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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2581/99

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

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Bhawani Shankar Rawat,
Ex-T.No.3543 IME,
R/o C/o Shri Sunil Sharma,
204-A2, Western Railway Colony,
Tughlakabad,
New Delhi-1100044.
2. Surender Singh,
Ex. T.NO.1488,
R/o C/o Smt. Sudhar Rani,
Qtr No.301, IFCI Jwalahodi Market,
Paschim Vihar, New Delhi.
3. Late Shri N.S. Rathore,
through his wife
Smt. Shakuntala Rathore,
Ex. T.No.3714, IME of 509 Workshop,
R/o C/o Shri Pradip Singh (Pappi),
House No.2774 Choori Walan Gali,
Delhi.

-Applicants

(By Advocate Shri K.K. Patel)

-Versus-

Union of India through:

1. Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Director General (EME),
MGO's Branch,
Army Headquarters,
DHQ PO New Delhi.
3. CDA (Central Command),
Meerut Cantonment,
Meerut.
4. CDA (Pension),
Allahabad.
5. The Commandant,
509, Army Base Workshop,
Agra.

-Respondents

(By Advocate Shri Anil Singhal proxy for Mrs. P.K. Gupta,
Advocate)

O R D E R

By Mr. Shanker Raju, Member (J):

MA for joining together is allowed.

2. The applicants being aggrieved by the decision of the respondents to recover LTC advance alongwith an interest of 14% have sought release of the retiral benefits with an interest of 18% and to set aside the impugned order where the applicants have been subjected to recovery. A prayer has also been made to pay them LTC advance alongwith interest as well as leave encashment.

3. Briefly stated, all the three applicants retired on 31.8.98, 28.2.98 and 31.1.98 respectively. Applicant No.3 has expired as such the application is maintained by the legal heirs. The applicants have applied for LTC advance and the same has been collected by them, just two days before the journey. As such, it was not possible for them to get railway reservation and the same has been undertaken in a bus of State Government Transport and completed the journey and thereafter submitted the requisite tickets of the bus which have been verified and as per the rules the same have not been found tenable. As such after retirement the pensionary benefits have been worked out without any administrative delay and the dues have been asked to be collected by them but they have not responded to the same. The claim of the leave encashment is admitted by the respondents which is due on them but the respondents have deducted the LTC advance alongwith 14% interest and their request for refund of the same has been rejected by passing a speaking orders, which are assailed herein. The contention of the learned counsel for the applicants Shri K.K. Patel is that as per the OM dated 1.10.1966 there was no provision to produce the tickets before the commencement of journey for the Government employees. The only requirement was either to commence the

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outward journey within 30 days of the drawal of advance or refund in full and in such cases the individual was made liable to produce railway tickets within 10 days from the drawal date of advance. The applicants were given advance two days prior to the commencement of their journey and due to delayed payment of advances the applicants managed their journey i.e. on 10.1.98 through Nagaland Tourism Department by bus and while commencing the journey, the applicants met the Accounts Officer, Shri Ravi Mohan Kulshrestha in the workshop and apprised him of the position and requested to send the representative to verify the genuineness of applicants journey and to collect copies of bus tickets. As the instructions of 9.2.98 are prospective in effect and the applicants have completed their journey in January, 1998 the instructions would have no application to their cases. It is also stated that on payment of pensionary benefits they have not been allowed any interest as such the recovery of LTC advance with interest is bad in law. The respondents have not paid interest on the retiral benefits though it has been paid after 8 months on 16.9.98 and other dues after 17 months on 5.1.99. The applicants further contended that as the respondents themselves have not complied with the rules and the reservation is to be made before 60 days before the commencement of the journey the advance having been accorded two days before it was practically impossible to get reservation and the journey was undertaken by other mode. As per Rule 12 (2) (iii) of L.T.C. Rules, 1988 where a Government servant travelling by road takes a seat or seats in a bus, van or other vehicle operated by Tourism Development Corporations in the Public Sector, State Transport Corporations and Transport services run by other

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Government or local bodies to visit any place in India, the reimbursement shall be either the actual hire charges or the amount reimbursable on the journey to the declared place of visit had the journey been undertaken by entitled class by rail by the shortest direct route, whichever is less. Reimbursement shall not be admissible for journey by a private car (owned, borrowed or hired) or a bus, van or other vehicle owned by private operators. The applicants are, therefore, entitled for the LTC. Applicant No1. submitted his application for grant of advance on 10.9.97, applicant No.2 on 16.9.97 and applicant No.3 on 17.10.97. Advances were received two days before. As applicant No.1 was to retire on 31.1.98 he had no option but to postpone his journey and the same was ultimately taken by travelling in a bus. The respondents were to decide the verification of the genuineness of the travelled documents within a maximum period of one year of the receipt. Due to inordinate delay by R-5 the pensionary benefits have been delayed. It is also stated that the applicants have never refused to receive the payments and despite visiting the respondents the applicants are yet to be paid the benefits.

