

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.10589-10590 OF 2017
(Arising out of SLP (C) Nos.23204-23205 of 2013)

UNION OF INDIA & ORS.

.... Appellant(s)

Versus

SH. SARVENDRA SINGH CHAUHAN & ORS.

....Respondent(s)

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

The Respondents filed Writ Petitions challenging the order dated 12.05.2011 issued by the Director General of Assam Rifles which were allowed by a learned Single Judge of the Guwahati High Court. The Appeals filed against this order were dismissed by a Division Bench. Aggrieved, the Union of India and others have filed these Civil Appeals.

2. The Respondents are combatised personnel of the Assam Rifles. Their grievance pertains to withdrawal of Special (Duty) Allowance. To understand the controversy, it is relevant to refer to the events that led to the introduction of Special (Duty) Allowance and its withdrawal.

3. By office memorandum dated 14.12.1983, the Government of India introduced payment of Special (Duty) Allowance to Central Government civilian employees who were posted to any station in the North-Eastern region. The said allowance was extended to personnel working in Assam Rifles on 02.02.1989. On the basis of the recommendations of the 6th Central Pay Commission, the President of India approved the introduction of Risk/Hardship Allowance to Central Para Military Force personnel w.e.f. 01.03.2009. The office memorandum dated 16.04.2009 by which the decision was conveyed to all departments concerned contained a clause which is as follows:-

*"4.CPMF personnel shall have the option to receiving their existing package of compensatory allowances and detachment allowance **or** the Risk/Hardship Allowances proposed at para-1 and 2 above whichever is beneficial to them." (emphasis supplied)*

4. By a letter dated 05.06.2009, the benefit of Risk/Hardship Allowance was extended to Combatised Armed Reserved Personnel in Assam Rifles. They were informed that they have an option to claim Special Compensatory Allowance (remote locality) and detachment allowances ***or*** risk allowance whichever is beneficial to them.

5. A clarification was sought on the drawal of Risk/Hardship Allowance by the Shashatra Seema Bal (SSB) on 13.12.2010 as to whether the employees posted in the North-Eastern region were entitled for Risk/Hardship based allowance along with Special (Duty) Allowance. The Government examined the proposal and clarified that the personnel who were getting Risk/Hardship Allowance were not eligible for Special (Duty) Allowance being a compensatory allowance. Consequently, the Director General Assam Rifles passed an order on 12.05.2011 informing the personnel that Special (Duty) Allowance which was being paid along with Risk/Hardship Allowance would be stopped w.e.f. 01.06.2011. The personnel were given an option to choose either Risk/Hardship Allowance or Special (Duty) Allowance. The said order dated 12.05.2011 was challenged by the Respondents in Writ Petition No.147

of 2011 and Writ Petition No. 133 of 2011. A Single Judge of the Guwahati High Court set aside the order dated 12.05.2011 and directed the authorities not to stop the payment of Special (Duty) Allowance until a suitable modification of the notification dated 16.04.2009 is made. The only ground on which the Writ Petitions were allowed was that the Special (Duty) Allowance was given to the personnel by a Presidential sanction whereas its withdrawal was by an order passed by the Director General of Assam Rifles. A Division Bench of the Guwahati High Court affirmed the said judgment of the learned Single Judge. The judgment of the Division Bench of High Court is assailed in these appeals.

6. We have heard Mr. Ranjit Kumar, Solicitor General of India for the Appellants and Mr. Sunil Kumar, learned Senior Counsel for the Respondents. The Solicitor General submitted that Government of India clarified on 23.02.2011 that the eligible persons under the scheme are not entitled for payment of both the Special (Duty) Allowance and Risk/Hardship Allowance. The order dated 12.05.2011 of the Director General of Assam Rifles was only a consequential order issued pursuant to the clarification

dated 23.03.2011. Further, he relied upon the order dated 16.04.2009, which was issued with the sanction of the President, to contend that the personnel would be entitled to either the Special (Duty) Allowance or the Risk/Hardship Allowance and not both. According to him, the initial sanction of the allowance itself made it clear that the armed reserved personnel were not entitled for both the allowances and that the question of withdrawal did not arise. It was by a mistake that the personnel working with Assam Rifles were being given both the allowances and after a clarification was given by the Government of India on 23.02.2011, the Director General Assam Rifles had withdrawn the Special (Duty) Allowance. The armed personnel were informed that they have an option to choose between the Special (Duty) Allowance and Risk/Hardship Allowance. To a pointed query by us, the learned Solicitor General submitted that the Special (Duty) Allowance is a compensatory allowance.

7. Countering the submissions of learned Solicitor General, Mr. Sunil Kumar, learned Senior Counsel appearing for the Respondents submitted that Special (Duty) Allowance is not a compensatory allowance and relied upon

the letter dated 02.02.1989 written by Deputy Secretary, Ministry of Home Affairs to Director General Assam Rifles whereby the Special (Duty) Allowance was extended to the combatised personnel of Assam Rifles. He referred to the said letter to submit that the combatised and non combatised civil personnel (including officers) were given the benefit of Special (Duty) Allowance. The special compensatory allowance (also called special remote locality allowance) was given only to combatised personnel. He further submitted that the Respondents, being combatised personnel are entitled for both the Special (Duty) Allowance and Risk/Hardship Allowance.

8. We have considered the submissions made by the learned Senior Counsels. The office memorandum dated 16.04.2009 by which the Risk/Hardship Allowance was introduced makes it clear that the CPMF personnel will have the option to receive the existing package of compensatory allowances and detachment allowance or Risk/Hardship Allowance. The existing package of compensatory allowance would necessarily include the Special (Duty) Allowance which, in our opinion, is a compensatory allowance. The Special (Duty) Allowance was introduced

on 14.12.1983 to all Central Government civilian employees who were posted in the North Eastern region. The contention of the counsel for the Respondents that the Special (Duty) Allowance is not a compensatory allowance is not correct. The submission on behalf of the Respondents that combatised personnel were given an additional benefit of special compensatory allowance which was not available to the non combatised personnel due to which they would be entitled for payment of both the Special (Duty) Allowance and the Risk/Hardship Allowance is also not acceptable. As stated earlier, the Risk/Hardship Allowance is an alternative to the existing package of compensatory allowances which includes Special (Duty) Allowance. Any ambiguity was already cleared by the Government of India in a clarification sought by the SSB.

9. We are not in agreement with the findings recorded by the High Court that the benefit of Special (Duty) Allowance granted with the sanction of the President could not have been withdrawn by the Director General Assam Rifles. The Director General Assam Rifles was only correcting the mistake that was committed earlier and implementing the office memorandum dated 16.04.2009 as clarified by the

Government on 23.02.2011.

10. By an order dated 19.07.2013, this court while issuing notice to the Respondents restrained the recovery of the amounts already paid in the past. We confirm the said order and direct that there will be no recovery of the amounts that have already been paid to the Respondents.

11. For the aforementioned reasons, the judgment of the High Court is set aside and the Civil Appeals are allowed.

.....J
[S.A. BOBDE]

.....J
[L. NAGESWARA RAO]

New Delhi,
August 17, 2017