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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 8497/2016**

SATYENDRA KUMAR JHA Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA AND ANR Respondents

Through: Mr.Mukesh Kumar, Advocate with
Mr.Naveen Kumar, DC/CISF.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

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ORDER
01.02.2019

Dr. S. Muralidhar, J.:

1. Satyendra Kumar Jha, a Deputy Commandant in the Central Industrial Security Force (CISF) has filed this petition for a mandamus to the Respondents to grant him the 'risk/hard area allowance' from 18th April 2016 when he was posted at the CISF Unit, National Aluminium Company Limited (NALCO), Damanjodi, District Koraput, Odisha.

2. The Petitioner joined the CISF as Assistant Commandant on 16th April 2009. At the conclusion of his basic training he was conferred with awards for 'All round best Probationer', 'Best in outdoor' and 'Best in firing'.

3. The Petitioner was posted to the CISF Unit, Neyveli Lignite Corporation

at Neyveli, Tamil Nadu with effect from 1st May 2010. After completing nearly two years there, he was posted to the CISF, Force Headquarters (HQ) at New Delhi. Four years thereafter, he was posted to the CISF Unit at NALCO, Damanjodi, District Koraput, Odisha. According to the Petitioner in terms of CISF Circular No.53/2011 dated 20th December 2011 Damanjodi, District Koraput, Odisha was identified as a Left Wing Extremism (LWE) affected area. By CISF Circular No.14/2015 the said CISF Unit at NALCO, Damanjodi was also declared as a 'hard area unit.'

4. The Petitioner states that acknowledging the difficulties faced by police personnel of all police stations, of the Odisha State Armed Police, Officers of the District Intelligence Bureau, District Crime Record Bureau, Court Officers and Reserve Officers deployed in Naxal affected areas including District Koraput, the Government of Odisha on 14th July 2014 sanctioned special incentive @ 15% of basic pay to such personnel.

5. The Sixth Central Pay Commission, which submitted a report relating to the structure of emolument allowances, conditions of service and retirement benefits of central government employees and personnel belonging to defence forces had, *inter alia*, made recommendations which were accepted by the Ministry of Finance, Department of Expenditure by a resolution dated 29th August 2008 subject to certain modifications. Relevant to the case on hand is para 9 of the said resolution dated 29th August 2008 which reads as under:

“9. The Government has granted "in principle" approval to a scheme of allowances for CPMF officers of the rank of Commandant and below, and other ranks in the battalions

deployed in difficult areas. Counter-insurgency areas and in high altitude areas, keeping in view the allowances granted to Defence Forces personnel in such, or similar, areas and the Detachment and other allowances granted to the CPMF personnel at present, to be worked out in consultation with Department of Expenditure.”

6. Following the above resolution dated 29th August 2008, the Ministry of Home Affairs (MHA) (Respondent No.1) also recognised the risk/hardship faced by the Central Paramilitary Forces (CPMF) personnel posted in LWE affected districts. It issued an Office Memorandum (OM) dated 16th April 2009 conveying the approval of the President of India for introduction of risk/hardship based allowance to combatized CPMF personnel up to the rank of Commandant as under:

“1. In pursuance of Government's decision on the recommendations of Sixth Central Pay Commission conveyed vide para-9 of resolution No.1/1/2008-IC dated 29th Aug 2008, the President is pleased to convey approval for introduction of the following risk/hardship based allowances to combatized CPMFs personnel up to the rank of Commandant:

CPMFs personnel deployed in areas affected by Left Wing Extremism (LWE)

(i) Personnel of the CPMFs deployed (strictly operational strength) for specified Anti Naxal Operations in LWE affected areas on specific notification/orders of Ministry of Home Affairs would be entitled to LWE risk allowance at rates equivalent to CI Ops in Modified Field Area Allowance admissible to Army;

(ii) CPMF Bns/Coys deployed for counter insurgency operations in J&K and NE Areas not covered by areas/co-ordinates defined by Army will be considered on case to case

basis by the Committee under AS&FA(Home) on furnishing of deployment details with adequate justification by the CPMFs;

(iii) CPMFs personnel, up to the rank of Commandant, on deputation to the Commando Battalion for Resolute Action (COBRA) of CRPF would be entitled to an allowance at the rate of 80% of Marine Commandos (MARCOS) Allowance.

