

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

**Contempt (SWP) No. 154/2007
In SWP No.910/2004**

Date of Decision: **31.05.2012**

Bhola Nath v. **Harcharantjeet Singh & ors.**

CORAM:

Mr. JUSTICE J. P. SINGH.

Appearing counsel:

For Petitioner(s) : Mr. D. K. Khajuria, Advocate.

For Respondent(s) : Mr. K. K .Pangotra, ASGI.

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| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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ORDER

The Union of India and its functionaries were commanded to consider the petitioner's claim to allowance(s) on lines similar to those on which it was payable to the Army Personnel deployed in counter insurgency operations in terms of the directions issued on petitioner's Writ Petition SWP No.910/2004, which read thus:-

“This Petition is accordingly disposed of with a direction to the respondents to consider the claim of the petitioners for grant of various compensatory allowances for being posted in the areas

notified for grant of special allowances payable to armed forces. Let the consideration be accorded within a period of four months and if the petitioners are found entitled to their claims of allowances payable under the Government policy, be released in their favour within a period of two months thereafter.

Sd/-

JAMMU
August,05, 2005.”

Responding to the directions aforementioned, a speaking and reasoned order was passed by the Union functionaries on 4.3.2011. The order issued by the Under Secretary to Government reads as follows:-

“SPEAKING ORDER IN RESPECT OF JUDGEMENT AND ORDER DATED 05 AUG 2005 PASSED BY HON’BLE HIGH COURT OF J&K AT JAMMU IN SWP No.910/2004 SHRI BHOLA NATH AND 4 OTHER GREF PERSONNEL

1. WHEREAS, Hon’ble High Court of J&K at Jammu delivered judgment dated 05 Aug 2005 in SWP No.910/2004 filed by Shri Bhola Nath, UDC and 4 other GREF Personnel directing the respondents to consider the case of the petitioners for grant of various compensatory allowances for their posting in the areas notified for special allowances payable to Armed Forces.
2. AND WHEREAS, Army Officers and Personnel posted in BRO were permitted to draw SCCIA based on the authority of quarterly notification issued by Corps HQ, indicating the status of the area of deployment, But the Comptroller and Auditor General of India, Defence Services has raised objection regarding payment of SCCIA to Army Officers and Personnel posted to BRO, since they are not deemed to actually involved in CI Operation vide Draft Paragraph Report No.D-70/2005/2006(35)/05-06 dated 06 Sept 2006.
3. AND WHEREAS, recovery action for irregular payment is being made and further payment has been stopped since Jan 2007.
4. AND WHEREAS, reference is also made to Order dated 2.2.2000 from D (Pay & Services) which clearly spells out that Part II Order regarding deployment of service personnel on CI Ops should contain a certificate from Sub Area Commander or the Corps Commander to the effect that they have approved the deployment of the personnel in the CI Ops and the said personnel were actually deployed in such operations. This it is clearly evidence that SCCIA is task, duration and order specific.
5. AND WHEREAS, Army Headquarters (AHQ) has also issued specific orders dated 1.5.2009 from ADG(PS), AG Branch, AHQ stating that personnel of BRO are not involved in counter insurgency operations. Hence, it was decided to take action for recovery of SCCIA pertaining to army officers/PBORs posted in BRO. Even the Army HQ has clearly brought out that Army

personnel/officers posted in BRO are not entitled hence the GREF Officials/ personals can not be entitled for SCCIA.

6. AND WHEREAS, the orders for recovery of payment of SCCIA paid to Army personnel/officers were issued after the CAG objected and recommended for the recovery in the Audit Report. The reply to the Audit Para (ATN) No.4 of 2007 has been sent to Ministry of Finance (Expenditure on 12.08.2008 for placing before PAC of the Parliament. In the ATZN Report sent to Ministry of Finance, it has been clearly stated that payment of SCCIA to Defence Services (officers/personnel) posted in BRO has been discontinued because they are not deployed for counter-insurgency operations. Since they are not deployed in counter-insurgency area operations, therefore, it was decided to take action for recovery of SCCIA paid to Army Officers/personnel during the period of November, 1994 till March 2006. And the instructions were issued dated 02.07.2008 that officers and personnel of BRO are not actually involved in counter-insurgency operation, and hence BRO officers/personnel were not issued requisite certificate regarding deployment in counter-insurgency operations.

7. AND WHEREAS, there is no change in the situation/fact and BRO personnel/officers are not deployed in CI Ops. Whereas SCCIA is area, task and duration specific. The major role assigned to Army officers and personnel posted to BRO as well GREF officers/personnel there is to construct, maintain and clear the roads and not to fight the insurgents. Thus GREF personnel are not entitled for SCCIA.

8. In a similar case of Shri A Rajendran, SAO and 12 others (of BRO) demand for SCCIA was rejected by the Ministry vide speaking Order dated 13.09.2010. Thus after considering facts and circumstances, the case of Mr. Bhola Nath and 4 other GREF personnel are hereby disposed of as rejected.

Sd/-
(Manmohan Pipil)
Under Secretary to the Govt. of India
04.03.2011".

The petitioner seeks initiation of proceedings in contempt against the respondents saying that rejection of petitioner's claim by the respondents amounts to willful disobedience of the directions issued by the Court.

Considered the submissions advanced by learned counsel for the parties at the Bar.

Perusal of the order of this Court reveals that the issue of petitioner's entitlement or otherwise to the allowance(s) was pending consideration with the Competent Authority of the

Central Government when the Writ Petition came up for consideration. It was in these circumstances that rather than ruling on the issue as to the entitlement or otherwise of the petitioner to the allowance(s), the Court considered it fit and appropriate to issue directions to the Competent Authority of the Central Government to consider the petitioner's claim for taking appropriate decision thereon. This becomes further clear from what is contained in the later portion of the directions in terms whereof the petitioner's claim to allowance(s) was to be considered for its allowance by the Central Government only if the petitioner was found entitled thereto by it.

It is, therefore, apparent that the Central Government was left free by the Court to take decision on the issue as to petitioner's entitlement or otherwise to the allowance(s) as were payable to the Army Personnel posted in counter insurgency operations.

The Government of India have considered the petitioner's claim, as they were required so to do in terms of the directions of the Court. They have, however, found the petitioner disentitled thereto and have given detailed reasons in support of rejection of the petitioner's Claim.

The respondents have rejected the petitioner's claim to allowance(s) exercising the option given to them by the Court to consider the petitioner's claim to allowance(s) as were payable to the Army Personnel posted in counter insurgency

operations. They cannot, therefore, be said to have violated the directions of the Court.

The petitioner's Complaint against them for willful disobedience of the directions of the Court is, therefore, found *without substance*. The petitioner, if aggrieved by the decision of the respondents may work out his remedy available under law.

No case for initiation of proceedings in contempt is, therefore, made out.

The Motion is, accordingly, ***declined***.

(J. P. Singh)
Judge

JAMMU:
31.05.2012
Tilak, Secy.