

Brijesh Kumar Raikwar vs.union of India and Ors

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Court : Delhi

Decided On : Sep-04-2018

Appellant : Brijesh Kumar Raikwar

Respondent : Union of India and Ors

Advocate for Def. : Ms. Arti Bansal

Advocate for Pet/Ap. : Mr. Jai Prakash, Mr. Mayank Sharma

Judgement :

\$~21. * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 2542/2017
BRIJESH KUMAR RAIKWAR

... Petitioner

Through: Mr. Jai Prakash and Mr. Mayank Sharma, Advocates versus UNION OF
INDIA AND ORS Through: Ms. Arti Bansal, Advocate

... RESPONDENTS

CORAM: HONBLE MS. JUSTICE HIMA KOHLI HONBLE MS. JUSTICE REKHA
PALLI %

ORDER

0409.2018 1. The petitioner, who is working on the post of an Inspector in the
respondents/CRPF, seeks directions for release of the Special Duty Allowance (in
short SDA) in his favour for the period of service rendered by him between

29.12.2015 to 19.11.2016.

2. A glance at the relevant facts of the case is considered necessary. On 19.08.2004, the petitioner had joined as a Constable in the respondents/CRPF and was promoted on 19.11.2009, to the rank of SI/SD. Vide order dated 25.02.2009, the petitioner was transferred as SI/GD to the Special Duty Group (in short SDG) w.e.f. 02.02.2009. Vide sanction order dated 27.04.2012, the petitioner and his other colleagues working in the W.P.(C) 2542/2017 Page 1 of 6 SDG were sanctioned SDA @ 25% of the gross emoluments, besides HRA and CCA. On 27.11.2015, the petitioner was promoted to the rank of Inspector/GD, whereafter, vide Signal dated 02.12.2015, he was released on promotion as Inspector/GD and placed on the Special Approved List for proceeding to J&K Zone. By the end of the very same month, on 28.12.2015, the respondents issued a letter vide which the DIG, Parliament Duty Group informed the petitioner that though he had been sub-allotted to the DG, J&K Zone, CRPF, he was now being assigned the very same unit, where he was serving earlier, i.e., SDG.

3. As a consequence to the aforesaid letter of the DIG, vide order dated 29.12.2015, the petitioner was informed that he, alongwith four others had been taken back on the strength of the SDG. For the purposes of ready reference, the relevant extract of the said office order is being reproduced herein below:-

"OFFICE ORDER Consequent on promotion as Insp/GD, the following Sis/GD of this Group who were brought on Special Approved List-G/GD-07/2014 released on promotion as Insp/GD vide IGP, Northern Sector, CRPF, New Delhi Signal No.p.VII- 4/2015-NS-Adm-I dated 28/12/2015 are hereby promoted to the rank of Insp/GD w.e.f. 29/12/2015 (F.N.) in the Pay Bank of Rs.9300-34800/- with Grade Pay Rs.4,600/- plus usual allowances as admissible to Central Govt. employees from time to time and they have been taken on strength of this Group as Insp/GD from the date i.e. 29/12/2015 (FN) and also struck off strength as SI/GD of this Group on same date. Details are as under:-

"Sl.No.F/No.Rank & Bank FSS No.Medical Category with date XXX XXX XXX XXX Coy to which posted XXX W.P.(C) 2542/2017 Page 2 of 6 2 045021076 221 Shape-I D/SDG SI/GD Brijesh Kumar Raikwar 19/06/2015 XXX XXX XXX XXX

XXX2 The above personnel may exercise their option certificate within one month from the date of issue of this order for fixation of their pay, otherwise their pay will be fixed as per existing rules. XXX XXX XXX Based on the above order, the petitioner continued serving as an 4. Inspector with the respondents/CRPF at the SDG w.e.f. 29.12.2015. On 04.03.2016, like a bolt from the blues, the petitioner received an information that not only was the payment of SDA stopped, but an amount of Rs.28,856/- already received by him towards the SDA between 29.12.2015 to 31.03.2016, was liable to be recovered from him. Aggrieved by the aforesaid order, the petitioner submitted a representation to the Commandant, SDG, requesting for release of the SDA, as per his entitlement. However, the said request was turned down vide order dated 08.07.2016 and he was informed that only 20 posts of Inspector/GD including Subedar Major were authorized in the SDG and since 21 Inspector/GDs had been posted in the Group, there was no vacancy for sanction of SDA to him and that sanction of SDA to the petitioner would be beyond the sanctioned strength. Subsequently, the representations made by the petitioner were also turned down by the respondents vide letters dated 08.07.2016 and 20.10.2016. Hence, the present petition.

