(4)

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1024 of 1988.

V.K. Kaushik .... Applicant.

Versus

Union of India & others .... Respondents.

Hon'ble K.J. Raman, A.M.

This is an application under Section 19 of the Administrative Tribunals Act,1985 preferred by Sri V. K. Kaushik an Auditor, working in the office of the Controller of Defence Accounts, Central Command, Meerut (U.P.), against (i) the Union of India through the Secretary, Ministry of Defence, New Delhi, (ii) the Controller General of Defence Accounts, New Delhi, & (iii) the Controller of Defence Accounts, Central Command, Meerut Cantt., praying that the letter dated 28.7.1988 (Annexure 'IX') issued by the Accounts Officer of the office of the Controller of Defence Accounts (CDA), Meerut, directing him to deposit within 30 days a sum of Rs. 8,430/- plus penal interest of Rs. 1,629/- be set aside.

2. The applicant states that he submitted a bill towards Leave Travel Concession (LTC) claim for the block year 1986-89 for himself and his family members, under the rules, along with all documentary evidence in support of it, about two years before the filing of this application. The claim was admitted in audit and passed for payment after exercising all the prescribed checks under the relevant rules and instructions. The amount was paid to the applicant after observing all the formalities and procedure prescribed in this behalf. By a letter dated 24.2.1988 (Annexure 'XI') from the Deputy Controller of Defence Accounts (AN), the applicant was directed to submit the third copy of the above claim along with collateral evidence in support of having performed the journey from

(5)

Meerut to Kanyakumari. In addition to the above, he was also asked to furnish certain other information including the age and relationship of the family members, date of commencement of the journey, date of completion of the journey, total number of tickets, and ticket nos. etc. It was stated in that letter that if no reply was received within 15 days of receipt of this memo, it would be assumed that the applicant had nothing to say in the matter and that he had no material evidence in support of the stated journey. It was further stated that the amount in question would be recovered in lumpsum from the pay and allowances from the following month. It was added that, besides, it will entail disciplinary action. In his reply dated 11.3.1988, the applicant stated that all the documentary evidence including collateral evidence in support of his final LTC claim was submitted by him along with the bill in duplicate and that he did not have the third copy of the bill. The applicant further stated that the information called for at this belated stage, i.e. after a lapse of about two years "may be got verified easily" at the other end, as the claim and records were available with the respondents. He also requested to be allowed to inspect his claim; or a photo-copy of the claim be issued to him. Thereafter the impugned order dated 28.7.1988 (Annexure 'IX') was received by the applicant. The said order runs as follows :-

"SUB:- Discipline-DAD: Estt.

LTC Claim amounting to Rs. 8,430/- for the block year 86-89, in respect of yourself/your family members was passed by this office on account of availing the above concession for the journey from Meerut to Kanyakumari.

2. You were directed vide this office memo no. even dt. 24.2.88 to submit collateral evidence in support of having performed journey upto Kanyakumari but you produce nothing which could have proved the genuineness of your claim.

(6)

3. Again your case was referred to a Board of officers and that Board gave you a chance to produce any more information to justify your case, but even then you could not avail the opportunity in satisfying the Board. The Board has opined that genuineness of your claim could not be ,proved beyond doubt.

4. You are therefore hereby directed to deposit within 30 days of receipt of this letter the aforesaid amount as stated in para 1 above plus penal interest thereon i.e. Rs. 10059/- (Rs. 8,430/- plus penal interest Rs. 1,629/-) through MRO and send the copy of T.R. immediately for further necessary action.

In case you failed to comply with the aforesaid instructions, the whole amount will be recovered from your pay and allowances in lump sum. No extention of time in this regard will be granted in any case."

In reply, the applicant requested for a copy of the opinion of the Board of Officers. The contention of the applicant is that his LTC claim was passed after examining all the requirements and documentary evidence in support of the performance of the journey, in accordance with the various rules and instructions prescribed for the purpose of LTC concession. Various checks which have been prescribed must obviously have been performed and his claim must have been found proper and correct and based on proper evidence and then only it would have been passed. In these circumstances, the applicant has questioned the action of the respondents in asking him again to produce collateral evidence after two years. According to the applicant, such a demand for collateral evidence at this stage is illegal and against all existing provisions of rules and regulations. He states that he had already submitted all the evidence he had,

(7)

along with his claim, two years earlier and he did not keep any additional evidence with him. The applicant also states that nothing was mentioned in the impugned letter or the earlier letter, referred to above, about the paid vouchers of his claim which must have been with the respondents. Instead of verifying the office records, the respondents were asking for further collateral evidence from the applicant. This argument of the applicant is based on the fact that nowhere in the above letters or notices it was stated that the paid vouchers had been lost. According to the applicant, the impugned order passed, besides being illegal and based on no rules, is also penal in character.

