



HIGH COURT OF SIKKIM, GANGTOK

(Civil Extra Ordinary Jurisdiction)

HON'BLE SHRI SATISH KUMAR AGNIHOTRI, JUDGE

W.P. (C) No. 50 of 2014

1. Mr. Angu Lepcha,
R/o Upper Zangu, North Sikkim.
Head Constable, General Duty (HC/GD)
Serving at SHQ SSB Gangtok, East Sikkim.
2. Mr. Karma Wangyal Bhutia,
R/o Upper Tathangchen, Gangtok,
East Sikkim,
Head Constable, General Duty (HC/GD)
Serving at: 46 Bn. SSB Rhenock, East Sikkim.
3. Mr. Baichung Bhutia,
R/o Jalipool, East Sikkim.
Constable, General Duty (CT/GD)
Serving at: 52 Bn. SSB Yuksom, West Sikkim.

... **Petitioners**

Versus

1. The Director General,
Sashastra Seema Bal
East Block-V, R.K. Puram,
New Delhi-110066,
2. The Secretary (Ministry of Home Affairs),
Government of India,
North Block, Raisina Hill,
New Delhi.
3. The Secretary (Ministry of Finance)
Government of India,
North Block, Raisina Hill,
New Delhi.



4. The Deputy Inspector General,
Sector Head Quarter, SSB, Gangtok
Shamlee Building, Development Area,
Gangtok, East Sikkim.

... **Respondents**

**WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA.**

Appearance :

Mr. A.K. Upadhyaya, Sr. Advocate with Ms. Aruna Chettri, Advocate for the Petitioners.

Mr. Karma Thinlay, Central Government Advocate with Ms. Pollin Rai, Advocate for the Respondents.

JUDGMENT

(29.06.2016)

SATISH KUMAR AGNIHOTRI, J.

1. Assailing the purported withdrawal of payment of Special Duty Allowance (for short "SDA") while working in the North Eastern Region including Sikkim (for short "NER"), when posted outside NER, the instant Petition has filed.

2. The Petitioners are stated to be Head Constables/ Constable, serving in the Respondent force/Sashastra Seema



Bal (for short "SSB"), have come up with the instant Petition seeking a direction to continue with the payment of SDA, as aforestated, to them.

3. The facts in nutshell, as posited by the Petitioners are that the Petitioners were getting SDA for the entire period of their attachment/temporary duty outside NER, when they were having their declared Headquarters in the NER. It is further stated that the employees of other Central Government Organizations, having posted in the NER are receiving SDA while they proceed on tour to places outside the NER. The Petitioners further urged that the Respondents, by Circular bearing No. 1/20/2008/SSB/PERS-II/2981-3065 dated 22.02.2011, withdrew the said SDA, arbitrarily without any rationale or reason. Thus, this Petition.

4. Mr. A.K. Upadhyaya, learned Senior Counsel, assisted by Ms. Aruna Chettri, learned Advocate appearing for the Petitioners, would submit that the Petitioners have been enjoying the SDA for their posting outside the NER when their declared Headquarter was NER. It is further urged that other person working in other forces, have been enjoying the said SDA. Thus, discontinuation of payment of SDA is unreasonable, arbitrariness and discriminatory.



5. Opposing this submission, per contra, Mr. Karma Thinlay, learned Central Government Counsel assisted by Ms. Pollin Rai, learned Advocate, appearing for the Respondents, would submit that no members of Para Military Forces and other Organizations are receiving any SDA for their posting outside the NER when their declared Headquarter is NER. Referring to the Circular dated 21.12.2012 issued by the Ministry of Home Affairs, learned Central Government Counsel, would contend that non-grant of SDA to all the employees headquartered at NER while posted outside the NER is clear from the endorsement of the said Circular to all the Para Military Forces. It is further contended that the submission of the Petitioners that the members of other Central Government employees and members of other forces are getting SDA for posting outside the NER is without any basis as no document to this effect has been produced by the Petitioners. Mr. Karma Thinlay, lastly contended that non-payment of SDA to the employees posted outside the NER is a policy decision of the Central Government, which may not be interfered with by this Court.

6. Having given my anxious consideration to the submission advanced by the learned counsel for the parties, perused the pleadings and documents appended thereto, it is



evident that no circular or document is placed on record which indicates that any member of any Para Military Force or Central Government employees headquartered at NER is receiving SDA for their posting outside the NER.

