

A UNION OF INDIA AND ORS. ETC.

v.

B. PRASAD, B.S.O., AND ORS. ETC.

FEBRUARY 17, 1997

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Service Law :*

C *Special Duty Allowance—Government of India Proceedings dated 17.4.1995—Defence Civilian employees—Posted in North-eastern region—Entitlement to special Duty Allowance and Special Compensatory (Remote Locality) Allowance—Held, the defence civilian personnel deployed at the border area for support of operational requirement, face the imminent hostilities supporting the Army personnel deployed there and as such they alone require the double payment—But the defence civilian employees posted*  
D *at the Modified Field Area (i.e. "barracks"), as the area is a lesser risking area, shall not be entitled to double payment—Government would modify the order accordingly—Government would not recover any payments made of the period prior to 17.4.1995.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1572 of 1997 Etc.

From the Judgment and Order dated 17.11.95 of the Central Administrative Tribunal, Gauhati, in R.A. No. 4 of 1995 in O.A. No. 49 of 1989.

F P.P. Malhotra, Ms. Smitha Inna, Y.P. Mahajan, Ms. Anil Katiyar, Arvind K. Sharma, Ms. Kamakshi S. Mehlwal, for the Appellants.

Arun Jaitely, P.P. Rao, Jasmeet Singh, Mahinder Singh Raj K. Gupta, H.V.P. Sharma, Rajesh and Sanjay Parikh for the Respondents.

G The following Order of the Court was delivered :

Leave granted. We have heard learned counsel for the parties.

H These appeals by special leave arise from the various orders passed by the Central Administrative Tribunal, Gauhati Bench in different mat-

ters. The main order was passed on 17.11.1995 in RA No. 4/95 in OA No. 49/89. A

The Government of India have been issuing orders from time to time for payment of allowances and facilities for civilian employees of the Central Government servants working in the States and Union Territories of the North-eastern region. It is not in dispute that Special Duty Allowance was ordered by the Government @ 25% of the basic pay subject to a ceiling of Rs. 400 per month on posting on any station in the North-eastern region. Subsequently, the Government have been issuing orders from time to time. In the proceedings dated April 17, 1995, the Government modified the payment of the Special Duty Allowance and Special Compensatory (Remote Locality) Allowance as under : B C

"The Defence Civilian employees, serving in the newly defined modified Field Areas, will continue to be entitled to the Special Compensatory (Remote Locality) Allowance and other allowances as admissible to Defence Civilians, as hitherto, under existing instructions issued by this Ministry from time to time. However, in respect of Defence Civilian employees in the newly defined Field Areas, Special Compensatory (Remote Locality) Allowance and other allowances not concurrently admissible along with Field Service Concessions." D E

It is contended by Mr. P.P. Malhotra, learned senior counsel appearing for the Union of India, that the view taken by the Tribunal that they are entitled to both, is not correct and that they would be entitled to either of the allowances. Shri P.P. Rao, learned senior counsel appearing for some of the respondents has contended that those civilian employees working in the defence service at various stations in the North-eastern region were given Special Duty Allowance with a view to attract the competent persons and the persons having been deployed, are entitled to the same and the amended concessions would be applicable to those employees who are transferred after April 17, 1975. All those who were serving earlier would be entitled to both. Shri Arun Jaitely, learned senior counsel appearing for some of the respondents has drawn our attention to the distinction between Field area and Modified Field area and submitted that in cases where civilian employees are supporting the field defence persons deployed for the border operational requirements facing the im- F G H

A mense hostilities, they will be denied the payment of both allowances while the personnel working in the Modified Field Area, in other words, in barracks, will be entitled to double benefit of both the allowance. This creates hostile discrimination and unjust results.

B Having regard to the respective contentions, we are of the view that the Government having been extending the benefit of payment of Special Duty Allowance to all the defence employees working in the North-eastern region as per the orders issued by the Government from time to time as on April 17, 1995, they are entitled to both the Special Duty Allowance as well as Field Area Special Compensatory (Remote Locality) Allowance.

C The same came to be modified w.e.f. that date. Therefore, irrespective of the fact whether or not they have been deployed earlier to that date, all are entitled to both the allowances only upto that date, Thereafter, all the personnel whether transferred earlier to that or transferred from on or after that date, shall be entitled to payment of only one set of Special Duty Allowance in terms of the above modified order.

D As regards the payment of Special Duty Allowance to the defence civilian personnel deployed at the border area for support of operational requirement, they face the imminent hostilities supporting the army personnel deployed there. Necessarily, they alone require the double payment as ordered by the Government but they cannot be deprived of the same

E since they are facing imminent hostilities in hilly areas risking their lives as envisaged in the proceedings of the Army dated January 13, 1994. But the Modified Field Area, in other words, in the defence terminology, "barracks" in that area is a lesser risking area; hence they shall not be entitled to double payment. Under these circumstances, Mr. P.P. Malhotra is right in

F saying that the wording of the order requires modification. The Government is directed to modify the order and issue the corrigendum accordingly.

G The appeals are disposed of accordingly. It is made clear that the Union of India is not entitled to recover any payments made of the period prior to April 17, 1995. No costs.

R.P.

Appeals disposed of.