2. The risk/hardship allowance proposed shall be admissible to combatized CPMFs personnel. The terms and conditions governing Army Allowance shall also apply to CPMF personnel.

3. CPMF personnel shall have the option to receiving their existing package of compensatory allowance and detachment allowance, or the risk/hardship allowance proposed at para-1 and 2 above, whichever is beneficial to them.

4. Given the dynamic internal security scenario, the Committee under AS&FA(Home) notified vide this Ministry's letter of even no. dated 23rd December 2008 shall periodically review the categorization/classification of locations, with at least one annual review, and recommend additions/deletion/changes in classification of locations, if any.

5. These orders will be effective from March 2009.”

7. The Petitioner states that on 28th April 2014 the Directorate General of CISF (Respondent No.2) issued an order stopping the risk/hardship based allowance to CISF personnel posted in Public Sector Undertakings (PSUs), Airports in Jammu & Kashmir (J&K) and North-East (NE) region. The Petitioner points out that he was neither posted in J&K nor in NE region and therefore, the above circular is not applicable to him.

8. The Petitioner points out that as per the Standard Operating Procedure

(SOP) of the CISF Unit, NALCO, Damanjodi the CISF is required to conduct counter-naxalite operations. It is pointed out that the security provided by CISF at NALCO, Damanjodi is divided in two components, (a) refinery security and (b) mines security. The base of the Unit is at Damanjodi whereas the Mines area is 20 km away. The road connecting the two is undulated and is highly susceptible to attack/ambush by the Naxalites. It thus poses imminent threats to the lives of the CISF personnel deployed there. It is further pointed out that:

“the security at mines of NALCO Damanjodi is being provided in open field/area without any perimeter wall or fencing thereby detrimental to safety and security of the CISF personnel deployed there.”

9. The Petitioner states that the Minister of State for Home Affairs in reply to a question raised in in the Lok Sabha relating to risk/hard area allowance clarified that LWE allowance was being granted to CPMF personnel based on the deployment in LWE States.

10. It is pointed out that in 2009 naxalites had attacked CISF personnel at the Mines of NALCO at Damanjodi and had tried to loot the explosives. The CISF personnel posted there valiantly repelled the attack and prevented the loot. Unfortunately, ten CISF personnel were killed. Their gallantry was recognized by the Government of India. Posthumously, four of them were awarded the President's Police Medal and the remaining six were awarded Police Medals. The Petitioner points out that yet the CISF personnel at NALCO, Damanjodi are not being paid the LWE Risk/Hard Area allowance.

11. It is pointed out that in 2012, a CISF patrolling vehicle was ambushed enroute from the NALCO Refinery to the Panchpatmali Mines during which a CISF driver and another Constable suffered bullet injuries. The presence of mind of the injured CISF driver saved the life of the CISF Constable. It is pointed out that the threat perception in District Koraput is so grave that in addition to a BSF Battalion, a COBRA Battalion of the CRPF has been deployed there. It is pointed out that recognising the Naxal threat, the MHA has by a letter dated 14th July, 2010 granted to the personnel posted there, extension of the facility of retention of government accommodation at the last place of posting. Yet the hard area posting allowance was not paid.

12. In terms of the statistics of the Maoist violence in Odisha, it is pointed out that after District Malkangiri, District Koraput was one of the most severely affected on account of LWE. Eight Odisha State Armed Police jawans lost their lives in February, 2017 in a landmine blast triggered by the Maoists near Sunki area of District Koraput. Two BSF personnel lost their lives when their vehicle was blown up in a landmine laid by the Maoists on 8th January, 2016.

