

Original Application No. 1436 of 2002

New Delhi, this the 28th day of May, 2003

HON^{BLE} MR. KULDIP SINGH, MEMBER (JUDL)

Shri G.S. Sachdev
Assistant Director,
Government of India Tourist Office,
London (UK).

-APPLICANT

(By Advocate: Shri V.K. Rao)

Versus

1. Union of India through
the Secretary,
Ministry of Tourism,
Government of India,
Transport Bhawan,
Parliament Street,
New Delhi-110 001.

2. The Director (Tourism)
Department of Tourism,
Government of India,
Transport Bhawan,
Parliament Street,
New Delhi-110 001.

-RESPONDENTS

(By Advocate: Shri Adish C. Aggarwal with Shri Neeraj
Goyal)

ORDER

By Hon^{ble} Mr. Kuldip Singh, Member (Judl)

The applicant who was working as Assistant Director, Tourist Office had been posted to Tourist Office, Government of India at London where he claims to have been discharging his duty to the best of his ability and had earned many appreciation letters. However, the applicant claims that he was surprised to receive the Establishment Order dated 15.5.2002 vide which he had been recalled back to India and had been directed to report at the Headquarter Establishment. The applicant challenges that the order dated 15.5.2002 which allegedly has been passed by the respondents only to punish him and with mala fide motive. The applicant further alleges

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that when he was posted as Assistant Director in Government of India, Tourist Office, London, it was clearly mentioned in the letter dated 24.11.2000 that it is for a period of 3 years. However, before the applicant has completed his tenure, he has been called back.

2. The applicant further alleges that the back ground of this transfer order is that the applicant had received their E-Mail wherein it was mentioned that a complaint was made against the applicant in which it was alleged that he had raised false claim when he had visited Manchester on 11.11.2001 and though the hotel had issued an invoice for GBP 212.40 but the applicant had claimed 280 GBP.

3. Similarly the applicant on his return from Manchester travelled by taxi and shared it with Shri Karan Singh, who had claimed GBP 40.50 for taxi charges and the applicant had also claimed GBP 40.50 for taxi charges. Thus, prima facie, it was stated to have been established that a false claim was made by the applicant.

4. The applicant is trying to justify his claim in this OA and stated that it all had happened due to the fact that the applicant had not cleared certain bills of Director, Mrs. Alka Kohli and it is on her behest, a complaint had been made as she was interested to continue at London even after her tenure had completed.

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5. Thus it is stated that the action of the respondents is illegal, arbitrary, punitive and the impugned order had been passed without considering the various representations given by the applicant in violation of the principles of natural justice.

6. The respondents who are contesting the OA have taken a plea that the applicant had submitted a wrong TA claim for Pounds 282.20 instead of 212.40. It is also pleaded that, prima facie, case had been established against the applicant and a detailed enquiry was contemplated against him, therefore, it has been decided by the competent authority to call back the applicant vide order dated 15.5.2002. Thus it is not appropriate to say that the order dated 15.5.2002 is illegal, punitive, arbitrary and violative and it has not been passed by the competent authority.

7. The respondents also pleaded that they have verified the various documents issued by the concerned hotel where the applicant had stayed and on comparison of the documents there, a prima facie case has been made against the applicant for submitting a false TA claim so now the department has taken a decision to hold an enquiry against the applicant and it will be in the public interest if the applicant is transferred from London. Hence, he has been called back and moreover it is the prerogative of the respondents to call back the applicant.

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8. The respondents also pleaded that even as per the posting order they have right to call back the applicant even before completion of 3 years.

9. I have heard the learned counsel for the parties and gone through the record of the case.

10. After the matter was heard and order was reserved applicant moved an MA for taking on record the order dated 21.4.2003 for proper adjudication of the OA. Hence the MA 1079/2003 was allowed and letter dated 21.4.2003 was taken on record since respondents have no objection.

11. The learned counsel for the applicant submitted that since the whole episode of making false claim pertains to the fact which had happened at London (UK) so if the applicant is transferred to Delhi it will definitely prejudice his disciplinary case for which the charge-sheet has been issued and the applicant will not be able to produce his defence by summoning the witnesses from the hotel concerned.

12. The document submitted along with MA filed by the applicant also shows that the IO had also drawn an inference that to know exactly which invoice is correct and to ascertain about the correctness of the invoice, he had expressed that the concerned representative of the hotel is to be examined in the ordinary situation and since the enquiry is being held at New Delhi, so it is not possible to summon the representative of the hotel. As such the Inquiry officer has requested the parties to

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place before him the clinching evidence of the correctness of the evidence of the invoice issued. So on the strength of this document, the counsel for the applicant submits that since it is an observation made by the Inquiry Officer that it is not possible to examine the representative of the hotel concerned, so the applicant should not be transferred back to India.

13. Besides that he has pleaded that at the time when he had filed this OA it was stated that his children are undergoing education at London and admissions in Delhi are also closed so he has prayed for stay of the order in question, which was granted.

14. On going through various documents on record and rival contentions made by the parties concerned, I find that as far as the matter in issue before the Inquiry Officer appointed by the disciplinary authority is concerned, that pertains to a TA claim made by the applicant which according to respondents was in excess of the amount to which he was entitled, is a subject matter of the enquiry and for that findings has to be arrived at by the Inquiry Officer. So in these proceedings, it will not be appropriate to go into the merits of the issue which is pending before the Inquiry Officer.

15. The only question which would require determination by this Tribunal is whether the respondents can hold enquiry at New Delhi and for that purpose whether they can transfer the applicant from London to Delhi. Though the learned counsel for the applicant has pointed out that in case the enquiry is held at New Delhi

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applicant will be prejudiced since he will not be able to produce his defence properly as the record through representative of the hotel is to be produced and examined by the Inquiry Officer. Therefore, it is submitted that the proceedings be held at London and not at New Delhi.

16. To my mind this contention of the learned counsel for the applicant has no merits because if the proper procedure for holding enquiry is not violated then whether the enquiry is held at New Delhi or London, the applicant will have all the rights to challenge the findings arrived at by the Inquiry Officer. In case any prejudice is caused or principles of natural justice are violated or he is deprived of the opportunity to produce the defence evidence, then also that will have bearing on the final order passed by the disciplinary authority. But the fact that the applicant has been transferred to New Delhi and that too for valid administrative reason, so I do not think that the applicant can assail the same since the respondents have transferred the applicant from London to Delhi on administrative grounds. Hence it cannot be said to be punitive for making a false TA claim because the enquiry for that purpose is still pending and if at all the applicant is held guilty then it will follow the punishment order. But for the time being the respondent for their own administrative reason and in their own wisdom thought it proper to call back the applicant from London to New Delhi so I do not find that any fault can be found with the administrative order nor any mala fide can be attributed. Thus the whole episode pertains to the documents which have been submitted by

the applicant for making false TA claim for his tour to Manchester and the same can be verified by summoning records from London office itself. Even otherwise learned counsel for the respondents stated at Bar that in case there is need they will summon the concerned record/witness from England or even venue of enquiry can also be shifted to England if need be.

17. In view of this, I find that the impugned order of transfer cannot be found fault with and the same cannot be interfered with. Accordingly, the OA is dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)

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