

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 17th day of September, 2003.

QUORUM : HON.MR.JUSTICE R.R.K. TRIVEDI, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 307 of 2001

B.S. Nigam S/O Shri R.S. Nigam, aged about 59 years R/O
G-I/572, Armapur Estate, Kanpur..... Applicant.
Counsel for applicant : Sri R.K. Nigam.

Versus

1. The Union of India through the Secretary, Ministry of Defence (Department of Ministry of Defence Production), New Delhi.
2. Chairman, Ordnance Factories Board, Calcutta.
3. Additional Director of Factories/Members Ministry of Defence, Ordnance Factories Board, 10-A, Shaheed Khudiram Bose Road, Calcutta..... Respondents.

Counsel for respondents : Sri R.K. Tiwari.

ORDER

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of A.T. Act, 1985, applicant has prayed for quashing the impugned orders dated 28.6.2000 and 31.1.2001 (Annexures A-1 & A-2). He has further prayed for a direction to the respondents to expunge the penalty of Censure and return the entire amount recovered through the impugned order along with penal interest.

2. This case has a checkered history behind this. This relates to LTC Advance given to the applicant for the Block Year 1990-1993. This is the third O.A. filed for the same purpose. The first O.A. No.1188/93 was filed and the applicant was granted stay and subsequently the O.A. was allowed by the Tribunal on 28.10.98 with a direction to the respondents to refund the amount which the respondent had recovered from the applicant along with interest @ 12%

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per annum within a period of three months. The respondents were also directed to make a detailed enquiry in the matter after giving an opportunity to the applicant. Accordingly, the second enquiry was conducted which did not satisfy the applicant. The applicant, even without making appeal, filed O.A. No.815/00. The respondents took objection that the applicant has not even filed the appeal and has straightway approached the tribunal. The Tribunal disposed of the O.A. by giving liberty to the applicant for filing appeal. Accordingly, the applicant filed appeal which was rejected by the respondents aggrieved by which applicant filed the present O.A.

3. As mentioned above, the applicant was sanctioned LTC advance for the Block Year 1990-1993 for the members of his family from Kanpur to Kanyakumari and back vide order dated 9.11.1991. The applicant got reversed 8 seats on 24.11.1991 for members of his family by bus for Kanya Kumari and back during the period 30.11.91 to 13.12.91 through the Indian Travels, Kanpur, an authorised booking agent of U.P. Tourism Development Corporation, Lucknow. He was issued journey ticket No.013599 dated 27.11.91 with the tour programme for the period mentioned above by Bus No.MRA-6590 and Special Permit No.1161/BN dated 30.11.91. The permit was valid upto 13.12.91 w.e.f. 30.11.91 issued by the Assistant R.T.O., Sub-Region, Banda. It is stated that the family members of the applicant actually performed journey by bus from Kanpur to Kanyakumari on 30.11.91 and return journey started on 8.12.91 and reached at Kanpur on 13.12.91 safely. It is further stated that after the return journey, the U.P. Tourism Development Corporation Ltd., Lucknow issued certificate No.013599 dated 23.12.91 certifying that all the 8 members of the family travelled on their buses which started on 30.11.91 and concluded the journey on 13.12.91. On 3.4.93, the applicant addressed a

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letter to the Director, U.P. Tourism Development Corporation Ltd., Lucknow for clarification/verification of the tour performed by the family members of the applicant by Bus No. MBA-6590 Kanpur to Kanyakumari between 30.11.91 to 13.12.91. Members of the family of applicant have given in writing the details of the places they had visited and all the 8 members have signed on oath at Rs.10/= stamp (Annexure A-11).

4. The respondents, on the other hand, have opposed the contention of the applicant by filing the counter affidavit. They have stated that an independent Board of enquiry was ordered on 15.10.92. The Board of Enquiry conducted investigation and submitted its report on 25.2.93. The above Board of Enquiry had given the following remarks in respect of applicant's case :-

"The statement of Sri B.S. Nigam could not be scough as he is reported to be under suspension. The Board has gone through the claims submitted by bot the individuals (Sri C.L.Balmiki's case). The modelities adopted in both the claims are detto as taken up by other employees whose cases are discussed above. The tickets, the journey certificate, the photocopy of RTO permit, the list of passengers, the tour programme and various kinds of stamps on the photostat copies are of the same type as found in claims made by personnel mentione above. Board, therefore, infers that these two claims are also fictitious."

