

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH**

Jaipur, this the 9th day of February, 2009

ORIGINAL APPLICATION NO. 282/2005

CORAM:

HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

V. Betty Jose wife of Shri Jose Thomas, aged about 44 years, at present working on the post of Pharmacist (Scale Rs.5000-8000/-), O/o CMO, Group Center -II, CRPF, Foy Sagar Road, Ajmer (Rajasthan).

.....APPLICANT

(By Advocate: Mr. P. V. Calla)

VERSUS

1. Union of India through the Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. The Director General, Central Reserve Police Force, CGO Complex, Lodhi Road, New Delhi.
3. The Inspector General of Central Reserve Police Force (Training), Level 7, Block No. 7, R.K. Puram, New Delhi.
4. The Additional DIG, Group Center II, CRPF, Foy Sagar Road, Ajmer.

.....RESPONDENTS

(By Advocate: Ms. Kavita Bhati proxy to Mr. Kunal Rawat, Sr. Standing Counsel)

ORDER

PER HON'BLE MR. B.L. KHATRI

This OA has been filed u/s 19 of the AT Act thereby challenging order dated 22.12.2004 (Annexure A/1) issued by the Deputy Commissioner, C/o CRPF, New Delhi. In this OA, it has been submitted that various allowances as mentioned in the representation of the applicant, addressed to the IGP (Training), CRPF, New Delhi had not been allowed. Through this representation, the applicant had submitted that correct allowances had not been allowed under the following heads:-

- (i) Detachment Allowance
- (ii) Dearness Allowance

- (III) Patient Care Allowance
- (IV) Overtime Allowance
- (V) City Compensation Allowance

2. I have heard the learned counsel for the parties and perused the record and relevant rules. As regards grant of Detachment allowance it is submitted that the applicant was sent on attachment duty by the RTC -IV to the 20 Bedded Hospital, Awantipora in Phulwama District of Jammu & Kashmir from 05.02.1999 to 22.06.2000. Awantipora In Phulwama District was declared as disturbed area by the Government of Jammu & Kashmir vide order No. -543 dated 03.01.1990. While serving in disturbed area of Jammu & Kashmir, one can draw detachment allowance at 75% enhanced rate as per Government order no. -22011/1/90 dated 02.07.1990.

3. The applicant claimed the detachment allowance at enhanced rate but the same was denied because the applicant was temporarily attached to Composite Hospital, Bantalab, Jammu to 20 Bedded Hospital, Avantipura, which is not a detachment of RTC-IV and her Headquarter was composite hospital, Bantalab, Jammu.

4. The learned counsel for the respondents had invited attention of the Bench to Rule 46(d) of CRPF Rules, which reads as under:-

"46 (d) The Inspector General is competent to define the limits of the sphere of duty of any detachment sent out side the Headquarter of the Force or to fix the entire area of a State (as defined in the Constitution of India) or part of a State as the temporary Headquarters of a detachment posted outside the Headquarters."

5. Learned counsel for the respondents had also referred to the letter no. (.7/2001-2002-Trg-13 dated 05.12.2001, addressed to the Principal, RTC-IV, CRPF C/O 56 APO, wherein after examination of the claim of the applicant for detachment allowance, it was stated as under:-

"Detachment allowance is paid under the provision of Rule 46(d) of CRPF Rules, after declaration of sphere of duty for detachment sent outside the Hq,

whereas, she has been attached from your institution to 20 BH Srinagar and for which, she has been paid 180 days DA under the provisions of SR-73. Hence her claim for detachment allowance is unfounded and not accepted."

6. After perusal of the facts of the case and rules on the subject, I am of the opinion that detachment allowance had rightly been denied to the applicant.

7. As regards grant of Dearness Allowance, the contention of the learned counsel for the applicant is that a Govt. servant staying in inspection bungalow etc. and paying nominal obligatory charge of services such as Water & Electricity etc. shall not be deemed to have obtained free lodging, no reduction in daily allowance can be made as per Swamy's FR & SR Book. Therefore TA/DA at enhanced rate without deducting 25% from 05.02.1999 to 22.06.2000 may be granted.

