

CENTRAL ADMINISTRATIVE TRIBUNAL**CUTTACK BENCH****OA No. 680 of 2019****Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)**

Gouro Chandro Tripathy, aged about 57 years, S/o Late Trilochana Tripathy, permanent Resident of Raju Street, at/P.O/P.S/District of Nabarangapur, at present working as Programme Executive, Commercial Broadcasting Service, All India Radio, Cuttack, under P.S- Cantonment, P.O-Buxi Bazar, Cuttack City, in the District of Cuttack.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Broadcasting and Information, Government of India, New Delhi-100001.
2. Station Director, Head of Office, Prasar Bharati, India's Public Service B' Caster, All India Radio, Baripada, at P.O/P.S- Baripada Town, in the District of Mayurbhanj, PIN- 757001.
3. Station Director, Head of Office, Commercial Broadcasting Service, All India Radio, Cuttack, at/P.O- Buxi Bazar, under P.S- Cantonment, Cuttack City, in the District of Cuttack, PIN- 753001.

.....Respondents.

For the applicant : Applicant in person

For the respondents: Mr. S. Behera, Counsel

Order reserved on: 21.09.2020

Order on: 07.10.2020

O R D E R**Per Mr. Gokul Chandra Pati, Member (A)**

The applicant has sought for the following reliefs in this OA:-

- “(A) To pass appropriate Order to quash the Memorandum issued by the Respondent No-2, under Annexure-A/3. AND
- (B) Direction may be issued to Respondents to refund all the deducted/recovered amount of the Applicant, with day to day interest, as applicable, within a period stipulated. AND
- (C) To pass appropriate direction to all the Respondents to keep in abeyance of the aforesaid Memorandum under Annexure-A/3, till pending disposal of this Original Application, by this Hon'ble Tribunal. AND

(D)To pass such further Order(s)/Direction (s) as this Hon'ble Tribunal, deem fit, just and proper to the facts and circumstances of the case and Original Application of the Applicant may be allowed.”

2. The applicant, while working as Programme Executive in All India Radio, Baripada (in short AIR), had availed the LTC benefit with 10 days of leave encashment of Rs. 15019/- and was sanctioned an advance of Rs. 70,000/- on 29.9.2011. The applicant avers in the OA that he had submitted the LTC bills on his return from LTC within the prescribed period of one month which was entered in his service book. But he was surprised to get a memo dated 4.4.2019 (Annexure-A/1 series) directing him to deposit Rs. 1,51,149.60 within 15 days. Prior to that, a memo dated 21.2.2019 (Annexure-A/3) was communicated to the applicant indicating the details of the amount to be recovered. The applicant submitted representations dated 5.3.2019 (Annexure-A/3) and 18.4.2019 (Annexure-A/1). Respondents informed vide letter dated 30.4.2019 (Annexure-A/2) that there was no proof furnished regarding submission of the LTC bills, which were not submitted by the applicant, for which the direction to recover the amount in question was reiterated. When amount of Rs. 20,000/- was deducted from the salary of the applicant for the months of June, July and August, 2019 the applicant filed this OA.

3. Vide order dated 16.10.2019, this Tribunal while admitting the OA, directed the respondents not to effect any further recovery from applicant's salary taking into consideration the fact that no action was taken for recovery of the LTC advance for 8 years. The respondents have filed the MA No.319/2020 on 7.7.2020 for vacation of the above interim order and vide order dated 18.8.2020, the applicant's counsel was directed to file objection if any to the MA within a week. When the matter was taken up on 27.8.2020, the applicant's counsel requested for more time for filing of objection. He was allowed to file objection by 7.9.2020 as last opportunity and the matter was listed to 21.9.2020 for hearing of both the MA and OA.

4. The respondents have filed Counter denying the contention that any entry has been made in applicant's service book about availing of the LTC or settlement of the LTC bills in question. It is stated that for non-submission of the bills within 30 days, penal interest is to be charged as per the rule. The applicant is stated to have worked as drawing and disbursing officer (in short DDO) at AIR and it was his duty to make necessary entry about LTC in his service book. It is further stated in the Counter that though 90% of the fare was given as advance, the applicant has never claimed the balance 10% and that in absence of any proof/evidence or record, applicant's contention that the

LTC bills were submitted cannot be sustained. The provisions of the rule 15(vi) of the CCS (LTC) Rules was cited in support of the decision of recovery of the LTC advance from the applicant.

