

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1220/1996

New Delhi, this 20th day of January, 1997

Hon'ble Shri S.P. Biswas, Member(A)

Shri H.R. Mohey
s/o Shri R.R. Mohey
First Secretary, Embassy of India
Copenhagen, Denmark ... Applicant

(By Dr. D.C. Vohra, Advocate)

versus

Union of India, through

1. Foreign Secretary
Ministry of External Affairs
South Block, New Delhi
2. Head of Chancery
c/o Ministry of External Affairs
South Block, New Delhi .. Respondents

(By Shri N.S. Mehta, Senior Advocate)

ORDER (oral)

The applicant is aggrieved by Annexure A-1 order dated 6th January, 1995 (read with LPC dt. 23.1.1995) by which a recovery of Rs.37,079/- is sought to be effected from the applicant, being the difference of economy class fare and concessional fare for New Delhi-Santiago-New Delhi in respect of applicant's sons, who availed holiday passage for the period 1988-90.

2. The case of the applicant is that his sons, who were studying in India had availed children's holiday passages during July, 1988 to May, 1990 by the economy class as admissible under the relevant rules and regulations relating to Indian Foreign Service titled the "Children Holiday Passages" issued by the Ministry of External Affairs vide OM dated 31.3.62 amended from time to time, wherein it has been clearly stated that -

4 "This concession will be limited to the payment of the

(12)

~~cost of~~ return air passage by the cheapest class available from the last port of embarkment in India to the post abroad. In respect of a child studying abroad the return air fare will be from the place of his study to the place of the officer's station of posting limited to return air fare of the cheapest class from the last port of embarkation in India to the post abroad". The counsel for the applicant, therefore, argues that the instructions issued on 20.10.93 on the subject could not have retrospective effect inasmuch as the claims related to 1988-1990.

3. The respondents, on the contrary, would submit that the entitlement of fares on children's holiday passage is by "Cheapest class" as per O.M. dated 31.3.1962 and in the present case the 'student's concessional fare' granted by Air India was cheaper than the 'economy class'. As per latest circular of Ministry of External Affairs dated 20.10.1993, the "cheapest class" does not refer to "economy class" but would only mean excursion fares or concessional air tickets issued by Air India. A difference thus arose between the economy class and concessional ticket to the tune of Rs.37,079 which lead to audit objection and therefore the said amount was ordered to be recovered as per the instructions of OM dated 20.10.93. As per respondents, the circular dated 20.10.93 (R11-Annexure) was issued only as a clarificatory order and did not in any way supersede the earlier instructions on the subject contained in Annexure R-I. The said circular clearly mentions that pending objections were to be settled in accordance with the instructions laid out in the same circular.

13

4. The main contention of the applicant's counsel is that the respondents do not have any legal right to give retrospective effect of the instructions dated 20.10.93 when the concession was actually availed in 1988-1990 as per the instructions existing at that time. He further contends that the impugned order is without application of mind and violative of principles of natural justice, inasmuch as that the applicant was not given any show cause notice nor an opportunity of hearing or explaining *his side* of the case was given before issuance of the impugned order seeking to effect the said recovery. In support of his claim, he has cited the decisions in the following cases:

1. State of Orissa Vs. Dr.(Ms.) Binapani Dei & Ors. AIR 1967 SC 1269.
2. Mahabir Prasad Vs. State of UP AIR 1970 SC 1302.
3. B.D.Gupta Vs. State of Haryana AIR 1972 SC 2472.
4. M.Gopalakrishna Naidu Vs.State of MP AIR 1968 SC 240.
5. H.L. Trehan Vs. UOI 1988(2) SCALE 1376.

5. It is an admitted fact that no administrative order will have retrospective effect unless it is specifically stated therein. No doubt the OM dated 20.10.93 is clarificatory but nowhere it is stated that the clarification so given would have retrospective effect. It is also clearly stated therein that pending audit objections, if any, may be settled in accordance with the above clarification. If at all the applicant's claim was subjected to any audit objection, respondents should have intimated the applicant about the same. Unfortunately this was not done. Neither it is possible to treat A1 impugned order as a prior warning or as a pre notice before effecting recovery.

(19)

6. A system governed by the rule of law reckons no decision, without an adjudication. A decision which affects rights of parties, envisions pre-decisional hearing. Executive authorities cannot approximate themselves to oracles, or arrogate to themselves ordinances. This is a basic requirement of natural justice, which has always been part of adjudicatory process.

7. Sir Edward Coke described requirements of natural justice as the duty "to vocate, interrogate and adjudicate". It has been said that:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence".
(Cooper Vs. Wandsworth Board of Works) 1863(14) ER 414.

8. The Hon'ble Supreme Court of India has highlighted this requirement in a long line of decisions e.g. of State of Orissa Vs. Dr. (Miss) A.Bina Pani Dei, AIR 1967 (SC) 1269.

9. As per the decisions of the Hon'ble Supreme Court in the case of Dr. (Miss) Bina Pani Dei (Supra), "if there is a power to decide and determine to the prejudice of a person, the duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is the basic concept of the rule of law and the importance thereof transcends the significance of a decision in any particular case". Since in the present case the applicant was never asked to show cause before the order of recovery was issued, the said order violates the principles of natural justice and is a

15

nullity. In view of the above, the application is allowed and the Annexure A-1 order to effect recovery of Rs.37,079/- from the applicant is set aside. If the 1st respondent is of the opinion that the amount mentioned in A1 and A2 are to be recovered, he will have to issue a show cause notice to the applicant, hear him, consider his defence and take an objective decision.

10. The application is allowed as aforesaid. No costs.



(S.P. Biswas)
Member(A)

/gtv/