SUPREME COURT OF INDIA

Union of India through Cabinet Secretary

Vs.

Captain Gurdev Singh

C.A.No.2763 of 2009

(N.V.Ramana and Mohan,M.Shantagagouda,JJ.,)

11.02.2019

JUDGMENT

Mohan M. Shantanagoudar,J.,

This appeal arises out of the final judgment and order dated 07.05.2007 passed by the High Court of Delhi in C.M. No. 12743/2006 in W.P. (C) Nos. 17184-17185/2004, allowing the application filed by the respondents herein for direction and clarification of the order of the High Court dated 22.11.2005.

2. Vide the judgment dated 07.05.2007 (henceforth "the impugned judgment"), the appellants herein, i.e. the Union of India and the Ministries of Defence, External Affairs and Finance, were directed to award parity between the Bhutan Compensatory Allowance payable to the Indian Military Training Team (in short,

"the IMTRAT") posted in Bhutan, and the Foreign Allowance payable to Indian diplomatic personnel serving in Bhutan under the Ministry of External Affairs, Government of India (in short, "the MEA"). It is relevant to mention here itself that the IMTRAT consists of Service Officers and Personnel Below Officer Rank (in short, "PBORs").

3. The facts leading to the instant appeal are as follows: The instant case revolves around the payment of compensatory allowances to three classes of personnel. The first category is that of personnel belonging to the IMTRAT, which has been posted in Bhutan to train personnel in the Bhutanese Army. IMTRAT personnel receive a compensatory allowance for being posted in Bhutan, called the Bhutan Compensatory Allowance (in short, "the BCA"), which used to have a depression (i.e. deduction) upon it of 22.5% for Service Officers and 10% for PBORs. This was due to the provision of free mess and canteen facilities to the Service Officers and free ration, clothing and accommodation to the PBORs. The second category of personnel constitutes civilian personnel working in various projects in Bhutan (which are self-financed or aided by the Government of India) such as the Border Road Organisation's Project Dantak, the Tata Hydroelectric Project, the Central Water Commission, etc. The BCA is payable without any depression to

such personnel. The third category constitutes MEA personnel in Bhutan, who receive a different compensatory allowance called the Foreign Allowance (in short, "the FA"), under the Indian Foreign Service (Pay, Leave, Compensatory Allowance and other Conditions of Service) Rules, 1981 (in short "the IFS Rules").

4. There was a demand by IMTRAT personnel for the removal of the depression being imposed upon the BCA being paid to them, which was rejected by the Fifth Central Pay Commission. The issue was thereafter considered by a High Level Committee, which recommended reconsideration of the demand, which was subsequently considered by a Group of Officers chaired by the Cabinet Secretary. The Group of Officers recommended, vide its report submitted on 05.07.1999, that IMTRAT service personnel should be paid the BCA at the same rate as their civilian counterparts, and the existing depression be done away with, subject to the levy of appropriate charges on the facilities that were hitherto free. These recommendations of the Group of Officers were accepted vide the Cabinet decision dated 30.11.1999.

5. Writ Petition Nos. 17184-85/2004 were filed by two IMTRAT personnel, posted in Bhutan since 2003-2004, on two counts. Firstly, they sought parity between the BCA payable to IMTRAT personnel and the FA payable to their 'civilian counterparts', who, according to them, were the Indian civil personnel/deputationists under the Indian Embassy/MEA in Bhutan (i.e., the third category of personnel mentioned supra). This was on the ground that parity between the two allowances had existed for 25 years (from 1973 to 1997), after which the FA for MEA personnel had been revised regularly, but the BCA had been revised only twice, once by 25% on 01.01.2001 and once again by 11% on 01.04.2005, and that too in an ad hoc manner, which had still failed to re-establish parity between the two allowances. Secondly, they sought implementation of the Cabinet decision dated 30.11.1999 regarding removal of depression and imposition of charges for free facilities, which had not yet been implemented.

6. During the pendency of the above writ petitions, the Cabinet decision dated 30.11.1999 was given effect to through an order of the Ministry of Defence dated 20.09.2005, removing the existing depression and directing that the payment of the BCA to IMTRAT personnel be made at the same rates as to their civilian counterparts, subject to the recovery of nominal charges @ 6% and 4% for Service Officers and PBORs respectively for providing mess facilities, etc. The said order was prospective in operation.

