

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 22
T.A. No.

1989

DATE OF DECISION JANUARY 17, 1990.

Shri Sohan Pal Singh _____ Applicant (s)

Shri B.S. Maines _____ Advocate for the Applicant (s)

Versus

Delhi Administration & Another _____ Respondent (s)

Shri B.R. Prasher _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. JAIN, MEMBER (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged Office Order dated 7.3.88 (Annexure D); memorandum dated 12.10.1988 (Annexure F); and memorandum dated 25.11.1988 (Annexure H); by which he has been directed to refund the payment made to him on account of L.T.C. claim and has prayed that these may be quashed and set aside.

2. Briefly stated, the relevant facts are that the applicant is Craft Inspector, Industrial Training Institute, Subzi Mandi, Delhi, had availed the Leave Travel Concession (LTC) during 1983 for the block 1982-85 for performing journey from Delhi to Kanyakumari alongwith his family members. His claim amounting to Rs. 6,325/- for 5 $\frac{1}{2}$ tickets was admitted by the Principal, Industrial Training Institute, Subzi Mandi, Delhi, and was paid the said amount during

Clear

July, 1983. In the course of a complaint No. 52/83-AC Branch dated 7.10.83, against one Shri Harbans Lal Sharma of Government Boys Senior Secondary School, Chand Nagar, New Delhi, relating to mis-use of L.T.C facility from Delhi to Kanaya Kumari, the Anti-Corruption Branch of Directorate of Vigilance, Delhi Administration, inter-alia discovered that the applicant was entitled only to 2½ tickets. The Directorate of Vigilance . . ., therefore, inter-alia recommended that recovery of L.T.C. amounts with penal interest may be made. Departmental action was also recommended. In pursuance of this report, the principal, I.T.I., Subzi Mandi Delhi, in accordance with the instructions issued by the Directorate of Training and Technical Education, Delhi Administration, Delhi, vide their letter dated 29.2.88 asked the applicant vide office order dated 7.3.1988, to deposit an amount of Rs. 10,082/- failing which the said amount will be recovered from his salary in lumpsum till the recovery of the total amount. The applicant made a representation dated 8.5.88. After considering the representation, he was directed vide memorandum dated 12.10.88 to deposit a sum of Rs. 10,609/- (Rs. 6325.00 as principal amount and Rs. 4284/- as penal interest thereon), immediately. The applicant again represented on 17.10.1988. After considering . . . the representation, memorandum dated 25.11.1988 was issued whereby the applicant was directed to deposit the above amount immediately. However, vide memorandum dated 20.4.89 (Annexure F to the reply filed by the respondents), the applicant was informed that L.T.C. claim for three members only will be recovered from him (Rs. 3450 plus penal interest as applicable thereon) in modification of the previous orders in view of the clarification given by the Vigilance Officer, Directorate of Training and Technical Education, New Delhi.

3. Applicant's case is that he did not prefer any false claim; that he was not given any opportunity to show cause against the proposed recovery; that the impugned orders cast a stigma on him; that no enquiry has been held in the matter; and that he has not

been conveyed any reasons for the claim stated to be false. The learned counsel for the applicant cited three judgements*. The case of Jabalpur Bench is not at all relevant. In the case of Bombay High Court it was held that removal from service on the basis of certain information gathered without affording an opportunity of being heard and where the order casts stigma, it was an order in violation of principles of natural justice, and thus bad. In Smt. Rajinder Kaur's case it was held that the discharge of appellant on the result of an enquiry as to character of appellant into allegation that she spent two nights with a male constable, enquiry held behind the back of the appellant, was liable to be quashed as violative of Article 311(2) of the Constitution.

4. The respondent's case, in brief, is that recovery has been ordered in accordance with the rules; and that action has been taken on the report of Anti Corruption Branch of the Directorate of Vigilance, Delhi Administration, Delhi. They have quoted C.&A.G No. NGE/31/1982-No.3422-NGE 1/6-81 dated 27.11.82 in support of their contention that penal interest is to be recovered if the conditions laid down in the sanction by the Competent authority are not complied with and/or the rules regulating the grant of these advances have been violated. L.T.C. advance is governed by Rule 235 of the General Financial Rules.

5. I have perused the record of the case and have also heard the learned counsel for both the parties.

6. Report of the Anti Corruption Branch referred to above shows that the statement of the applicant was taken in which he has stated that he had performed the journey from Delhi to Kanya Kumari.

-
- * 1. Smt. Rajinder Kaur Vs. Punjab State & Anr. ATR-1986-(2)-SC-540.
 - 2. U.G.Harishankar Vs. Union Bank of India - Bombay High Court - 1980-(3)-SLR-571.
 - 3. Vasant Diwakar Thite Vs. Union of India & Others - CAT- Jabalpur Bench - ATR-1989-(1)-CAT-64.
- (14)

in the month of June 1983 and that he had claimed L.T.C. for the 7 members of his family including himself and his wife. In the enquiry it was found that only $2\frac{1}{2}$ member were actually on South India tour as per report of Ganesh Hotel at Kanya Kumari. It was further stated the applicant might have performed the journey in Bus No. DEP 4587, and that he had not disclosed this fact which is a serious lapse on his part because Bus No. DLP 5169 was not on South India Tour. These allegations have, however, not been communicated to the applicant as per the documents on record of this case. During the enquiry conducted by the Anti Corruption Branch, there is nothing to show that the applicant was shown or confronted with the evidence against him. No such facts have been communicated by the respondents to the applicant to give him an opportunity to substantiate his claim that the journey was performed with all the 7 members for which he had preferred the claim and paid the same. Recovery has been ordered after nearly 5 years of the settlement of the claim and there is no doubt that impugned action does cast a stigma on the applicant.

7. Two cases cited on behalf of the applicant pertain to termination of service which was in fact held to be removal and thus a penalty. Recovery of the amount in this case is not a penalty, but the ratio in 2 cases cited by the applicant is applicable in this case also inasmuch as ordering of the recovery after the lapse of about 5 years without assigning any reason therefor and without any opportunity being given to the applicant to rebut the charges against him, amounts to violation of principles of natural justice and cannot, therefore, be sustained in law. In view of the above discussion, the impugned orders dated 7.3.88, 12.10.88 and 25.11.88 are hereby quashed. The modified order passed on 20.4.89 (Annexure F to the counter-reply) is also quashed. The respondents are directed not to effect any recovery

(Signature)

in pursuance of the above four orders. However, the respondents will be free to initiate fresh action and after giving an opportunity to the applicant to show cause as to why the proposed recovery should not be made from him, may pass appropriate orders thereafter. The application is disposed of in terms of the above directions. Parties will bear their own costs.

(L. C. M. 17/196)
(P.C. JAIN)
MEMBER (A)