

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00150/2021

HYDERABAD, this the 24th day of February, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



- 1.S.Sathma Ram S/o Anatiaha,
Aged : 58 years, Occ : C.M./Tech.,
2. Syed Hyder Ali S/o Syed Mumtaz Ali,
Aged : 42 years, Occ : C.M./Tech.,
3. J.Niranjan Kumar S/o J.V.Bhaskar,
Aged : 46 years, Occ : UDC,
4. K.Shankaraiah S/o K.Buchaiah,
Aged : 43 years, Occ : UDC,
- 5.Y.Shashikala W/o Y.Samson,
Aged : 50 years, Occ : Supervisor/NT(S),
- 6.K.Yellesham S/o Agamaiah,
Aged 57 years, Occ : JWM,
- 7.M.Shalini W/o Late Gourishwar Babu,
Aged : 45 years, Occ : JWM,
- 8.M.Laxma Reddy S/o Narayana Reddy,
Aged : 58 years, Occ : JWM,
- 9.K. Krishna Murthy S/o Late K. Mohana Chary,
Aged : 54 years, Occ : JWM,
- 10.B.Balawantha S/o Late B.Balawantha,
Aged : 54 years, Occ : JWM / SG,
- 11.M.Ravinder S/o M.Devadas,
Aged : 52 years, Occ : JWM(SG),
- 12.K.R.Hemanth Kumar S/o late K.V.Raghunath,
Aged : 53 years, Occ : JWM (SG),
- 13.G. Damodar Reddy S/o Late G. Ram Reddy,
Aged : 56 years, Occ : JWM,
- 14.K. Muralidhar Reddy S/o Late P. Surender Reddy,

Aged : 55 years, Occ : JWM,

15.K.Prakash Rao S/o K. Venkateshwar Rao,
Aged : 48 years, Occ : JWM,

16.P.Shravan Kumar Reddy S/o P. Gopal Reddy,
Aged : 47 years, Occ : JWM



All are working in the O/o Ordnance Factory, Yeddumailaram, Sangareddy District, T.S.PIN 502 205, T.S., and R/o Ordnance Factory Estate, Yeddumailaram, Sangareddy and Ranga Reddy Districts of Telangana State. ...Applicants

(By Advocate : Mr. K. Ram Murthy)

Vs.

1.Union of India, Represented by its General Manager,
Ordnance Factory, Yeddumailaram,
Sangareddy District, T.S.PIN 502 205.

2.The Deputy Director of Audit, (OF),
HVF Admin Building, IInd Floor, Avadi,
Chennai – 600 054. (TN)

3.The Controller of Finance & Accounts (FYS),
Ordnance Factory, Medak – 502 205, T.S.

4.The Principal Controller of Defence Accounts,
(Factories), Ayudh Bhavan, 10-A,
Shahid Khudiram Bose Road, Kolkatta,
West Bengal, PIN – 700 001.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed against the show cause notice dated 13.05.2019 proposing recovery of LTC amounts paid to the applicants along with interest, on conversion of Home Town LTC to visit North East Region/ J&K during the block years 2006-09 & 2010-13.

3. Brief facts of the case are that the applicants were granted conversion of Home Town LTC to North East Region/ J & K for block years 2006-2009 & 2010-2013. Bills claimed by the applicants were passed and paid by the respondents 1, 3 & 4. After 7 to 8 years, internal audit while auditing the claims found an error committed by the respondents 1, 3, & 4 in allowing the claim. Applicants have gone on LTC with the approval of the respondents and made the claim as per rules which were passed. There was no fraud or misrepresentation in making the claims and yet, ordering recovery with interest is unfair. Hence the OA.

4. The contentions of the applicants are that the order of recovery is against Principles of Natural Justice, Articles 14, 16 & 309 of the Constitution of India. 7 to 8 years have lapsed since the settlement of the claims as per rules. For administrative lapse, the applicants are being penalised. Applicants have volunteered to set off the LTC claims made against future eligible All India LTC blocks. Tribunal vide order dt. 28.12.2018, in OAs 898, 899, 900 of 2016, etc. has directed the respondents to adjust the claim made against eligible future All India LTC blocks.

Hon’ble Supreme Court in Rafiq Masih case has not permitted recovery from employees belonging to Group C & D.

5. Heard learned counsel for both sides and perused the pleadings.

6. I. The dispute is in regard to availing of the Leave Travel Concession (for short “LTC”) facility by converting Home Town LTC to LTC for North Eastern Region, Sikkim and Srinagar. Respondents did permit the applicants to avail the benefit of conversion of the Home town LTC to NER etc and granted 90% advance as well to avail of the facility. Bills, when preferred, audit objected on the ground that the employees whose headquarter and the home town is same, they are ineligible for conversion, as per clause 5 of DOPT memo dated 14.5.2008 . The relevant clause is extracted hereunder:



5.	Whether a Government employee who has already availed All India LTC is entitled for LTC to visit NER in terms of OM dated 2.5.2008?	A Government employee can avail LTC to visit NER by conversion of one block of home town LTC, if the same is available. However, the Government employees whose headquarters and home-town being same are not entitled for home town LTC and the question of conversion of home town LTC into LTC for NER in such cases does not arise.
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Therefore, notice was issued to the applicants for remitting the amount granted with penal interest.

