

DIRECTOR GENERAL, CRPF & ORS.

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v.

JANARDAN SINGH & ORS.

(Civil Appeal No. 5850 of 2011)

JULY 02, 2018

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[ADARSH KUMAR GOEL AND ASHOK BHUSHAN, JJ.]

Service Law – Allowances – Special (Duty) Allowances – Claim of – On facts, by the Government Order dated 31.03.1987, benefit of Special (Duty) Allowances extended to CRPF personnels posted and serving, and had their headquarters in North Eastern Region – Respondents-pharmacists in CRPF posted in North Eastern Region but their Headquarters were in Gwalior; sought Special (Duty) Allowances for the period during which they were posted in the North Eastern Region – However, case of Director General, CRPF that respondents entitled to Special (Duty) Allowances only with effect from 03.08.2005 when by the Office Memorandum, the Government allowed the claim of CRPF personnel that benefits would be extended to all whether their headquarters are in North Eastern Region or not – Courts below granted Special (Duty) Allowances to the respondents for the period they actually worked in the North Eastern Region – On appeal, held: When the purpose is to encourage and retain the personnel in North Eastern Region, denial of benefit of Special (Duty) Allowance to those who although posted and serving in North Eastern Region but have their Headquarter outside the North East Region does not have any rational nexus with object sought to be achieved – Perusal of the Order dated 03.08.2005 does not indicate that the said benefit was intended only after 03.08.2005 – Order uses the words ‘it is clarified that allowance would be admissible to the personnels who are actually working in the North East Region’ – Order was clarificatory in nature – To differentiate the employees in two categories, whose Headquarters are within North Eastern Region and whose Headquarters are outside the North Eastern Region, clearly indicate that classification is not founded on any intelligible differentia – Classification as made in the GO dated 31.03.1987 did not pass the twin test – Government having itself realised the error, corrected

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A *the same by GO dated 03.08.2005 – Thus, it was unconstitutional to deny the said benefit on the premise that Government corrected its error only on 03.08.2005, hence, with effect from 03.08.2005 only the benefit should be given – Order passed by the courts below upheld.*

B **Dismissing the appeal, the Court**

HELD: 1.1 The main Office Memorandum by which Special (Duty) Allowance was decided to be granted is dated 14.12.1983. A perusal of the said Memorandum clearly indicates that genesis of grant of Special (Duty) Allowance was posting of person in North Eastern Region. The said benefits were extended to attract and retain the services of the competent officers serving in North Eastern Region. The said benefit was extended to CRPF personnels also. The benefit as extended by Office Memorandum dated 14.12.1983 was revised from time to time and by 29.08.1986 revised orders were issued with effect from 01.10.1986, benefit of which orders was claimed in the claim petition filed by the respondents before the Tribunal. A perusal of the letter dated 15.04.2005 indicates that only reason for denying the Special (Duty) Allowance to the respondents was that their Headquarters were in Shivpuri/Gwalior i.e. out of North Eastern Region although there was no denial that their posting was in North Eastern Region. [Paras 9, 11-13][88-F; 89-C-F]

1.2 The purpose and object of granting the benefit was to reward the persons who are posted in the North Eastern Region. The tribunal has directed for granting the benefit to the respondents for the period they have actually worked in the North Eastern Region. When the basis for granting Special (Duty) Allowance was posting in North Eastern Region, it cannot be seen how the respondents who were posted in the North Eastern Region would have been denied the Special (Duty) Allowance on the ground that their Headquarters are in Shivpuri/Gwalior. The benefit is attached to their posting in the North Eastern Region and denial on the ground that their Headquarters are in Shivpuri/Gwalior has no nexus with their claim. [Para 14][89-F-H; 90-A]

1.3 A perusal of the Order dated 03.08.2005 does not indicate that the said benefit was intended only after 03.08.2005.

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Paragraph 2 of the order uses the words “it is clarified that allowance would be admissible to the personnels who are actually working in the North East Region”. The Order issued by the Government was clarificatory in nature. [Para 16][90-B-C] A

