SUPREME COURT OF INDIA

Union of India

Vs.

R.Thiyagarajan

C.A.No.2229 of 2020'

(Deepak Gupta and Aniruddha Bose,JJ.,)

03.04.2020

JUDGMENT

Deepak Gupta,J.,

SLP(C)No.18853 of 2017

1. Leave granted.

2. The respondent is employed with the Central Industrial Security Force (CISF). He was recruited as a constable in the year 1999.

3. The appellant enacted the Disaster Management Act, 2005 (for short 'the Act') and the same was notified on 26.12.2005. Section 44 of the Act provides that a National Disaster Response (NDRF) shall be constituted for the purpose of specialised response to threatening disaster situations or disasters. The Ministry of Home Affairs approved the constitution of the NDRF on 19.01.2006. The Disaster Management (National Disaster Response Force) Rules, 2008 (for short 'the Rules') were made by the Central Government under Section 75 of the Act and notified on 13.02.2008. The Rules were, in fact, enforced with effect from 11.09.2009.

4. The NDRF was initially constituted by drawing Battalions from the Central Police Forces, Border Security Force (BSF), Central Railway Police Force (CRPF), Indo Tibetan Border Police (ITBP) and Central Industrial Security Force (CISF). The entire Battalions were sent to the Director General, NDRF. Prior to the enforcement of the Rules i.e. on 11.09.2009, the personnel belonging to the various Central Para Military Forces continued to remain under the control and command of their respective police forces. They also continued to receive their pay and allowances from their parent organisation. After the Rules were enforced on 11.09.2009, the Battalions of the Central Para Military Forces which were sent to the NDRF were re-named as NDRF Battalions and their control has from that date vested with the NDRF. They also drew their pay and allowances from 11.09.2009 from the NDRF.

5. On 13.01.2010, an office memorandum was issued by the Director General, NDRF which provided that the Battalions of the NDRF had been re-named and re-numbered in

the NDRF to give the force a separate identity. The tenure of the respondent who had been sent to the NDRF on 18.04.2008 came to an end on 07.10.2011 when he was relieved of his duties in NDRF and repatriated to the CISF. He submitted a representation to the Director General, NDRF requesting that he be granted 10% deputation allowance and 25% special allowance with effect from 18.04.2008. Vide communication dated 23.07.2011 the respondent was informed that his case for grant of deputation allowance had been taken up with the Ministry of Home Affairs. On 31.07.2011, the respondent filed a writ petition in the High Court of Madras in which the prayer was that the respondent in the writ petition i.e. Union of India, Director General, NDRF and Director General, CISF be directed to pass orders on his representation dated 20.07.2020.

6. The appellant and other respondents in the writ petition contested the writ petition and claimed that the writ petitioner is not entitled to grant of any deputation allowance. In the meantime, on 14.01.2013 the Ministry of Home Affairs sent a letter that the competent authority had agreed that deputation allowance be paid to the personnel of the Central Para Military Forces deputed with the NDRF @ 5% if they are deputed in the same station and @ 10% if deputed outside the station subject to certain conditions. On the basis of this letter, the Director General, NDRF issued an order on 18.02.2013 on the above lines. However, the deputation allowance was made payable with effect from 14.01.2013. This was also clarified by the Government of India in its letter dated 25.03.2014.

7. In the meantime, the Delhi High Court vide judgment dated 11.08.2015 in Writ Petition (C) No.2532 of 2012, Brij Bhushan v. Union of India, which was a case of another employee of CISF deputed with the NDRF with effect from 24.07.2008, held that the petitioner therein would be entitled to deputation allowance for the period he remained in service with the NDRF. The judgment of the Delhi High Court was based on interpretation of the sub-rule 3(1) and 3(2) of the Rules which read as follows:

> "3. Constitution of Force:
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> (1) The personnel deputed from the Central Para Military Forces by the Central Government in the Ministry of Home Affairs vide Order number 1/15/20002-DM/NDM- III(A), dated the 19th January, 2006 shall be deemed to have been deputed in the National Disaster Response Force under these Rules."
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> "(2) The Central Government may, in consultation with the National Authority, depute, as and when required, such number of personnel from the Central Para Military Forces to the National Disaster Response Force for the purposes of disaster management, having skills, capabilities and qualifications and experience of handling disaster and their management and such other technical qualifications as prescribed by the Central Government in this behalf. Provided that in the case of non-availability of personnel with the required technical qualification and experience, the Central Government may appoint such personnel through deputation from other organizations."

