

**Reserved**

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

**Original Application No. 327 of 2001**

Friday, this the 15<sup>th</sup> day of **February** 2008

**Hon'ble Mr. K.S. Menon, Member (A)**

1. M.C. Sharma, Son of Sri Chirangi Lal Sharma, Lower Division Clerk, Central Ordnance Depot, Agra.
2. Rajendra Singh son of Sri Shiv Mangal Singh, Office Supdt., Central Ordnance Depot, Agra.
3. M.R. Garg son of Sri Chhaju Ram, Upper Division Clerk, Central Ordnance Depot, Agra.
4. Kul Bhushan son of Sri Badri Nath, Upper Division Clerk, Central Ordnance Depot, Agra.
5. Vijay Kumar son of Sri Radhey Shyam Sharma, Upper Division Clerk, Central Ordnance Depot, Agra.
6. H.S. Mishra son of Late Keshav Deo Mishra, Upper Division Clerk, Central Ordnance Depot, Agra.
7. M.C. Sharma son of Sri Govind Ram Sharma, Lower Division Clerk, Central Ordnance Depot, Agra.
8. Arvind Kumar Sharma, son of Sri Shiv Shanker Sharma, Lower Division Clerk, Central Ordnance Depot, Agra.
9. Bharat Swarup son of Sri Ram Murti Saxena, Upper Division Clerk, Central Ordnance Depot, Agra.
10. B.P. Sharma, adopted son of Late Ram Lal Dubey, Store Superintendent, Central Ordnance Depot, Agra.
11. G. Devasthali son of Late Shivramkrishan Devasthali, Office Supdt. (Retd.) Central Ordnance Depot, Agra.

**Applicants**

**By Advocate Sri A.K. Bajpai**

**Versus**

1. Union of India through Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Controller of Defence Accounts (Army), Meerut Cantt., Meerut.
3. Area Accounts Officer (Army) Agra.

*Em*

4. Commandant, Central Ordnance Depot, Agra Cantt., Agra.

**Respondents**

**By Advocate Sri D.S. Shukla**

**ORDER**

**By K.S. Menon, Member (A)**

This Original Application has been filed against the impugned recovery notices/orders dated 31.01.2001 and Order dated 15.02.2001 issued by the respondent No.4 and 2 respectively (Annexure-A-9, A-10, A-11 and A-12 [compilation No. II]) for recovery of the amounts of L.T.C. from the salary of the applicants.

2. The facts of the case in brief are that all the applicants are class III employees working under Central Ordnance Depot (for short C.O.D.), Agra. In 1998, the applicants applied for L.T.C. advance to undertake the journey between 31.05.1998 to 21.06.1998. In May 1998 the respondents sanctioned 60% of the L.T.C. amount. Thereafter the applicants reserved their tickets with Manipur Tourism for the journey to be performed between 31.05.1998 to 20.06.1998. Photocopy of the Bus Permit and list of passengers is given at annexure A-1 to the O.A. The applicants claimed that they performed the journey from 31.05.1998 and visited several important places in different States during the course of their trip and on return rejoined their duties on 22.06.1998. They then submitted their L.T.C. bills for payment. Applicants have annexed several entrance tickets/journey tickets and other documents as proof of having visited the various places of interest <sup>as a part of their</sup> ~~as itinerary~~. Department of Personnel and Training had issued a letter dated 09.02.1998 which contained a list of some State Tourism departments and Corporations hiring of whose buses was prohibited for purposes of L.T.C. Manipur Tourism through whom the applicants undertook the journey was in that prohibited list. The Department of Personnel and Training letter dated 09.02.1998 was circulated by the Ministry of Defence vide its letter dated 27.02.1998 and the Commandant C.O.D. Agra i.e. respondent No.4 published the same vide Part I order on 03.06.1998. The L.T.C. bills which were submitted by the applicants were then forwarded by respondent No.4 to respondent No.2 (CDA/Army]Meerut) on 04.09.1998 with the recommendation that bills may be passed for payment as the letter of Department of Personnel and Training regarding prohibiting the Manipur Tourism Bus for L.T.C. purposes was made available to the respondents after the applicants had already reserved, paid for their tickets and commenced

*✓ CDA (Meerut)*

their journey. After audit scrutiny of the bills passed the same and made payments to the applicants.