1.4 By Government Order dated 31.03.1987 Special (Duty) Allowance was extended to CRPF personnel posted and serving in North East Region who had their Headquarters also in that region. Obvious inference was that those personnel posted and serving in North East Region whose Headquarters were not in that region were not entitled to the benefit. [Para 17][90-C-D] B

1.5 Article 14 does not prohibit reasonable classification but for passing test of permissible classification there are two conditions which have been time and again laid down and reiterated. There is no intelligible differentia between two classes of employees posted and serving in North East Region. The policy of law as is clear from the original Government Order dated 14.12.1983, it is clear that Government came with the scheme of Special (Duty) Allowance with the object and purpose of encouraging, attracting and retaining the services of the officers in the North Eastern Region. To differentiate the employees in two categories-whose Headquarters are within North Eastern Region and whose Headquarters are outside the Region, clearly indicate that classification is not founded on any intelligible differentia. Further the differentia has no rational relation to the object sought to be achieved. When the purpose is to encourage and retain the personnel in North Eastern Region, to deny the benefit to those who although posted and serving in North Eastern Region have their Headquarter outside the North East Region does not have any rational nexus with object sought to be achieved. [Paras 18, 20 and 21][90-+F; 91-E-H; 92-A] C D E F

Budhan Choudhary v. State of Bihar AIR 1955 SC 191 : 1955 SCR 1045; *Harakchand Ratanchand Banthia and others v. Union of India and others* AIR 1970 SC 1453 : [1970] 1 SCR 479 – referred to. G

1.6 The classification as made in the Government Order dated 31.03.1987 does not pass the twin test. The Government having itself realised the error has corrected the same by H

A **Government Order dated 03.08.2005 permitted the Special (Duty) Allowance to all who are posted and serving in North East Region irrespective of the facts as whether their Headquarters are within or outside the North Eastern Region. [Para 22][92-A-B]**

B **1.7 When the earlier classification as envisaged by GO dated 31.03.1987 itself not been valid to deny the benefit to those who were entitled to the Special (Duty) Allowance on the ground that Government came with the clarification only on 03.08.2005 shall neither be equitable nor shall stand the test of equality before the law. When the denial did not pass the twin test of valid classification and was unconstitutional to deny the said benefit on the premise that Government corrected its error only on 03.08.2005, hence, with effect from 03.08.2005 only the benefit should be given does not appeal to reason. Thus, there is no ground to interfere with the judgment of the High Court. [Paras 23-25][92-C-E]**

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Case Law Reference

[1955] SCR 1045 referred to Para 18

[1970] 1 SCR 479 referred to Para 19

E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5850 of 2011.

From the Judgment and Order dated 14.02.2008 of the High Court of Allahabad in Civil Misc. Writ Petition No.8608 of 2008.

F Vikramjeet Banerjee, ASG, Kiran Bhardwaj, Shailender Saini, Ayush Anand, Shubhandu Anand, Ms. Sushma Suri, Advs. for the Appellants.

Yatish Mohan, Sumit Kr. Jha, Subhash Chandra Sagar (for E.C. Vidya Sagar), Advs. for the Respondents.

The Judgment of the Court was delivered by

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ASHOK BHUSHAN, J. 1. Director-General, CRPF, the Union of India and Additional-Director-General, group centre, CRPF, has come up in this appeal questioning the judgment of Allahabad High Court dated 14.02.2008 by which judgment the High Court dismissed Writ Petition filed by the appellant upholding the order of Central Administrative

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Tribunal dated 05.11.2007 by which claim of Special (Duty) Allowance of the respondent was accepted. A