8. The Delhi High Court held that the writ petitioner was deemed to be on deputation in terms of sub-rule 3(1) and 3(2) of the Rules and OM No. 6/8/2009-Esti.(Pay II) dated 17.06.2010, which reads as follows:

> "(e) Appointments of the nature of deemed deputation or transfers to ex-cadre posts made in exigencies of service with the specific condition that no deputation (duty) allowance will be admissible - e.g. (i) interim arrangements in the event of conversion of a Government office/organisation or a portion thereof into a PSU/autonomous body or vice-versa, and (ii) appointments to the same post in another cadre."
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> Relying on the aforesaid O.M., the Delhi High Court held that all persons who joined the NDRF would be treated to be on deputation from the date they joined the NDRF. Special Leave Petition against the said judgment was dismissed in limine without expressing any opinion on the merits of the case.

9. Coming to the instant case, the respondent filed writ petition in the Madras High Court. The learned Single Judge of the Madras High Court allowed the writ petition filed by the respondent herein relying upon the judgment of the Delhi High Court in the matter of Brij Bhushan (supra) referred to above. The learned Single Judge not only granted deputation allowance but also granted special allowance to the respondent.

10. Aggrieved by the aforesaid judgment, an appeal was filed before the Division Bench of the High Court by the Union of India. The Division Bench partly allowed the appeal of the Union of India and held that the respondent was only entitled to deputation allowance and not to any special allowance. However, the Division Bench further went on to hold that not only the respondent but all other personnel of the NDRF drawn from other forces from 19.01.2006 up to 13.01.2013 would be entitled to be paid deputation allowance and the Central Government was directed to ensure that this amount was paid within a maximum period of six months. This judgment is under challenge before us.

11. It is pertinent to mention that at the time of admission the judgment and order dated 22.01.2007 passed by the High Court of Madras was stayed.

12. We have heard Ms. Madhavi Divan, learned Additional Solicitor General for the State, Mr. Dhirendra Kumar Mishra, learned counsel for the respondent and Ms. Santwana, learned counsel for the intervenors. At this stage, we may point out that the intervenors are members of the NDRF and they filed petitions before the Delhi High Court claiming deputation allowance like the respondent. In their cases an order has been passed by the Delhi High Court that the judgment of this Court in the present case be awaited since that will have vital bearing on the case of the intervenors. Therefore, we have heard learned counsel for the intervenors in detail.

13. The main argument raised on behalf of the appellant is that the O.M. granting deputation allowance makes it clear that the said allowance is to be paid from 14.01.2013 in which the Court could not have directed payment of the said allowance from the date of the constitution of the force on 19.01.2006. In the alternative, it is submitted that the personnel of the various Central Para Military Forces who were sent to the NDRF could

not be said to be on deputation at least till 13.01.2010 when the NDRF constituted its own Battalions. It is urged by Ms. Madhavi Divan that it was not one personnel who was deputed from the Central Para Military Forces to the NDRF but entire Battalions. These Battalions remained under the administrative and disciplinary control of the Central Para Military Forces to which they belonged and the basic requirement of deputation that the master should change did not happen. On the other hand, the respondent placed reliance on the reasoning given by the Delhi High Court in Brij Bhushan case (supra) and the various communications and it is submitted that right from the constitution of the NDRF in terms of Rule 3(1) of the Rules all personnel deputed from the Central Para Military Forces would be deemed to be deputed in the NDRF. Rule 3(2) also provided for deputation of such employees to the NDRF.

14. What is deputation has been very succinctly explained in the judgment of this Court in the case of *Umapati Choudhary v. State of Bihar*[1] wherein this Court held as follows:

> "8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled...."

