

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 284 of 2019**Tuesday, this the 5th day of October, 2021**Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)JC-669261W Ex Sub/Clk (SD) Shailendra Raj
S/o Shri Harihar Raj
R/o Vill – Haspaty, PO – Dumri Niwas, Tehsil – Shhjanwa,
Dist – Gorakhpur (UP) – 27309

..... Applicant

Ld. Counsel for the Applicant: **Shri Virat Anand Singh,**
Shri Pankaj Kumar Shukla
Shri Ashish Kumar Singh, Advocate

Versus

1. Union of India, through the, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. OIC Records, ASC Records (South), Bangalore.
4. PAO (OR) ASC South, Bangalore.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava,**
Central Govt Counsel.**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(i) To direct the respondents to pay the applicant difference of amount as applicable per month from 27/05/2011 to 08/06/2013 as arrears of difference of foreign allowance and Bhutan Compensatory Allowance.

- (ii) To pass such other order(s) which their Lordships may deem fit and proper in the existing facts and circumstances of the case.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 03.10.1989 and was discharged from service on 31.10.2017. During the service, applicant was posted to Indian Military Training Team (IMTRAT), Bhutan for the period from 27.05.2011 to 08.06.2013. He was paid Bhutan Compensatory Allowance (BCA) as per orders of Govt of India but applicant is claiming Foreign Allowance and made correspondence with the respondents to pay arrears but no positive action has been taken till date to pay difference of Foreign Allowance and BCA to the applicant. Being aggrieved, the applicant has filed the present O.A.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 03.10.1989. The applicant served in HQ IMTRAT (Bhutan) from 27.05.2011 to 08.06.2013 and was paid Bhutan Compensatory Allowance (BCA) as per Govt. of India orders applicable to all defence persons posted in Bhutan but as per HQ IMTRAT letter dated 09.05.2006, persons served in IMTRAT Bhutan are required to be paid Foreign Allowance instead of BCA. In this regard, an official correspondence was initiated on 15.04.2016 but no positive action has been taken till date to pay difference of Foreign Allowance and BCA to the applicant.

4. Learned counsel for the applicant further submitted that in a similar situated army person Ex Hav Jatin Borah of 18 JAT had been paid difference of amount of Foreign Allowance and BCA in compliance of the AFT (RB), Guwahati judgment dated 29.10.2014

passed in OA No. 31 of 2013, **Ex Hav Jatin Borah vs. Union of India and others**. He further submitted that Article 14 of the Constitution of India mandates similar treatment for similarly situated persons and therefore, applicant should also be paid difference of Foreign Allowance and Bhutan Compensatory Allowance.

5. Learned counsel for the respondents submitted that during the service, applicant was posted to Indian Military Training Team (IMTRAT), Bhutan for the period from 27.05.2011 to 08.06.2013 and was paid Bhutan Compensatory Allowance (BCA) as per Govt of India, Ministry of External Affairs, New Delhi order dated 29.12.2000 reproduced vide Ministry of Defence letter dated 25.04.2000.

6. Learned counsel for the respondents further submitted that the Hon'ble Supreme Court vide its judgment dated 11.02.2019 in Civil Appeal No. 2763 of 2009, **Union of India vs. Captain Gurdev Singh & another** allowed the appeal in part and set aside the impugned judgment dated 07.05.2007 passed by Hon'ble High Court in W.P. No. 17184-17185 of 2004 filed by Captain Gurdev Singh & another. The Hon'ble Supreme Court in Para 31 and 32 of the judgment dated 11.02.2019 clarified the controversy involved and said :-

“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.”

7. Learned counsel for the respondents further submitted that in view of the Hon'ble Supreme Court's order dated 11.02.2019 vide which it has been clarified that BCA cannot be equated with Foreign Allowance, the prayer of the applicant deserves to be rejected.

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

9. We find that during the period of posting at HQ IMTRAT, Bhutan, applicant has been paid Bhutan Compensatory Allowance as per entitlement/rates authorised by the Govt. which have been further revised as per recommendations/orders of Govt. The Hon'ble Supreme Court has also clarified in its order dated 11.02.2019 that Bhutan Compensatory Allowance cannot be equated with Foreign Allowance and therefore, applicant is not entitled to Foreign Allowance.

10. In the result, we do not find any illegality in rejecting the claim of the applicant for grant of arrears of difference of Bhutan Compensatory Allowance and Foreign Allowance. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: October, 2021
SB