

(2010) 02 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1492 of 2004 and IA No. 47 of 2009

Mohd. Yousuf Mir

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : (2010) 2 JKJ 534

Hon'ble Judges : Hakim Imtiyaz Hussain, J; Gh. Hasnain Massodi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Gh. Hasnain Massodi, J.—The Government of India in the year 1963 decided to extend facilities available to the combatants in the forward

areas to ""Defence Civilian Employees"" working with the combatants in such areas. As a follow up to the above decision, vide Ministry of Defence

(MOD for short) letter dated 02.03.1963, followed by MOD letter dated 25.01.1964 the concessions called ""Field Service Concession"" (FSC

for short) till then only available to the Armed Forces, were extended to the ""Defence Civilian Employees"". The concessions included free ration to

the beneficiaries. The decision to make available free ration and other FSC to non-combatants in the said areas came to be reviewed from time to

time. MOD letter dated 2.3.1968 further detailed and specified the FSC in the appendix attached to it. The FSC were further extended vide

MOD letter dated 18.02.1986. In the year 1994 review and re-classification of the ""Field Areas"" was made and vide order dated 13.01.1994

Field Areas"" were divided into two categories ""Field Areas"" and ""Modified Field Areas"". The areas where troops are deployed near the borders

for operational requirements with greater imminence of the hostilities and grave risk to their lives, were classified as "Field Areas". The "Modified Field Areas" on the other hand, included the areas where the troops are deployed in an operational support or, in other words, to support the troops deployed near the borders for operational requirements. In the "Modified Field Area" degree of operational readiness is little lower than in the Field Area. The Government after re-classifying the Field Areas as "Field Areas" and "Modified Field Areas" vide Government letter dated 13.01.1994, vide MOD letter dated 31.1.1995, as modified by Corrigendum dated 12.9.1995, specified the "Field Service Concession" to the Defence Civilian Employees serving in the "Field Areas" and "Modified Field Areas". It was provided that the Defence Civilian Employees serving in "Modified Field Areas" will continue to be extended "Field Service Concession" specified in appendix "B" to the Government letter dated 02.03.1968. The direction embodied in Government letter dated 13.01.1994 were to come into force with effect from 08.04.1993. The appendix B" to the Government letter dated 02.03.1968 did not include free ration as a Field Service Concession. The net effect of re-classification of Field Areas and the consequent specification of the benefits of the "Field Service Concession" made available to the "Defence Civilian Employees serving in Field Areas and Modified Field Areas, is that whereas the "Defence Civilian Employees" serving in Field Areas continue to get free ration, the concession is no more available to "Defence Civilian Employees" serving in Modified Field Areas. The Government gave a re-look to the Field Service Concession in the year 2000 and while consolidating the concession available to the "Defence Civilian Employees" working in Field Areas and the Modified Field Areas, specified the FSC to be available to the "Defence Service Employees" serving in the said areas. The "Defence Civilian Employees" serving in Field Areas were to get free ration on the scale applicable to the combatants of the Army or Air Force, as a case may be, and fuel, free tented/basha accommodation, free clothing etc., whereas "Defence Civilian Employees" serving in Modified Field Areas were given the concession of free remittance to the family, two postage free forces letters per individual per week, retention of family accommodation etc. In terms of order dated 01.09.2002 the "Defence Civilian Employees" serving in "Modified Field Areas" are not to get free

ration, available to their counter parts working in Field Areas. It appears that the ""Defence Civilian Employees"" serving in forward areas, which

were later categorized as ""Field Areas"" and ""Modified Field Areas"", were allowed till' 2000 A.D. to draw ""Ration Allowance"" in lieu of free ration.

