

(2021) 05 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 4151 Of 2015

Vikram Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 04-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 14

Central Reserve Police Force Rules, 1955 — Rule 46(c), 51, 71, 73

Citation : (2021) 05 DEL CK 0007

Hon'ble Judges : Rajiv Sahai Endlaw, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Ankur Chhibber, Arun Bhardwaj, Nikhil Bhardwaj

Judgement

Review Petitions No.4/2021 & 7/2021 & CMs No.29861/2020 (of respondents for early hearing), 746/2021 (of respondents for

condonation of 600 days delay in filing Review Petition No.4/2021 against order dated 10th April, 2019), 747/2021 (of respondents for

taking on record additional documents) & 1178/2021 (of respondents for condonation of 260 days delay in filing Review Petition

No.7/2021 against order dated 13th March, 2020)

1. CM No.29861/2020 is now infructuous and is disposed of.

2. For the reasons stated, the delays in filing the Review Petitions are condoned and CMs No.746/2021 and 1178/2021 are disposed of.

3. CM No.747/2021 has been filed by the respondents/review petitioners for taking additional documents on record and is being dealt with along with the Review Petitions.

4. Review, in Review Petition No.4/2021, is sought by the respondents of the judgment dated 10th April, 2019 allowing W.P.(C) No.4151/2015.

Review, in Review Petition No.7/2021, in addition, is sought of the order dated 13th March, 2020, clarifying the judgment dated 10th April, 2019,

allowing the writ petition.

5. From a reading of the judgment dated 10th April, 2019, of which review is sought, it is found that, (A) the petitioner, who was then posted as a

Second-In-Command (2IC) in the respondent Central Reserve Police Force (CRPF), had filed the writ petition aforesaid seeking quashing of Office

Memorandum (OM) dated 7th September, 1998 to the extent that it authorized grant of Ration Money Allowance (RMA) to Central Para Military

Force (CPMF) personnel only if they are deployed alongside, ahead of or under the operational control of the Army and are deployed in counter-

insurgency and anti-insurgency operations alongside the Army personnel, or in border and/or disturbed areas, and seeking a direction to the

respondents Union of India and CRPF, to grant RMA to all personnel of CRPF up to the rank of Commandant, irrespective of their place of posting or

deployment;

(B) the stand of the respondents/review petitioners in opposition to the writ petition was, that since the petitioner, while posted at Assam, which was a

disturbed area, was serving alongside the Army and opted to draw the Detachment Allowance at full rates, he was not eligible for RMA; (C) this

Court reasoned that, (i) it was not in dispute that Gazetted Officers of Border Security Force (BSF), in the rank of Inspectors, got RMA when they

were deployed at the Line of Control or border areas and were not drawing regular Detachment Allowance, as was being drawn by the personnel of

CRPF; (ii) as per Rule 46(c) of the CRPF Rules, 1955, drawl of Detachment Allowance has nothing to do with the place of posting or whether the

said force personnel was under the command of the Army or not or whether he was posted in a particular area, operations etc.; (iii) the 6th Central

Pay Commission, in its report had stated that dietary requirements of personnel in CPMFs as well as the Military Forces were likely to be similar and

had recommended payment of RMA to CPMFs personnel at par with that available to the Defence Forces; (iv) BSF had been paying RMA to all its

Officers up to the rank of Commandant, whether they are deployed in the counter-insurgencies or anti-insurgency operations in Jammu & Kashmir,

Nagaland or Assam; (v) the OM dated 7th September, 1998 also did not make

the payment of RMA conditional upon the CRPF personnel undertaking to give up the Detachment Allowance payable under Rule 46(c) of the CRPF Rules; (vi) Detachment Allowance was payable as reimbursement for the expenses incurred by the individual when travelling and being away from the Headquarters; (vii) the instructions that CRPF personnel must opt for either RMA or Detachment Allowance was contrary to Rule 46(c) of the CRPF Rules; (viii) Supreme Court in *B. Rugmini Amma Vs. B.S. Nirmala Kumari* (2013) 11 SCC 262 had held that administrative instructions could not override the statutory provisions; (ix) thus the instructions in the present case, seeking to add a condition for availing RMA, being contrary to Rule 46(c) of the CRPF Rules, had to give way to Rule 46(c); and, (x) the argument of the respondents/review petitioners that the denial of RMA not only to the petitioner but to all Officers up to the rank of Commandant was justified, could not be accepted. Accordingly, vide judgment dated 10th April, 2019, of which review is sought, the OM dated 7th September, 1998, to the extent it authorises grant of RMA to CPMF personnel only if they are deployed alongside, ahead of or under the operational control of the Army or only if they are deployed in counter-insurgency and anti-insurgency operations alongside the Army personnel in border areas and disturbed areas, was quashed and a direction was issued to the respondents Union of India and CRPF to grant RMA to all personnel of CRPF up to the rank of Commandant, irrespective of their place of posting and the arrears of RMA were directed to be paid with interest payable for any delayed payment.