3. During scrutiny of paid vouchers, it was revealed that the L.T.C. claims of the applicants were forged and the A.A.O. (Army) vide his letter dated 05.01.2000 informed the respondents accordingly and advised that the applicants should be asked to refund the amounts paid to them as L.T.C. claims in one lump sum by 15.02.2001, failing which the same would be recovered at the rate of 1/3<sup>rd</sup> of their pay bills alongwith penal interest commencing from January 2001. The respondents replied on 30.01.2001 stating that the claims were verified and there was no forgery when the bills were forwarded except that the Manipur Tourism Bus was on the prohibited list. A request was made to consider the applicants' cases sympathetically as they had already purchased their bus tickets and commenced their journey before the embargo contained in D.O.P.T. letter dated 09.02.1998 was made available to the respondents. The request was accepted and the claims were paid to the applicants. In view of this the respondents requested that no recovery should be made from the pay bills of the applicants. Despite this the A.A.O. (Army) Agra effected the recovery from the pay bill of January 2001. AAO (Army) Agra further clarified vide his letter dated 07.02.2001 that the L.T.C. claims were initially preferred for a journey by bus, later the same claims were preferred for a journey by Train (Him Sagar Express) by erasing the word 'Bus' by using white fluid. In view of this and the fact that the Him Sagar Express did not commence from Delhi on Sunday (the date mentioned by the applicants), the L.T.C. claims were therefore treated as forged and recoveries were ordered to be made accordingly. In response the respondent No.4 once again wrote to the C.D.A. (Army) reiterating the points made earlier i.e. the claims were thoroughly examined before they were forwarded to CDA (Army) Meerut and the office copies clearly indicated that there was no tampering done by use of white fluid and that if at all there was no mention of the train Him Sagar Express and if at all any tampering was done it could have taken place after the bills were forwarded by the respondent No. 4 to respondent No.2. An Officer of C.O.D. Agra Cantt. was deputed with the original documents to C.D.A. (Army) Meerut for their perusal.

4. The applicants claim that they had purchased the bus tickets from Manipur Tourism, as at that time they were not aware that the said organization was on the prohibited list of operator <sup>or</sup> issued by

D.O.P.T. They performed the journey and submitted their bills which were duly forwarded by the Controlling Officer with recommendations, which were ultimately passed and payments made to the applicants. Now after considerable time respondents cannot state that the claims were forged because if the claims were forged the authorities like CDA (Army) Meerut would not have passed the claims. So it is evident that the tampering was done after payment of the said bills by some other persons. They therefore hold that the recovery order based on the above is bad in law<sup>as</sup> and is liable to be quashed and set aside.

5. The respondents' No. 2 and 3 claim that initially the L.T.C. claims were submitted to show journeys were undertaken by bus and these were passed and paid erroneously and the staffs responsible have been charge sheeted and are being <sup>ed</sup> processed against. Subsequently they were deliberately amended using white fluid to show that the journey was undertaken by train-Him Sagar Express from Delhi on a Sunday. They therefore maintain that a case of forgery is clearly established. Respondent No. 2 has in his letter dated 05.02.2001 clearly indicated that similar cases from other units/formations had been received in the respondents' office and appropriate action has been initiated against the officials responsible for such erroneous payments. Since forgery has been established and action initiated against the errant officials in the respondents' department, recovery action had to be initiated against the applicants which is as per the rules. They contend that the applicants do not have any case and are not entitled to any of the reliefs claimed and are liable to refund the payments made to them so far<sup>as</sup> The O.A. being without merit is liable to be dismissed.

6. Heard Sri A.K. Bajpai, learned counsel for the applicants and Shri D.S. Shukla, learned counsel for the respondents and perused the pleadings on record.

7. It is well established that the applicants applied for LTC advance and were paid 60% of the total cost of the tickets and had already commenced their journey before the D.O.P.T. letter dated 09.02.1998 was forwarded by the Ministry of Defence vide their letter dated 27.02.1998 and published in a Part I order issued by respondent No.4 on 03.06.1998. It is a little difficult to believe that the Ministry of Defence's letter dated 27.02.1998 was published by the respondent No.4 only three and a half month's later. The respondents have not clearly indicated when the said Ministry of Defence letter dated

27.02.1998 was actually received in their office. In the absence of this information it is difficult to establish that the said letter was in their possession when the request from the applicants for grant of L.T.C. advance was received or when the applicants provided proof of having bought bus tickets from Manipur Tourism after the L.T.C. advance was sanctioned to them. The reasoning given by the respondents that the applicants had already purchased the tickets is not valid enough reason to permit them to undertake a journey by a bus which was prohibited by the Government. The respondents line of argument can be accepted only if they are able to conclusively prove that the said Ministry of Defence letter dated 27.02.1998 was not in their possession before actual commencement of journey by the applicants on 31.05.1998. This aspect has unfortunately not been brought out in the pleadings or established during arguments. To this extent there has been a clear lapse on the part of the respondent No.4 as he failed to comply with the orders of the Government in this matter. The applicants on the other hand cannot be faulted if the contents of the D.O.P.T. letter dated 09.02.1998 were not brought to their notice before purchase of bus tickets from the prohibited organization and before commencement of actual journey.