13. During the pendency of the present petition, this Court by an order dated 22nd September 2016 granted the Respondents four weeks' time to dispose of the representation dated 29th June 2016 made by the Petitioner. Pursuant thereto an order was passed on 11th November 2016 by the Directorate General, CISF (Respondent No.2) rejecting the Petitioner's representation. *Inter alia*, it was stated therein as under:

“07. AND WHEREAS, similar proposals submitted by BSF for grant of risk/hardship based allowance to Field 'G' Team personnel posted at Sector Headquarters in LWE affected area had been examined by the above Committee, and not agreed to, as the personnel posted at static location are not eligible for Risk Allowance.

08. AND WHEREAS, as per MHA's OM dated 16.04.2009 ibid, the CAPFs personnel posted in static locations are not eligible for risk/hardship based allowance, as this is admissible strictly for operational strength.

09. AND WHEREAS, National Aluminium Company Limited, Damanjodi, is treated as a static location, and as such, CISF personnel posted at above Public Sector Undertaking is not eligible for risk/hardship based allowance, as in the case of other CAPFs personnel posted in static locations.”

14. Subsequently, on 16th August 2017 this Court passed an order, the relevant portion of which reads as under:

“Learned counsel for the respondents has produced before us a copy of the order dated 11/15 November, 2016 by which representation filed by the petitioner has been rejected on the ground that personnel posted in static, locations are not eligible for risk/hardship based allowance as this is admissible strictly for operational strength.

The petitioner, who appears in person states that he will like to challenge the said order. We permit the petitioner's oral prayer to amend the writ petition to challenge the aforesaid order. Amended writ petition be filed within four weeks from today. Reply to the amended writ petition be filed by the respondents within four weeks thereafter. Rejoinder may be filed, if required, after four weeks of service of counter affidavit.

List on 27th November, 2017.”

15. Pursuant to the leave granted by this Court the Petitioner has amended the writ petition to additionally challenge the order dated 11th November 2016 passed by Respondent No.2.

16. A counter-affidavit has been filed on behalf of the Respondents on 13th December 2017. A preliminary objection as to maintainability of the petition has been raised by referring to MHA's OM dated 16th April 2009 in terms of which:

“CAPFs personnel posted in static locations are not eligible for risk/hardship based allowance, as this is admissible strictly for operational strength and whereas National Aluminum Company Limited, Damanjodi, is treated as a static location, and as such, CISF personnel posted at above Public Sector Undertaking is not eligible for risk/hardship based allowance, as in the case of other CAPFs personnel posted in static locations.”

17. The Respondents submit:

“That the present writ petition is not maintainable and liable to be dismissed on the ground that the risk-hardship allowance was introduced by 6th Central Pay Commission for personnel engaged in Counter Insurgency Operations (CI-Ops)/Anti Naxal Operations. Since, CISF is not engaged in either of the said operations, therefore, the Risk-Hardship allowance was not given to CISF personnel posted in Jammu & Kashmir (J&K)/ North Eastern Region (NER)/ Left Wing Extremism (LWE) Areas. The matter was repeatedly taken up with the MHA through various letters but the same was considered and regretted by MHA/IFD on the grounds that CISF personnel are actually not deployed near the border or actually engaged in counter insurgency Operation.”

18. In their para-wise reply to the petition, the Respondents submit that “CISF Unit NALCO, Damanjodi” has been declared as hardship area for the

purpose of posting tenure only. It is further that:

“The proposal for grant of Risk/Hardship allowance to CISF personnel deployed in LWE areas had been submitted to the Committee on 7th CPC but the Commission has not changed the definition of eligibility for getting Risk-hardship Allowances. It means that only those troops engaged in CI Ops/Anti Naxal Operations will be eligible for Risk-hardship Allowances.

....

“However, while accepting the 7th CPC's recommendations, Govt. has decided that "Classification of Field Areas" for CAPFs shall be examined by Ministry of Home Affairs. Decision of Govt. of India as and when communicated, shall be implemented.”

19. In sum, the Respondents are not willing to accept the prayers in the petition. The Petitioner filed a rejoinder on 2nd April 2018 answering each of the objections raised in the counter-affidavit.