7. The writ petitions were allowed by the High Court vide order dated 22.11.2005 (hereinafter "the original order"), setting aside the Ministry of Defence order dated 20.09.2005 to the extent it gave relief prospectively. The High Court gave effect to the Cabinet decision dated 30.11.1999 from 01.12.1999, after taking into account the two ad hoc revisions. It would not be out of place to mention here that the operative portions of the Cabinet decision and the Ministry of Defence order were identical, except for the important difference that the Cabinet decision dated 30.11.1999 did not specify the rates of the nominal charges to be imposed on the personnel in lieu of the depression, which only came to be specified by the Ministry of Defence order dated 20.09.2005. The direction in the writ petitions effectively amounted to giving retrospective operation to the Ministry of

Defence order dated 20.09.2005, which is evident from the following observations made in the original order (reproduced from the SLP paper book):

> "14. Accordingly, the writ petition is allowed and the order dated 20th September, 2005 to the extent it grants the relief prospectively to the petitioners is quashed and set aside and the respondents are directed to implement the Cabinet decision dated 30th November, 1999 ith effect from 1 st December, 1999 in favour of the petitioner after taking into account the two ad hoc revisions on 1 - January, 2001 and 1st April, 2005 and are further directed to pay all the arrears consequently payable to the petitioners on or before 31st January, 2006.
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> 15. The learned counsel for the petitioner pressed for interest in view of the fact that the dues were wrongfully withheld. The learned counsel for the respondent sought time to obtain instructions from the respondent in respect of the interest sought by the petitioner consequent to the retrospective operation of the communication/letter dated 20 th September, 2005 in consonance with the above decision in this petition. However, we are of the view that it is appropriate to await the decision of the respondent and if the decision is taken by the Government itself to award the BCA as approved by the Group of Officers w.e.f. 30th November, 1999, then interest on the said amount may not be granted by this Court to the petitioner. However, in case the decision is otherwise, this Court will consider the prayer for grant of interest at an appropriate rate."
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> (emphasis supplied)

8. The Union of India sought multiple opportunities to comply with the order, in which interregnum, the Ministry of Defence issued a corrigendum on 23.02.2006 to its order dated 20.09.2005, directing that the removal of depression and recovery of charges at the specified rates be given retrospective effect from 01.12.1999.

9. However, in its order dated 07.03.2006, the High Court observed that although one part of the directions in the original order had been complied with, the " remaining part' of the directions was still unimplemented, and granted further time for such compliance. After this order, an additional affidavit was filed by the MEA, claiming that with the issue of the corrigendum making the removal of depression effective from 01.12.1999, the directions issued in the original order had been effectively complied with. It was further stated that the direction with respect to periodic revision of the BCA had also been taken note of, and such revisions would be duly considered from time to time. It was also placed on record that IMTRAT personnel were being paid the same BCA as other Indian civilian personnel in Bhutan (i.e. the second category of personnel mentioned supra).

10. Subsequently, in light of the above affidavit, the respondents filed an application i.e. CM No. 12743/2006 for direction and clarification of the original order, on the basis that the Union of India was incorrectly interpreting the term " civilian counterparts" as referring to persons on deputation with the Royal Government of Bhutan, and seeking a clarification that the original order directed the maintenance of parity between the BCA and the FA paid to MEA personnel at the Indian Embassy in Bhutan. On this application,

the impugned judgment was passed affirming parity between the BCA and the FA, leading to the instant appeal by the appellants on the ground that the High Court erred in granting the relief of such parity, which was not contemplated in the directions issued in the original order, and that the BCA could not be held to be at par with the FA.

11. This Court is conscious of the fact that the original order was never challenged by either the appellants or the respondents, and has thus attained finality. The fundamental issue before us, therefore, is whether the impugned judgment went beyond the scope of the original order in directing parity between the FA and the BCA payable to IMTRAT personnel.

12. To that end, the appellants submitted that the original order did not direct the two allowances to be maintained at par, and while dealing with the issue of parity between the two allowances it only contemplated that periodic revisions be undertaken to the BCA just like periodic revisions had been undertaken for the FA. Furthermore, it was submitted that the direction for granting retrospective effect to the removal of the depression on the BCA, payable to IMTRAT personnel had to be considered in the light of the underlying recommendation of the High Level Committee and the Group of Officers, and the Cabinet decision dated 30.11.1999. These were to the effect that the BCA be paid to the IMTRAT at the same rate as their "civilian counterparts", which did not make any reference whatsoever to the FA paid to MEA personnel, and were only meant to ensure parity with civilian deputationists in Bhutan who receive the BCA, albeit without any depression.

