

Reserved Judgment
Court-2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 692 of 2021

Friday, this the 18th day of August, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

No. IC-52234Y Col S.K. Dhawan
S/o Ashok Kumar Dhawan
R/o L-1, 1460, Ashiana Colony, Near Chancellor Club, Lucknow
Presently posted as AO 22 UP NCC Bn Sitapur

..... Applicant

Learned counsel for the : **Shri Mahendra Kumar Singh**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, through Adjutant General, IHQ MoD (Army) Kashmir House, Rajaji Marg, New Delhi.
3. Controller General of Defence Accounts (CGDA), CGDA Office, Ulanbatar Road, Palam, New Delhi-110010.
4. Office of the PCDA (O), Golibar Maidan, Pune-1.
5. General Officer in Command, 508 SS & TC, PIN-930508, C/o 56 APO.
6. Director General Border Roads, Headquarters Seema Sadak Bhawan, Ring Road, Delhi Cantt, New Delhi – 110010.

.....Respondents

Learned counsel for the : **Shri Kaushik Chatterjee**, Advocate
Respondents Central Govt. Counsel

ORDER

1. The applicant has filed present application under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:-

- “A. To issue/pass an order or directions to set aside/quash the speaking order dated 12 August 2021 passed by CE (Civ) Director General of Boarder Roads.
- B. To issue/pass an order or directions to the respondents to release the Special Compensatory Counter Insurgency Allowances (SCCIA) as the applicant was posted at CI Ops (participated in OP RAKSHAK) during August 2013 to September 2015 in lieu of Govt. of India Policy Letter No. 37269/CI/AG/PS3(a)/121/O dated 14.01.1994 in light of judgment and order dated 19.04.2011 passed in O.A. No. 144 of 2011 Brig A.K. Bhutani & Ors vs. Union of India & Ors passed by Hon’ble AFT (RB) Chandimandir.
- C. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- D. To allow this original application with costs.”

2. The factual matrix on record is that the applicant was commissioned in the Indian Army on 12.06.1993. The applicant was posted with 508 SS & TC (GREF) w.e.f. 05.08.2013 to 13.09.2015 in Counter Insurgency Operations (OP RAKSHAK). Part II Orders for grant of Special Compensatory Counter Insurgency Allowance (SCCIA) were published but the applicant has not been paid amount on account of SCCIA so far. As per IHQ of MoD (Army) policy letter No. 37269/CI/AG/PS3(a)/121/O dated 14.01.1994, troops deployed in

Counter Insurgency Operation were entitled for SCCIA as per rates specified in the letter but applicant has been denied. The applicant made several correspondences with the respondents but nothing materialised. Being aggrieved, the applicant has filed the present Original Application for grant of SCCIA.

3. Learned counsel for the applicant submitted that applicant was commissioned in the Indian Army on 12.06.1993. The applicant was posted with 508 SS & TC (GREF) w.e.f. 05.08.2013 to 13.09.2015 and the unit was engaged in Counter Insurgency Operations (OP RAKSHAK). For grant of Special Compensatory Counter Insurgency Allowance (SCCIA), Part II Orders for the different periods were published as per details given below :-

Ser No.	Part II Order No. and Date	Period of grant of SCCIA		Remarks/Ceased
		From	To	
(a)	03/2014 dated 02.04.2014 (Sr. No. 1)	05.08.2013	27.10.2013	28.10.2013 to 05.11.2013
(b)	03/2014 dated 02.04.2014 (Sr. No. 3)	05.11.2013	08.12.2013	09.12.2013 to 19.01.2014
(c)	03/2014 dated 02.04.2014 (Sr. No. 5)	20.01.2014	24.01.2014	25.01.2014 to 13.03.2014
(d)	04/2014 dated 16.04.2014 (Sr. No. 3)	14.03.2014	27.03.2014	28.05.2014 to 08.06.2014
(e)	06/2014 dated 16.04.2014 (Sr. No.6)	09.06.2014	21.11.2014	22.11.2014 to 31.12.2014
(f)	01/2015 dated 02.01.2015 (Sr. No.6)	01.01.2015	02.05.2015	03.05.2015 to 18.05.2015
(g)	05/2015 dated 19.05.2015 (Sr. No.6)	19.05.2015	13.09.2015	Posted out from 508 SS & TC (GREF) w.e.f. 14.09.2015

