

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 583-A of 1994

Allahabad this the 7th day of July 1999

Hon'ble Mr. S.L. Jain, Member (J)

Rajendra Kumar, Son of Late Sri Shiv Basant, At present working as Upper Division Clerk(Stores Section), Field Gun Factory, Kanpur.

Applicant

By Advocate Shri M.K. Upadhyay

Versus

1. The Union of India through the Secretary, Ministry of Defence, West Block V, R.K. Puram, New Delhi.
2. The General Manager, Field Gun Factory, Kanpur.
3. Shri A.K. Biswas, Works Manager-AII, Field Gun Factory, Kanpur.

Respondents

By Advocate Shri Ashok Mohiley

O R D E R

By Hon'ble Mr. S.L. Jain, Member (J)

This is an application under Section 19 of Administrative Tribunal Act, 1985 for quashing the order dated 23.3.94 after calling the record of L.T.C. advance including bill as well as correspondence made with the U.P. State Tourism and State Tourism Development Corporation, Lucknow alongwith all connected papers and finalise the L.T.C. bill, excess amount be reimbursed to the applicant alongwith the cost of the application.

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2. There is no dispute between the parties in respect of the facts that the applicant is working as Upper Division Clerk(Stores), Field Gun Factory, Kanpur who was entitled to avail leave travel concession for the whole year 1986 - 89, applied for L.T.C. advance for visiting from Kanpur to Kanyakumari and back for himself, his father and mother, wife and sister which was sanctioned by the respondents amounting to Rs. 7180/- vide order dated 05.8.1991 annexure A-2 he submitted his claim for adjustment against advance and reimbursement enclosing the following documents; -

- "(i) U.P.S.T.D. Corporation Journey Ticket No. 010785 dated 12.8.91 for Rs.9350/- (annexure A-3) for seats from Kanpur to Kanyakumari and back.
- (ii) Permit No.394/91 for Bus No.U.P.-78 - 9391
- (iii) List of Passengers
- (iv) Tour Programme from 17.8.91 to 30.8.91 showing also Receipt No.2957 dated 23.8.91 from Kanya Kumari Town Ship Office for Rs.5/- as Entrance Fee for Bus No.U.P.-78 - 9391.
- (v) After conclusion of the Tour, the UPSTDC Ltd. issued Certificate No. U 11394 dated 10.9.91."

(v)

3. The office of respondent no.2 desired various information vide letter dated 29.1.92 annexure A-4 which was replied on 08.2.92 vide annexure A-5. Vide letter No.1417/L.T.C./Bills dated 22.4.92 Shri S.K. Beri, Deputy General Manager Administration pass the order as under; -

"It is considered reasonable to conclude that your claim is not genuine. Accordingly it has been decided to disallow the same _____ and further that L.T.C. advance would be recovered from the _____ of salary of May, 1992 ."

4. Vide annexure A-7, the applicant submitted

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a representation seeking the documents on the basis of which the claim was found not genuine vide annexure A-7, again on 05.5.92 vide annexure A-8 the facts were brought to the notice of the respondents but the respondents held that the claim is not genuine and amount of Rs.7180/- will be recovered at the rate of Rs.1000/- per month from the salary of May, 1992 and onwards. The applicant requested the authorities of U.P. State Tourism Development Corporation Limited to confirm genuineness of the journey documents directly to the General Manager, FGK so that the recovery intended to be made, is deferred and his genuine claim is paid alongwith a copy of G.M., F.G.K. and authorise agent M/s House of Tours vide annexure A-8 dated 05.5.92. The reply to the same was directly sent to the General Manager, F.G.K., confirming that Ticket No.010786 dated 12.8.91 was issued to the applicant and is on record of the U.P. State Tourism Development Corporation Limited. Vide annexure A-9 dated 20th May, 1992, the General Manager, F.G.K. sought clarification on certain points from the U.P. State Tourism Development Corporation Limited. Vide letter dated 24.6.92 a reply was received clarifying the entire position as desired vide reply dated 10.7.92 and corrigendum vide letter no. 1488/92 dated 07.8.92 annexure A-10, A-11 and A-12 respectively.

5. The applicant's case in brief is that he alongwith ~~with~~ his family has availed the leave travel by actually performing the journey between 17.1.91 to 30th, January, 1991 from Kanpur to Kanyakumari and back. The respondents with a predetermined mind to disallow the claim proceeded to enquire into the matter and even after

every clarification the claim of the applicant was disallowed without giving any reason or opportunity of hearing which is wholly illegal and against the principles of natural justice. The documents on the basis of which respondents came to conclusions are not supplied to him hence, this O.A. for the above said relief as the actions of respondents is malafide exercise of powers, based on whims in an arbitrary manner against the statutory rules and principle of natural justice.

6. The respondents have resisted the claim stating that few other employees had also travelled through U.P. Tourism Development Corporation Limited, Lucknow by different dates and different buses against L.T.C. for them and members of their family from Kanpur to Kanyakumari/Trivandrum, furnished the journey details alongwith documents issued by the U.P. Tourism Development Corporation, Lucknow, the concerned officer inquired from them and some the claimants confessed verbally that they had actually not travelled and had managed to obtain documents to show as they had actually performed the journey through representative of U.P. State Tourism Development Corporation Limited, Lucknow and such ^{journeys} ~~rules~~ are conducted on papers only and are not actually performed. When documents were questioned, it was found that they were actually ignorant of the ^{rate} ~~rules~~ and topography of important places of visit they ^{claim} ~~came~~ to have travelled, some of them agreed to deposit back the L.T.C. advance after confessing about the false claim but ^{some} ~~none~~ of the individuals were adamant hence ^{prime facie} ~~of n~~ sent it was concluded that some ^{unscrupulous} elements are operating in connivance with U.P. State Tourism Development

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Corporation Limited, Lucknow to make fraudulent claims.