In *Prasar Bharti v. Amarjeet Singh*[2] this Court held thus:

> "13. There exists a distinction between "transfer" and "deputation". "Deputation" connotes service outside the cadre or outside the parent department in which an employee is serving. "Transfer", however, is limited to equivalent post in the same cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications.
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> 17. It has not been disputed that the functions of the Central Government have been taken over by the Corporation in terms of Section 12 of the Act, when the Corporation has started functioning on and from the appointed day. It requires manpower for managing its affairs. It has been doing so with the existing staff. They are being paid their salaries or other remunerations by the Corporation. They are subjected to effective control by its officers. The respondents, for all intent and purposes, are therefore, under the control of the Corporation.
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> 20. The concept of control implies that the controlling officer must be in a position to dominate the affairs of its subordinate. It unless otherwise defined would be synonymous with superintendence, management or authority to direct, restrict or regulate. It is exercised by a superior authority in exercise of its supervisory

power. It may amount to an effective control, which may either be de facto or remote....”

15. A reading of the aforesaid judgment makes it clear that deputation envisages the assignment of an employee of one department/cadre/organization to another Department /cadre/organisation in the public interest. It is also clear that normally deputation also involves the consent of the employee. In Prasar Bharti case (supra) this Court also held that on transfer of the services in the case of deputation, the control with regard to the employee would also determine whether such employee was on deputation or not.

16. As far as the present case is concerned, as we have noticed above, till 11.09.2009 the respondent continued to be under the control of his parent organisation i.e. CISF and was also getting his pay and allowances from the said authority. Therefore, though he as a member of his Battalion may have been serving the NDRF, it cannot be said that he was on deputation to the NDRF. His organisation had agreed to deploy some of its Battalions with the NDRF. However, the administrative and disciplinary control over such employees remained with the CISF. The emoluments were also paid by the CISF and, therefore, it cannot be said that the NDRF was the employer or master of the respondent. In such circumstances, up to 10.09.2009 the respondent could not be said to be on deputation even though as per the Rules he may have been described as a deputanionist. This term has been very loosely used but for payment of deputation allowance it must be shown that the services of the employee had been transferred to another department/cadre/organisation and the control over the employee now vests with the transferee department/cadre/organisation. However, on 11.09.2009, the date when the Ministry of Home Affairs conferred the command and control of the Battalions drawn from the various Central Para Military Forces with the Director General, NDRF and from which date these personnel drew their pay from the NDRF they would be deemed to be on deputation with the NDRF.

17. Ms. Madhavi Divan has also urged that the High Court without any jurisdiction or prayer before it wrongly directed that such relief be given to all employees and that too from 2006. We are in agreement with the submission. Before the learned Single Judge, it was only the respondent herein who was the petitioner and his prayer was only for his representation being considered. Despite that, the learned Single Judge went beyond the relief claimed and granted him benefit of certain allowances. An appeal was filed only by the Union of India. No other person was there before the Division Bench. In such a case, we do not understand how the Union of India could have been put in a worse position than it would have been if it had not filed an appeal.

18. We also are of the view that the High Court exceeded its jurisdiction in matters like this. The High Court exercise its jurisdiction only over State(s) of which it is the High Court. It has no jurisdiction for the rest of the country. Matters like the present may be pending in various parts of the country. In the present case, matter had been decided by the Delhi High Court but some other High Court may or may not have taken different view. The High Court of Madras could not have passed such order. It has virtually usurped the jurisdiction of other High Courts in the country. It is true that sometimes this Court has ordered that all similarly situated employees may be granted similar relief but the High Court does not have the benefit of exercising the power under Article 142 of the

Constitution. In any event, this Court exercises jurisdiction over the entire country whereas the jurisdiction of the High Court is limited to the territorial jurisdiction of the State(s) of which it is the High Court. The High Court may be justified in passing such an order when it only affects the employees of the State falling within its jurisdiction but, in our opinion, it could not have passed such an order in the case of employees where pan India repercussions would be involved.

19. In view of the above discussion, we partly allow the appeal and direct that the respondent shall be paid deputation allowance with effect from 11.09.2009 till 07.10.2011 when he was relieved from service. As far as the intervenors are concerned, the Delhi High Court can now dispose of their writ petition in view of the law which we have laid down above. Pending application(s) if any, shall accordingly stand disposed of.

Judgment Referred.

[1]*(1999) 4 SCC 0659*
[2]*(2007) 9 SCC 0539*