5. Rejoinder filed by the applicant reiterating the contention that he had submitted the LTC bills within the time as stipulated under rule 15(vi) and that had he not submitted the LTC bills, AIR would have taken action for recovery immediately after one month of completion of the return journey under LTC. It is also stated that the applicant was not shown the service book for verification and that he had not worked as regular DDO and when the regular DDO was on leave or on tour, he was given temporary responsibility as DDO for short period. It is stated that the question of the LTC advance allowed on 20.9.2011, came to light in July, 2018 during audit scrutiny and till that time no letter was issued to the applicant by authorities regarding alleged non-submission of the LTC bills. The applicant referred to the Government of India instructions in the rules to aver that it was the duty of the Head of the Office to check the LTC advance register every month and to take step for recovery if any advance is outstanding against any staff. In that case, the applicant would have been notified about the LTC advance outstanding against him. It is also stated in Rejoinder that when the applicant was transferred from AIR to Cuttack, the LPC issued to him should have reflected the LTC advance if it was outstanding due to non-submission of the bills by the applicant.

6. Heard the applicant who was present in person. He submitted that since the respondents have not taken action earlier for alleged non-submission of the LTC bills by him as per the instructions of Government of India, their action after 8 years from the date of sanction of advance by the impugned orders of recovery cannot be sustained. He also argued that had he not submitted the LTC bills, the authorities would have taken steps for recovery earlier after reviewing LTC advance register and such advance would also have been reflected in his LPC on his transfer from AIR to Cuttack in 2012, which was silent about the advance in question. It was also submitted by him that he had not worked as DDO in AIR and had functioned as DDO for short period on temporary charge whenever required.

7. Learned counsel for the respondents was heard. He submitted that the applicant did not submit any LTC bills after returning from journey and this fact was noticed by the audit in the year 2018 as stated in the Counter. He further submitted that no proof has been furnished by the applicant in support of his claim that he had submitted the LTC bills in question.

8. With due regard to the pleadings on record and the submissions by both the parties, it is clear that the LTC bill claimed to have been submitted by the applicant was not available in office of the AIR Baripada at the time of audit in the year 2018. The respondents have averred that the applicant has not submitted the said LTC bills. The applicant contradicts such averment by stating in Rejoinder that if he had not furnished the LTC bills in time, it was the responsibility of the authorities to advise him to refund the amount as per the rules as well as the instructions of Government of India. It is also claimed by the applicant in para (h) of Rejoinder that the LPC issued to him at the time of his transfer from AIR to Cuttack should have reflected such advance if it is outstanding. Such claims of the applicant in Rejoinder have not been contradicted by the respondents. But the applicant has not furnished any document to show that he had submitted the LTC bills in question. His contention in the OA that there was entry in his service book about the LTC in question has been contradicted by the respondents in the Counter. The Rejoinder is silent about the service book entry.

9. The impugned order dated 21.2.2019 (Annexure-A/3) states as under:-

“Shri G.C. Tripathy, former PEX of this station is hereby informed that on scrutiny and as pointed out by the Audit party vide inspection report No. 34/18-19 Dt.25.07.2018, 10 days Leave Encashment of Rs. 15019/- and the LTC advance of Rs. 70,000/- drawn vide bill No. 64 & 65 dt. 29.09.2011 respectively by Shri Tripathy has remained unsettled due to non-submission of LTC bill. As per sub rule 15(vi) of CCS (LTC) Rules, where an advance has been drawn by a Govt. Servant, the claim for reimbursement of expenditure incurred on the journey shall be submitted within one month of the completion of the return journey. On Govt. Servant's failure to do so, he shall be required to refund the entire amount of advance along with penal interest thereon in one lumpsum.....”

The order dated 21.2.2019 went ahead to indicate the amount of leave encashment and LTC advance disbursed on 29.9.2011 and has calculated the interest at the rate of 2% above the GPF rate till the date of order and total interest calculated was Rs. 66,130.60 on the principal amount of Rs. 85,019/-, thus totaling Rs. 1,51,149.60 which is shown to be recovered and the applicant was asked to deposit that amount within 15 days.