It was later realized that such a course was not in conformity with MOD letter dated 01.02.1968 or MOD letter dated 25.01.1964, whereby the

Defence Civilian Employees"" posted in these areas were declared entitled to receive free ration as part of the Field Service Concessions. The

drawal of ""Ration Allowance"" being not in accordance with law, a proposal was moved to regularize the Ration Allowance already paid to the

Defence Civilian Employees in lieu of free ration, and also to give option to the Defence Civilian Employees serving in Field Areas to draw ""Ration

Allowance"" in lieu of free ration. The proposal did not find favour with Ministry of Defence, Government of India. Resultantly vide MOD letter

dated 16.09.2004 all the units/formations in Northern Command were instructed to initiate recovery action at the earliest. The aforesaid letter in

effect forbade payment of ""Ration Allowance"" in lieu of free ration to the Defence Civilian Employees serving in Field Areas and also directed

recovery of such allowances already drawn in violation of MOD letters dated 02.03.1963 and 25.01.1964. A further communication addressed

by SE/Dir(Legal) for E-in-C to Chief Engineer, HQ Northern Command with a copy endorsed to 31 Sub-Area asked for recovery of the amount

paid from October, 1994 on account of ""Ration Allowance"" from the Petitioner and his colleagues, Petitioners in SWP Nos. 1078/1995 and

1262/2001.

2. The Petitioner and his other colleagues, whom the Petitioner intends to get benefited by the final outcome of present petition and who were

before the Central Administrative Tribunal, are admittedly serving as ""Defence Civilian Employees"" at Drugmulla falling within Garrison Engineer

874 EWS, classified vide letter dated 13.01.1994 as ""Modified Field Area"". The Petitioner and his colleagues, in wake of classification of area

where they are serving, as Modified Field Area, have been denied free ration that was received by the Petitioner and his colleagues prior to MOD

letter dated 13.01.1994. The Petitioner and others aggrieved of the re-classification of Field Area and denial of free ration filed two service writ

petitions before this Court, later transferred to Central Administrative Tribunal. The Central Administrative Tribunal held the petitions devoid of

merit and the Petitioners not to be entitled to concession of "free ration" or ration money and dismissed the petitions vide order dated 01.7.2004.

The Petitioner aggrieved of aforesaid order has filed instant writ petition praying for the following relief:

That the order of the CAT (Central Administrative Tribunal) as contained in Annexure -A may be set-a-side and a direction may be issued to the

Union of India, to consider the writ petition, as a representation and decide the same within a time limit to be fixed by the Hon'ble High Court or in

the alternative, the Hon'ble Court may itself quash the impugned order before the CAT as well as the judgment of the CAT dated 01.07.2004, and

direct that the Petitioner and all other labourers similarly circumstanced whose case is identical with the case of the Petitioner should be given the

benefit of the judgment of the Division Bench and should be entitled to receive the Ration money in accordance with law or the Hon'ble High Court

may itself mould the relief and grant benefit to the Petitioner and all other labourers who had filed the petition before the CAT in accordance with

the principles of social justice, as enshrined in the preamble to the Constitution of India.

3. It needs to be pointed out that the averments in the petition are made unmindful of the stand taken by the Respondents in their reply before the

Central Administrative Tribunal that the Petitioner and others in wake of MOD letter dated 13.01.1994 are not entitled to free ration let alone

ration allowance and that the Defence Civilian Employees serving in Field Area or Modified Field Area were never entitled to ration allowance in

lieu of free ration at any point of time. The Petitioner pleads that the Petitioner and his colleagues are being denied ration allowance and forced to

receive free ration from the ration depots set up by the Army; that the Petitioner and others because of threat of militants are not in a position to

receive free ration and deserve to be granted ration allowance. The writ petition is thus made on the assumption that the Petitioner and others

entitled to ration allowance, are now forced to take free ration and because of averments made, must be given the option to receive "ration

allowance" in lieu of free ration. Having said so, the petition now needs to be given a closer look to summarise the grounds pleaded by the

Petitioner.

4. The petition is based broadly on following grounds:

1. That the classification of ""Field Service Concession"" and categorizing it under Field Areas and Modified Field Areas is impermissible,

discriminatory and violative of Petitioner's right to equality guaranteed under Article 14 of Constitution of India.