2. Brief facts of the case are:

The Government of India, Ministry of Finance vide its Office Memorandum dated 14.12.1983 decided to extend certain benefits to the officers in service in North Eastern Region of the country. One of the benefits which was decided to be extended to those employees/officers was to grant Special (Duty) Allowance on posting to any station in the North Eastern Region. The said benefits were subsequently extended to the employees of CRPF. The respondents 2,3 and 4 were appointed as pharmacists in CRPF on 08.09.1989, 28.06.1988 and 11.06.1981 respectively and they were posted in different places in India including North Eastern Region. A letter dated 31.03.1987 was issued by Government of India, Ministry of Home Affairs, according to which the benefit of O.M. dated 28.12.1983 read with O.M. dated 29.10.1986 is to be extended to BSF, CRPF & CISF personnel posted and serving in North Eastern Region having their Headquarters in that region. The respondents submitted an application regarding sanction of Special (Duty) Allowance. The respondent case was that he is posted in North Eastern Region and is entitled to Special (Duty) Allowance he being posted in unit Johrat in Assam. The representation was replied by letter dated 15.04.2005 of office of the commandant stating that since Headquarter of Personnel is in Shivpuri/Gwalior, hence, person is not entitled for Special (Duty) Allowance. Letter from Deputy-Inspector-General of Police dated 11.07.2005 was sent to the Commandant, CRPF, informing that although Director-General by his letter dated 12.03.1992 has sent proposal to Ministry of Home Affairs that Special (Duty) Allowance should be given to all the battalions whose Headquarters are not in the North East but the battalions are deployed in the North East. It was further stated that the consent of Ministry of Home Affairs has not yet been received. On 3rd August 2005, Government of India, Ministry of Home Affairs issued an order on the subject:

“No. A-I-3/Inst-Accts-3/PF-III

Government of India

Ministry of Home Affairs

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North Block, New Delhi
Dated, the 3rd August, 2005

OFFICE MEMORANDUM

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SUB: ALLOWANCE AND FACILITIES FOR CIVILIAN EMPLOYEES OF THE CENTRAL GOVERNMENT SERVING IN THE STATES AND UNION TERRITORIES OF NORTH EASTERN REGION, ANDAMAN AND NICOBAR ISLANDS AND LAKSHADWEEP.”

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3. The Order clarified that allowance to be admissible to the personnel who were actually working in the North East Region. The respondents filed Original Application No.778 of 2006 before Central Administrative Tribunal claiming grant of Special (Duty) Allowance as per the Order dated 14.12.1983. The Central Administrative Tribunal by its judgment and Order dated 05.11.2007 directed for sanction of Special (Duty) Allowance to the applicants for the period they have actually worked in the North Eastern Region. Against the Order of Tribunal, appellants filed a Writ Petition in Allahabad High Court which was dismissed on 14.02.2008 aggrieved against which Order the present appeal has been filed.

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4. The issue in this appeal is a very limited issue i.e. whether the respondents were entitled for Special (Duty) Allowances for the period during which they were posted in North Eastern Region from the date of their posting in the North Eastern Region or only with effect from 03.08.2005 when the Office Memorandum was issued by the Government of India which allowed the claim of CPF personnels.

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5. Learned Counsel for the appellants submits that the claim of respondents for Special (Duty) Allowance was earlier rejected since, although they were working in the North East Region but their Headquarters were in Shivpuri/Gwalior. He submits that by Government Order dated 03.08.2005 it was decided to extend benefits to all whether their Headquarters are in North Eastern Region or not. Thus, he submits that the respondents were entitled for Special (Duty) Allowance only with effect from 03.08.2005. Both Tribunal and the High Court committed an error in directing for payment of Special (Duty) Allowance to the respondents for the entire period when they were posted in the North Eastern Region. The respondents were not eligible for Special (Duty)

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Allowance since as when they were deployed in the North Eastern Region their Headquarters were situated outside of North Eastern Region. A

6. The submissions are refuted by learned counsel appearing for the respondents. It is contended that Special (Duty) Allowance was granted to those who were employed in North Eastern Region. There is no dispute that respondents were posted in North Eastern Region. Their claim could not have been denied on the ground that although their battalions were posted in North Eastern Region but their Headquarters were out of North Eastern Region. He submits that the Government Order dated 03.08.2005 is clarificatory which makes it clear that all personnels who were posted in North Eastern Region were entitled for the benefits as per the O.M. dated 14.12.1983 read with O.M. dated 29.05.2002. B C