7. The Para Military Forces like, Border Security Force (BSF), Central Industrial Security Force (CISF), Central Reserve Police Force (CRPF), Indo Tibetan Border Police (ITBP), Sashastra Seema Bal (SSB) (the concerned force), National Security Guards (NSG) and Assam Rifles (AR) are working under the umbrella of Ministry of Home Affairs with the sole purpose to quell the public disorder, when local police failed and proved ineffective and also to assist the Army depending on their place of posting, while guarding the borders of India.

8. The Ministry of Home Affairs, Director General, SSB, vide Memo dated 21.11.2007 took a decision on non-payment of allowances admissible in NER to the personnel attached at Force Hqrs. New Delhi, which reads as under: -

"SUB: NON-PAYMENT OF ALLOWANCES
 ADMISSIBLE IN NORTH EAST REGION TO
 THE PERSONNEL ATTACHED AT FORCE
 HQRS. NEW DELHI.

It has been noticed that some of the field units are discontinuing the allowances admissible in North East Region to the personnel attached on temporary duty at Force Hqrs or out of their jurisdiction.



2. This matter has been examined in depth with reference to the rules provision on the matter at Force Hqrs. and it has not been decided that as per provision of para-III of Appendix – 9 of FR SR Part-1, Special Duty Allowance will not be admissible during the period of leave training beyond 15 days at a time and beyond 30 days in a year. The personnel posted in N.E. Region presently attached at Force Hqrs. or else where on temporary duty or other words will be treated on tour/ temporary duty and as such are entitle to their pay and allowances as admissible in North East Region for the entire period of their attachment on temporary duty.

3. This issues with the approval of D.G. (SSB)."

9. Thereafter the issue was clarified vide Circular No. 1/20/2008 / SSB/PERS-II/2981-3065 dated 22.02.2011, which reads as under: -

"No. 1/20/2008/SSB/PERS-II/2981-3065 dated 22nd Feb. 2011.

CIRCULAR

Subject: - Non payment of Special Duty Allowance

It has been observed that personnel posted in North East Region and attached at FHQ or elsewhere are being paid Special Duty Allowance (SDA) as admissible in NE-Region for the entire period of their attachment, which has invited audit objections. As per MHA, OM No. A.I.3/Inst-Acctts-3/PF.III dated 03/08/2005 it has been clarified that these allowance would be admissible only to the personnel who are actually working in the NE-Region.

2. A person on attachment at a location and establishment where Special Duty is admissible will be entitled to it. However, a person whose declared Headquarters is in such location/establishment and proceeds on attachment to a location/establishment where the allowance is not admissible, will be ineligible for the said allowance during the period of attachment.

3. The Director General, SSB has approved to ensure compliance of orders and stop payment of Special Duty Allowance to personnel posted to North East Units but not actually working there. It has also been approved to



draw up a comprehensive list of all individuals involved and amount to be recovered etc. The same information may be provided to FHQ at the earliest so that a decision on how the recovery should be made is taken accordingly.

This issues with the approval of DG, SSB."

10. Subsequently, Ministry of Home Affairs, vide Circular 21.12.2012 on the advice of Ministry of Finance, reiterated the decision of non-grant of SDA to the employees serving in the NER States (including Sikkim) and UTs when they are posted outside the NER. The Circular reads as under: -

"Sub: Grant of Transport Allowance, HRA and SDA to the CAPF personnel during the period of their attachment with offices/establishments other than their declared headquarters, at the rates as admissible at the place where they are attached.

Based on proposal of CRPF, a proposal for grant of Transport Allowance/HRA/SDA to all the personnel of CAPFs and AR during the period of their attachment with offices/ establishments other than their declared headquarters, at the rates as admissible at the place where they are attached, was recommended by MHA to Ministry of Finance.

2. Ministry of Finance (Deptt. Of Exp.), vide their ID Note No. 2(20)/2011-E.II(B) dated 09.02.2012, advised the following:

"It is clarified that HRA/Tpt Allowance are regulated w.r.t. the place of duty and not on the basis of attachment. Para 4(b)(xi) of MoF's OM dated 27.11.1965, as amended from time to time, provides that "During the period of transfer not exceeding 90 days, HRA/CCA is admissible at old duty station rates and during the periods of transfer exceeding 90 days, HRA/CCA is to be regulated w.r.t. the new HQ. For temporary transfer, initially made for a period not exceeding 90 days, but later extended beyond this period, the benefit of the provision contained in Para 4(b)(x) shall be allowed from the date of issue of



the order converting the transfer into a permanent one or at the end of 90 days, whichever is earlier." The limit of 90 days for treating a transfer as temporary transfer which has been raised to 180 days for the purpose of drawal of Daily Allowance has not been extended to 180 days for the purpose of drawal of HRA/CCA during temporary transfer prescribed in Para 4 (b)(xi). Special (Duty) Allowance is granted to the eligible Central Government employees serving in the N.E.R. States (including Sikkim) and UTs of A & N and Lakshadweep group of islands.

