



2024:DHC:8081-DB



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

Date of decision: 14.10.2024

+ **W.P.(C) 16837/2022 & CM APPL. 53317/2022**

AMIT SHARMA

.....Petitioner

**Through: Mr.Nikhil Bhardwaj, Adv.
along with petitioner in person.**

versus

UNION OF INDIA AND ORS

.....Respondents

**Through: Ms.Arunima Dwivedi, CGSC
with Mr.Amit Dutta and
Ms.Pinky Pawar, Advs. for UOI**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India, praying for the following reliefs:

“i) issue an appropriate writ, order or directions to quash and set aside the letter dated 07.06.2022 vide which respondents directed to initiate disciplinary proceedings against the petitioner as well as attachment order dated 15.11.2022;

ii) issue an appropriate writ, order or directions to quash and set aside the impugned order dated 25.10.2021 vide which respondents initiated and conducted Staff Court of Inquiry against the petitioner as well as the findings of Staff Court of Inquiry held against the petitioner.”



Case of the petitioner

2. It is the case of the petitioner that the petitioner was repatriated to his parent department, that is, Border Security Force (in short, 'BSF') on 13.04.2016 from the National Technical Research Organisation (in short, 'NTRO'). He reported to the 93rd Battalion at Baikuntpur, Salaguda, Nagaland on 25.05.2016. On 22.05.2019, after completion of a tenure of almost 3 years, he was posted to the Frontier Headquarter BSF, Kashmir as a Deputy Commandant.

3. It is asserted that during his tenure in the 93rd Battalion BSF, the petitioner found various irregularities committed by the respondent no.4, who was the Commandant of the 93rd Battalion. On 04.07.2019, he filed a complaint before the Director General, BSF bringing to his notice the irregularities committed by the respondent no.4. Accordingly, on 23.07.2019, a Staff Court of Inquiry was initiated against the respondent no.4.

4. It is asserted that the respondent no.4, having been infuriated by the complaint of the petitioner and the inquiry against him being initiated, made a false complaint dated 24.09.2020 against the petitioner *inter alia* alleging therein that the petitioner had unauthorisedly claimed the House Rent Allowance (in short, 'HRA') between the period May, 2016 to May, 2019. The officials of the respondent, under the influence of the respondent no.4, ordered a Staff Court of Inquiry against the petitioner, *vide* Order dated 25.10.2021. Carrying forward the same with the *mala fide* intent of acting under the influence of the respondent no.4, *vide* the Impugned Order dated 07.06.2022, the respondents directed initiation of the disciplinary



proceedings against the petitioner as well as directed attachment of the petitioner on disciplinary grounds, *vide* Order dated 15.11.2022. Aggrieved of the same, the petitioner has challenged the same before this Court.

Submissions of the learned counsel for petitioner

5. The learned counsel for the petitioner submits that the entire action of the respondent is under the influence of the respondent no.4, against whom the petitioner had made a complaint, and on which complaint, the Staff Court of Inquiry had been initiated against the respondent no.4.

6. He further submits that the petitioner was even otherwise entitled to claim the HRA for his period of stay in the 93rd Battalion. He submits that the petitioner had stayed only for 147 days, in this entire period between May, 2016 and May, 2019, in a temporary shed, which was named as a Mess by the respondents. The actual Mess was inaugurated only sometime in 2019.

7. He submits that during his tenure in the 93rd Battalion, there were audits which were conducted, however, did not report that the petitioner had unauthorisedly drawn the HRA.

8. He submits that the above would clearly show that the petitioner is being persecuted for having made a complaint against the respondent no.4 and not for any valid reason.

9. He submits that even assuming that the HRA was wrongly given to the petitioner for the relevant period, the blame of paying the same lies only on the respondents. The petitioner cannot be subjected



to a disciplinary inquiry for the amount wrongfully paid by the respondents to the petitioner.

10. The learned counsel for the petitioner further submits that the petitioner, on his posting in the 93rd Battalion, had, in fact, himself addressed a communication to the respondents for fixation of the pay of the petitioner in accordance with the Rules as are applicable. The petitioner cannot, therefore, be blamed in case it is later found that the HRA has been wrongly released to the petitioner.

Submissions of the learned counsel for respondents

11. On the other hand, the learned counsel for the respondents submits that the petitioner had been drawing the HRA which was not admissible. There were other benefits also which had been obtained by the petitioner in spite of him not being eligible for the same.

12. She submits that based on a report of the Staff Court of Inquiry dated 28.04.2022, directions were issued for initiation of disciplinary action against the petitioner in accordance with the BSF Act and Rules. She submits that the present petition which seeks a restraint on the respondents from carrying out such departmental inquiry, cannot be entertained.

Analysis and findings

13. We have considered the submissions made by the learned counsels for the parties.

14. The Staff Court of Inquiry, vide its Opinion dated 28.04.2022, has issued the following directions:

“i) Disciplinary action as per BSF Act &



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Rules be initiated against Shri Amit Sharma, DC (IRLA No. 10801833) of 93 Bn BSF (Now posted to HQ BSF Kashmir Ftr) for claiming unauthorized HRA from May'2016 to May'2019, while staying in Officer Mess (Annexe) of 93 Bn BSF.

ii) The CEA claims and TA/DA bill during course in TC&S Hazaribagh of the Officer be audited by 93 BN BSF duly constituted Audit Committee/BOO."

15. Based thereon, Board of Officers, *vide* Order dated 15.06.2022, was appointed to carry out audit of CEA and TA/DA claims of the petitioner; the board proceedings were approved for a recovery of Rs.39,879/- against the petitioner.

16. This Court, in exercise of its power under Article 226 of the Constitution of India, cannot enter into the disputed question of facts. The plea of the petitioner that the petitioner was not guilty of having wrongly drawn the HRA, therefore, cannot be adjudicated by this Court; this would be a matter to be considered in the disciplinary proceedings. We, at this stage, are refraining ourselves from making any comment on the other submissions made by the counsel for the petitioner for they may hamper or influence the inquiry one way or the other.

17. As far as the allegation of *mala fide* is concerned, it be only noted that on a complaint made by the petitioner against the respondent no.4, in fact, inquiry has been ordered against the respondent no.4 itself. Therefore, we do not *prima facie* find any merit in the said submission.

18. Accordingly, at this stage, we find no merit in the present



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petition. The same is dismissed. The pending application also stands disposed of as infructuous.

19. All contentions of the petitioner shall remain open in the inquiry that has been initiated against him by the respondents.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 14, 2024/ns/VS

Click here to check corrigendum, if any