II. It is seen form the facts of the case that the applicants were permitted to go on LTC and granted 90% advance. They claimed that they have not committed any fraud nor did they misrepresent the facts, which was not refuted by the respondents. It was therefore, the responsibility of the respondents to examine the issue as per rules and instruct the applicants, when they sought permission for conversion and avail LTC to NER etc. Having not done so, they have committed the mistake and for their mistake

applicants are being penalised. Had the respondents rejected the conversion by applying the Rule, the issue would not have cropped up. Therefore, we have no hesitation to hold that the mistake lies at the door of the respondents. Besides, it is a fact that the applicants have made the journey and preferred the bills as per rules. To the extent of undertaking the journey, there is no dispute. Hence, after allowing the applicants to undertake the journey to NER etc and thereafter, turning around to state that they are ineligible is unfair, to say the least. Moreover, applicants have prayed that the LTCs claimed can be adjusted against future All India LTC block, which is a reasonable proposition and such a measure, if accepted, would not put the respondents to any financial loss in the overall perspective. Respondents have not responded to the contention of the applicants that the Tribunal allowed the adjustment of LTC availed through conversion by similarly situated employees with future LTC blocks in OAs 898, 899, 900 of 2016 etc. The operative portion of the verdict of the Tribunal in OA 898 of 2016, is reproduced hereunder:



“3. The place of posting of all the employees was Ministry of Defence, (DGQA) Controllerate of Quality Assurance, (Infantry Combat Vehicle), Yeddumailarm, Medak District. After due sanction for conversion of home town LTC to North East Region, Jammu & Kashmir, LTC journeys were performed. Advance was also sanctioned by the Controller of Accounts (Factories), Yeddumailaram, Medak to perform the said LTC journeys. Final bills were also passed.

4. The 2nd respondent issued proceedings vide No.300/F-461/CA/OFMK/2014-15 dated 26.05.2016 based on Sr. Audit Officer, Chennai vide letter dated 26.04.2016 on the ground that the Government employees whose headquarters and home-town being same are not entitled for home-town LTC and the question of conversion of home-town LTC into LTC for NER in such cases does not arise.

5. It is contention of the counsel for the applicant that the LTC availed was duly sanctioned and there is no case of misappropriation or fraud as the journeys were duly performed. The LTC bills were also settled finally.

6. It is an undisputed fact that the LTC facility was availed by the applicants after due sanction of the department. Also, it is an undisputed fact that the journeys were duly performed. The case of the respondents is that as per the

Test Audit Report since the applicants were ineligible to convert their Home Town LTC facility to North-East Region / Jammu and Kashmir recovery of the amount has now been ordered based on the Test Audit Report.

7. *The onus of checking up the eligibility of officials and grant of advance for LTC facility squarely lies with the department and there has been a clear lapse on the part of the department for allowing ineligible officials to avail the LTC facility. Now at this stage after availing the LTC advance, performing the journey and settlement of claims the officials have been directed to repay the entire amount in accordance with the Test Audit Report.*



8. *Counsel for the applicant argued that ends of the justice would be met if the applicants are barred from availing the LTC facility for the next block year both home town (irrespective of where they are posted) and All India LTC. Counsel for the respondents agreed that based on the consent given by the applicant's counsel the applicants can be debarred from the availing the LTC facility in the next block year for both home town as well as anywhere in India.*

9. *With the above direction, the 1. OA. 898/2016, 2. OA.899 / 2016, 3. OA. 900/2016, 4. OA. 901/2016, 5. OA.1006/2016 and 6. OA.1033/2016 are disposed of by the above common order. In view of disposal of OAs.900/2016,OA.1006/2016, MA.537/2017 & MA.536/2017 (amendment petitions) also stand disposed of. No order as to costs."*

Thus, on 3 counts, applicants are eligible for relief, namely for committing the mistake by them, relief granted to a set of employees has to be extended to similarly situated employees and the judgment of a Coordinate Bench is binding, as observed by the Hon'ble Apex Court on the 3 issues, as under:

a. Mistake of the department should not recoil on to the employees.

*The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna**, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another recent case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer. (iii) It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363** wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

b. Similarly situated employees should be granted similar benefits.

i. Amrit Lal Berry vs. Collector Of Central Excise, (1975) 4 SCC 714:

"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

ii. ***Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:***

“...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court.”

c. ***A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench.***



In S.I. Rooplal And Anr vs Lt. Governor Through Chief Secretary, Delhi on 14 Dec., 1999, in Appeal (Civil) 5363-64 of 1997:

“At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bounded by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement”

IV. Hence, as the matter is squarely covered by the judgments cited supra, respondents are directed to grant similar relief to the applicants in the instant OA as per their eligibility, as has been ordered in OA 898 of 2016 & batch cited supra.

V. With the above direction, the OA is disposed of, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

evr

(ASHISH KALIA)
JUDICIAL MEMBER