7. The Office Memorandum dated 03.08.2005 is to the following effect:

“ No. A-I-3/Inst-Accts-3/PF-III D

Government of India

Ministry of Home Affairs

North Block, New Delhi

Dated, the 3rd August, 2005 E

OFFICE MEMORANDUM

SUB: ALLOWANCE AND FACILITIES FOR CIVILIAN EMPLOYEES OF THE CENTRAL GOVERNMENT SERVING IN THE STATES AND UNION TERRITORIES OF NORTH EASTERN REGION, ANDAMAN AND NICOBAR ISLANDS AND LAKSHADWEEP. F

I am directed to refer to the Ministry's letter no.II-27012/31/85-FP- II dated 31.03.1987 vide which the CPF personnel posted in the North Eastern Region and not having their Headquarter in the North Eastern Region were not getting Special (Duty) Allowance because of condition that the Headquarters of such personnel should also be in North East. G

2.The matter has since been examined in consultation with Ministry of Finance and it has been decided to consider and allow H

A the claim of CPF personnel deployed in North East Region in the light of criteria laid down in Finance Ministry's O.M.No.20014/3/83-E-IV dated 14.12.1983 read with their O.M.No.11(5)/97-E-II(B) dated 29.05.2002. It is also clarified that the allowance would be admissible only to the personnel who are actually working in the North East Region.

B 3. The issues with the concurrence of Ministry of Finance, Deptt. of Expenditure, E-II(B) Branch vide UO No. 315/05 dated 10.08.2005 and integrated Finance Division of this Ministry vide their Dy. No.748/Fin.11/05 dated 03.08.2005.

C Sd/-
(Ranjanesh Sahai)
Director(Police Finance)"

D 8. Paragraph 2 of the Office Memorandum indicates that it was decided to allow the claim of CPF personnels deployed in North Eastern Region in the light of criteria laid down in Office Memorandum dated 14.12.1983 read with Office Memorandum dated 29.05.2002. It was further clarified that allowance would be admissible only to the personnels who were actually working in the North Eastern Region.

E 9. The issue is to whether the benefit of the above Office Memorandum is to be given with effect from 03.08.2005 only or the benefit of Special (Duty) Allowance is admissible after Office Memorandum dated 14.12.1983 was decided to be extended to CRPF personnels in the year 1987. The main Office Memorandum by which Special (Duty) Allowance was decided to be granted is dated 14.12.1983.

F The purpose and object for granting the said benefit is explained in opening paragraph of Office Memorandum which is to the following effect:

G " The need for attracting and retaining the services of competent officers of service in the North Eastern Region comprising the State of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel & Administrative Reforms, to review the existing allowances and facilities admissible in the various categories of Civilian Central Government employees

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...serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now released to decide as following....”

10. Further, Special (Duty) Allowance is sanctioned by same Office Memorandum which is to the following effect:

“(iii) Special (Duty) Allowance:-

Central Government civilian employees who have All-India transfer liability will be granted a Special (Duty) Allowance at the rate of 25 per cent of basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern Region.....”

11. A perusal of the aforesaid clearly indicates that genesis of grant of Special (Duty) Allowance was posting of person in North Eastern Region. The said benefits were extended to attract and retain the services of the competent officers serving in North Eastern Region.

12. There is no dispute that the said benefit was extended to CRPF personnels also. The benefit as extended by Office Memorandum dated 14.12.1983 was revised from time to time and by 29.08.1986 revised orders were issued with effect from 01.10.1986, benefit of which orders was claimed in the claim petition filed by the respondents before the Tribunal.

13. A perusal of the letter dated 15.04.2005 (Annexure-P5) indicates that only reason for denying the Special (Duty) Allowance to the respondents was that their Headquarters were in Shivpuri/Gwalior i.e. out of North Eastern Region although there was no denial that their posting was in North Eastern Region.

