

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

Original Application No. 1080 of 1995
this the 29th day of May'2002.

HON'BLE MR. C.S. CHADHA, MEMBER (A)

Rajendra Kumar Dubey, S/o late Sri Niwas Dubey, working
as Telephone Operator, G.S.E. Section, Field Gun Factory,
Kalpi Road, Kanpur.

Applicant.

By Advocate : Sri M.K. Upadhyay.

Versus.

1. Union of India through the Secretary, Ministry
of Defence, Department of Defence Production,
Kanpur.
2. The General Manager, Field Gun Factory, Kanpur.
3. Smt. Sangeet Goel, Works Manager (Admn.) Field
Gun Factory, Kanpur.
4. The Project Officer, U.P. State Tourism Develop-
ment Corporation Ltd., Lucknow.

Respondents.

By Advocate : Sri Ashok Mohiley

O R D E R (ORAL)

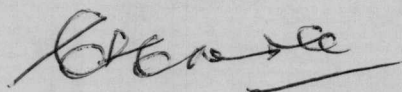
The case of the applicant is that recovery is
being made from his salary of the amount of advance
taken by him for performing the journey from Kanpur to
Kanyakumari on LTC on the ground that his claim is not
genuine. This matter was earlier adjudicated by ^{filing} O.A.
No. 498 of 1994, which was allowed by a judgment and
order dated 3.1.1995 and the impugned order dated 5.3.94
was set-aside and the respondents were given liberty
to proceed afresh in accordance with law. On the remand
of the case, the respondents put eight questions to the
applicant vide their letter dated 24.4.95 (Annexure-2)

Eff. 24.4.95

and also asked the applicant to give various details of the journey, which he submitted vide Annexure-8. I am surprised to find that in the impugned order dated 25.9.95 (Annexure-1) the explanation of the applicant has been rejected only in general terms. More-over what is even more surprising is that the applicant has been held guilty of not being able to prove his journey. In such a case, the burden of proof lies on the respondents to prove that the journey is false. Since the tickets and receipts produced by the applicant have not been challenged as un-true, merely acting on the surmise that the journey is unlikely to have been performed is highly improper and the burden of proof does not lie on the applicant to prove his claim. I am also surprised at the questions asked in the questions like the name of bus Conductor, name of bus Driver etc. No man of common prudence ever asks the name of the bus Conductor, name of the bus Driver etc. I am also surprised that the names of bus Conductor & bus Driver have been given by the applicant and no reason has been given in the impugned order why the claim submitted by him was treated to be false.

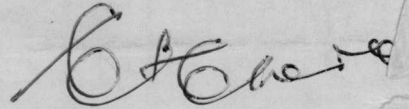
2. The learned counsel for the respondents states that according to Rule 12(2)(3) of the LTC Rules, LTC is not permissible if a person travels by a private chartered bus. I would have fully agreed with this argument provided that the impugned order had ever mentioned that the claim was rejected on this ground. The impugned order or any of the enquiries do not mention this ground at all and it is not open to the respondents to take this argument at this stage.

3. The learned counsel for the applicant has also shown that in a similar matter for similarly situated person, this Tribunal by a judgment dated



1.6.2001 in O.A. no. 1068/95 allowed the O.A. and quashed the impugned order. I am in respectful agreement with my learned brother and I see no reason to differ from the same.

4. In the above circumstances, the impugned order is absolutely illegal, passed without application of mind and in a prejudiced manner and it is, therefore, quashed. The O.A. is allowed. The recovery, if any, made from the applicant should be refunded forthwith. The implementation of this order shall be carried-out within a period of one month from the date of filing of a copy of this order before the respondents. There shall be no order as to costs.



MEMBER (A)

GIRISH/-