8. The role of the respondent No.2 also comes under scrutiny. Admittedly, respondent No.4 as the Controlling Officer had scrutinized the L.T.C. claims and after certifying the same forwarded these to respondent No.2 for payment by which time the instructions of Department of Personnel and Training's were well known to all. Being the Accounts Office responsible for scrutiny and pre check, respondent No. 2 without exercising any of these checks, passed by the LTC claims for payment after having them audited. There has therefore been a clear lapse on their part in effecting the payment to the applicants. The Joint Controller of Defence Accounts has no doubt indicated that his office had erroneously made the payment and action to punish those guilty was already underway.

9. It has also not been clearly brought out whether the LTC bills were only tampered with as regards the entry pertaining to mode of transportation or whether the accompanying bills, receipts and other documents continued to pertain to the bus journey as originally submitted by the applicants. The issue that arises here is that when the L.T.C. claims were submitted they were for a journey performed by bus, which has been certified by the respondent No.4, when he forwarded

G  
G

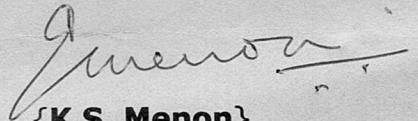
these bills to respondent No. 2 for payment and subsequently also when the issue of forgery was intimated to him. Respondent No. 2 also passed the said bills for payment albeit erroneously but no tampering must have existed at that point in time, otherwise respondent No. 2 would not have passed the said bills for payment. This point has been corroborated as is evident from the office copies of the bills forwarded to respondent No. 2 by respondent No. 4. It can therefore be concluded that when the L.T.C. bills were submitted by the applicant, verified and approved by the Controlling Officer and passed for payment by respondent No. 2 there was no evidence of tampering by using white fluid. It was at the time of post audit of these paid vouchers of the L.T.C. bills that the tampering was noticed by respondent No. 2 and 3. The logical conclusion is that the tampering must have taken place after the payment. Respondents have not been able to clearly establish how the applicants would have got access to the paid vouchers which are in the custody of respondent No. 2 for any tampering to be effected by the applicants. What the motive of the applicants were to tamper with the records to which they had no access and that too after they received payment for their said claims has also not been clearly established. Besides the applicants have all along maintained that <sup>they or</sup> L undertook the journey by bus and provided ample proof through copies of various receipts, tickets and other documents that the journey was undertaken by them by bus as claimed. On all the above <sup>counts in</sup> L preponderance of evidence lies in favour of the applicants and it can be said that the applicants have had no role to play in the erroneous passing and subsequent payment of their L.T.C. claims or the tampering with of these bills as detected during post audit of paid vouchers in 2001. In such a situation the benefit of doubt should be given to the applicants.

10. On the issue of fixing responsibility it must be said that respondent No. 4 as the Controlling Officer should have ensured dissemination of D.O.P.T., orders circulated by the Ministry of Defence to all the employees and processed LTC claims according to the prevalent instructions. Subsequent recommendations while forwarding the final L.T.C. bills for payment caused the bills to be paid erroneously by respondent No. 2. The laps <sup>e.g.</sup> to a very large extent can be attributed to respondent No. 2 who by his own admission did not carry out the prescribed scrutiny while passing the said bills for payment. Besides they have not been able to clearly establish that the tampering was done by the applicants. It can therefore be reasonably and logically concluded that the tampering has taken place while the paid vouchers

were in the custody of respondent No.2 and his staff is responsible for the same. Action should be initiated against officers and staff concerned of respondent No.2 and respondent No.4.

11. The conclusion is that the applicants did perform the journey by bus, which was prohibited but was not in their knowledge. Claims were submitted to the Controlling Officer duly supported by documentary evidence and their claims were paid by the respondents. They are not responsible for the acts of omission and commission of the respondents. Further it has not been established that the tampering of records was done by them and the same appears to have taken place when the said documents were in the custody of the respondents.

12. In view of the above, the O.A. is allowed and the letter dated 15.02.2001 issued by respondent No.2 and the recovery notices dated 31.01.2001 issued by the respondents are quashed and set aside. Recoveries, if any, made from the applicants shall be refunded to them. It is further directed that the respondents <sup>or concerned</sup> shall investigate the matter to fix responsibility on the officers and staff who are responsible and initiate appropriate action in a time bound manner. There will be no order as to costs.



{K.S. Menon}  
Member (A)

/M.M/