

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 402/2002

New Delhi, this the 15th day of November, 2002

Hon'ble Sh. Govindan S.Tampi, Member (A)

Sh. N.K.Verma  
S/o late Sh. Man Singh Verma  
Ex. J.E. E/M (Retd) from the office of  
GE (North) Meerut Cantt.  
R/o & C/o Sh. Surendra Kumar, Police Inspector  
10, Kotla Road, Delhi - 6.

...Applicant

(By Advocate Sh. V.P.S.Tyagi)

V E R S U S

1. Union of India through  
Secretary  
Ministry of Defence, South Block  
New Delhi.
2. Engineer-In-Chief  
(Army Head Quarters) DHQ PO  
New Delhi.
3. Controller of Defence Accounts (Army)  
Meerut Cantt.
4. G.E. (North)  
Meerut Cantt.
5. PRO (Govt. of Nagaland)  
Nagaland Tourism Deptt.  
Nagaland House, 29, Aurangzeb Road  
New Delhi - 110 011.

...Respondents.

(By Advocate Sh. R.P.Aggarwal)

O R D E R (ORAL)

By Sh. Govindan S.Tampi,

Heard S/Sh. V.P.S.Tyagi and R.P.Aggarwal, ld.  
counsel for the applicant and the respondents  
respectively.

2. Applicant, a retired Govt. employee is  
aggrieved that an amount of Rs. 19,800/- sanctioned  
to him towards LTC on a journey undertaken by him <sup>family</sup> in  
1996-97 had been recovered from his leave encashment.  
While working in the office of the G.E. (South),  
Meerut Cantt, the applicant had availed himself of LTC

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during the block period 1994-97 for journey from Meerut to Kanyakumari and back in June-July, 1997 in respect of five members of his family. Journey was performed by taking five seats in tourist bus, arranged by Nagaland Tourism Deptt. on payment of Rs.19,800/- (@Rs.3460/- per person). The claim had been got verified by the respondents, before the sanction was accorded. However, three and half years later and after his retirement, in March, 2001, he was advised that the claim had been found to be forged/fraudulent as the RTO permit for the bus in

which the travel was allegedly undertaken was forged. *and that the amount was adjusted against his leave encashment.* His representation against the recovery was turned

down on 01.08.2001. At the same time no recovery has been made from few others who also travelled alongwith them in the same bus during the same period. The above recovery made after four years was hit by limitation and *was* in violation of the principles of natural justice as the applicant was not put on notice. The review/investigation undertaken was malicious. Holding that Nagaland Tourism Deptt. was *conceding* ~~allowing~~ the tours improperly and that the permit granted to the bus was forged to effect recovery of the amount correctly reimbursed to him under L.T.C. *was* ~~was~~ improper. Applicant was also discriminated and threatened with action through CBI. The recovery was effected without proper authority and without putting him on notice. In the circumstances OA should succeed, the applicant plead.

3. In reply on behalf of the respondents, it is pointed out that the applicant had drawn a sum of Rs.19,800/- towards LTC availment by the five members

of his family from Meerut to Kanyakumari and back and after verification of the travel certificate from Nagaland Transport Deptt. who had arranged the travel the claim was passed for payment. However, on review of the claim in 2000 it was found that the applicant had produced the RTO permit in the name of Vinod Kumar Bus No. USC 7281, while the bus permit was in fact issued in the name of Yad Illahi Bus No. DEP-6734, showing the claim to be bogus. Accordingly the above amount was recovered from the applicant's leave encashment on 02.05.2001. Subsequently, Nagaland Tourism Deptt. indicated that they had issued tickets only for four persons for Rs.15,800/- @Rs.3,960/- per seat by receipt No. 20.6.97, as against Rs.19,800/- claimed and received by the applicant, thereby confirming the fraud and endorsing the recovery ordered. While the claim was originally accepted and payment effected, on special review conducted by CDA, Meerut it was found that the claim was found to be forged and hence, the recovery was ordered. This was correctly done. There was no discrimination as alleged, as the applicant had not submitted the details of his fellow travellers. There was also nothing arbitrary as the review had been ordered properly, in accordance with rules and instructions. Objection raised on the ground of delay was not maintainable as the instant recovery was not of erroneous payment but payment received by fraud. As the applicant had received payment which he was not entitled, to facilitated through fraud. The recovery was correctly ordered and the same did not warrant any interference, plead the respondents.