6. On 13th March, 2020, CM No.8785/2020 of the respondents/review petitioners, for clarification of the judgment dated 10th April, 2019 came up before a Bench of one of us (Rajiv Sahai Endlaw, J.) sitting with Justice Sangita Dhingra Sehgal and after hearing the counsels, it was opined that there was no ambiguity in the judgment dated 10th April, 2019, that the arrears of RMA were to be paid with effect from the date the same became payable under the OM dated 7th September, 1998 i.e. with effect from 1st September, 1998 and it was further added that even if there was any ambiguity, it was being so clarified.

7. Review is sought, pleading (a) that in compliance of the judgment dated 10th April, 2019 and order dated 13th March, 2020, RMA arrears to the

tune of Rs.1,52,309/- were paid to the petitioner as well as to some other Officers; (b) that as far as the direction in the judgment dated 10th April, 2019 for payment of RMA arrears to all other Officers was concerned, there were thousands of serving and retired Officers over the period of 22 years involved and computation of arrears of RMA for each one of them was a lengthy and time consuming job; (c) that though the petitioner in the writ petition had ventilated his cause of action only but sought a direction for payment of RMA to all personnel of CRPF; (d) that the Supreme Court, in Union of India Vs. R. Thiagarajan (2020) 5 SCC 201 has held that the High Court did not have jurisdiction to direct grant of relief to all the employees and that too from long back and had exceeded its jurisdiction in doing so; (e) that in service jurisprudence, the Courts cannot grant a relief to non-petitioners; (f) that in service jurisprudence, one High Court cannot grant relief even to those non-petitioners over whom the High Court has no jurisdiction; (g) that thus no relief IN REM could have been granted in the subject writ petition; (h) that vide the judgment dated 10th April, 2019, of which review is sought, relief had also been granted to those who had not agitated their rights and whose claims were barred by laches, acquiescence and waiver; (i) that this Court, in the judgment dated 10th April, 2019, of which review is sought, had thus travelled beyond its jurisdiction; (j) that the petitioner could not have sought relief for those who had not even authorised him to file the petition; (k) that no Public Interest Litigation lies in service jurisprudence; (l) that the writ petition should have been dismissed for claiming the relief of payment of RMA to persons other than the petitioner; (m) that the judgment does not discuss Supplementary Rules 51, 71 and 73; (n) that Rule 46(c) of CRPF Rules gains strength from Supplementary Rules 51, 71 and 73; (o) that the exercise of option between RMA and the amounts of Ration Money as a component of Daily/Detachment Allowance, goes to the root of the matter and the judgment dated 10th April, 2019, of which review is sought, does not consider these relevant issues and is erroneous; (p) that a direction for release of financial benefits in violation of statutory rules could not be issued and is liable to be recalled; (q) that the matter has to be decided in the light of as many as 16 Government Orders and OMs and all of which have not been discussed/considered in the judgment dated 10th April, 2019; (r) that in matters where financial implications could run into thousands of crores of rupees, the Court could not have decided without

considering all the relevant facts; and, (s) that the judgment dated 10th April, 2019, of which review is sought, interferes with the legislative power of the Government to frame policies.

8. The respondents/review petitioners, in the Review Petitions have made detailed pleadings as to how, on application of the Government Orders/OMs, which were not placed before the Court, and are now sought to be filed, the RMA ordered to be paid vide the judgment dated 10th April, 2019, is not payable. However need is not felt to detail the same in these Review Petitions as the reply of the petitioner thereto has not been called yet and only if the review is allowed and the said documents are permitted to be considered, would the need therefor arise.

