leave period of all the petitioners up to 31.05.2020 stands regularised as Special Casual Leave for which the petitioners have no grievance.

25. The grievance is for the period of absence from 01.06.2020 which has been adjusted against the leave EL/HPL as was available to each petitioner. In terms of Office Order No. 18379/Leave/DGBR/T&C dated 12.02.2021 while the petitioners leave beyond 01.06.2020 has not been considered as Special Covid Leave, the Ministry of Defence (Army) vide Letter No. B/33040/AG/PS-2(b) dated 09.07.2020 has regularized the period of absence after 01.06.2020 as Special Casual Leave for Army, untrammelled by the fact that the official lockdown was relaxed on 31.05.2020. The relevant part of the Office Order reads as under:

“(a) Period Admissible as Special CL. The period of ‘lockdown’ on account of anti COVID-19 measures due to orders of GoI/State Govt/ Local Authorities/ Service HQ occurring during an individual's leave would be admissible to be regularized as Special CL. At the end of this period the individual should have reported on duty to his Unit/ nearest Station HQ or Unit as directed by the concerned Army authorities. For better understanding and to obviate ambiguity, examples vide illustrations are given at Appendix to this letter (encl).

(b) Leave Sanctioning Authority. The following authorities would be empowered to sanction Special CL on acct of anti COVID-19 measures -

- | | |
|-----------------------------|--|
| <i>(i) Upto 30 Days</i> | <i>By leave sanctioning authority</i> |
| <i>(ii) Beyond 30 Days.</i> | <i>By IO of the offr empowered to sanction Spl CL upto 30 days as mentioned at sub-Para 3 (b) (i) above.</i> |

(c) Regularization of Pd in Combination with Other Leave. As per provisions contained in Leave Rule 72(A). Special CL may be combined either with CL or regular leave i.e. AL,

Furlough, etc and not with both. Thus, combining of absence pd by grant of Spl CL with sanctioned leave needs to be in conformity with the existing provisions.”

26. Consequent to this O.M, the period of absence for the personnel of Army and to all those to whom this OM is applicable, has been regularized into Special Casual Leave. However, despite strong recommendations by respondent No.3/ Chief Engineer HQ and Add. Director General of Border Roads (NW) vide letter No.13003/Gen/ADGBR(NW)/22/E1A dated 03.06.2020, no favourable response has been received in regard to the petitioners. The petitioners despite being placed in the same difficult situation on account of Covid-19 Pandemic and inability to resume their duties in Bhutan being on account of circumstances beyond their control, they are being discriminated against, which is violative of Article 14 of the Constitution of India.

27. It cannot be overlooked that an extraordinary situation was created on account of Covid-19 Pandemic which brought the entire world to a standstill. The petitioners were compelled to remain in India not because of their own volition, but because of the extraordinary circumstances wherein Government of Bhutan itself restricted the entry of the personnel into Bhutan in batches of 12 and the Government of India could not send them on duty immediately on 01.06.2020 while the lockdown was lifted. Understanding this complicated situation, though the Ministry of Defence (Army) bearing No. B/33040/AG/PS-2(b) dated 09.07.2020, has allowed the period of absence beyond lockdown to be treated as Special Casual Leave, but the same benefit has been denied to the petitioners, and their period of absence is being adjusted towards the leave to their credit which,

as has been explained by them, is to their disadvantage. Since the leave once exhausted would not be available to them in future and also for some, there is no leave available and the period would be adjusted against leave without pay, this is a situation of discrimination without any logical basis. Once, the benefit of the period of absence beyond lockdown period being treated as Special Casual Leave, has been extended to one section of Army, there is no reasonable justification for not extending the same to the petitioners as well.

28. It is pertinent to mention that the Chief Engineer HQ and Add. Director General of Border Roads (NW) also made strong recommendations for extending similar benefit to the petitioners, but for the reasons best known, their recommendations have not met with any favourable response from the Government of India.

29. The petitioners are similarly placed as other sections of Army and the discrimination in grant of leave cannot be justified under Article 14 of Constitution of India. Article 14 of the Constitution of India forbids such class discrimination, though reasonable classification based on an intelligible differentia and that the differentia having a rational relation to the object sought to be achieved, may be made as has been observed in the case of *Saurabh Chaudri vs. Union of India* (2003) 11 SCC 146.

30. The petitioners being part of the armed forces, cannot be treated differentially and therefore, it is hereby directed that their period of absence beyond 31.05.2020 till they resumed their duties on account of Covid-19 Pandemic be treated as Special Casual Leave.

31. The petition is accordingly allowed and all the consequential benefits be given to the petitioners.

32. The pending applications, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

MARCH 28, 2023
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