

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1453/87
T.A. No.

198

DATE OF DECISION 7.11.1989

Shri Anuranjan Mukherjee &
Ors.

Petitioners

Shri F.B. Misra

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.H. Ramachandani

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

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. Whether to be circulated to other Benches? *Yes*

AB
(Amitav Banerji)
Chairman 7/11

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

DATE OF DECISION: 7.11.1989

REGN NO. OA 1453/87

Shri Anuranjan Mukherjee & Ors. Applicants.
Versus.	
Union of India & Ors. Respondents.
Shri P.B. Misra Counsel for the Applicants.
Shri P.H. Ramchandani Senior Standing Counsel for the Respondents.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.
The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble Mr. Justice Amitav Banerji, Chairman.)

This Application has been filed jointly by 24 applicants and all of them are employed in the Department of Statistics, National Sample Survey Organisation, Data Processing Division, Calcutta. All of them had taken the benefit of L.T.C. to travel during leave period to various parts of India and had claimed Ist Class fare for themselves and their dependent family members. They had been paid the fare by the Pay and Accounts Officer in the year 1981. The respondents were seeking to recover the excess amount paid to the applicants as they had travelled in 2nd Class accommodation in "Yatra Special." The recovery was challenged by the applicants on the ground that it was unjust and oppressive; the applicants had already paid the amount equal to Ist Class fare to the organiser of the Yatra Special and such amount cannot be realised from the Organiser of the Yatra Special. Further,

in view of the order issued by the Pay and Accounts Officer, C.I.T., W.B.I, Calcutta dated 20.7.1981 permitting the charging of higher class fares when the journey was completed in Yatra Special, the applicants were not liable to refund any amount to the respondents. It was also urged that the organiser of the Yatra Special also provided certain facilities and comforts at extra costs. The organiser charged amount equal to Ist Class fare and the applicants actually paid the same. Lastly, it was urged that the applicants travelled by the mode of Yatra Special in the refurbished second class bogies from 1974 and they were paid Ist class Railway fare. For the block years 1978-81 the applicants followed the same mode and drew advance before the journey and on completion of the journey they had submitted bills along with the certificates from the organiser of the Yatra Special for re-imbursement of Ist Class train fare. Since it was a mode accepted by the Central Government over a number of years, the applicants drew the Ist Class train fare without any objection from the executive, account and audit point of view. The same mode was accepted and they were reimbursed. It was contended that to ask for paying the difference now after 8 years was untenable and not equitable.

The respondents' case on the other hand was that the benefit of travelling on Leave Travel Concession (L.T.C for short was introduced from the year 1956 and it enabled Govt. Servants to claim travelling allowance limited to the fare of the entitled class of accommodation by rail. Later, amendment permitted travelling to any part of India but once in a block of four years.

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The first Block year was from 1974 to 1977. The second Block year was from 1978 to 1981. The L.T.C. provided to pay the Officer and his dependents the Railway fare to the class to which he was entitled for a return train along with his dependents to the declared destination by the shortest routes. In the present case, some have gone to Kashmir and some others to Kanyakumari and some others to Sonamarg. In all these cases, the applicants were entitled to travel in 1st Class, but actually had not travelled in 1st Class. They had claimed 1st Class for themselves and their dependents. They had falsely claimed to travel in 1st Class and had thus obtained from the Govt. of India money in excess to what they were entitled to. Consequently, they were asked to refund the same. The applicants had no moral or legal right to retain the said amount and it was liable to be recovered from them. The plea that there was a certain practice in earlier years and they were not aware of the changed position is not tenable in law. The respondents also took the case that the applicants travelled in 'Yatra Special', which was nothing more than 2nd Class Bogies or tourist Carriages and the applicants were not entitled to anything more than 2nd Class fare. They had wrongly obtained 1st Class fare on false claims.