14. The purpose and object of granting the benefit as noticed above was to reward the persons who are posted in the North Eastern Region. The Tribunal has directed for granting the benefit to the respondents for the period they have actually worked in the North Eastern Region. When the basis for granting Special (Duty) Allowance was posting in North Eastern Region, we fail to see that how the respondents who were posted in the North Eastern Region would have been denied the Special (Duty) Allowance on the ground that their Headquarters are in Shivpuri/Gwalior. The benefit is attached to their posting in the North Eastern Region and denial on the ground that their Headquarters are in

- A Shivpuri/Gwalior has no nexus with their claim. The Tribunal has allowed that claim which has been affirmed by the High Court.

15. Much emphasis has been given by the counsel for the appellant that Order dated 03.08.2005 has prospective application only and the benefit could have given only with effect from 03.08.2005 by which period some of the respondents were posted out of North Eastern Region.

- B 16. A perusal of the Order dated 03.08.2005 does not indicate that the said benefit was intended only after 03.08.2005. Paragraph 2 of the order uses the words “it is clarified that allowance would be admissible to the personnels who are actually working in the North East Region”.
- C The Order issued by the Government was clarificatory in nature.

17. We have already noticed that by Government Order dated 31.03.1987 Special (Duty) Allowance was extended to CRPF personnel posted and serving in North East Region who had their Headquarters also in that region. Obvious inference was that those personnel posted and serving in North East Region whose Headquarters were not in that region were not entitled to the benefit. Whether such classification for extending the benefit to one class of personnel who were both posted and serving there and had their Headquarter there and those personnels who were posted and serving there and having their Headquarter outside the North East Region is valid or not and passes the test of equality before law under Article 14 is the question also needs to be considered.

- D 18. Article 14 does not prohibit reasonable classification but for passing test of permissible classification there are two conditions which have been time and again laid down and reiterated. It is useful to refer to the Constitution Bench judgment of this Court in **AIR 1955 SC 191, Budhan Choudhary versus State of Bihar**. In paragraph 5, following has been laid down:-

“5....It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question.

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The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure...

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19. Another judgment which needs to be noticed with regard to Article 14 is a judgment of this Court in **AIR 1970 SC 1453, Harakchand Ratanchand Banthia and others vs. Union of India and others**. In paragraph 23, following has been laid down:

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“23....When a law is challenged as violative of Article 14 of the Constitution it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and object of the Act the Court has to apply a dual test in examining its validity (1) whether the classification is rational and based upon an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group and (2) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object...”

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20. When we apply the ratio as laid down above we find that there is no intelligible differentia between two classes of employees posted and serving in North East Region as noted above. The policy of law as is clear from the original Government Order dated 14.12.1983, it is clear that Government came with the scheme of Special (Duty) Allowance with the object and purpose of encouraging, attracting and retaining the services of the officers in the North Eastern Region. To differentiate the employees in two categories i.e. (i) whose Headquarters are within North Eastern Region and (ii) whose Headquarters are outside the North Eastern Region, clearly indicate that classification is not founded on any intelligible differentia.

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21. Further the differentia has no rational relation to the object sought to be achieved. When the purpose is to encourage and retain the personnel in North Eastern Region to deny the benefit of Special (Duty) Allowance to those who although posted and serving in North Eastern

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A Region have their Headquarter outside the North East Region does not have any rational nexus with object sought to be achieved.

22. The classification as made in the Government Order dated 31.03.1987 does not pass the twin test as noted above. The Government having itself realised the error has corrected the same by Government Order dated 03.08.2005 permitted the Special (Duty) Allowance to all who are posted and serving in North East Region irrespective of the facts as whether their Headquarters are within the North Eastern Region or outside the North Eastern Region.

23. When the earlier classification as envisaged by Government Order dated 31.03.1987 itself not been valid to deny the benefit to those who were entitled to the Special (Duty) Allowance on the ground that Government came with the clarification only on 03.08.2005 shall neither be equitable nor shall stand the test of equality before the law.

24. When the denial as noted above did not pass the twin test of valid classification and was unconstitutional to deny the said benefit on the premise that Government corrected its error only on 03.08.2005, hence, with effect from 03.08.2005 only the benefit should be given does not appeal to reason.

25. In view of foregoing discussions, we do not find any ground to interfere with the judgment of the High Court. In the result, the appeal is dismissed.