Applicant was informed about this enquiry and was asked to deposit full amount which was paid to him as LTC advance. The applicant submitted his representation on 30.3.93 reques-
ting for not affecting the recovery which was rejected by the respondents. This resulted in the first O.A. No.1188/93 which was allowed by this Tribunal with a direction to the respondents to refund the amount which respondents had recovered from the applicant along with interest @ 12% per annum. The orders of the Tribunal were fully complied with. The second Board of enquiry was constituted which submitted

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its report on 1.9.99. The Enquiry Officer held that there was no reliable evidence of visit to Kanyakumari by the family members of the applicant. The applicant was served with the charge-sheet under Rule 14 of CCS(CCA) Rules 1965 and the applicant submitted his written statement of defence dated 29.11.99 wherein he denied the charges against him hence a court of enquiry was appointed with Sri R.K. Sagar, Works Manager as Enquiry Officer. Enquiry Officer submitted his report on 23.2.2000 in which all the charges ^{Were} held to be proved. The applicant had then submitted his representation on 26.3.2000 in defence to the enquiry report.

5. The Disciplinary Authority, after consideration of the entire documents on record, the enquiry report submitted by the Enquiry Officer and representation submitted by the applicant, issued the order dated 28.6.2000 imposing penalty of Censure upon the applicant. It was further directed that the withheld claim of applicant will be disallowed and next two sets of LTC due in respect of the applicant viz (i) Home Town and (ii) All India tour, will be forfeited as per rule.

6. Counter affidavit further states that the applicant instead of approaching the Appellate Authority, filed the O.A. No.815/00 before this Tribunal without exhausting the departmental remedy. The Tribunal disposed of the O.A. by giving liberty to the applicant to make appeal to the appropriate authority. The order dated 19.4.01 of this Tribunal is quoted hereunder :-

"The learned counsel for applicant presses for interim relief by way of staying the recovery from the salary of the applicant. It is stated that after departmental enquiry, the applicant has been punished by awarding censure entry, hence the question of recovery does not arise. The respondents may file CA/Short CA against the prayer of interim relief by the next date. In the meantime it is provided that no recovery shall be made from the pay of applicant. List on 19.7.2001

7. Applicant made application to the Appellate

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Authority which was also rejected.

8. We have carefully considered the rival contentions of both the parties and perused the records.

9. The basic question which calls for consideration and decision is whether the impugned orders are justified in this case. It is stated that one of the ground for disbelieving the journey by the members of the family of the applicant is that they were not aware of the route and the topography of the places they visited. For that respondents have not advanced any reason which led them to disbelieve their statement. Vide Annexure A-11, the members of the family had submitted the details of places they had visited. The enquiry report does not make any mention of this affidavit given by the members of the family. The enquiry report has stated that it does not make any mention of the township area. Enquiry report mentions that photocopy shows the stamp of Kanyakumari township area only. This itself indicates that the bus has travelled upto Kanyakumari. It may also be mentioned that the applicant has also mentioned and annexed a copy of the letter from U.P. State Tourism Development Corporation which gives details of the tickets issued to the applicant. They have also stated that the officials/officers from the Field Gun Factory may visit the tourism office in case of any doubt about the veracity of the ticket issued. It is stated that this does not find any mention in the enquiry report as well as the counter of the respondents. The applicant has filed rejoinder affidavit on 8.3.02 and has asserted vide para 7 that no official from respondent's office visited the house of the applicant to put any question to the actual travellers or even to the applicant regarding the journey. Vide para 8 of the rejoinder, it has been stated that so far as the actual journey by the actual travellers is concerned, the Manager (UP Tourism Development Corporation) vide his letter dated 7.4.93 (Annexure A-10) has certified the journey against the L.T.C.

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10. It may be mentioned that these two assertions have not been rebutted by the respondents.

11. About the penalty of censure it may be mentioned that the proper enquiry does not appear to have been gone into the inadequacies mentioned above clearly indicates that there is no valid ground to doubt the genuineness of the ticket or the journey performed by the members of the family of the applicant. The penalty of censure has been imposed upon him merely on the ground that the members of the family had not undertaken the journey and the amount of LTC has been misused by the applicant.

12. In the result, the O.A. succeeds on merit. The impugned orders dated 28.6.2000 and 31.1.2001 are quashed. The respondents are directed to refund the amount, if any, recovered from the applicant within a period of three months from the date of receipt of a copy of this order.

No order as to costs.

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