

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2492/98

New Delhi this the 16th day of February, 2001.

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

Rishiraj Singh,
S/o Sh. Major Singh,
R/o Qr. 98 Block 21,
Lodi Colony,
New Delhi.

...Applicant

(By Advocate Dr. D.C. Vohra)

-Versus-

1. Union of India,
through the Foreign Secretary,
Govt. of India,
Ministry of External Affairs,
South Block,
New Delhi.
2. Embassy of India, Paris,
through Head of Chancery,
C/o Ministry of External Affairs,
South Block, New Delhi.
2. Embassy of India, Santiago,
through Head of Chancery,
C/o Ministry of External Affairs,
South Block, New Delhi.

(By Advocate Shri N.S. Mehta)

O R D E R

By Mr. Shanker Raju, Member (I):

The applicant is a member of Indian Foreign Service Branch 'B' and one of his conditions of his employment including postings at Indian Mission, Abroad. The applicant was posted with the respondents Abroad vide order dated 20.7.93 and was sanctioned non-recoverable amount of Rs. 5600/- under the provisions of Rule 222 of the General Financial Rules, 1963 (GFR for short). Admittedly the applicant has not drawn any TA advance from the headquarter and the cost of the passages for himself and his family was paid directly to the Air India as well as the cost of the freight for baggage. According to the

(2)

applicant these amounts are neither TA claim nor advance. Subsequently the applicant has been asked to submit his transfer TA claim within six months of arrival at Paris and failure to do so would entail not only forfeiture of TA claim but also recovery of the entire TA advance from his pay bill in one instalment alongwith interest as stipulated in Sub-rule (2) of Rule 178 of the GFR. The applicant arrived on 15.8.93 and his LPC was received from the Headquarters in due course, clearly showing that he had not drawn any TA advance from the respondents and period of transit has been regularised. The applicant due to loss of original Airway bill which has to be attached with the TA claim could not submit his claim and eventually he submitted a claim on 25.6.96 beyond two years after adjustment of TA advance of French francs 1500 claiming 230.70 and Indian currency Rs.3422/-. The claim of the applicant was forwarded to the competent authority with an explanation of delay. The TA claim of the applicant was returned back vide order dated 18.10.96 and 22.10.96 by the respondents on the ground that the same has not been preferred within two years. On 23.12.96 the respondents issued a letter to recover from the applicant cost of passage along with unsettled TA advance. The applicant made a representation to the respondents to exclude from the recovery cost of passage for the journey actually performed in public interest by the applicant and his family. On 27.11.97 the respondents ordered a recovery of Rs.10,000/-on account of cost of passage/freight without even asserting the total amount to be recovered. The applicant made a specific request on 27.11.97 itself for revival of his TA claim. After exchange of a communication vide letter dated 29.4.98 the respondents



simply returned the TA bill of the applicant without deciding his representation and vide impugned order dated 19.5.98 without ascertaining the exact amount and penal interest the recovery of Rs.10,000/- per month has been ordered against the applicant from his salary w.e.f. May, 1998. It has also been informed that the request for revival of the claim is also rejected. The applicant contended that the respondents are recovering a sum of \$ 271.59 p.m. since May, 1998, which according to the rate of currency varies from month to month and it exceeded the limit of Rs.10,000/-. It is further contended that before effecting recovery the applicant has not been issued any show cause notice and also not afforded a reasonable opportunity to defend despite the fact that the recovery entailed civil consequences upon the applicant. The applicant conceded that as he has not made the TA claim in time that can be recovered from his salary and further contended that he has to recover certain amount from the Government but fairly conceded that the claim could not be made within the stipulated period. The same can be recovered but as regards the cost of passage and freight with penal interest the applicant contended that the respondents have no right to recover the cost of passage as it is not a TA advance. According to him unless the TA claim is mentioned in the last pay certificate of the applicant the same could not have been validly recovered by the respondents and to substantiate his claim he has referred to LPC at Annexure A-17 where there is no reference of TA claim including passage. It has been further contended that the cost of passage is turned out by the Government paid directly to the Airlines and as such it should not be treated as a TA advance. The applicant,

contended that his representation regarding exclusion of Air passage has not been considered by the respondents. It is further contended that the Embassy vide a letter dated 22.6.98 has sought from the Government the details of the recovery to be effected upon the applicant. The applicant resorted to GFR 225 and the Government decision at serial No.2 to contend that the advance drawn by a Government servant as TA if not submitted within the time limit will stand forfeited under SR 194-A and has to be recovered from his pay bill in one instalment. The applicant resorted to SR 194-A containing Government decision therein dated 18.2.76 to contend that SR 194-A would not be attracted and Rule 82 of GFR would be applicable which allows consideration of time barred claim of TA. The applicant further draws my attention to Rule 55 C to contend that the payment made by the Government directly to Airline as passage and freight allowances should be indicated in the LPC of the officer. According to him any administrative instructions cannot over-ride the statutory rules. According to him administrative instructions are not public documents and have not been brought in the knowledge of the applicant. The applicant further relied upon decision dated 22.2.83 to contend that while examining the belated claim in relaxation of the provisions and if the delay is on account of receipt etc. a token penalty of 5% of the total amount should be imposed and if it is found that the claim was not deliberately made penal interest at the rate of 2-1/2% higher than the rate of interest leviable should be charged. The applicant has further contended that he has been discriminated in the matter of granting relaxation in submission of the delayed claim of TA, as one Sh. J.L. Peepli who has submitted his claim belatedly has been given