9. The respondents/review petitioners, in the Review Petitions, have also pleaded with reference to precedents, how a case for grant of review is made out.

10. The counsel for the respondents/review petitioners, during the hearing, on the basis of R. Thiyagarajan supra has contended that the direction given in the judgment dated 10th April, 2019, of which review is sought, for payment of RMA to persons other than the petitioner, is contrary thereto.

It is also informed that the respondents/review petitioners, under the judgment have to incur a financial liability of eight thousand crores and has

contended that such financial implications ought to have a bearing on the Court and has referred us to PGF Limited Vs. Union of India (2015) 13 SCC

50 in this regard. It is yet further argued that the judgment dated 10th April, 2019, of which review is sought, is premised on BSF paying RMA but

which is factually incorrect. It is contended that both RMA and Detachment Allowance are not payable and the judgment dated 10th April, 2019 also

cannot be read as directing the payment of both.

11. Per contra, the counsel for the petitioner/non-review petitioner has contended that the direction in the judgment dated 10th April, 2019, of which

review is sought, for payment to all, was issued since the OM dated 7th September, 1998 was challenged and was quashed. It is argued that the

respondents/review petitioners, at the time of hearing of the writ petition, did not controvert that BSF was paying RMA. It is contended that even

otherwise the nature of the relief claimed by the petitioner in the writ petition was such which was general in nature i.e. if granted to the petitioner,

having application to all those similarly situated as the petitioner. Reference is made to State of Uttar Pradesh Vs. Arvind Kumar Srivastava (2015) 1

SCC 347, holding that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike, by

extending the same benefit to them since not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India.

12. Having perused the Review Petitions and heard the counsels, one thing definitely stands out and cannot be controverted is that all the Rules now

referred to and all the arguments now made, were not taken into consideration while pronouncing the judgment dated 10th April, 2019. This was not

owing to any fault of the Court or on account of the Court ignoring the same, inspite of being available on record but clearly on account of the

respondents/review petitioners not placing the same before the Court, as have placed now. To that extent, the respondents/review petitioners, by way

of these Review Petitions, are indeed seeking re-hearing by engaging a different counsel and which is not permissible in law.

13. However notwithstanding the same, what prevails with us to allow the Review Petitions is, that the relief, vide the judgment dated 10th April, 2019

has been granted even to those who were not even before the Court. The limitations on the Court, viz. of being not entitled to re-hear the controversy

while entertaining a review of an order granting relief to a petitioner, would not apply as far as the order grants relief to others, who had not even

petitioned the Court or who were not before the Court. The respondents/review petitioners have pleaded and the counsel for the petitioner has not

disputed, that as far as the petitioner is concerned, the judgment dated 10th April, 2019, of which review is sought, has been complied with. For the

constitutional jurisdiction of this Court to be invoked, the petitioner has to disclose a cause of action, save the exception carved out in the case of

Public Interest Litigations (PILs). Admittedly, W.P.(C) No.4151/2015 was not filed as a PIL and even after filing thereof, was not treated as a PIL

and the Roster Bench which decided the writ petition was not even authorised to hear and decide the PILs save on specific assignment by Hon'ble the

Chief Justice. The grant of the relief in the writ petition, in general, to all members of CRPF and CPMFs who had not even petitioned and were not

before the Court and had not disclosed the cause of action, thus was indeed in the nature of, as the Court is authorised to grant in a PIL, and the

matter requires to be reviewed.

14. We are thus inclined to allow these Review Petitions.

15. Accordingly, Review Petitions No.4/2021 & 7/2021 are allowed and the judgment dated 10th April, 2019 and the order dated 13th March, 2020 in clarification thereof, are recalled.

16. However the same will not entitle the respondents/review petitioners to claim refund from the petitioner or from others, to whom in compliance of the judgment/order, which have now been recalled, monetary benefits have already been granted.

17. Review Petition No.4/2021 and Review Petition No.7/2021 are disposed of.

W.P.(C) No.4151/2015

18. It is deemed appropriate to grant an opportunity to the respondents to file an additional affidavit.

19. The same be filed within four weeks.

20. Rejoinder thereto, if any, be filed within further four weeks thereafter.

21. List before the Roster Bench on, 27th July, 2021.