2. That the ""Field Service Concession"" including the concession of free ration and ration allowance is a part of the wages within meaning of the law

governing the subject and that the Respondents by depriving the Petitioner and his colleagues of the ration allowance have violated the Petitioner's

right to property guaranteed under Article 19 of Constitution of India.

3. That the classification, otherwise discriminatory and violative of constitutional mandate, has been made oblivious to and unmindful of the ground

situation as much as the Petitioner and his colleagues because of militancy are not in a position to report to the ration depots and collect the free

ration; that the classification and consequential discriminatory treatment meted out to the Petitioner and his colleagues virtually deprives them of the

benefit of free ration otherwise available under rules.

4. That the Respondents lack authority to unilaterally withdraw the concession availed by the Petitioner and his colleagues without affording them

an opportunity to show cause against cessation of the concession.

5. That the Petitioner and others are entitled to the same treatment/relief as has been given/granted to the Petitioner in SWP No. 1078/1995.

6. That the recovery of ""Ration Allowance"" in lieu of free ration paid to the Petitioner and his colleagues with effect from October 1994, is

unwarranted and untenable under law.

5. The Respondents in an affidavit sworn by Maj. Vikas Jain, GE 874 EWS, in the compliance of order dated 23.07.2009 have stated that under

Government of India, Ministry of Defence letter dated 24.01.1964, as amended from time to time, the ""Defence Civilian Employees"" posted in

Field Area are entitled for ""Field Service Concession"" including free ration and that there is no rule existing to claim the ration money in lieu of

ration. It is further stated that though in lieu of free ration, ration money was paid to the employees for a period 01.10.1994 to 31.08.2000, neither

ration nor ration money was due to the Petitioner and his colleagues-party to the service writ petition. It is stated that an amount of Rs. 28.65 per

day was worked out as ration money payable to an individual (Defence Civilian Employee).

6. The grounds urged in the petition may be taken up ad seriatim for consideration.

7. The Government of India, as already stated, decided to provide some facilities to the ""Defence Civilian Employees"" serving with the combatants

in the border areas as were provided to the members of the Army Forces. There was rationale behind the decision as both combatants and non-

combatants were exposed to same kind of hardship, inconvenience and risk and there was no reason to treat the two categories differently. It is

pertinent to point out that even after the Government decision dated 02.03.1963 formalized vide MOD letter dated 21.01.1964, the ""Field Service

Concession"" made available to the ""Defence Civilian Employees"" serving in border areas were not given to ""Defence Civilian Employees"" serving in

urban or sub-urban areas away from border areas. The ""Field Service Concession"" was thus restricted to the ""Defence Civilian Employees

working near the borders. The Respondents after the gap of 25 years reviewed the concessions and classified Field Area in two categories, viz.,

Field Area and Modified Field Area. It needs no emphasis that earlier decision of 1963 took notice of absence of facilities in the borders areas, as

also operational requirements and imminence of hostilities; that with the advent of time essential facilities became available to more and more areas,

reducing hardship and inconvenience experienced by ""Defence Civilian Employees"" serving in such areas, thus after gap of 25 years the

Respondents classified the Field Areas into Field Area and Modified Field Area.

The Field Area includes area where troops are deployed for operational requirements; where there is imminence of hostilities and aggravated risk

to life. The Modified Field Area includes the area where the troops are deployed for operational support and have a support role; and degree of

operational readiness is on lower side. The ""Defence Civilian Employees"" serving in Modified Field Areas thus are exposed to lesser hardship as

compared to their colleagues serving in Field Areas, and the later obviously have more facilities available as compared to those serving in Modified

Field Areas. The classification made vide MOD letter dated 13.01.1994, almost 25 years after initial MOD letter dated 24.01.1964, classifying

Field Areas into ""Field Areas"" and ""Modified Field Areas"" and specifying two sets of concessions to ""Defence Civil Employees"" serving in two

areas is thus reasonable and does not violate the right to equality guaranteed under Article 14 of Constitution of India. There is not only intelligible

differentia between the two classes but also a close nexus between the classification and the object sought to be achieved. The object is to give

more facilities to those exposed to more hardship. It may be pointed out that Government of India, Ministry of Defence apart from aforesaid

classification has made provisions for more facilities for the combatants and members of Armed Forces and ""Defence Civilian Employees"" serving

in the areas where they are exposed to more hardship than in the Field Areas. To illustrate, as evident from Annexure-A to the petition, extra

facilities are available to ""Defence Civilian Employees"" serving in ""High Altitude Areas"", ""Uncongenial Areas"" as compared to their counter parts as

defined in Field Area.