7. The applicant submitted the passenger list contained the details of Sultanpur, Amethi Railway Mail Service Department, Kanpur, D.M.S. Kanpur as such these authorities ^{Mr Head} Head Post Master, Sultanpur, D.M.S. or D.F, Kanpur, Officer Incharge, Railway Mail Service, Northern Railway, Kanpur were approached vide letter no.1417/LTC/Bills dated 07.2.92 to confirm the departure time and date from Sultanpur and Kanyakumari, arrival time and date at Sultanpur and Kanyakumari, name and address of the agent through whom tickets were purchased. The reply to the same was sent by Head Post Master, Sultanpur Officer Incharge, Railway Mail Service, Northern Railway, Kanpur vide annex re C.A.-11 and C.A.-12 and on perusal of the same alongwith the details submitted by the applicant, it is found that they did not tally with such other, hence the applicant was asked to furnish details vide letter no.1417/L.T.C./Bills dated 29.1.92. The reply to the same letter was submitted vide letter dated 08.2.92 and after considering the above facts alongwith the reply of the applicant, the claim was found to be not genuine. The correspondence by the applicant with the U.P. State Tourism Development Corporation and reply to the same ^{was taken in to consideration.} Since no specific conclusion ^{came} to be drawn, the respondent no.2 was apprised with the facts who formed an independent Board of Inquiry vide order no. 1653/F/L.T.C./L.B. dated 15.10.92 to enquire into the matter and the Board consisted of Ashok Kumar, Deputy General Manager/HRD as Chairman, S.K. Pandey, Hindi Officer, S.P. Bajpayee fireman as members and after discussing the same after an enquiry, the claim of the applicant was found to be not genuine and the applicant

was ~~to be~~ ordered for recovery.

8. In rejoinder-affidavit, the applicant denied the allegation levelled against him in counter-affidavit and reiterated the stand taken by him in O.A.

9. The inquiry into the matter by giving questionaries to the various claimants, similar i.e. seeking their reply in respect of the same and came to a conclusion, the method adopted by the Board is abnormal one, not known to the law and hence such an inquiry is of no assistance to the respondents to arrive to a finding which they have reached on the said basis that the claim is in-genuine.

10. The learned counsel for the applicant relied on the memo no.31011/20/89-EsTT(A) issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi 3rd January, 1990, which mentions that ;

"I am directed to refer to your letter no.6619/670 dated 18.11.1989 on the subject mentioned above and to say that as already informed vide this Department letter No.900/89-EsTT(A) dated 13.4.1989, the tours wholly operated/conducted by the ITDC or any other State Government Undertaking, either by their own buses or buses taken on hire from outside, are admissible for LTC under the scheme applicable to Central Government employees. This position would be applicable in case of Kumaon Mandal Vikas Nigam Limited and Garhwal Mandal Vikas Nigam Ltd., if these are Undertakings of the State Government of Uttar Pradesh.

2. In case there is any dispute in the matter of the journeys conducted and operated by a State

Government Undertaking for their admissibility for LTC claim, the concerned Undertaking should appropriately take up the matter direct with the Ministry/Department concerned."

11. By perusal of the same, I find that the tours wholly operated/conducted by the ITDC or any other State Government Undertaking, either by their own buses or buses taken on hire from outside are admissible for L.T.C. under the scheme applicable to Central Government employees.

12. The learned counsel for the applicant argued that the respondents are trying to make out a new case which is not pleaded by him, he cannot be permitted to do the same. Annexure A-11, letter no. 1182/92, 10th July, 1992 is filed by the applicant himself.

13. Thus even the said memo is taken into consideration, the applicant's claim is in no way prejudiced. Infact, the fact must have been pleaded by the respondents but as the document has been filed by the applicant himself, consideration of the same cannot be rejected.

14. The applicant's case has been decided without affording him an opportunity of hearing.

15. The learned counsel for the applicant relied on (1991) 15 A.T.C. 550 Munshi Khan Vs. Union of India

and Others decided by Central Administrative Tribunal Allahabad and argued that after the lapse of two years the claimant cannot be asked to submit the collateral evidence, the order is non-speaking. I entirely agree with the learned counsel for the applicant for the reasons stated above. The board of inquiry who has come to a finding that the claim is not genuine, cannot be upheld.

16. The learned counsel for the applicant relied on order passing ~~in~~ O.A. No.1786 of 1992, 20th March, 1998 by the Central Administrative Tribunal, Allahabad Bench. There is no show-cause notice which is in the present case and the order passed for recovery of advance along-with interest. If Annexure A-1 is taken into consideration it does not state the grounds for rejection of the claims. Even on this account, the conclusion that the claim is not genuine, cannot be sustained.

17, In the result, the O.A. is allowed, Order dated 23.3.94 is quashed, respondents are ordered to finalise the L.T.C. claim of the applicant and if any amount is payable to the applicant after adjustment of the advance, the same may be paid to him within a period of one month alongwith cost of the application amounting to Rs.650/- (legal practitioner fee Rs.500/- + other expenses Rs.150/-).

J.S.W.
Member (J)

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