



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

% Date of decision: January 15, 2024

+ W.P.(C) 2000/2011

(6) DEEPAK SINGH

..... Petitioner

Through: Mr. M.K. Bhardwaj, Mrs. Priyanka
M. Bhardwaj and Mr. Maria Mukesh
Khannan H., Advs.

versus

UOI AND ORS.

..... Respondents

Through: Ms. Arunima Dwivedi, CGSC with
Ms. Pinky Pawar and Mr. Aakash
Pathak, Advs. for UOI with
SI Shrabanta Sarkar, SSB/respondent

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:-

- “i) To quash and set aside the impugned circular dated 22.02.2011 (P-1) and 25.02.2011.*
- ii) To declare the action of the respondents in not releasing Risk/Hardship Allowances to the petitioner as illegal and unconstitutional.*
- iii) To issue Writ of Mandamus to the respondents for releasing the Risk/Hardship Allowances to the petitioner with 24% penal interest from March 2010.*
- iv) To allow the WP (C) with cost*
- v) Any other relief as this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the above case.”*



2. The case of the petitioner is that he is serving in the extremist area of Dantewada, Chhattisgarh and has been deprived of Risk/Hardship Allowance as given to other Para-Military persons as well as to the Army. According to the petitioner, pursuant to the recommendation of the 6th CPC, the Government of India took decision on August 29, 2008, for giving Risk/Hardship Allowance to combatise Central Para-Military Forces ('CPMF', for short) Personnel posted in Anti-Naxal Operation in Left Wing Extremist Affected Areas (LWE). The said allowances were to be given in lieu of Compensatory Allowances and Detachment Allowances. The case of the petitioner is also that the respondents issued memorandum dated November 21, 2009, making it clear that the personnel posted in North Eastern Region presently attached at Force Headquarter or else whereon temporary duty will be treated on tour / temporary duty and as such entitled to pay and allowances as admissible in North East Region for the entire period of attachment. It is his case that as the petitioner was not granted the aforesaid allowances inspite of being posted in LWE Area of Dantewada, Chhattisgarh, he submitted a representation to the respondents, requesting them to allow him as well as other Battalion personnel of 41st Bn. deployed at LWE area, Dantewada, LWE allowances as admissible to Army as per letter dated April 16, 2009. The respondents have contested the writ petition by stating that the Ministry of Home Affairs has introduce Risk/Hardship allowance for CPMF personnel who are deployed in area affected by LWE vide OM dated April 16, 2009 subject to the following conditions:-



- i. The Risk/Hardship Allowance proposed shall be admissible to combatised CPMF personnel. The terms and conditions governing allowances paid to Army personnel shall also apply to CPMF personnel.
 - ii. The CPMF personnel shall have an option to receive their existing package of Compensatory Allowances and Detachment Allowance or Risk/Hardship Allowance whichever is beneficial to them.
3. According to them, the petitioner belongs to 41 Bn. of SSB with Headquarter at Sonapur, Guwahati and deployed at Dantewada, Chhattisgarh in 2010 and is presently posted at 24th Bn., SSB Rangia. The Compensatory package that the petitioner was entitled to during his posting in North-East was:
 - (a) Special Duty Allowance (SDA).
 - (b) Detachment Allowance.
 - (c) Special Compensatory Allowance (SCA).
4. Since, the deployment of the petitioner was in area affected by LWE so he is entitled to draw Risk/Hardship allowance as alternative compensatory package as per Government of India order dated April 16, 2009. The petitioner enjoys the liberty to opt for either of the packages which is beneficial to him. The Petitioner opted for LWE allowance package, i.e., Risk/Hardship allowance. According to the respondents as contended by Ms. Arunima Dwivedi the petitioner's plea is that he has opted for LWE package in lieu of TA/DA which is his self-benefit interpretation and contrary to existing instructions of MHA.



5. The MHA vide OM dated February 23, 2011, has clarified that Special Compensatory and Detachment Allowances would not be admissible to those personnel who opts for LWE/Risk/Hardship Allowances and SDA is very much part of compensatory package as referred to in MHA circular dated April 16, 2009. She also states that the issue in question has been decided by the Supreme Court in ***Union of India & Ors. v. Sh. Sarvendra Singh Chauhan & Ors., Civil Appeal Nos. 10589-10590/2017*** decided on ***August 17, 2017***, wherein in paragraph 8, the Supreme Court has held as under:-

“8. We have considered the submissions made by the learned Senior Counsels. The office memorandum dated 16.04.2009 by which the Risk/Hardship Allowance was introduced makes it clear that the CPMF personnel will have the option to receive the existing package of compensatory allowances and detachment allowance or Risk/Hardship Allowance. The existing package of compensatory allowance would necessarily include the Special (Duty) Allowance which, in our opinion, is a compensatory allowance. The Special (Duty) Allowance was introduced on 14.12.1983 to all Central Government civilian employees who were posted in the North Eastern region. The contention of the counsel for the Respondents that the Special (Duty) Allowance is not a compensatory allowance is not correct. The submission on behalf of the Respondents that combatised personnel were given an additional benefit of special compensatory allowance which was not available to the non combatised personnel due to which they would be entitled for payment of both the Special (Duty) Allowance and the Risk/Hardship Allowance is also not acceptable. As stated earlier, the Risk/Hardship Allowance is an alternative to the existing package of compensatory allowances which includes Special (Duty) Allowance. Any ambiguity was already cleared by the Government of India in a clarification sought by the SSB.”



6. Having perused the record and noted the respective stand of the parties in the pleadings, we are of the view that the issue in hand is covered by the judgment of the Supreme Court in ***Sh. Sarvendra Singh Chauhan & Ors. (supra)***. The Supreme Court has held, the office memorandum dated April 16, 2009 by which Risk/Hardship Allowance was introduced makes it clear that CPMF Personnel will have the option of existing package of Compensatory Allowance and Detachment Allowance or Risk/Hardship Allowance. The Compensatory Package that the petitioner was being paid during his posting in North East was SDA/Detachment Allowance/ Special Compensatory Allowance. So, in that sense the same as the name suggest were Compensatory Allowances. The plea that he would be entitled to aforesaid three allowances and also Risk/Hardship Allowance is not acceptable for the reason that the circular dated April 16, 2009, makes it clear that CPMF Personnel shall have the option to receive their existing package of Compensatory Allowance and Detachment Allowance or the Risk/Hardship allowance, whichever is beneficial to them. So, the impugned action cannot be faulted.

7. On March 24, 2011, this Court had directed no recovery be made from the salary of the petitioner. As held by the Supreme Court in paragraph 10 of the judgment in ***Sh. Sarvendra Singh Chauhan & Ors. (supra)*** which we reproduce as under, the respondents are restrained from making any recovery of the amount which has already been paid to the petitioner:

“10. By an order dated 19.07.2013, this court while issuing notice to the Respondents restrained the recovery



of the amounts already paid in the past. We confirm the said order and direct that there will be no recovery of the amounts that have already been paid to the Respondents.”

8. For the aforesaid reasons, the petition being without any merit is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 15, 2024/ds