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

+ **W.P.(C) 10011/2019**

M MUTHU

.....Petitioner

Through: Mr. Akshay Ravi and Mr. K.V. Muthu, Advocates along with Petitioner in person.

versus

**AIRPORTS AUTHORITY OF INDIA
AND ORS.**

.....Respondents

Through: Mr. Digvijay Rai, Ms. Chetna Rai, Mr. Rachit Kumar Munjal, Mr. Archit Mishra and Mr. Raghib Ali Khan, Advocates along with Mr. Ashish Mohan Das-GM (ATM-HRD), Mr. Raj Kumar JGM (ATM-HRD), Mr. Jitendra Goel, DGM (AM-HRD) and Mr. Yatinder Choudhary, Law Officer for Airports Authority of India.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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04.10.2024

CM APPL.58360/2024

1. This is an application preferred on behalf of Respondent No.1 under Section 5 of the Limitation Act seeking condonation of delay of 05 days in filing the affidavit in terms of order dated 09.09.2024.
2. Issue notice.
3. Mr. Akshay Ravi, learned counsel accepts notice on behalf of Petitioner.
4. For the reasons stated in the application, the same is allowed. Delay of 05 days in filing the affidavit in terms of order dated 09.09.2024 is condoned. Affidavit along with accompanying documents is taken on record.



5. Application stands disposed of.

W.P.(C) 10011/2019 & CM APPL. Nos. 45135/2024, 51717/2024

6. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“i. Issuance of a writ in the nature of Certiorari quashing the order dated 26.03.2015 passed by the Respondent No.1 for being cryptic, devoid of reasons and violating principles of natural justice; and

ii. Issuance of a writ in the nature of Certiorari quashing the order dated 10.10.2016 passed by the Respondent No. 4 for being cryptic, devoid of reasons and violating principles of natural justice; and

iii. Issue a writ in the nature of Mandamus directing the Respondents to reimburse his professional allowances along with the salary increment due in 2015 that were withheld as a result of the illegal and arbitrary action, to the tune of Rs. 17,64,569/- (Rupees seventeen lacs sixty four thousand five hundred sixty nine only) along with interest @12%; and

iv. Award damages in favour of the Petitioner to the tune of Rs. 50,00,000/- (Rupees Fifty Lakhs only) for wrongfully imposing punishment my maliciously initiating departmental proceedings.”

7. By this writ petition, Petitioner assails the minor penalty of withholding of one increment for a period of one year without cumulative effect as also recovery of two allowances, i.e. Rating and Stress Allowance, called Professional Allowance. It is averred in the petition that vide order dated 29.07.2002, Petitioner was posted as DGM (Aviation Safety), Southern Region (‘SR’) at Chennai Airport. By Memorandum dated 25.10.2002 issued by Respondent No. 2, personnel belonging to ‘ATC/Communications’ were held ineligible for Professional Allowances i.e. Rating and Stress Allowance and were only entitled to General Proficiency Allowance. By another Memorandum dated 05.12.2002, it was clarified that postings in Aviation Safety Directorate are not lateral movements but are identical to normal transfers and in view thereof such



officers will be eligible to draw their Discipline Rating Allowance/ Discipline Proficiency Allowance as per eligibility criteria.

8. It is further averred that two DARA Circulars bearing Nos. 03/1994 and 04/2005 were issued by Airport Authority of India ('AAI'). By Circular No. 03/1994, guidelines were laid down for periodical radar duties. Air Traffic Control Officers ('ATCO') were mandatorily required to comply with the Circulars and Petitioner claims that he performed his duties in accordance with the guidelines laid down therein and rightly claimed and was paid Stress Allowance. However, illegally and arbitrarily, on 06.01.2009, an Office Note was issued by DGM (Finance and Accounts) asking the Petitioner to pay back the Stress Allowance.