20. This petition throws up an interesting question as to what would qualify as a ‘hard area’ or a ‘risk’ location from the point of view of the CPMFs. It is seen that there is recognition by the Odisha State police, as well as the BSF and CRPF, that District Koraput is one of the severely affected LWE districts. Further, it is not denied by the Respondents CISF’s Circular No.14/2015 declares the said CISF Unit at NALCO, Damanjodi as a ‘hard area unit.’

21. In the circumstances, the stand of the Respondents that the CISF Unit at NALCO, Damanjodi is a ‘static location’ does not stand to reason, particularly given the risks that the CPMF personnel posted there are subjected to. If there was any doubt in this regard, then the tragic incidents

that took place there in 2009, 2012 and even as recently as February, 2017 should have laid them to rest. The Petitioner is right in pointing out that while the personnel are not only engaged in protection of the assets and installations at the PSUs but are also providing security cover to the employees of the PSU from the threats of violence at the hands of the Naxalites. In reply to Ground 'Q' in the writ petition where it is averred that the CISF personnel at Damanjodi are themselves engaged in anti-Naxal operations which not only include area domination but also "protecting the men and material of the NALCO Undertaking from the loot/brunt of Naxalites," the Respondents in their counter-affidavit state that "the contents of para 27 (Q) are matters of record." There is thus no denial of the Petitioner's averment in the same ground Q of the petition that "the CISF is more prone to the degree of threat because of absence of surprise element i.e. the duty posts/area of patrolling is fixed in CISF. As such the surprise element which is a vital ingredient of security is absent leading into higher vulnerability of CISF personnel from naxal attack."

22. The Court is therefore unable to accept the rejection, by the order dated 11th November 2016 of Respondent No.2, of the Petitioner's representation that NALCO, Damanjodi should be treated as "risk/ hardship area". In this context, it must be noticed that the MHA itself recognises the distinction between the 'Sector Headquarters' in LWE affected areas and the 'Field' where the 'Duty Battalion' serves. The MHA has issued a Circular dated 30th September, 2005 recognizing posting of CISF in security and fire units in all PSUs as service in 'Duty Battalion'. Clearly, therefore, the posting of the Petitioner as part of the CISF unit in NALCO, Damanjodi cannot be

treated as a 'static posting', but a field posting. Further, there can be no manner of doubt from what has been stated that the posting should be treated as a 'risk/hardship posting' entitling the personnel posted thereto to avail 'risk/hardship allowance'. It, therefore, leads to the conclusion that the Petitioner's posting with the CISF Unit at NALCO, Damanjodi would stand covered by MHA's OM dated 16th April 2009 which provides for risk/hardship based allowance to combatized CPMF personnel up to the rank of Commandant.

23. This petition demonstrates how the CPMF play a crucial role in providing for the safety and security of PSUs, government installations and the lives of the local population in LWE affected areas by subjecting themselves to grave risks to their lives at the hands of non-State actors.

24. Consequently, the Court sets aside the decision of the Respondents, communicated to the Petitioner by Respondent No. 2 by the order dated 11th November 2016, rejecting his representation. A mandamus is issued to the Respondents to pay to the Petitioner the 'risk/hard area' allowance in terms of the MHA's OM dated 16th April, 2009 read with CISF's Circulars 53/2011 dated 20th December, 2011 and 14/2015 dated 27th July, 2015 from the date of his posting at the CISF Unit at NALCO, Damanjodi. The arrears will be paid within a period of eight weeks from today failing which the Petitioner will be entitled to simple interest @ 6% per annum on the said sum till the date of payment. Needless to state, the Petitioner would continue to receive the risk/hard area allowance during his entire tenure at the said posting.

25. The MHA (Respondent No.1) should on its own grant the above relief to all those similarly placed as the Petitioner without their having to file separate petitions.

26. The Court commends the competence and clarity with which the Petitioner, a Deputy Commandant in the CISF, has not only drafted the present petition but presented oral arguments in person.

27. The petition is allowed in the above terms. No costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 01, 2019

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