13. The respondents, on the other hand, submitted that there were two parts to the directions in the original order and only one of them had been complied with by the appellants, i.e. removal of depression and its retrospective operation. The impugned judgment in no way went beyond the judgment being clarified, as the clarification was in consonance with the second part of the directions in the original order in paragraphs 12 and 13, on the issue of parity between the FA and the BCA. This claim was based on the argument that the recommendation of the Group of Officers and the Cabinet decision dated 30.11.1999 to the effect that the BCA be paid to the IMTRAT at the same rate as their "civilian counterparts" could only mean parity with MEA personnel. It was further argued that the appellants themselves had submitted before the High Court while the writ petitions were being heard that the grievances of the respondents had been fully met post the removal of depression on the BCA, which indicated acceptance of the interpretation of the term "civilian counterparts" as MEA personnel; and that in the order of the High Court dated 07.03.2006 (already mentioned supra), it had been observed that the appellants had not complied with the "remaining part of the directions" given in the original order.

14. To determine the validity of the clarification made vide the impugned judgment, it is essential to first examine the original order. The High Court acknowledged while passing the original order that two grievances had been raised by the writ petitioners (the respondents herein)—i.e., concerning removal of depression, and concerning parity with MEA personnel in the quantum of the respective allowances in the form of the BCA and the FA. With regard to the question of depression, the grievance was in terms of the non-implementation of the Cabinet decision dated 30.11.1999. It was contended by the

writ petitioners that the decision needed to be enforced retrospectively from 30.11.1999, when the Cabinet decision was made, or from 01.08.1997, the date suggested by the Group of Officers.

15. The High Court went on to conclude that the writ petitioners were justified in claiming retrospective benefit of the Ministry of Defence order dated 20.09.2005, the prospective operation of which was arbitrary insofar as it did not disclose any reason for the same, and unreasonable insofar as it failed to address the lack of parity between the BCA and FA payable to IMTRAT and MEA personnel respectively between 1997 and 2005, as they had been at par since the institution of the FA in 1973 until 1997, due to non-revision of the BCA when the FA was revised. The High Court further reasoned that the writ petitioners' stance was vindicated by the recommendation of the Group of Officers and the Cabinet decision dated 30.11.1999. On this basis, the High Court directed that the Cabinet decision dated 30.11.1999 be given effect from 01.12.1999, after taking into account the two ad hoc revisions of the BCA undertaken previously, and to pay all consequent arrears.

16. However, it is evident that though the above observations were made by the High Court concerning parity between the two allowances, no direction was issued to that effect. In this respect, it would be useful to revisit the directions actually and finally issued in the original order (reproduced from the SLP paper book):

"14. Accordingly, the writ petition is allowed and the order dated 20th September, 2005 to the extent it grants the relief prospectively to the petitioners is quashed and set aside and the respondents are directed to implement the Cabinet decision dated 30th November, 1999 with effect from 1 st December, 1999 in favour of the petitioner after taking into account the two ad hoc revisions on 1 - January, 2001 and 1st April, 2005 and are further directed to pay all the arrears consequently payable to the petitioners on or before 31st January, 2006.

15. The learned counsel for the petitioner pressed for interest in view of the fact that the dues were wrongfully withheld. The learned counsel for the respondent sought time to obtain instructions from the respondent in respect of the interest sought by the petitioner consequent to the retrospective operation of the communication/letter dated 20th September, 2005 in consonance with the above decision in this petition. However, we are of the view that it is appropriate to await the decision of the respondent and if the decision is taken by the Government itself to award the BCA as approved by the Group of Officers w.e.f. 30th November, 1999, then interest on the said amount may not be granted by this Court to the petitioner. However, in case the decision is otherwise, this Court will consider the prayer for grant of interest at an appropriate rate."