5. Learned counsel for the petitioner submits that the decision of the respondents on the one hand, of deputing the petitioner in the SDG from 29.12.2015 to 19.11.2016 and on the other hand, denying him SDA for the W.P.(C) 2542/2017 Page 3 of 6 period between 29.12.2015 to 19.11.2016, is arbitrary, whimsical and liable to be set aside; that it was on the instructions of the respondents that the petitioner had served in the SDG during the relevant period and therefore, he was entitled to be compensated, at par with his other colleagues in the said Group; that the respondents were well aware of the fact that the petitioner had been transferred to the J&K Zone, vide letter dated 02.12.2015 contemporaneous to his promotion as an Inspector/GD but it was at their instance that the said letter was recalled and the petitioner was retained in the SDG and that being the position, the respondents could not have declined payment of SDA to the petitioner during his stay at the SDG.

6. A reply in opposition to the present petition has been filed by the respondents, wherein it has been averred that in total, 20 Inspector/GDs have been authorised

to the SDG and only the said 20 officers are entitled to SDA in terms of the letters dated 25.04.1986, 09.10.1986 and 02.01.2008. It has been further averred that vide Signal dated 28.12.2015, five personnel had been allotted to SDG on promotion as Inspector/GD against the existing vacancy of four Inspectors/GD; that as per the extant rule, a person, who is left with a longer period of tenure in the SDG, is given priority for retention and entitlement to SDA. Applying the said rule, four out of the five Inspector/GDs, who had been promoted and retained in the SDG alongwith the petitioner, were sanctioned SDA, since they had a longer period of tenure left in the SDG, vis-a-vis the petitioner, who is therefore the only one to be denied SDA.

7. Counsel for the respondents submits that in view of the position explained above, the petitioner was not entitled to draw SDA in the rank of Inspector/GD w.e.f. 29.12.2015 and therefore, the amount erroneously W.P.(C) 2542/2017 Page 4 of 6 drawn by him towards SDA, amounting to Rs.28,856/- for the period between 29.12.2015 to 31.03.2016, has been rightly recovered from his pay and allowances.

8. It is noteworthy that though in their counter affidavit, the respondents have referred to the existence of the aforesaid rule, no document has been enclosed or brought to our notice in the course of arguments to substantiate the existence of any such rule. In any event, even if the said rule is in existence, then the same appears to be most illogical. Instead of following the principle of inter se seniority between Inspectors/GD at the SDG, the respondents have elected to follow a strange procedure wherein, priority for retention in the SDG and entitlement to SDA, is sought to be linked with the remaining tenure of the person in the Group.

9. On perusing the stand taken by the respondents, we find that the same to be untenable and arbitrary. It is not as if the petitioner had sought a posting in the SDG. Rather, it was the respondents who had posted him in the said Group, knowing very well that vide Signal dated 02.12.2015, on being promoted as an Inspector/GD, he had been allotted J&K Zone. It is also not a case where the respondents were unaware of the strength of the SDG, when posting the petitioner to the Group vide order dated 29.12.2015. That being the position, it does not lie in

the mouth of the respondents to contend that the petitioner, though posted in the SDG, would not be entitled to SDA. It is also noteworthy that at no stage did the respondents clarify to the petitioner while issuing the office order dated 29.12.2015, that he would not be entitled to SDA on the logic sought to be offered now in the counter affidavit to the effect that since his remaining tenure in the SDG was the shortest amongst the other five officers, whose names find mention in the W.P.(C) 2542/2017 Page 5 of 6 office order dated 29.12.2015, he would not be entitled to receive SDA, even while posted in the SDG.

10. In view of the aforesaid facts and circumstances, the impugned order dated 04.03.2016 issued by the respondents (Annexure P-5) insofar as it relates to the petitioner, whose name finds mention at Sr.No.10 in Part-II of the said order, is held to be unsustainable and is accordingly quashed and set aside. Similarly, the replies dated 08.07.2016 and 20.10.2016 issued by the respondents, declining to grant SDA to the petitioner, while he was posted in the SDG, are quashed and set aside. The respondents are directed to release the SDA in favour of the petitioner for the period of his posting in the SDG from 29.12.2015 to 19.11.2016, in the rank of Inspector/GD to which post he stood promoted vide order dated 27.11.2015. Compliances shall be made within four weeks from today, by remitting the amounts payable to the petitioner directly into his account.

11. The petition is allowed on the aforesaid terms with costs of Rs.10,000/- imposed on the respondents, to be remitted into the account of the petitioner alongwith the arrears of the SDA, within the same timeline. HIMA KOHLI, J
REKHA PALLI, J
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