10. The rule 15(vi) of the CCS (LTC) Rules, 1988 which has been relied upon by the respondents states as under:-

“15. Grant of advance and adjustment thereof.-

.....

(vi) Where an advance has been drawn by a Government servant, the claim for reimbursement of the expenditure incurred on the journey shall be submitted within one month of the completion of the return journey. On a Government servant's failure to do so, he shall be required to refund the entire amount of

advance forthwith in one lump sum. No request for recovery of the advance in instalments shall be entertained.”

Although it is stated in order dated 21.2.2019 that the applicant failed to submit the LTC bills to settle the advance sanctioned in his favour on 29.9.2011, then under the rule 15(vi), steps were required to be taken by the concerned authorities once the applicant failed to submit the bills within one month from the date of return from LTC, to instruct the applicant to refund the advance amount as per the provisions of the rule 15(vi). The reason why no such action was taken till the Audit party discovered this matter in 2018 has not been explained by the respondents in their Counter.

11. Further, the respondents have alleged that the applicant has failed to submit the LTC bills, which is denied by the applicant. No effort seems to have been made to ascertain the truth by conducting an inquiry into the matter. In absence of such inquiry, the contention in the Counter that the applicant has not furnished any evidence to show that he had submitted the LTC bills in time, is not sufficient to prove that the applicant has not submitted the said LTC bills as stated in order dated 21.2.2019.

12. At the same time, it cannot also be said that the applicant's action in the matter is without any blemish. Once an advance is taken by the applicant for LTC, it was also his duty to ensure that after submission of the LTC bills, the advance against him is settled by adjustment against the said bills. Failure of the authorities to monitor the LTC advance paid to the applicant and to take timely steps for recovery as per the rules, will not free the applicant from his responsibility to ensure that no advance against him remains outstanding at a particular station, particularly at the time of his transfer to another station. The applicant has not explained the reason for not ensuring adjustment of LTC advance against him in time even if his averment that he had submitted the LTC bills is treated as correct. The applicant has referred to the instructions of Government of India to monitor and timely recovery of LTC advance. But no rule or instruction has been furnished by him to show that if the authorities do not comply with these instructions regarding timely recovery of LTC advance, then the amount in question cannot be recovered from the concerned employee belatedly. Hence, for administrative lapses of the authorities, the applicant cannot be exempted from his liability to refund the said advance as per the provisions of the rule 15(vi) of the CCS (LTC) Rules, 1988.

13. In the factual circumstances of the case, the delay in recovery of the advance in question is mainly due to lapses on the part of the respondents, for which the applicant cannot be made responsible. Hence, for delay on the part of the respondents, the applicant cannot be asked to pay the penal interest as

calculated in the impugned order dated 21.2.2019 (A/3). Further, the rule 15(vi) does not provide for payment of interest if recovery of advance from the concerned employee is delayed due to lapses on the part of the authorities. The respondents have not furnished any rule or instruction which will make the applicant liable for payment of penal interest at the rate of 2% above the GPF rate as demanded vide order dated 21.2.2019 (A/3).

14. For the reasons as discussed above and taking into account the provisions of the rule 15(vi) of the CCS (LTC) Rules, I am of the considered view that while the applicant is liable to refund the amount of LTC advance and the leave encashment for 10 days amounting to Rs. 85,019/-, he is not liable to pay the penal interest of Rs. 66,130.60 as shown in the order dated 21.2.2019. Accordingly, the decision to charge penal interest from the applicant in the impugned order dated 21.2.2019 (Annexure-A/3) is quashed. If the amount recovered already from the applicant is less than Rs. 85,019/-, then the respondents will be at liberty to recover the balance amount from the applicant. If the amount recovered already from the applicant is more than Rs. 85,019/-, the respondents are required to refund the excess amount recovered to the applicant within two months from the date of receipt of a copy of this order. Further, the respondents will be at liberty to recover the penal interest on the amount from the employees due to whose negligence the amount in question could not be recovered in time in accordance with the rules, by following due process of law.

15. The OA is allowed in part as above. There will be no order as to cost.

(GOKUL CHANDRA PATI)

MEMBER (A)