4. Learned counsel for the applicant further submitted that as per IHQ of MoD (Army) policy letter No. 37269/CI/AG/PS3(a)/121/O dated 14.01.1994, troops deployed in Counter Insurgency Operation were entitled for SCCIA as per rates specified in the letter. Thereafter, AFT

(RB), Chandigarh passed a judgment and order dated 19.04.2011 in O.A. No. 144 of 2011, **Brig AK Bhutani & Ors vs. Union of India & Others** granting benefit of SCCIA to the applicant. Thereafter, Govt. of India, Ministry of Defence letter dated 18.02.2014, IHQ of MoD (Army), New Delhi letter dated 21.02.2014 and Dte Gen Border Roads, Seema Sadak Bhawan letter dated 25.02.2014 were issued on the subject. The applicant was posted in CI Ops area which was sanctioned vide Govt. of India, Ministry of Defence letter dated 07.05.1990 making entitlement to SCCIA. The applicant preferred a representation dated 11.11.2014 to PCDA (O), Golibar Maidan, Pune for grant of SCCIA but to no avail. The applicant made several correspondences with the respondents but no action has been taken by the respondents with regard to grant of SCCIA.

5. Learned counsel for the applicant further submitted that applicant filed OA No. 732 of 2020 before AFT (RB) Lucknow which was disposed off vide order dated 15.12.2020 directing the respondents to decide applicant's representation dated 20.02.2020. When the order of this Tribunal dated 15.12.2020 was not complied with by the respondents, the applicant filed Execution Application No. 26 of 2021, then he came to know that his representation dated 20.02.2020 has been rejected by the respondents vide order dated 12.08.2020 in which it was mentioned that as per Govt. of India, Ministry of Defence letter dated 03.04.2019, grant of SCCIA to BRO and MES units or any other unit including other Civilian Units which are not actually involved in Counter Insurgency Operations, are not

eligible for grant of the concessions and thus, SCCIA has been discontinued to BRO units from the date of issue of letter, i.e. w.e.f. 03.04.2019, long after the matter of this applicant. He pleaded that applicant's case is squarely covered with **Brig AK Bhutani** (supra) case which has been upheld by the Hon'ble Apex Court and therefore, applicant is entitled for SCCIA for the period from 05.08.2013 to 13.09.2015 (less the period for which SCCIA has been ceased as per Part II Orders) as per rates fixed by the Govt.

6. Learned counsel for the respondents submitted that as per Govt. of India, Ministry of Defence letter dated 14.01.1994, SCCIA is entitled to those troops who are deployed in Counter Insurgency Operations. Accordingly, Army officer and personnel posted to BRO units were earlier entitled to SCCIA but the eligibility conditions for grant of SCCIA have been re-iterated vide Govt. of India, Ministry of Defence letter dated 03.04.2019 by which personnel of BRO are not eligible for grant of SCCIA. He further submitted that officer (applicant) served with 508 SS & TC w.e.f. 05.08.2013 to 13.09.2015 and initially Part II Order regarding grant of SCCIA has been published by the unit concerned vide Part II Order No. 09.2013 dated 17.08.2013 and due to non adjustment of ibid Part II Order, fresh Part II Order No. 11/2014 dated 09.11.2014 has been republished. Thereafter, on the request of applicant, previous Part II Orders have been cancelled and fresh Part II Order No. 0007/2020 dated 23.05.2020 has been published. The SCCIA for the personnel posted

to BRO units was discontinued vide Ministry of Defence letter dated 02.07.2008 and Corrigendum order dated 31.12.2008.

7. Learned counsel for the respondents further submitted that order dated 19.04.2011 passed AFT Chandigarh judgment in the case of **Brig AK Bhutani** (supra) is in personam and accordingly, direction to release SCCIA to the applicants has been passed. Thereafter, Ministry of Defence issued letter dated 03.04.2019 which stipulates that BRO unit, MES units or any other unit including other civilian units etc. which are not actually involved in counter insurgency operation are not eligible for grant of the concessions. Therefore, benefit of that judgment cannot be extended to the applicant and hence, applicant is not entitled to SCCIA as claimed by him. He pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and perused the material placed on record.

9. There is no dispute on the part that applicant was posted to 508 SS & TC unit for the period from 05.08.2013 to 13.09.2015 which was located in counter insurgency area and the applicant worked there during the period SCCIA is claimed.