8. The contention that the ""Field Service Concession"" is part of the wages and that the Petitioner and his colleagues having availed the concession

cannot be deprived of the same, as such a recourse would be violative of their right to property guaranteed under Constitution of India, is equally

preposterous. The ""Field Service Concessions"" are facilities having reference to an area. An employee asked to serve in the designated area

becomes entitled because of his posting in such area. Once the employee serving in an area where the additional facilities in the nature of ""Field

Service Concessions"" because of situation peculiar to that area, is transferred from that area, the area is reclassified or facilities withdrawn, such

employee automatically loses the right to get the additional facilities. The reason being that the employee is to be no more visited with the

inconvenience and hardship, the employee would otherwise experience by serving in that area. The ""Field Service Concessions"" available to

Defence Civilian Employees"" in a forward area are of the same nature as are available to State Government employees, in the nature of

compensatory allowance, posted at Leh or Kargil. Once State Government employee is re-transferred to the area where the compensatory

allowance is not available, such employee automatically loses his right to avail such allowance. The Government has all the powers to redefine such areas having regard to availability of modern facilities in such areas or even restructure the quantum of compensatory allowance. The same is true about different rates of House Rent Allowance payable at different categories of cities/stations. The transfer of Government employee from one station to other may result in variation in such allowances. It is to be pointed out that, ""Field Service Concessions"" do not comprise only of free ration but includes a number of concessions like free postage, free remittance, free retention of accommodation etc. and some of the concessions continue to be available to the ""Defence Civilian Employees"" serving in Modified Field Areas. MOD letter dated 21.9.2000 expressly declares the Field Service Concessions as ""non-monetary"" in nature and provides that no compensation in the form of monetary allowance as part of FSC is admissible under rules. There is thus merit in the ground that ""Field Service Concession"" is not part of the wages. Reliance placed on law laid down in *Airfreight Ltd. Vs. State of Karnataka and Others*, , to canvas that the ""Field Service Concession"" are part of the wages, is grossly misplaced inasmuch as facts and controversy involved in the referred case, are markedly different from the case in hand..

9. The Respondents have sufficient expertise, know how and vital inputs available to classify the areas as Field Area, Modified Field Area and areas other than Field Area and Modified Field Area. The court cannot substitute its opinion for the opinion of Respondents regarding the areas that are to be included in a particular category. The categorization otherwise appears to be made on reasonable and objective grounds. The Respondents have taken note of pivotal factors like deployment for operational requirements, operational preparedness, imminence of hostilities, overall risk to life, altitude etc. while making the classification. The classification thus cannot be said to have been made in an arbitrary and irrational manner or devoid of any basis.

There is no substance in the case set up by the Petitioner claiming the requirement of show cause notice prior to classification into Field Area and Modified Field Area made by MOD letter dated 13.01.1994. The classification, it is to be noted, is not Petitioner or employee specific. The

classification is based on policy decision and brings within its fold the Armed Forces installation/deployment areas stretching other length and breadth of the Country and pertains to all the "Defence Civilian Employees" serving in such installations/deployment areas. The classification is aimed at classifying the areas and specifying the facilities to be available to Defence Civilian Employees serving in respective areas. The Petitioner and for that matter his colleagues are not entitled to any show cause notice nor Respondents are under any obligation to serve any notice. The Petitioner if asked to serve in an area, say an area classified as "Field Area", shall automatically become entitled to "Field Service Concession including the free ration.