(emphasis supplied)

17. It is clear that the operative portion of the order unambiguously states only that the Cabinet decision dated 30.11.1999 has to be given effect from 01.12.1999 (i.e. the Ministry of Defence order dated 20.09.2005 has to be given retrospective effect from

01.12.1999). This direction stands duly complied with after the issuance of the corrigendum dated 23.02.2006 to the Ministry of Defence order dated 20.09.2005. Evidently, the observations made by the High Court regarding parity between the BCA and the FA noted above are based on a conflation of two distinct grievances of the writ petitioners, i.e., firstly, removal of the depression from the BCA payable to IMTRAT personnel, and secondly, the reinstatement of parity of the BCA with the FA. Such conflation, in turn, appears to be based upon the implicit assumption of the High Court that the term "civilian counterparts" in the underlying recommendations of the High Level Committee and Group of Officers, and the Cabinet decision dated 30.11.1999, refers to MEA officials posted in Bhutan, though the term "civilian counterparts" itself has not been defined in any of the above recommendations/orders.

18. The impugned judgment throws light on the lack of consideration of this issue by the High Court while disposing of the writ petitions. It is noted in the impugned judgment that the Government could not at that stage (i.e. while the High Court was considering the application for clarification of the original order) raise the argument regarding non-parity between the BCA and the FA, or between IMTRAT and MEA personnel, after failing to raise it while the writ petitions were being heard. Moreover, while noting in paragraph 4 of the impugned judgment that the Government had specifically submitted before the High Court earlier that the grievances of the writ petitioners had been met through the Ministry of Defence order dated 20.09.2005, the High Court articulated the implicit assumption which had been made in the original order that the civilian counterparts of the IMTRAT personnel referred to in the report of the Group of Officers, Cabinet decision, etc. were MEA officials. It would be useful to compare and contrast extracts from the relevant paragraphs from the two judgments, i.e. paragraphs 10-13 of the original order and paragraph 4 of the impugned judgment, at this juncture. The relevant extract from paragraphs 10-13 of the original order (reproduced from the SLP paper book) is as follows:

"10. The learned counsel for the respondent Ms. Sangeeta Tomar has handed over a decision of the Government dated 20th September, 2005 which showed the acceptance of the parity claimed by the petitioners to a large extent by the Government and records the following:-

"1(9)/2000/D(Pay/Services)
Government of India Ministry of Defence New Delhi, the 20th September, 2005
The Chief of Army Staff,
The Chief of Air Staff,
The Chief of Naval Staff.

Subject: Removal of anomalies arising out of the implementation of the revised pay scales and allowances consequent to the fifth CPC recommendations- Bhutan Compensatory Allowance Removal of Depression Sir,

I am directed to refer to this Ministry's letter No. A/00787/AG/PS-3(a)/51-S/D(Pay/Services) dated 17th January, 1974 and No. 54452/AG/PS-3(a)/1808-S/D(Pay/Services) dated the 14th December, 1976 on the above subject and to state that

the issue regarding certain anomalies arising from the implementation of the revised pay scales and allowances consequent to the fifth CPC award for Defence Service Officers and Personnel Below Officer Rank (PBORs) has been considered by the Government in the light of the recommendations of the Committee specially constituted on the above subject and it has been decided that the depression of 22.5% and 10% for Officers and PBORs respectively from the Bhutan Compensatory Allowance may be removed and service personnel posted at IMTRAT, Bhutan be paid Bhutan Compensatory Allowance at the rates applicable to their civilian counterparts subject to the condition that full and final charges in respect of free facilities provided to them are recovered.

2. The charges in lieu of free facilities at the following rates will be recovered from the BCA laid down in this Ministry's letter No. 4(1)/2005/D(Pay/Services) dated 7th September, 2005:-

(i) Officers 6%

(ii) Personnel Below Officer Rank 4%
Yours faithfully Sd/-
Under Secretary to the Government of India"

11. The learned counsel for the respondent Ms. Sangita Tomar has thus contended that since the grievance of the petitioner has been met by the order dated 20th September, 2005, nothing survives in the present writ petition and therefore, the writ petition should be disposed of as having become infructuous. The learned senior counsel for the petitioner, Mr. Gaurab Banerji, however, drew our attention, what according to him, to the glaring infirmity in the above order. He submitted that the decision in paragraph 4 of the communication/letter dated 20th September, 2005 clearly states that it was prospective in nature i.e. with effect from 20th September, 2005. He has submitted that while the grievances raised in the writ petition have been met in respect of the period subsequent to 20th September, 2005, at least from 30th November, 1999 the date of the Cabinet Approval, if not from 1st August, 1997 as recommended by the Group of Officers, the allowances as approved by the order dated 20th September, 2005 ought to have been paid at least from the 30th November, 1999 when the Cabinet approved the said proposal.