3. The respondents have filed a short counter affidavit as well as a detailed one opposing the application. After seeing the short counter affidavit, an interim stay order passed on 30.8.1988 while admitting the claim staying the recovery of the amount as indicated in the impugned order (Annexure 'IX'), was continued. The respondents aver that a pseudonymous complaint was made to the Prime Minister and on the basis of the said complaint, an investigation was made by a group comprising one IDAS Officer and two Accounts Officers of the Department, into the payment of LTC claims in the office of the respondents. This group submitted a preliminary report on 27.7.1987. It revealed that certain paid vouchers of LTC claims were missing and the persons of the staff employed on auditing and passing the LTC claims entered into a criminal conspiracy with the staff who submitted fictitious LTC claims with the intention to cheat and defraud the Government and this resulted in fraudulent payment of such claims. It is stated that the applicant is amongst the "conspirators". It is alleged that during the course of the preliminary enquiry, three individuals out of the claimants, who had also preferred similar types of claims, voluntarily and freely admitted the existence of such a conspiracy. The report

contained some details of the various admissions made by the three individuals. The modus operandi of such fradulent claims has been indicated briefly, in terms of the admissions of the said individuals. The essence of the method was to pay the amount and destroy all the vouchers leaving nothing behind to incriminate the criminals. It may, however, be mentioned here straight away that the statements and admissions of those three individuals do not contain any reference to the applicant in this case, or the claim made and passed in his favour. These averments in the reply, therefore, are only of peripheral interest and relevance in this case. It has been stated that charge-sheets for major penalty has been issued in respect of certain officials who are alleged to be part of such conspiracy and in respect of the three individuals, action for imposing a minor penalty has been initiated.

4. The respondents state that after receipt of the preliminary enquiry report dated 27.7.1987, letters were issued to each of the employees who were found to have submitted the alleged fictitious LTC claims, including the applicant, on 24.2.1988 (Annexure 'XI') through which the details of the journey, etc. were asked for, as indicated above. It was specifically stated that in case no reply was furnished within 15 days, it would be presumed that the individuals had nothing to say or they had no material evidence in support of their LTC claims. They were also asked to produce the third copy of their LTC claims which is generally retained by claimants. According to the reply of the respondents, the applicant was one of those who were instrumental in removing the original claims from the office of respondent no.3 and that is why they demanded for a perusal of the original copy of the claim. The matter was again referred to a Board consisting of an IDS Officer and two

Accounts Officers. The Board, following the principles of natural justice, issued letters to individuals including the applicant asking them to appear before the Board on specified dates and after hearing the applicant as well as other persons similarly placed, the Board prepared its report on 13.6.1988. In the report the Board has opined that the applicant "could not prove the genuineness of his claim beyond doubt". Thereafter, the impugned notice was issued asking the applicant to deposit the amount with interest. It is claimed that the said notice was issued only for recovering the amount paid on false claim and to make good the loss suffered by the Government and that this notice is not at all penal in character and is not by way of disciplinary action. In fact it was made clear that the said notice was without prejudice to taking disciplinary action according to rules. The respondents state that in case any protection is granted to the petitioner, that will encourage others to resort to such practices. It is clearly admitted by the respondents that the paid voucher, in respect of the applicant's claim, is no more available and has been lost. According to the respondents, the applicant was legally bound to furnish the information regarding performance of the journey.

