

9.
Central Administrative Tribunal
Principal Bench

O.A. 2180/93

New Delhi this the 23 th day of December, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

R. P. Sharma,
JSO,
S/o late Shri K.R. Sharma,
R/o A-23/2, SFS, Saket,
New Delhi-110 017. Applicant.

By Advocate Shri Surinder Singh.

Versus

1. Union of India through

The Defence Secretary,
Ministry of Defence,
South Block,
New Delhi-1.

2. The Director,
Defence Institute of Physiology
and Allied Sciences,
Delhi Cantt-110 010. Respondents.

By Advocate Shri P.H. Ramchandani, Sr. Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the penalty order dated 29.3.1993 passed against him after holding a departmental inquiry and the order dated 18.8.1993 ordering the recovery of pecuniary loss caused to Government plus penal interest. The penalty order against the applicant was withholding of two increments during the period of four years.

2. The applicant had been charged of defrauding the Government by claiming Rs.4,446/- on account of Leave Travel Concession (LTC) for the block year 1978-81 in respect of himself and his family for travelling from New Delhi to Kanyakumari and back without actually performing the journey.

18

According to him, he had availed of the LTC for the block year 1978-81 and travelled by Deluxe Bus and final claim was settled on 8.8.1981.

3. One of the main grounds taken by Shri Surinder Singh, learned counsel for the applicant was that after a lapse of 11 years, the respondents could not have held an inquiry against the applicant in respect of the settled claim. He has also submitted that no original documents were produced by the Presenting Officer as well as the correspondence exchanged between the Government of India and Nagaland Transport Authority as well as with the Transport Authority in Tamil Nadu. He has submitted that the Transport Commissioner (Nagaland) had stated that Vehicle No. NLK 2521 registered with them was that of a Scooter and not of Bus, but he has submitted that a specific query had not been made as to the position in 1981. Learned counsel has relied on the judgements of the Supreme Court in **State of M.P Vs. Bani Singh** (AIR 1990 SC 1308), **Syed Abid Hussain Vs. Union of India & Ors.** (1992 (2) ATJ 446), and **M.L.Garg Vs. Union of India** (1987(5) ATC 480). The applicant has alleged that the original documents had not been produced at the inquiry but he had been given the carbon copies thereof. He had made a representation against the recovery of the LTC amount with interest which had been summarily rejected. Learned counsel has also contended that no witnesses were presented during the inquiry. For these reasons, he has prayed that the punishment order of stoppage of two increments for a period of four years may be set aside as well as the order of recovery of LTC amount with penal interest.

18/

4. Respondents in their reply have controverted the above averments made by the applicant. They have submitted that as they found that the claim for LTC had been made by the applicant based on fake and fabricated documents, they had decided to hold an inquiry. They have submitted that they had received the reply from Nagaland Transport Commissioner that certain employees have stated that they had travelled to Kanyakumari during 1981-82 in their Buses, including Bus No. NLK-2521. They have clarified that this registration number is of a scooter and not of Bus, as claimed by the applicant. Respondents have fairly submitted that as some of the original documents could not be produced during inquiry, ~~but~~ carbon copies of the relied upon documents had been furnished to the applicant by the disciplinary authority. They have also submitted that the applicant had not disputed the authenticity of these documents during the inquiry. Shri P.H. Ramchandani, learned Sr. Counsel, has submitted that there is no rule to support the applicant's contention that a claim which has been once settled cannot be reopened after a lapse of more than 11 years when the irregularities came to their knowledge. He has also submitted that the inquiry has been held in accordance with the Rules after compliance with the principles of natural justice and he has, therefore, prayed that the O.A. may be dismissed.

5. We have perused the pleadings and carefully considered the submissions made by the learned counsel for the parties.

6. One of the main contentions raised by the learned counsel for the applicant is that original records have not been produced which vitiated the inquiry which has been held

82

after a lapse of a decade. However, it is not denied by the applicant that carbon copies of the relied upon documents had been furnished to him. In the circumstances of the case, as no prejudice has ^{been} caused to the applicant, mere non-production of the original documents at the inquiry is not sufficient to vitiate the same.

7. Another contention of the learned counsel for the applicant was that once the claim is settled, it cannot be reopened after a lapse of 11 years and the delay was sufficient to quash the inquiry. He has relied upon the judgement of the Supreme Court in **Bani Singh's case** (supra). In the facts and circumstances of the case, we are unable to agree with the contentions of the applicant that the judgement of the Supreme Court in **Bani Singh's case (supra)** would be applicable to the ^{facts of the} present case so as to justify quashing of the charge memo and the disciplinary proceedings. The case of **Syed Abid Hussain (supra)** will not ^{also} assist the applicant as in that case admittedly after a lapse of 5 years of allowing the LTC claim, the amount was recovered from the applicant without even affording him an opportunity to put forth his case. That is not the position in the present case where the applicant has been afforded reasonable opportunity to put forward his case in defence to the charge sheet issued to him on 24.6.1991. Similarly, the judgement of the Tribunal in **M.L.Garg's case** (supra) will also not help the applicant where it was held that the applicant had not been given a fair opportunity of representation which facts do not apply to the present case. The applicant has himself stated in the Original Application that "It is well established that transporters indulge in mal-practices and innocent Govt. employees are made scapegoats". In such cases, the time taken

by the respondents to verify the genuineness or otherwise of the claims from the concerned agencies in this case, including from the Transport Commissioner, Nagaland, will be a relevant factor. In the facts and circumstances of the case, the lapse of about 11 years in between LTC claim and the departmental action taken cannot be considered as excessive or arbitrary so as to justify quashing ~~of~~ the inquiry proceedings. In the present case it is also relevant to note that the disciplinary proceedings have already concluded and the penalty order has been passed on 29.3.1993.

8. Taking into account the nature of the charge-sheet, the contention that no witnesses were called during the inquiry is also no ground to hold that the inquiry has not been properly held in accordance with the Rules and instructions. As the applicant has been given a reasonable opportunity to put forward his case, we find no good grounds to quash the impugned penalty order and the recovery order.

9. For the reasons given above, the O.A. fails and is dismissed. No order as to costs.

Lakshmi
(Smt. Lakshmi Swaminathan)

Member (J)

Adige
(S.R. Adige)
Vice Chairman (A)

'SRD'