

(20)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1948/99

New Delhi this the 30th day of April, 2001.

Hon'ble Dr. A. Vedavalli, Member(J)

Sh. Jagan Singh,
S/o late Sh. Babulal,
R/o 256, Mandakini Enclave Alaknanda,
New Delhi-19. Applicant

(through Sh. K.P. Dohare, Advocate)

Versus

1. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-11.
2. Superintending Engineer(P),
New Delhi Zone-1, CPWD,
Nirman Bhawan,
New Delhi-11.
3. Pay and Accounts Officer,
New Delhi Zone CPWD,
Indraprastha Bhawan,
IP Estate, New Delhi-2. Respondents

(through Sh. Rajeev Sharma, proxy for Sh. Gajender
Giri, Advocate)

O R D E R

Hon'ble Dr. A. Vedavalli, Member(J)

The applicant a retired Central Government employee is aggrieved by the recovery of a sum of Rs. 10386/- i.e. Rs.6840/- towards LTC advance plus penal interest amounting to Rs. 3546/- from his provisional pension by the respondents in the months of July and August 1999. He has impugned the order of the respondents dated 09.06.99 (Annexure-A) and the order dated 26.07.99 (Annexure-B) in this regard.

2. Heard the learned counsel for both the parties. Pleadings and all the relevant papers and materials placed on record have been perused including the written submissions filed by the parties.

A/

3. Facts of this case briefly are as under:-

The applicant while working as an Executive Engineer in the office of the respondents admittedly has drawn an LTC advance of Rs. 6840/- on 16.06.95 for his journey from New Delhi to Shillong/Guwahati and back alongwith his wife based on the 2nd AC Sleeper fare of Rs. 7600/-. Instead of going by train he performed the outward journey by Jet Airways, a private Airline and the journey was completed on 21.06.95. The applicant is stated to have submitted an incomplete bill for claiming LTC on 11.07.95 and prepared the bill afresh in January 1998. He signed the fresh bill as a Government servant as well as the Controlling and Disbursing Officer. The bill in question was sent to PAO New Delhi for passing on 01.01.98 (Annexure R-1). The said claim bill was rejected by PAO on 08.01.98. The applicant retired from service on 31.01.98. He was informed by the respondents letter dated 18.08.98 (Annexure-II) about the inadmissibility of his bill. He was advised by the respondents by the first impugned letter dated 09.06.99 (Annexure-A) to deposit a sum of Rs. 6840 towards the LTC advance together with penal interest immediately and that otherwise the same will be deducted from his provisional pension. The applicant in reply submitted his representation dated 30.06.99 (Annexure-C) stating that the delay in taking the decision was on the part of the department and had the timely decision been taken by them and communicated to him asking for the refund of the advance, he would have

PV

certainly complied with the orders by depositing the money to the department. He further stated that it is against all canons of justice and fair play to ask him for penal interest which is not covered by any penal interest clauses for the abnormal delay in taking the decision by the department and that his case should, therefore, be considered by them. However, the respondents by their second impugned order dated 26.07.99 (Annexure-B) have stated that the representation was sympathetically considered but the allegations contained therein are baseless and that the LTC advance together with interest calculated as Rs. 10386/- has to be recovered from him and consequently 50% of the amount due was recovered from his interim pension and the remaining balance will be recovered from the next month pension. The applicant thereafter filed the present OA on 06.09.99 challenging the aforesaid impugned orders.

4. The applicant seeks the following reliefs in the OA:-

"(a) Quash the orders of the respondents dated 9.6.1999 and 26.7.1999 which is illegal, unjustified, arbitrary, unwarranted and invalid since such orders are not issued in accordance with law..

(b) Direct the respondents to refund the recovered amount of Rs. 10,386/-

by

forthwith and interest @30% from the date of recovery till the date of refund because the recovery is harsh and illegal.

(c) Direct the respondents to make the payments of the claim of the reimbursement which is due to the applicant, i.e. Rs.760/- with interest @30% w.e.f. July 1995 since the applicant has already got Rs. 6840/- as an advance at the time of performance of Journey.

(d) Award costs to the applicant as the action of the respondents in regard to recovery of the LTC advance amount is arbitrary and ultra-vires.

(e) Grant any other relief which the Hon'ble Tribunal may deem fit and proper in the interest of justice on the facts and circumstances of the case."