12. While we do appreciate that the Government has taken a fair stand in acceding to the demands raised by the petitioners who represent the IMTRAT nevertheless there appears to be substance in the grievance raised by the learned counsel for the petitioner. There appears to be no reason averred or discernible why the parity between the MEA and the BCA which was in existence from 1973 to 1997 should not continue right upto 20th September, 2005. The allowance having been granted for being stationed in high cost of living area like Bhutan, there is no reason why it is not being paid from 1999 to 2005. The petitioners ought not to be deprived of this allowance for the period when the disparity between the BCA and the foreign allowance existed. The stand of the petitioner has indeed been vindicated as far back as 1997 by the recommendation of the G.O. and the approval of the Cabinet on 30th November, 1999. There is no rational cause justifying the delay in its implementation and the Government cannot make the petitioner the victim of its

inaction and lethargy. In so far as the amount deducted towards the free facilities provided is concerned, we are satisfied that no anomaly can be found in respect of the decision taken by the Ministry of Defence to deduct a lump sum of 6% and 4% from the allowance of Officers and PBORs respectively. Consequently, the prayer made in the writ petition qua the recovery of lump sum charges of 22.5% and 10% for officers and PBORs respectively no longer survives.

13. Accordingly, we are of the view that the petitioners are entitled to the allowance from 30 th November, 1999 when the Cabinet approved the proposal of the Group of Officers. The denial of the BCA at least from 30 th November, 1999 to the petitioners is wholly arbitrary and no reason whatsoever is discernible from the order why it was made prospective only. The prospective operation of the order of 20th September, 2005 is not only arbitrary as the order does not disclose any reason nor is it reasonable as the parity between the BCA payable to the IMTRAT and the foreign allowances payable to the personnel of MEA was disturbed due to
the non revision of BCA as and when the foreign allowances were revised. Since the anomaly has occurred due to the respondent's inaction the petitioner cannot be made to suffer for the fault of the respondents. The action of the respondents in denying the parity retrospectively violates Article 14 for arbitrariness and unreasonableness, and such action is also violative of Article 14 and 16 of the Constitution in so far as foreign allowances to MEA personnel have undergone periodic revisions without giving such benefits to the petitioners notwithstanding the erstwhile parity in force from 1973 to 1997."

(emphasis supplied)

The relevant extract from paragraph 4 of the impugned judgment
(reproduced from the SLP paper book) is as follows:

"4. The Government itself reiterated as recorded in paragraph 10 of the Judgment that the parity claimed by the Petitioner qua the civilian counter parts in Bhutan, which is naturally the officials of MEA was redressed by the decision of the Ministry of Defence dated 20th September, 2005 ..."

(emphasis supplied)

19. It is evident from the original order that no reference was made by the Government to equivalence between the MEA and IMTRAT personnel, though they made an implied reference to equivalence between the IMTRAT and their civilian counterparts. Despite the same, the High Court came to the erroneous conclusion that the Government also impliedly conceded that there should be equivalence between IMTRAT and MEA personnel. All through, it was the specific contention of the appellants that the BCA payable to IMTRAT personnel should be on par with the BCA of their civilian counterparts. As mentioned supra, the Government always maintained that "civilian counterparts" means the civilians working on projects, etc. but not the diplomatic personnel who come under the MEA. However, we hasten to add here itself that the Government's conduct in the form of certain submissions before the High Court may have generated confusion in the mind of the High Court while arriving at the conclusion that parity should be maintained between the MEA and the IMTRAT. However, the Court should not have confused itself based on such conduct.

20. The High Court had thus reached the conclusion in the original order that the only

point of contention between the parties was with respect to the retrospectivity of the Ministry of Defence order dated 20.09.2005, and on this basis the Court further formed the opinion that giving effect to the Cabinet decision dated 30.11.1999 from 01.12.1999 (which essentially amounted to giving retrospective effect to the Ministry of Defence order dated 20.09.2005) would lead to reinstatement of parity between the FA and the BCA. In the impugned judgment too, the Court made the same conflation of the issue of retrospective application of removal of the depression with the issue of parity between the BCA and the FA, based on the above interpretation of the term "civilian counterparts" in the Group of Officers report, the Cabinet decision, etc.