9. Petitioner was transferred to Mumbai Airport w.e.f. 20.07.2009, where he reported on 10.03.2010 and his leave was regularised. Petitioner obtained the Rating Certificate for claiming Rating Allowance for duties performed by him at Chennai Airport. He made a claim for the said allowance which was processed vide Note dated 07.03.2010. In the Note dated 10.12.2010, it was stated that Petitioner's ratings were confirmed by Joint GM (Trg.), Chennai and therefore, his claim for a period of 120 days being in order, was recommended for payment. On 27.07.2011, one Mrs. Mangala, a co-worker of the Petitioner made a complaint to the Vigilance Department alleging that Petitioner had fraudulently claimed Stress Allowance while posted at Chennai Airport from 2002 to 2008 and though the same was recovered but it was not clear if disciplinary action was taken against him. It was also alleged that Petitioner had wrongfully drawn Rating Allowance at a higher amount. Petitioner was in the meantime transferred to Bangalore Airport where investigation commenced and a minor penalty



charge sheet dated 20.08.2014 was served on him alleging that Petitioner had committed misconduct by wrongfully claiming Rs.1 Lac as Rating Allowance at Mumbai Airport and Rs.2,56,083/- as Stress Allowance while working at Chennai Airport. Petitioner defended himself asserting that he had done no wrong, however, AAI found him guilty and vide order dated 26.03.2015 imposed a penalty of '*withholding one increment for a period of one year without cumulative effect*'.

10. Pursuant to the penalty order, increment of the Petitioner was put on hold with immediate effect against which Petitioner preferred an appeal, which was dismissed on 10.10.2016. Respondent No.2 recovered the amounts from the salary of May, 2013 and thereafter began deducting Rs.60,000/- per month from the salary. Representations made by the Petitioner yielded no favourable result and he approached this Court.

11. Learned counsel for the Petitioner argues that posting of the Petitioner was not a lateral movement but a normal transfer and vide Memorandum dated 05.12.2002 confusion with respect to lateral movement was resolved. Petitioner was entitled to Professional Allowances as he was actively performing ATC duties as envisaged in DARA Circular Nos. 03/1994 and 04/2005. Petitioner's predecessor Mr. K. Venkatraman was paid the Professional Allowances including Stress Allowance and being a part of peer group on the permanent strength of GM (ATM) Chennai, Petitioner cannot be given a different treatment.

12. It is further urged that Petitioner performed ATC duties under Central and Regional Headquarters and all ATCOs, including the Petitioner were paid Professional Allowance only after due verification. Petitioner is entitled to Rating Allowance upto 120th day of holiday which fact was recognised by



Joint GM (Trg.), Chennai, who accorded the Rating Certificate after assessing the ratings. This is also confirmed by intra-office Note dated 10.12.2010, whereby it was recommended that the Rating Allowance be paid to the Petitioner. Reliance is also placed on duty rosters to claim that the allowances were correctly released to the Petitioner. As for the complaint by Mrs. Mangala, it is alleged that this act was *mala fide* and the complaint was made out of vengeance. It is emphasized that payment of Rating Allowance is governed by Circular dated 03.09.2004 bearing no. 09/2004-ARI, wherein guidelines are laid for disbursal of the allowance and Paragraph 5 thereof provides that Rating Allowance shall be paid only after GM (Aero)/ATC in-charge of the Station has verified whether the concerned officer has performed ATC duties in accordance with the Circular and thus there is no basis to allege that Petitioner claimed and received the allowance fraudulently, once the concerned Officer verified and ratified that the allowance was payable. In light of this, learned counsel seeks quashing of the recovery orders and the penalty as well as the appellate orders.