We have heard Mr. P.B. Misra, learned counsel for the applicants and Mr. F.H. Ramachandani, learned counsel for the Respondents. Mr. Ramachandani stated that the

Calcutta Bench of the Tribunal had decided two similar matters, one was in the case of Ajit Kumar Naskar Vs. Union of India & Ors., (OA 101 of 1987 dated 24.4.1987) and second was in the case of Mihir Rakshit & Ors. Vs. Union of India & Ors., (TA No. 118 of 1987 dated 23.6.1987) in support of his contention that the applicants have absolutely no right to challenge the recovery of the amount claimed and paid to the applicants wrongly and illegally. Shri P.B. Misra, learned counsel for the applicants, however, urged that in a later decision of dated 24.4.87 the Calcutta Bench in Tarapada Bhattacharjee Vs. U.C.I., the same Bench of the Tribunal which had decided the case in Mihir Rakshit (Supra) ~~xx~~ had taken the view that the verification of the genuineness of journey Bill in respect of journey commenced before 25.1.80 would not be subject to guidelines of verification issued in C.M. No. 31011/8/78-Ests.(1), dated 25-1-1980.

We have perused the above decisions and we have also gone through the pleadings as well as seen some of the original bills filed by the applicants claiming reimbursement for L.T.C. journey for themselves and their family members.

We are of the view that the applicants do not deserve any relief whatsoever in the present C.A.

There is no manner of doubt that the applicants had taken L.T.C.. for themselves and their family members for the year 1980-81 to go to various parts of India and had travelled in Yatra Special organised by the Union

Travel Agency of Calcutta. There is no dispute that the Yatra Special comprised of 2nd Class refurbished bogies, which were attached to various trains and detached at prominent places.

The applicants undertook a Bus Journey also and they were to be reimbursed for the expense so incurred. All the applicants were entitled to travel in 1st Class along with their dependent family members in L.T.C. They were also entitled to claim 1st class fare to and fro, provided they actually travelled in 1st Class in the Railways. In the present case, they had travelled in 'Yatra Special' which was nothing more than 2nd Class bogies in the Railways and they had claimed 1st class fare to and fro for themselves and their dependent family members. The respondents have, therefore, taken the stand that the applicants were liable to refund the excess money paid to them and have taken steps to recover the same from their pay in ten equal monthly instalments.

The first point to be decided is whether the applicants were entitled to claim 1st Class fare when they travelled in Yatra Special carriages. Effort was made by learned counsel for the applicants to show that the 'Yatra Special' usually comprised of second class bogies refurbished by the Railways and the organiser of the Yatra Special added several items to make the journey

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comfortable and provided security which was not available to 2nd Class passenger. The Travel Agency which organised the Yatra/^{Special} collected from the applicants 1st Class fare to and fro for each member for all the passengers. This was permitted and no objection had been taken by the Pay and Accounts Officer.

Reference was made to the letter dated 20.7.1981 issued by the Accounts Officer, C.I.T., W.B.I., Calcutta and which was circulated for information and necessary action by the Income-tax Officer, Headquarters (A/cs), Calcutta, for Commissioner. The above letter stated that the C.C.A had clarified that, subject to the other general conditions being fulfilled, Govt. servants entitled to 1st Class Rly. fare, when travelling by Yatra-Special-Conducted-trains may be allowed higher fares than for the class of accommodation actually used (e.g. 2nd class) upon the said authorities certifying to their having charged at higher rates for providing extra amenities.

It was argued that there was an authority that the applicants could travel in Yatra Special (2nd class compartment) and claim 1st class fare. It may be stated at once that this letter was issued by the Accounts Officer in the office of the Commissioner of Income Tax and could be applicable to the ^{at best/employees} in the Income Tax department and not to the applicants, who belong to an entirely separate organisation. Apart from the above, it may be stated that it is not open

to an Accounts Officer to issue a clarification about a notification or a rule issued by the Central Government.

We may refer to Swamy's Compilation on L.T.C. (Page 86), where O.M. No. 31011/2/77-Ests.(A), dated 3-2-1979 in respect of Leave Travel Concession to Central Government Employees - Clarifications and Decisions relating thereto, is indicated. Paragraph 2 and Decision 3 are relevant and reproduced as under:-

"Para 2. The following decisions of the Government in regard to L.T.C. are also brought to the notice of all administrative authorities:-

Decision (3). Regulations of L.T.C. claim when a Government servant purchases a seat in Yatra Special trains, inclusive of the cost of board etc.

In this case, the claim will be regulated with reference to the place indicated by the Govt. servant as his place of visit. If the amount of claim calculated on the basis of shortest direct route between the Head-quarters and the declared place of visit by the entitled class or by the lower class (if a lower class of accommodation has actually been used while travelling by Yatra Special) is less than the expenditure incurred by the Government servant for purchasing a seat in Yatra Special the former amount alone would be admissible."