As the proposal of MHA for grant of HRA, Transport Allowance & SDA on attachment basis is contrary to the extant instructions on grant of these allowances, the same is NOT agreed to.

3. The proposal was again taken up with MoF for reconsideration by treating the place of attachment of the attached CAPF personnel as their place of duty.

4. However, MoF, vide ID Note No. 2(2)/2011-E.II(B) dated 11.12.2012, has reiterated that the proposal of MHA for grant of HRA, Transport Allowance & SDA on attachment basis is contrary to the extant instructions on grant of these allowances, and therefore, NOT agreed to.

5. This issues with the approval of MoF (Deptt. Of Exp.) vide ID Note No. 2(20)/2011-E.II(B) dated 09.02.2012 and 11.12.2012 and integrated Division of this Ministry, vide their CF No. 76768 dated 19.12.2012."

11. This Circular was made applicable to all the Para Military Forces from the date of endorsement made therein. From the aforesaid various Circulars, it is eloquent that the Ministry of Home Affairs had taken a policy decision not to grant SDA to the members of all Para Military Forces who are already getting SDA while posted at their declared Headquarters at NER (including Sikkim) while posted temporarily outside the NER.



I do not find any infirmity, illegality, arbitrariness or unreasonableness as pleaded by the Petitioners.

12. The next question arises as to whether the policy decision as aforesaid is required to be interfered with by the Court in exercising of its jurisdiction under Article 226 of the Constitution of India.

13. It is beneficial to refer certain observations made by the Supreme Court in this respect. In ***Premium Granites and another vs. State of T.N. and others***¹ wherein the Rule 39 of T.N. Mineral Concession Rules, 1959 was under assail, the Supreme Court held as under:

"54. It is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right.
"

1 (1994) 2 SCC 691



14. In *M.P. Oil Extraction and another vs. State of M.P. and others*², the fixation of royalty was challenged on the ground of being exorbitant and unreasonable, the Supreme Court held as under: -

"41. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere *ipse dixit* of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."



15. In yet another case, ***Narmada Bachao Andolan vs. Union of India and others***³, wherein the issue involved was relief and rehabilitation of oustees on account of construction of Sardar Sarovan Dam, the Supreme Court observed as under:

"229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken.
....."

16. In ***N.D. Jayal and another vs. Union of India and others***⁴, again a case of relief and rehabilitation of persons on account of construction of Tehri Dam, the Supreme Court observed as under : -

"9. In *Sardar Sarovar Project case* it was also held that when two or more options are possible and the Government takes a policy decision it is then not a function of the court to re-examine the matter by way of appeal. Necessary analogy could also be drawn from *BALCO Employees; Union (Regd.) v. Union of India.*"

3 (2000) 10 SCC 664

4 (2004) 9 SCC 362

17. Again in ***State of Madhya Pradesh vs. Narmada Bachao Andolan and Another***⁵, the Supreme Court held as under: -

"36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See *Ram Singh Vijay Pal Singh vs. State of U.P.*, *Villianur Iyarkkai Padukappu Maiyam vs. Union Of India* and *State of Kerala vs. People Union for Civil Liberties.*)"

18. Recently in ***Census Commissioner and others vs. R. Krishnamurthy***⁶, three Hon'ble Judges' Bench, referring and construing all the cases including the aforestated cases in respect of interference by the Court in policy decision held as under: -

"33. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded *ipse dixit* offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion".

5 (2011) 7 SCC 639

6 (2015) 2 SCC 796



19. In the conspectus of aforestated, it is luculent that the Ministry of Home Affairs has taken a considered decision to withdraw the SDA purportedly payable to the members of Para Military Forces, who are posted and headquartered in NER and getting special allowances when they are posted temporarily outside the NER. The Petitioners have failed to point out any violation of a fundamental right or other constitutional provisions as required to interfere with a policy decision of the Government.

20. For the reasons stated herein above, the Court is not inclined to pass any order as sought for in the Petition. Accordingly, the Petition is dismissed. No order as to costs.

Judge
29.06.2016

Approved for Reporting : Yes
Internet : Yes-