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4. During the oral submissions, Shri V.P.S. Tyagi, learned counsel appearing for the applicant reiterated his pleas. According to him the applicant had filed the claim on the basis of the tickets issued by Nagaland Tourism Deptt. who organised the trip and by the bus engaged by them. The travel has also been confirmed by the latter. He had not preferred any forged or bogus claim and he was also not concerned with the permit of the bus, as his family had travelled by the bus operated by the organisers of the travel. To be told after four years that the permit of the bus did not exist and to be subjected to recovery of the amount reimbursed for actual expenditure was improper and illegal. Further the letter No. Tour-1/2002/184 dated 01.07.2002, obtained by the respondents after the OA was filed was clearly an afterthought which did not merit acceptance. Shri Tyagi also relied upon the decisions of the Allahabad Bench of the Tribunal dated 30.05.2002 in OA No.645/2001 filed by Onkar Singh & Ors. and that dated 24.10.2002 by the Principal Bench in OA 466/2002 filed by Jagdish Chandra in almost identical circumstances and pleaded that the OA be allowed in the interest of justice. On the other hand, Sh. R.P. Aggarwal, ld. counsel appearing for the respondents urged that the applicant had no right to hold on to any amount, sanction for which was obtained by fraudulent means. The claim for the LTC having been passed on the basis of bogus and/or forged documents was always liable for recovery and the applicant has no claim at all. OA, therefore, urged Sh. Aggarwal, deserved dismissal.

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5. Rival contentions and the facts and circumstances brought on record have been carefully gone through. Undisputed facts in this case are the sanction and payment of Rs.19,800/- to the applicant towards LTC claim in respect of five members of the family in 1997 on the basis of documents produced and verified and the recovery of the same from his leave encashment amount four years later, at the time of his superannuation on the alleged grounds of fraud. While the applicant holds that he had filed his claim on the basis of the tickets purchased for the journey undertaken by his family which was also duly certified and verified by the tour operator, the respondents plead that the claim was forged/bogus as the details of the bus were not correct and it did not have any permit and that the journey was not apparently undertaken. On a <sup>careful</sup> ~~general~~ analysis of the facts and circumstances of the case, I am inclined to agree with the applicant's version. When a person undertakes a journey or arranges a journey for the members of his family through an accredited and recognised group of tour operators, he would not be calling for examination the permit issued to ~~the~~ bus in which travel is undertaken, <sup>especially</sup> ~~more so~~ as the tour operator is an arm of a State Govt., in this case ~~case~~ Nagaland Tourism Deptt. As the travel undertaken by the applicant's family has been duly certified and verified by the Nagaland Tourism Deptt., the applicant cannot at all be faulted, even if the permit granted in respect of the bus was <sup>subsequently</sup> found to be wrong. Unless it is the case of the respondents that the applicant's family did not at all undertake the journey, but had only fabricated evidence about the trip and forged all

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the documents with a view to avail themselves of the LTC benefit and the said allegation is proved, it would not be possible to sustain the action of the respondents. They have sought to place reliance on the letter No. Tour-1/2002/184 dt. 1-7-2002 and the enclosure from the Nagaland Tourism Deptt. ~~and its enclosure~~ to buttress their plea that only four tickets were issued for the trip as against five, thus pointing to the fraud <sup>allegedly</sup> committed by the applicant. Interestingly, this letter has been obtained, after notice has been issued in this OA on 15-2-2002. Obviously, therefore, the allegation of the applicant that <sup>obtaining</sup> this communication was an afterthought cannot be overlooked. It is doubtful that with <sup>S. 42</sup> meagre evidence, <sup>as above</sup> the respondents could have straight away ordered recovery of Rs.19,800/- from the leave encashment of the applicant. Their action deserves to be called in question especially as no show cause of any sort was issued before ordering the recovery. I do not suggest even for a moment that nothing irregular has taken place or that no action was called for, but I only observe that the action of the respondents cannot be sustained in the present circumstances and, therefore, the impugned action of the recovery would have to be set aside. My findings are also in line with those of the ~~Allahabad Bench~~, indicated on 30-5-2002 while disposing of OA 645/2001 filed by Onkar Singh & Ors. and of the Principal Bench dt. 24-10-2002 in OA 466/2002 filed by Jagdish Chandra. In both these OAs, also the recovery on identical grounds have been set aside with grant of liberty to the respondents to

conduct further enquiry and to proceed in accordance with law. Such a decision is called for in this OA as well.

6. In the above view of the matter, the OA succeeds and is accordingly allowed. The impugned order of the respondents dt. 1-8-2001 directing the recovery of Rs.19,800/- from the leave encashment of the applicant is quashed and set aside. The amount is ordered to be returned to the applicant within one month from the date of receipt of a copy of this order. However, this would not come in the way of the respondents taking any <sup>punitive</sup> action as is warranted in law, if it is found that the LTC claim was indeed forged or fabricated. No costs.

(GOVINDAN S. TAMPI)  
ADMINISTRATIVE MEMBER

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