It has been made clear that it is the class of travel which will determine the amount to which the Government servant is entitled. In case, some one has travelled in 2nd Class in the Railways and the Yatra Special organiser issued a ticket on a higher rate, then

he will be entitled to the reimbursement to the extent of the fare of the second Class. Similarly, if he is entitled to travel in 1st Class and buy a ticket in Yatra Special provided 1st Class accommodation, but charging a higher price from the Government servant for the sitting in the train, then he will be entitled to the fare of 1st Class and not the amount charged by the Yatra Special organiser. It is, therefore, evident that even in 1979, there was a clear circular by the Government that it is the class of travel, which determines the claim and not the amount which has been charged by the organiser of the Yatra Special. In this context we may refer to the decision of the Calcutta Bench of the Tribunal in the case of Mihir Rakshit (Supra), where it was observed that "it is clear that the reimbursement will have to be limited to the class of railway accommodation actually used by the Govt. employee. Any extra payment which might have been made to the travel agent organising the travel cannot be covered for reimbursement on the presumption of upgradation of class. Obviously, the class of railway compartment cannot be decided by any organisation other than the Railways and reimbursement is based on the railway fare and the class of travel in the railways. Other payments made to the travel agent for additional comforts and/or for food and other amenities cannot be considered for reimbursement under the rule."

We are in entire agreement with the above view. We hold that a Central Government employee's entitlement to the class of travel is determined on the basis of the pay

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scale determined from time to time by the Central Government, but he can only claim reimbursement for the fare in the class in which he has actually travelled. However, he cannot claim the fare of a higher class if he is not entitled to it. Nor can he claim fare of a higher class if he has made the journey in a lower class. That would be entirely wrong on his part. The Government servant is required to maintain his integrity at all time during his tenure in office. He cannot claim any amount in excess of what he is actually entitled to. In case, he has claimed and has been paid certain amount to which he is not entitled it can always be recovered from him. No employee is entitled to retain any amount from Government Fund, which he is not entitled to.

The argument that a Bench of the Tribunal at Calcutta had taken a different view in 1988 about verification of the genuineness of T.A. Bill in respect of journey made prior to 5.1.1988 can be distinguished on the ground with the facts of the present case. In the case of Tarapada Bhattacharjee (Supra), concerned authority had to initiate disciplinary proceedings against the applicants. Respondents' contention was that since the applicants' clear intent was to defraud the Government, the latter was not in the wrong to issue chargesheet against them. The only question to be decided in that case was whether the respondents were right in passing the impugned order for recovery of the specified amount and issuing the charge-sheet to the applicant. The Bench after examining the matter held that the directions of the Ministry of Home Affairs contained in

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O.M. dated 25.1.1980 had no application to the case. The view taken was that the journey was commenced long before the issue of aforesaid O.M. The respondents had no occasion to verify the claim as per the guidelines mentioned therein.

The above case is distinguishable on its facts and the questions that were raised in that case. In the present case, the Bills prepared by the applicants show that the journey had commenced on 12.9.80, 15.10.80, 16.1.81 and 15.3.81, i.e., long after 25.1.80. In the present case, the applicants had undertaken the journey after 25.1.80. Consequently the decision in the case of Tarapada Bhattacharjee(Supra) is distinguishable both on facts and the questions involved.

Reference was made by the learned counsel for the applicants to the decision of the Supreme Court in the case of Arun Kumar Chatterjee Vs. South Eastern Railway and Ors. (1985 SCC (I&S) 465) where the Supreme Court held that an employee cannot be governed by Railway Board's subsequent circular dated 31.12.66. when he had complained of his transfer dated 15.10.58. The decision of the Supreme Court will be attracted where the Railway referred to the circular of a later date for deciding the matter, when it had taken place earlier than/circular. However, in the present case, that is not the position factually.