relaxation subject to a cut of 15% of the claim or Rs.1500/- excluding cost of passage vide an order dated 8.4.91. According to the applicant instructions which are made applicable upon the applicant dated 24.4.93 would apply in his case and according to clause 2 (b) of these instructions penalty of 10% excluding the cost of passage can be levied to entertain a belated claim of TA. The applicant challenges clause 2 (d) of these instructions which deprives a reasonable opportunity to show cause and closes further examination of belated claim made beyond two years. It is contended that the Government has a discretion which is not judiciously discharged.

2. The respondents refuted the claim of the applicant by relying upon the Ministry circular dated 24.3.93 and contended that if the claim is not preferred within two years it would stand forfeited and need no further examination and the administration is empowered to recover cost of passage as unsettled advance with usual penal rate of interest from the date of advance sanctioned till the date of settlement. It is the cost of passage along with certain TA advance with penal interest has been decided with the prior approval of integrated finance. According to the respondents the request of the applicant for belated presentation and claim on account of misplacement of documents Airways bill has been considered as per the instructions and is not found sufficient for regularisation of the rules. According to the respondents on the request of Ambassador at Santiago the case of the applicant was re-examined but the same was not acceded to. The respondents have further contended that the claim of the applicant is time barred as the order of forfeiture of

h

recovery are different and as the order of forfeiture has been passed way back in the year 1976 the OA has been filed belatedly without any prayer for condonation of delay. As regards discrimination it has been contended that the case of Peepli was pertaining to the year 1991 and was relaxed under the then existing rules and the applicant cannot claim parity with Sh. Peepli as such there is no question of any discrimination. According to the respondents' counsel the recovery can be effected in number of instalments and SR 194-A would not have any application. It is further contended that there is no legal requirements to show Air passage in LPC. As regard the grant of reasonable opportunity to show cause before effecting recovery it has been contended that there is no provision in the rules to afford an opportunity of show cause to the concerned official before getting recovery. In the rejoinder the applicant has reiterated his claim made in the OA.

3. I have carefully gone through the rival contentions of the parties and perused the material on record. The applicant in his OA contended that before effecting the recovery no reasonable opportunity to show cause has been afforded to the applicant. According to him when such a huge recovery has been effected upon the applicant from his salary of Rs.7500/- has visited him with civil consequences. According to the applicant's counsel any administrative order which is in breach would be struck down as invalid. Apart from it, if an order effects an employee financially it must be passed after giving him full opportunity to make out his case. The learned counsel of the applicant contends that even if the opportunity of



show cause is not interpreted in any rule the same has to be construed and read as implied incorporation of the principles of natural justice in the aforesaid rules. In support of his contention the applicant relies upon the ratio of Hon'ble Apex Court in the following cases:

- (i) State of Orissa v. Dr. (Miss) Binapani Dei & Ors.
AIR 1967 SC 1269.
- (ii) M. Gopalakrishna Naidu v. State of M.P.
AIR 1968 SC 240.
- (iii) Mahabir Prasad v. State of U.P.
AIR 1970 SC 1302.
- (iv) B.D. Gupta v. State of Harvana
AIR 1972 SC 2472.
- (v) H.L. Trehan & Ors. v. Union of India
1988 (2) SCALE 1376.

4. I do not agree with contention of the respondents that as the rules do not provide for a show cause notice the same was not given to the applicant. As held by the Apex Court (supra) the principles of natural justice are to be observed before a Government servant is visited with civil consequences. In the instant case the order of recovery has been passed without affording any reasonable opportunity to the applicant to show cause against the same. In my view the order of recovery and pursuant action of recovering the unsettled TA claim along with penal interest would not be legally sustainable.

W



5. Apart from it, the learned counsel of the applicant contends that the orders passed are mechanical and non-speaking. The impugned orders do not specify the exact amount to be recovered from the applicant along with penal interest. The applicant who is getting a meagre salary of Rs.7500/- is imposed a recovery of more than Rs.10,000/- per month, although the Tribunal vide order dated 18.12.98 reduced the recovery from Rs.10,000/- to 1/3rd of the basic pay of the applicant and also the recovery in terms of dollars. I am also of the considered opinion that the respondents in their order of recovery have not specified as to the exact computation of the recovered amount along with penal interest to be paid by the applicant and the orders passed are not speaking in that context.

6. As I have disposed of this OA only on one legal issue the other grounds taken by the applicant are not adjudicated.

7. Having regard to the discussion made above the OA is partly allowed. The impugned orders dated 18.10.96 and 22.10.96 are quashed and set aside. The respondents are directed to refund to the applicant the recovered amount from his salary on account of settlement of TA bill and further afford the applicant a reasonable opportunity to show cause before effecting any recovery on account of TA advance. The respondents shall also specify the exact amount to be recovered as well as the penal interest to be recovered from the applicant in their show cause notice to be issued. The respondents are directed to

(9)

17

comply with the aforesaid directions within a period of two months from the date of communication of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

"San."