21. In the absence of any argument before the High Court during the hearing of the writ petitions on the meaning of the term "civilian counterparts", and in the absence of any specific finding recorded by the High Court in the original order to the effect that the term "civilian counterparts" refers to MEA personnel, the High Court in the impugned judgment should have restricted itself to the directions actually issued in the original order, which were limited to the relief of implementing the Cabinet decision dated 30.11.1999 from 01.12.1999. By granting the relief of parity, the Court went beyond the relief explicitly granted in the original order. It was not open to the Court to interpret the relief granted in such a manner so as to expand its scope to include the second relief prayed for but not granted. It must be kept in mind that the Court's power in a clarificatory proceeding is different from that in revision or appeal.

22. Therefore, in our considered opinion, the argument of the respondents, which effectively is that though the substantive relief of parity was not specified in the directions issued by the High Court in the original order, the surrounding discussion reveals the true intent of the High Court and the same was validly accounted for in the impugned judgment, cannot be accepted, inasmuch as the High Court has erred in going beyond the explicit directions issued in the original order.

23. The learned counsel on both sides, incidentally, also argued on the merits of the matter on the issue of parity/equivalence between the BCA payable to the IMTRAT and the FA payable to the MEA personnel. The case of the appellants, in this regard, fundamentally is that the FA and BCA are incomparable allowances paid to persons whose scope and nature of duties are completely different and whose service conditions are governed by different sets of rules/terms and conditions. Other notable arguments put forth by the appellants are that parity between the two allowances until 1997 was a mere coincidence arising out of similar methods of calculation and could not be demanded by way of legitimate expectation by the IMTRAT personnel since the Government never made any promise to that effect; that the parity was discontinued once the FA was linked to the United Nations Retail Price Index (in short "the UNRPI"); that granting the relief of parity would lead to demands for parity between the FA and the compensatory allowances paid to other deputationists/defence personnel in various countries and may have grave financial implications, and may even have security implications due to the possible reduction of military personnel in Bhutan; and that the difference between civilian and military personnel is anyway a valid ground for classification.

24. On the other hand, the case of the respondents in this regard primarily is that IMTRAT personnel cannot be equated with civilian personnel on deputation, who according to them are personnel under the control of the Royal Government of Bhutan in various projects aided by the Government of India, or those self-financed by the Bhutanese Government, whereas both the MEA and IMTRAT personnel work under the direct control of the Government of India, and therefore cannot be held at par with deputationists and are inter-se comparable. Other important arguments submitted by the respondents, in brief, are that the two allowances are of the same nature, i.e. their purpose is to offset the higher cost of living in a foreign country; that the BCA should be paid to IMTRAT personnel at an equivalent, if not greater, rate compared to the FA since they are working in a difficult terrain and in the deeply hostile atmosphere bordering Bhutan and China, with an exorbitant cost of living; that parity between IMTRAT and MEA personnel will not create grounds for parity between deputationists and the MEA, since the IMTRAT and deputationists constitute two separate classes; that there is parity between the compensatory allowances paid to IMTRAT-like teams and MEA personnel in other countries; that there was parity between the two allowances for 25 years which was arbitrarily discontinued; that the linkage of the FA with the UNRPI is not a valid ground for disparity since by the admission of the Government even the BCA payable to IMTRAT personnel was supposed to be linked to UN indices after 2002.

25. After duly considering the material placed on record before us, we are of the opinion that the High Court while passing the impugned judgment was not justified in concluding that a legitimate case for parity between the BCA payable to IMTRAT personnel and the FA payable to MEA personnel can be made out. Of course, it cannot be disputed that the purpose of both allowances is fundamentally the same, i.e. to meet the higher cost of living abroad, but at the same time the requirements that have to be met out of the two are somewhat different. IMTRAT personnel benefit to a larger extent compared to MEA personnel in terms of getting food and other purchases at a cheaper cost due to the provision of facilities such as mess, canteen, etc. Moreover, a comparison between the different allowances to which these two classes of personnel are entitled shows that IMTRAT personnel are entitled to an additional allowance called “Difficult Area Allowance”, and also receive Military Service Pay, in addition to Basic Pay which is paid to both MEA and IMTRAT personnel according to the respective grades of the personnel.