10. We find that as per Govt. of India, Ministry of Defence letter No. 37269/CI/AG/PS3(a)/121/O dated 14.01.1994, SCCIA was made applicable/entitled to the troops posted/deployed to BRO units/MES units in Counter Insurgency area. Later, in the year 2007, an audit objection was raised and Govt. of India, Ministry of Defence issued letter No. 16(1)/2006/D (Pay/Services) dated 02.07.2008 by which

SCCIA to the personnel posed to BRO units was discontinued. Thereafter, case of **Brig AK Bhutani & Ors** (supra) was filed before the AFT Chandigarh Bench and order dated 19.04.2011 passed by the Tribunal in favour of the applicants was upheld by the Hon'ble Apex Court. The Govt. of India, Ministry of Defence order dated 02.07.2008 was quashed and direction to release SCCIA to the litigants/applicants was passed. Thereafter, Govt. of India, Ministry of Defence issued a letter dated 18.02.2014 wherein it is mentioned in para 1 (a) that *“(a) DO letter No. 16(1)/2006/D (Pay/Services) dated 02 July 2008 for deleting BRO Units from respective Corps Notification and for recovery of the allowance already paid to such personnel is hereby withdrawn”*. Thereafter, Govt. of India, Ministry of Defence issued letter dated 03.04.2019 wherein it is mentioned in para 2 that, *“2. The following sentence may be added after the end of existing sentence in para 1 (iv) of the ibid letter:- **‘BRO units, MES units or any other unit including other Civilian units etc., which are not actually involved in counter insurgency operations, are not eligible for grant of the concessions’**”*.

Thus, it is summarised that SCCIA was applicable to BRO units from Jan. 1994 and Govt. of India, Ministry of Defence letter dated 02.07.2008 issued for discontinuation of SCCIA to BRO units was withdrawn by the Govt. of India, Ministry of Defence vide their letter dated 18.02.2014. Later, Govt. of India, Ministry of Defence vide letter dated 03.04.2019 discontinued SCCIA to BRO units from the date of issue of letter, i.e. w.e.f. 03.04.2019. In letter dated 03.04.2019, it is

clearly mentioned that it is effective from date of issue of the letter, meaning thereby SCCIA to the BRO units was applicable from Jan. 1994 till 02.04.2019.

11. We have also perused the Speaking Order dated 12.08.2021 passed by CE (Civ), Headquarters, Dte Gen Border Roads, Seema Sadak Bhawan, New Delhi in respect of judgment and order of this Tribunal dated 15.12.2020 in O.A. No. 732 of 2020 of Col SK Dhawan in which it is mentioned that Army personnel posted with BRO units were earlier drawing SCCIA w.e.f Jan. 1994 but due to audit objection raised by the concerned department, SCCIA was discontinued vide Ministry of Defence letter dated 02.07.2008. Thereafter, vide AFT Chandigarh order dated 19.04.2011 passed in **Brig AK Bhutani & Others** (supra) case, SCCIA was allowed to the applicants of the case and a letter dated 18.02.2014 was issued by the Govt. of India, Ministry of Defence in this regard but claim of applicant for grant of SCCIA has been rejected.

12. Having regard to the aforesaid submissions as well as the order passed by the AFT (RB) Chandigarh in the case of Brig. **A.K.Bhutani & Ors** (supra), which has been upheld by the Hon'ble Supreme Court vide order dated 16.01.2012, we are of the view that applicant is entitled to SCCIA for the period from 05.08.2013 to 13.09.2015 (less cessation period as per details given in para 3 above) as per prevailing rates as SCCIA claimed by the applicant is within the period of entitlement to BRO units, i.e. between Jan. 1994 to 02.04.2019).

13. Resultantly, Original Application is **allowed**. The impugned order passed by the respondents is quashed. The applicant is held entitled to SCCIA for the period from 05.08.2013 to 13.09.2015 (less cessation period as per Part II Orders) as per rates fixed by the Govt. during the period. The respondents are directed to pay Special Compensatory (Counter Insurgency) Allowance to the applicant for the period from 05.08.2013 to 13.09.2015 (less absence/cessation period) subject to verification of record. Necessary calculation relating to the amount payable shall be made and the amount found to be payable shall be paid to the applicant within a period of four months from the date of receipt of copy of this order. Default will invite interest @ 8% per annum till the actual payment.

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: August, 2023

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(Justice Anil Kumar)
Member (J)