8. Learned counsel for the respondents relied on SR-51 Para 4 under which the respondents are empowered to deduct 25% DA in case the employee on tour is provided with free board and lodging.

9. As regards deduction of 25% of DA for providing free lodging, it has been stated by the applicant that he had been charged for water & electricity; as such free lodging had not been provided by the respondents. Since the DA had been deducted to the extent of 25%, the respondents are directed to reimburse the charges of water & electricity etc. charged from the applicant within a month of receipt of this order.

10. As regards Patient Care Allowance, it is submitted by the applicant that respondents have denied payment of Patient Care Allowance to the applicant, which is contrary to the Rules. In this regard, it is submitted by the applicant that vide order dated 30.10.2000 issued by the Government of India, Ministry of Family Welfare, a decision was taken to deduct certain amount from an employee against Hospital Patient Care Allowance in case he/she avail

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Earned Leave and proceeded on training. During the period from September, 2000 to December, 2004, the applicant availed 90 days Earned Leave and 60 days Casual Leave i.e. total 150 days. For 150 days period, she has not performed the hospital duty. The decision taken by the government for not granting Hospital Patient Care Allowance for the above period was later on withdrawn vide letter dated 17.10.2002. In view of the above letter dated 17.10.2002 no amount can be deducted against the allowances granted for Hospital Patient Care. In the case of the applicant the respondents deducted Rs.3500/- for Casual Leave and Earned Leave availed by the applicant. The applicant demanded that it should be refunded back but to this effect no reply has been given. To this effect applicant places on record copies of letter dated 05.02.2002 and 17.10.2002 as Annexure A/4 and Annexure A/5 respectively.

11. Learned counsel for the respondents had placed on record order No. P.1-1/08-09 PC dated 07.11.2008 wherein it has been stated that refund bill is being made shortly.

12. In view of this subsequent amendment order, respondents are directed to give a copy of this order to the applicant within a period of 15 days from the date of receipt of a copy of this order and to refund the amount within a period of one month from the date of receipt of a copy of this order. If the applicant is still aggrieved, she can file a fresh OA before this Tribunal on this point.

13. As regards Overtime allowance, applicant submitted that the duty of hospital staff as provided under the normal rule is 6 & ½ hours (½ hour lunch time) so total $6 \text{ \& } \frac{1}{2} + \frac{1}{2} = 7$ hours per day. The applicant is a Pharmacist which is neither night duty post nor it is a shift duty. In this view of the matter one staff should do 42 hours duty in a week and every staff will get one off within 7 days. The applicant was performing the duties of Pharmacist. She was verbally ordered to perform night duty vice the post of Nursing Sister. In this view of the matter for a pretty long time, she performed the duty for 12 hours positively.

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14. In the reply, the respondents have stated that applicant was given compensatory Leave for her duties performed on Sunday, holiday and for night duty. Hence she is not entitled for Overtime Allowance. Learned counsel for the respondents also submitted that there is no provision of overtime allowance to Central Government employees as per the recommendation of the 5th Pay Commission report. Therefore, she has been rightly denied overtime allowance.

15. In view of the above reply of the respondents, I am of the opinion that the applicant had rightly been denied the claim for overtime allowance.

16. The applicant claimed 50% amount of City Compensation Allowance, which was deducted by the respondents.

17. In this regard, it was submitted by the respondents that as per instructions contained in MHA letter No. 13011/1/92-Fin. II dated 17.02.1992, CPO personnel and CRPF civilians who are allowed concession of free board and lodging or messing Allowance are entitled to CCA @ 50% of prescribed rate in terms of Note 1 below Para 1 of their OM dated 27.11.1965 and have, therefore, directed that overpayment made on this account be recovered immediately. Ministry of Finance vide their U.O. note of the even number dated 05.02.1992 have reiterated again to follow these provisions strictly and have desired that action is initiated to recover the overpayments made on this accounts without further delay.

18. In view of the explanation of the respondents, I am of the opinion that it is a case where applicant was provided free lodging, boarding/messing allowance, applicant is not entitled to any relief on this ground.

19. In this way, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)