26. Moreover, it has not been shown by the respondents that the nature of the work done by the IMTRAT and MEA personnel is one and the same, or even comparable. The terms of appointment and conditions of service of the IMTRAT and MEA personnel are also completely different. This aspect in itself is sufficient to negate the case for parity pled by the respondents. The institution of the IMTRAT team for Bhutan can be traced to the sanction letter of the Government of India dated 27.8.1962, by which a military team (the IMTRAT) was loaned out for training purposes to the Government of Bhutan. As indicated by the letter dated 28.01.1985 from the Army Headquarters to the IMTRAT containing administrative instructions for the team, the IMTRAT is fully under the control of the Government of India and is an integral part of the Indian Armed Forces, functioning under the direct command of the Army Headquarters, Government of India. In contrast, MEA personnel are governed by the IFS Rules. In Rule 2, the said rules are stated to be

applicable to:

> "(i) all persons who have been, or may hereafter be, appointed to the Service; and (ii) any other officer of an All India Service or Central Civil Service, subject to the option, if any, exercised by such officer under the provisions of the Indian Foreign Service Rules."
>
> It is relevant to note that Rule 7 of the same refers to the FA, stating that:
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> "A member of the Service serving outside India may be granted a foreign allowance at such rates and subject to such conditions as may be prescribed by the Government from time to time."

27. At this juncture, it would be apt to observe that this Court has on several occasions affirmed that the difference between civilian and defence personnel is a valid classification. (For instance, see : *Confederation of Ex-Servicemen Associations v. Union of India*[1]*; Union of India v. K.P. Singh*[2]

28. Moreover, though it may be true that IMTRAT-like teams in other countries like Zambia, Lesotho and Botswana receive compensatory allowances at par with the FA paid to the Indian diplomats in those countries, it cannot be forgotten that IMTRAT-like teams working in certain other countries (except the aforementioned) have been stated to be receiving lesser compensatory allowances than the FA paid to MEA personnel posted in those countries. It is for the State to take a pragmatic view in the matter of fixing compensatory allowances on a country-to-country basis, depending on the facts and circumstances of each case, and Courts in such matters generally may not interfere, particularly when the decision to be taken by the State in such matters is akin to a policy decision.

29. Additionally, it is an undisputed fact that parity had existed between the two allowances for 25 years, but that does not mean that such action of the Government can be taken to mean that the Government should continue such parity in the future also. As mentioned supra, it is open for the State to modulate the allowances depending on the attending circumstances.

30. However, we accept the submission of the respondents that IMTRAT personnel cannot be termed as deputationists. It is evident from the letter dated 26.11.2008 from the Army Headquarters that IMTRAT personnel are not deputationists. Be that as it may, this in itself is not a sufficient ground to grant parity between IMTRAT and MEA personnel. Even a perusal of the recommendations of the 5th Central Pay Commission, the High Level Committee and the Group of Officers, as well as the Cabinet decision dated 30.11.1999, do not suggest in any manner that the civilian counterparts of the IMTRAT personnel are MEA personnel. The issue before them being the arbitrary depression imposed upon the BCA payable to IMTRAT personnel, the reference to "civilian counterparts" would naturally mean non¬military personnel who are receiving the BCA without any depression. It is relevant to note here that the 6th and 7th Central Pay Commissions also recommended

maintaining the status quo with respect to the BCA payable to IMTRAT personnel.

31. In view of the above discussion, we hold not only that the clarification made through the impugned judgment is beyond the scope of the original order dated 22.11.2005, but also that there were no valid grounds for the High Court while passing the impugned judgment to grant parity between the BCA payable to IMTRAT personnel and the FA payable to MEA personnel. The directions made in the original order are only to the effect that the removal of depression on the BCA payable to IMTRAT personnel, and its replacement with nominal charges for the erstwhile free facilities, be made effective from 01.12.1999. As noted supra, the same have been fully complied with by the appellants after the issuance of the corrigendum dated 23.02.2006. It is also pertinent to note that seven revisions of the BCA payable to IMTRAT personnel have been undertaken between 2007-2017 as per the appellants. However, having regard to the fact that the IMTRAT personnel are working in difficult areas of Bhutan bordering China, and as they have to be vigilant all through in the interest of our nation, they deserve to be provided the BCA without any depression. Hence, having regard to the totality of the facts and circumstances, we direct the Government to remove the depression of 6% and 4% respectively on the BCA payable to IMTRAT personnel, being the Service Officers and PBORs, with immediate effect.

32. Accordingly, we allow the instant appeal in part and set aside the impugned judgment dated 07.05.2007 with the aforementioned directions.

Judgment Referred.

[1]*(2006) 8 SCC 0399*
[2]*(2017) 3 SCC 0289*