13. Mr. Digvijay Rai, learned counsel appearing on behalf of AAI submits that Petitioner was transferred on 29.07.2002 from the office of DGM (ATC), Chennai to office of DGM (Aviation Safety), SR, which is a non-radar posting and was posted at Regional Headquarters, Southern Region, Chennai to perform administrative duties. DARA Circular No. 03/1994 finds mention in Circular dated 15.12.2008 and was issued for laying down minimum duty requirements and periodical duties to be performed by the ATCOs. DARA Circular No. 03/1994 deals with instructions on Periodical Radar Duties and provides that the officer should perform the ATC duties independently *albeit* under observation of an officer



belonging to that Station and holding current radar ratings. It also provides that Radar Rated Officers when posted at Non-Radar Aerodromes are to be deputed on tour every six months to the Aerodromes where they had last received the radar rating for the purpose of performing radar duties and maintained their current ratings.

14. It is further argued that as per Circulars dated 27.01.2006 and 30.06.2009, Stress Allowance is paid to ATCOs deployed at ATC Units and posted at Airports mentioned therein, which includes Chennai Airport, however Petitioner was transferred to the Directorate of Aviation Safety in Southern Region, Chennai, Regional Headquarters on 29.07.2002 and was not on active ATC duties at Chennai Airport and thus cannot be granted Stress Allowance. Explaining the documents relied upon by the Petitioner as Annexure-P8 to the writ petition it is urged that the ratings mentioned from serial nos. 1 to 6 are procedural, i.e., non-radar and are out of the purview of periodical radar duties, whereas ratings at serial nos. 7 and 8 are radar duties for which ratings are to be current and maintained. The duty roster filed by the Petitioner only goes to show that he was on periodical radar duties under the supervision of a competent ATCO and was to perform the periodical duties during a period of 4 days of tour in a period of six months in order to maintain his ratings and draw the Rating Allowance and therefore mere mention of his name in the Roster does not entitle him to draw Stress Allowance, which is paid to ATCOs posted at Airports and performing active duties day-in and day-out at the ATC Units. It is also submitted that the matter of drawal of Professional Allowance was examined by the CVC and vide letter dated 08.05.2014, it was recommended that minor penalty charge sheets be issued against two officers, one from the HR Directorate



and one from the Finance Directorate for dereliction of duty in releasing Stress Allowance and to recover the same from the Petitioner and other officers similarly placed.

15. Mr. Digvijay also submits that on being posted to Mumbai Airport on 14.07.2009, Petitioner remained continuously absent for 232 days, however, his leave of 222 days was regularized. As per Circular dated 27/30.01.2006, in the event of an ATCO being absent from duty for a continuous period exceeding 120 days, Rating Allowance ceases. Petitioner claimed the allowance from August, 2009 to November, 2009, though he was on medical leave for 77 days from 25.09.2009 to 10.12.2009 and hence was not entitled to Rating Allowance. It is strenuously argued that Petitioner is not entitled to any relief and minor penalty was correctly imposed on him apart from the recovery of the Professional Allowance wrongly disbursed to him.

16. Heard learned counsels for the parties and examined their submissions.

17. By this writ petition, Petitioner assails the minor penalty imposed on him as also the action of AAI in recovering the Professional Allowance, i.e., Rating and Stress Allowance. Circular dated 27.01.2006 issued by AAI provides that ATCOs posted at Airports mentioned therein will be paid an additional allowance, i.e., Stress Allowance, which includes Chennai Airport. It is also explained that the allowance is paid to those officers who are posted as ATCOs and perform active Radar Duties and not to those who are otherwise posted on Administrative Duties but perform periodical duties on Radars only for the limited purpose of maintaining their Rating Allowance. It is categorically stated in the affidavits filed by AAI that Petitioner was posted from DGM (ATC), Chennai to DGM (Aviation