10. It is argued by the learned Counsel for Petitioner that the powers of Central Administrative Tribunal could be exercised only by the judicial member and the order passed by the administrative member of that Tribunal, sitting alone, was liable to be set aside. Reliance is placed on law laid down in 2004 LAB.I.C 2860. The law relied upon by the counsel for Petitioner is wide off the mark and does not help the Petitioner's case. In the said case the Chairman of Central Administrative Tribunal had not assigned the matter dealt with by administrative member to the administrative member. It was in the said context that administrative member was held to have no jurisdiction to hear and decide the matter and the decision was set aside. In the present case the issue involved is nowhere near controversy in the referred case.

11. The ground that the Petitioner and his colleagues are entitled to the same treatment as has been given to the Petitioners in SWP 1078/95, in wake of the judgment in said SWP, is again of no help to the Petitioner. This Court in SWP 1078/95 directed the Respondents to give "Field Service Concessions" to the Petitioners in said SWP as permissible under rules. The judgment thus cannot help the present Petitioner or his colleagues to build up the case for "Ration Allowance", not otherwise permissible under rules.

12. The Petitioner and his colleagues indisputably were being paid "Ration Allowance" from October, 1994 till 2000 without having any right to receive the "Ration Allowance" or free ration in terms of MOD letter dated 13.01.1994. However, the Petitioner or his colleagues had no role in

extension of the concession not otherwise available to the Petitioner or his colleagues. It is nobody's case that the Petitioner and his colleagues

extracted the concession by making any misrepresentation or employing any fraud on the Respondents. It appears to have been purely a case of

misinterpretation of MOD letters issued on the subject from time to time. Where a concession or facility is extended to a Government servant, to

which such Government servant is not entitled under rules, due to misinterpretation of rules, order or Government instruction and surrounding

circumstances do not point to any fraud or misrepresentation on part of the Government servant to prompt or persuade the Government to extend

such concession or facility, the Government cannot later order recovery of money paid erroneously or extended concession or facility. It is thus no

more open to the Respondents to order recovery of concession extended in mistaken belief and misinterpretation of official record.

13. In *Sahib Singh v. State and Ors.* 1995 (1) SCT 668, where, as a result of misinterpretation of rules, benefit of higher pay scale was given to

the Appellant and thereafter recovery of amounts drawn ordered, the Supreme Court held ""however, it is not on account of any misrepresentation

made by the Appellant that the benefit of higher pay scale was given to him but by wrong consideration made by Principal for which Appellant

could not be held to be at fault. In the circumstances the amount paid till date may not be recovered from the Appellant"". This principle of law was

reiterated in *E.S.P. Raja Ram and Ors. v. Union of India and Ors.* 2001 (1) SCT 759, where the Apex Court ordered that in view of the fact that

the employees have received financial benefits and different interpretation was suggested later on, the recovery could not be made of the payments

already paid. The principle also finds expression in *Karnail Singh v. State of Punjab and Anr.* 2003 (1) SCT 1042, *Vaid Kumar and Ors. v. State*

of Punjab and Ors. 2001 (2) SCT 921 and *Subhash Chander v. State of Haryana and Ors.* 2006 (3) SCT 194.

14. Having regard to the law laid down on the subject and that the ration allowance paid 16 years back is now sought to -be recovered and further

that the Petitioner and his colleagues in extremely hostile atmosphere and conditions have cooperated and served with the Army forces, it is neither

open nor just to order recovery of the ""Ration Allowance"" paid to the Petitioner and his colleagues from October 1994 till August 2000.

15. For the reasons discussed above, the grievances voiced in the petition against the order of Central Administrative Tribunal dated 01.07.2004

are devoid of any basis. The impugned order is in conformity with law. The prayer for grant of writ of certiorari is, accordingly, declined. However,

the Respondents through writ of mandamus are commanded not to implement and give effect to MOD letter dated 16.09.2004 or make recovery

of the ""Ration Allowance"" paid to the Petitioner and other Petitioners before Central Administrative Tribunal, who for some reasons have not

joined the present petition, from October 1994 till August 2000.

This writ petition is, accordingly, disposed of along with connected CMP(s).