5. The case was heard when Sri A.K. Gaur, learned counsel for the applicant, reiterated the contentions referred to above. He particularly pointed out that in the short counter affidavit, the respondents had stated that the case was referred to the Chief Vigilance Commissioner (CVC), but it was later retracted. He also referred to two decisions of this Tribunal in respect of his argument that the principles of natural justice should be followed and due opportunity should be given before any LTC claim is rejected or refused. The cases are M.L. Garg v. Union of India (1987 (5) ATC 480) and Muppidi Jaya Kumar v. Senior Superintendent of Post Offices, Vijayawada & another (1988 (8) ATC 803). Sri K.C. Sinha,

(10)

learned counsel for the respondents, stated that the principles of natural justice were fully followed. The applicant was given due opportunity by the Board to produce any evidence he had, in support of his claim, before the amount lost to the Government was demanded to be paid, not as a punishment, but only to recover the amount paid wrongly. Sri Sinha submitted that this is a peculiar case of fraud and has to be looked at in the proper prospective. Penal action was a separate matter which has not yet been initiated. Sri Sinha also produced two files containing the proceedings before the two groups of officers referred to above and also the reports submitted by the two groups, also indicated above.

6. The short point to be decided in this case is whether the impugned order dated 28.7.1988 (Annexure 'IX') is legally valid in the circumstances of this case. This order has been reproduced above. The background of this letter has been detailed earlier in this order. Admittedly, the applicant submitted a claim for LTC some two years before the impugned order was issued. It is not denied that the claim of the applicant was passed according to rules and regulations, and subjected to audit, and it was paid to him in accordance with such rules. This letter (Annexure 'IX') as well as the earlier letter dated 24.2.1988 (Annexure 'XI') does not at all mention the reason for asking the applicant to submit information and documents or evidence in respect of a claim which has already been duly passed. It is only in the pleadings in this case that the real reason for issue of such letters has been indicated; viz. that the LTC claim was a false one and no journey was performed; but at the time when the impugned order was issued, elementary principles of justice and law required that the reason for making such an extra-ordinary demand should have been mentioned in the letter or order. As stated earlier, there is not even a statement in the impugned order that the claim submitted earlier by

(11)

the applicant was not genuine. In para 3 of the impugned order it is stated that the Board had opined that the genuineness of the applicant's claim could not be proved beyond doubt. It is not that there was any proof of the non-genuineness of the claim on which basis only the amount paid can be recovered. The impugned order is, therefore, logically and legally defective. It is also not easy to accept the contention of the respondents that the applicant was legally bound to submit collateral evidence after two years of the payment of his original claim, to show that the claim was duly passed on proper evidence. The respondents have no right to demand payment of any sum which is not shown conclusively to be due to the Government. One cannot recover the amount paid from the applicant merely on the basis of suspicion or on the basis of a general allegation in an anonymous or pseudonymous complaint. There is nothing in the entire pleading or in the files produced to establish that the amount of money paid on the LTC claim of the applicant, was based on a false claim. There is no evidence produced to show that the applicant or his family did not perform the journey in question. In fact there is no clear allegation to that effect though there are some vague references in the pleadings of the respondents that the applicant was one of the "conspirators".

7. It is clear that there has been a big fraud in the office of the respondents and it is obvious that the Government has been cheated fradulently and amounts have been paid on false claims. This is the finding of the two reports, referred to above. But as indicated earlier, before a demand could be made of the applicant to pay back the amount paid to him, there must be some proof of the claim having been paid wrongly. In this case there is no clear statement anywhere that the applicant had made a false claim. The maximum that has been said is that the genuineness of the applicant's claim could not be proved beyond doubt. This statement is also based on the fact that the applicant could not produce any further information or material two years after his

(12)

bill was passed. No rule has been shown to show that the applicant was legally bound to keep a third copy or to produce such copy or other evidence for reiterating his claim for the LTC. It follows, therefore, that the impugned order cannot be said to be based on any evidence at all.

8. The respondents have seriously stated that no protection should be given in such cases as such protection would encourage similar frauds. This is only too true. But this can be ensured only if the respondents make a thorough and effective investigation of such cases of fraud and collect evidence intelligently and bring the offenders to book in accordance with the law, and not make a formality of such investigations resulting in vague and unsubstantiated allegations which are bound to be set aside by any judicial Tribunal.

9. In the result the application is allowed and the impugned order dated 28.7.1988 is hereby set aside. The respondents are, however, at liberty to make a proper investigation into the matter and take action according to due process of law. There will be no order as to costs.

MEMBER (A).

Dated: February 23, 1990.

PG.