We have examined the Bills submitted by the applicants, for example, the applicant No. 1 submitted a Bill for Rs.3,720.50 for self and four dependents for a trip to Kanya Kumari. In column No. 21, which was headed as "Class in which actually travelled", he wrote "Ist". Similarly,

the Applicant No. 20 had claimed Rs. 4737.60 for self and six dependents and he too indicated in column No. 21 that he had travelled by "Ist Class". He had made journey from Howrah to Jammu by train and then to Sonamarg by Bus. He had also obtained from the 'Tourist Centre', the Travel Agency, a certificate to the effect that " a sum of Rs.4737.60 only as detailed below has been received from Mr. Lakshman Ch. Ghosh, U.D.C., NSSO, Cal-II, 202, B.T. Road, Cal-35 for the journey of five adult, two child in our conducted tour to Sonamarg (Kashmir) and back from 12.9.80 to 2.10.80 has actually used the Ist class accommodation during the Rly. Journey." Similarly, a certificate has also been filed by Mr. Tarak Chandra Dutta, the applicant No. 12. He too had stated that he had travelled by "Ist Class" as shown against the Column No. 21 of his Bill. Similar Bill has been shown to us in respect of the applicants No 4 and 7. There is a tacit admission in the pleadings itself that the applicants had travelled in 2nd class compartment of Yatra Special. Consequently, their claims showing that they had travelled in Ist class in the Bills were wrong. Similarly, the certificate issued by the Travel Agency was also incorrect. If they had travelled by Ist Class, they were entitled to be paid Ist Class fare to and fro. We are, therefore, satisfied that the applicants had travelled in a lower class than Ist Class and they were thus not entitled to any fare except that of 2nd class. They had drawn a higher amount from the Government whereas they were entitled to only 2nd class fare. Consequently, the

difference between the then 1st Class and 2nd Class fare is liable to be refunded to the respondents. If the respondents ask them to refund the amount paid in excess, there is neither any illegality nor any error in doing so. The Government is fully entitled to recover all such amounts, not which were due to the employees under the Rules but paid in excess. The Government could have taken even disciplinary proceedings in case there is a fraudulent action by the employee. Reference may be made to O.M. No. F.31011/11/79-Estt.(A), dated 6.3.1981 (Page 94 of the Swamy's Compilation on L.T.C) and specifically to paragraph 5 thereof. If any payment is made contrary to these Notifications, Rules and O.Ms, the position is liable to be rectified by recovering the excess amount so paid. As a matter of fact, the above order dated 6.3.81 makes it clear that if the certificate filed by the Government servant is found to be false, the Government servant concerned can be proceeded against departmentally.

Learned counsel for the applicants referred to a decision of a Single Member in the case of Shri C.S. Bedi Vs. Union of India & Anr. (Delhi) (A.T.R. 1988 (2) C.A.T. 510 where recovery was sought to be made from the salary of a Government employee where mistake was detected after 16 years. Learned Member relied on a decision of the Calcutta Bench in Nilkantha Shah Vs. Union of India and Ors. (1987(3)SLJ (CAT) 306) and held that because of the delay, the recovery should not be made from salaries paid to the applicant. This was a case

where a question of fixation of the pay was raised and the mistake had been made by the department concerned in the fixation of pay and calculation of pay and allowances.

It is not a case where the applicant had induced the department in making wrong payment. The employee had drawn salary for 16 years. In that case and the case referred to in the judgement of Nilkantha Shah (Supra), pay was fixed wrongly in 1970 and again in 1973 and the mistake was detected in 1977. The Calcutta Bench of the Tribunal held that the recovery be waived fully because the applicant was not responsible for wrong fixation and it took 7 years for department to discover the mistake. These two cases are distinguishable on facts. Consequently, these citations do not help. The position in the present case is that the applicants had themselves given a declaration of having travelled in 1st Class on L.T.C. with their families and claimed the fare of 1st Class ticket. Actually, they had travelled by 2nd Class. They had themselves given wrong basis for their claims. The error was undoubtedly discovered after 7 years, but these errors were induced by the act of the applicants. We are, therefore, of the view that the Government was fully entitled to recover the excess amount paid to the applicants.

Having given the matter the consideration it deserves, we are of the view that no case has been made for interference with the impugned orders. The amounts are to be recovered in instalment. That, in our view, is reasonable.

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In this view of the matter, the Application fails and it is accordingly dismissed. We leave the parties to bear their own costs.

B.C. Mathur
7.11.85

(B.C. Mathur)
Vice-Chairman (A)

Ab

(Amitav Banerji)
Chairman

7.11.85