4. On the other hand, strongly rebutting the contention of the applicants the respondents contended that once in four years as per the CCS (LTC) Rules the applicants being civilian in Defence Services are entitled to avail LTC for which they applied for the block year 1998-2001 and were permitted to proceed on LTC tour and were granted leave. The LTC advance was claimed from CDA, Army, Meerut and accordingly before commencement of their journey on LTC tour from Agra to Kanya Kumari and back they have been paid the amount of Rs.11,500/-, Rs.11,600/- and

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Rs.11,600/- respectively. It is stated that as per Rule 15 (v) in all cases, the Government servant should produce railway or bus tickets within ten days of drawal of the advance, which is an objective of verifying the genuineness of the claim of LTC. On re-joining duties the claims were submitted by the applicants to the Accounts Officer and the same have been scrutinized and it was revealed that the applicants along with their family members have not travelled by road and travelled by a bus of an un-authorised travelling agency, i.e., by a private bus under the control of Nagaland Tourism Department of Government of Nagaland which is not admissible for LTC tour as per Rule 12 (2) (iii) of the CCS (LTC) Rules, 1988. The applicants have failed to produce bus/railway tickets and to intimate mode of journey by bus within ten days before the commencement of the journey. Their claims have not been found genuine as such the advance already paid to them became over payment to them and are to be legally recovered and hence notices have been issued to them to deposit the amount but without any avail. As informed by the competent authority the applicants having outstanding dues on account of their leave encashment, other retiral benefits were pending for payment. The LTC advance with penal interest is to be recovered out of the same. As such orders have been issued to that effect. Had the applicants deposited the amount before their retirement there would not have any occasion to recover the balance amount. The learned counsel for the respondents further contended that the applicants failed to return the LTC advance even after 17 months and there is no delay in settlement of their pensionary benefits. Applicant No.1 had submitted a false claim as his son Vivek did not travel on LTC tour as such

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he should have refunded the amount of LTC advance. The reply that he is not claiming the same as his nephew travelled in the bus in the name of his son is not legal and valid as per the LTC Rules. It is also stated that necessary amendments have been made in the LTC Rules ibid and applicant No.1 has misused the Government money for long period. As per the LTC Rules as on 9.2.99 have been modified by which the LTC Advance is to be recovered alongwith interest at the rate of Rs.14.5% from the applicants and the balance of amount was paid on 5.6.99 and no further payment is outstanding with the respondents.

5. I have carefully considered the rival contentions of the parties and perused the material on record. The stand of the respondents that as per the provisions of Rule 15 (v) of the LTC Rules ibid the travelled documents, i.e., the bus tickets are to be produced within 10 days of the drawal of the LTC advance to confirm the mod of journey is concerned, the same is not practicable in the present case. The applicants have undertaken journey on 11.1.98 and the have given advance of LTC just two days before the date of journey. The applicants have apprised the Accounts Officer Shri Ravi Mohan Kulshrestha and requested him to send the representative to verify the genuineness of their journey and to collect copy of the bus tickets but the respondents have failed to do so. The applicants submitted their travelled documents on return from the journey. As such Rule 15 (v) would have only application in case the advance is accorded to the applicants reasonably before 60 days as envisaged in the Rules.

6. As regards travel by train is concerned, the rules clearly stipulate commencing of the outward journey within 30 days of the drawal of LTC advance or to refund the amount of advance in full. Later on, in 1998 this time limit has been enhanced to six months vide OM dated 1.9.98. In this background it cannot be reasonably inferred that there is any malafide on the part of the applicants who have travelled in the bus other than the train.

7. As regards the rejection of the claim of the applicants by placing reliance to Rule 12 (2) (iii) of the LTC Rules vide a notification dated 9.2.98 the Ministry of Finance has provided that LTC is not admissible for journey by a private car (owned, borrowed or hired) or a bus, van or other vehicle owned or operated or chartered by private operators. As the journey has been undertaken much before the OM of 9.2.98 which has no retrospective application being an administrative instruction and there is no clause regarding its applicability prospectively the same is to be applied for the journey undertaken after 9.2.98. Before 1998 the provision of Rule 12 (2) (iii) would apply. The applicants have presented their claim by attaching the travelled documents, which, inter alia, show that the journey was undertaken through Nagaland Tourism Department which is admissible as per Rule 12 (2) (iii). Apart from it, on verification by the respondents The Nagaland Tourism Department had verified that the travelled documents are found to be issued from this department and as the journey is admissible through the State Transport Corporation, which includes Nagaland as well as Manipur and the fact that the notification of 9.2.98 has no retrospective effect the claim of the applicants is valid and as per the rules

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and the decision of the respondents is contrary to the rules. There cannot be any application of administrative instructions, i.e., OM of 9.2.98 to a journey undertaken before the stipulated date. As such the rules in vogue at that time when the applicants had applied for the advance and undertaken the journey would hold the field and as per those rules the applicants have a valid claim.

8. As regards leave encashment is concerned, the respondents themselves have acknowledged that the same is legal due to the applicants and in the event the applicants have not withdrawn the same they are legally entitled for accord of the same.

9. The other contention regarding delay in disbursement of the retiral benefits are concerned, the claim of the applicants is that though they retired in 1998 the interest has not been accorded on payments which have been released after 8 months is concerned, I am satisfied that the delay in payment is neither malafide nor unjustified and was on account of administrative exigencies as such the applicants are not entitled for any interest on the retiral benefits.

10. In the result and having regard to the reasons recorded above, the present OA is partly allowed with the following directions:

(i) The impugned orders dated 26.4.99, 30.7.99 and 17.8.99 are quashed and set aside.

(ii) The respondents are directed to re-examine the claims of the applicants in pursuance of our observations and strictly as per Rule 12 (2) (iii) which were in vogue at the time of performing the journey and the recovery made on account of drawal of LTC advance along with interest at the rate of 14% & to pass a detailed & Speaking order.

(iii) In the event the applicants have not yet received the leave encashment the same may be paid to them.

(iv) The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

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