4. The crucial question for consideration is whether recovery concerned from the provisional pension of the applicant is in conformity with law or not.

[Signature]

5. The main argument advanced by the learned counsel for the applicant is that the respondents have no authority to recover the amount mentioned supra from the applicant's pension. In this connection, he relied upon the provisions of Section 11 of the Pensions Act 1871 and Rule 9 of the CCS Pension Rules 1972. He contended that in view of the aforesaid provisions and the ruling of the Apex Court in Union of India & Anr. Vs. Wing Commander, R.R. Hingorani(Retd) (AIR 1987 SC 808), the decisions of the Delhi High Court in C.K. Razdan Vs. Municipal Corporation of Delhi (1997(2)AISLJ 192); Lalit Kumar (Retd.) Vs. Union of India (2000(1)ATJ 392) and judgement of the Allahabad High Court in the case of Chief Post Master, Kanpur Vs. Mohammad Salim and Anr. (2000(1)ATJ 437), the impugned orders regarding the recovery of the amount are illegal and deserve to be quashed and set aside. He prayed that the reliefs sought in the OA may be granted.

6. Learned counsel for the respondents in reply submitted that the applicant instead of going by a train performed his inward journey by Indian Airlines and outward journey by Jet Airways which is a private Airline. The journey by private Airlines is not permissible for claiming the LTC as per the OM No. 31011/1/95-Estt.(A) dated 28.4.95 (Annexure R-IV). The applicant submitted an incomplete bill for claiming LTC on 11.07.95 due to several reasons and afresh bill was submitted by him only in January 1998. Moreover, there was a change of destination which was not declared originally which is not permissible.

[Signature]

7. Learned counsel for the respondents submitted further that the impugned orders are in accordance with the provisions of the above OM and the said OM has not been challenged by the applicant. He has also stated that the judgements on which reliance was placed by the learned counsel for the applicant are not applicable to the facts of the present case. He prayed that the OA may, therefore, be dismissed with costs.

8. I have given my careful consideration to this matter. Section 11 of the Pensions Act runs thus:-

"11. Exemption of pension from attachment - No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a Decree or Order of any such Court."

9. Respondents in their reply have not been able to show as to how they could justify the recovery of the concerned amount from the applicant's pension in view of the provisions of the aforesaid Section 11 of the Pension Act. It is also not their case either in the counter or the additional affidavit or during the course of hearing that the impugned action was taken by the respondents in the light of Rule 9 or any other provision of the CCS Pension Rules. Moreover, the first impugned order dated 09.06.99 (Annexure-A) merely refers to the

[Signature]

respondents earlier letter dated 18.08.98 wherein the applicant was informed that the PAO has declared his LTC bill as inadmissible. The said letter also refers to certain other correspondence between the respondents and CCA Ministry of Urban Development etc. There is not a whisper as to the specific reasons for the inadmissibility of the LTC claim. There is no indication that the copies of the aforesaid letters between the respondents and the Ministry of Urban Development etc. have been made available to the applicant or that he was given a show cause notice and an opportunity to submit his representation against the proposed recovery from his pension. The second impugned order dated 26.07.99 (Annexure-B) rejecting the applicant's representation dated 30.06.99 (Annexure-C) is also a bald, cryptic and non-speaking order and does not show any application of mind by the respondents.

10. In the facts and circumstances of this case, and in view of the foregoing discussion, I am of the opinion that both the impugned orders are arbitrary and also violative of the basic principles of fairness, reasonableness and natural justice. They are also violative of Section 11 of the Pensions Act and the law laid down by the Apex Court in Union of India Vs. R.R. Hingorani's case supra regarding the question of recovery from pension. Such orders cannot be sustained under the law.

Av

11. In the result, the impugned orders dated 09.06.99 (Annexure-A) and 26.07.99(Annexure-B) are quashed and set aside. The respondents are directed to refund to the applicant the amount recovered from his pension together with interest at 18% per annum from the date of recovery till actual payment, within three months from the date of receipt of a copy of this order.

12. The claim of the applicant regarding reimbursement of Rs. 760/- with interest w.e.f. July 1995, prima facie is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. No application for condonation of delay has also been filed by the applicant. The said claim is therefore rejected.

13. The OA is disposed of as above. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

/vv/