Safety), SR vide order dated 29.07.2002 and was not performing active ATC duties at the Chennai Airport and thus his claim for Stress Allowance between March, 2005 to November, 2008 was without any basis and since it was erroneously released, recovery was justified. In support of this plea attention of the Court is drawn to the transfer order dated 29.07.2002 placed on record by AAI. It is clarified that Petitioner performed Periodical Radar Duties only on 04.05.2007, 04.06.2007, 06.10.2007, 22.10.2007, 06.02.2008 and 14.02.2008, contrary to his assertion that he was on regular active Radar duties. In view of the aforesaid Circular regulating the grant of Stress Allowance and looking at the fact that Petitioner was not on active Radar Duties at Chennai Airport and was posted on Administrative Duties with Periodical Radar Duties, he is not entitled to the Stress Allowance and there is merit in the contention of AAI. In this context, I may refer to relevant paragraphs of Circular dated 27.01.2006, which are as follows:

“... ”

II. STRESS ALLOWANCE

The ATCOs posted at the airports listed below will be paid an additional allowance, i.e. “Stress Allowance” as per the rates given below. The rates indicated in terms of percentage relates to the basic rating allowance for all the ATC Units of the Airport. The “Stress Allowance” will be payable to the ATCOs posted at the following airports only:

Name of the airports	Existing	Revised
Delhi	50%	50%
Mumbai	50%	50%
Kolkata	25% for TWR and 50% for other Units	50%
Chennai	25%	50%
Nagpur	25%	50%
Ahmedabad	25%	50%
Trivandrum	25%	25%
Hyderabad	Nil	25%
Varanasi	Nil	25%



The stress factor has been worked out on the criteria of traffic density and will be reviewed from time to time."

18. It would also be useful to refer to paragraphs (4) and (5) of DARA Circular No. 03/1994 which deals with instructions relating to Periodical Radar Duties as follows:

"4) The officers should perform the ATC duties independently and should take over in the logbook adding the words "on periodical radar duties" i.e; "Taken over watch (on periodical radar duties)". However, such duties should be carried out under the observation of an officer belonging to that station and holding current radar ratings, who should also sign, in the logbook along with other officer.

5) The intention of placing an officer to observe the periodical radar duties performed, is to safeguard against the possibility of any error occurring which may affect safety of aircraft operations while performing such duties after a long break. The officers performing periodical radar duties should, therefore, be allowed to work by themselves and intervention should be made only when it is considered that safety is likely to be affected."

19. It is thus evident that as per the said Circular, radar rated officers when posted at non-radar aerodromes, are deputed on tour every six months to the aerodromes at which they had last held the radar rating for purpose of performing radar duties and maintain their current ratings. Stress Allowance is paid to ATCOs posted on active duties and not to those on periodical radar duties and significantly, there is no challenge to any of the Circulars by the Petitioner. Insofar as the Duty Roster placed on record by the Petitioner are concerned, AAI has rightly pointed out that mere mention of Petitioner's name in the Roster cannot be of any avail as in fact the Roster reflects that Petitioner was performing Periodical Duties on the Radars under the supervision of a competent ATCO to maintain his ratings and draw the Rating Allowance.



20. Coming to the Rating Allowance, it is a categorical stand of AAI that Petitioner remained on leave for more than 120 days. He claimed Rating Allowance from August, 2009 to November, 2009, however, he was on medical leave for 77 days between 25.09.2009 to 10.12.2009 and was thus not entitled to the Rating Allowance as per Circular dated 27/30.01.2006, relevant part of which is as follows:

“VIII ADMISSIBILITY OF ATC RATING ALLOWANCE ON LEAVE ETC.

a. In the event of an ATCO being absent (on leave or otherwise) from duty for a continuous period exceeding 120 days, the rating allowance drawn by him will cease to be paid.

Note: Leave in the above context includes EL/HPL.

b. In the event of an ATCO being absent on account of leave without pay, no rating allowances will be paid during the period of such leave.”

21. In view of the aforesaid, this Court finds no infirmity in the impugned order dated 26.03.2015 passed by AAI imposing minor penalty on the Petitioner for claiming the Professional Allowance as well as the appellate order dated 10.10.2016 and/or in recovery thereof.

22. The writ petition is dismissed being devoid of merit. Pending applications also stand disposed of.

JYOTI SINGH, J

OCTOBER 4, 2024/DU/jg/shivam