

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 29th day of October 2007

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Original Application No. 02 of 2000

Shiv Kumar (P. No. 03/2115), S/o late Sri Badri Prasad, R/o 141/A/2-H/1, Rajrooppur, Allahabad.

. . . Applicant

By Adv: Sri O.P. Khare

V E R S U S

1. Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
2. Secretary, Departmental of Personnel, Public Grievances and Pension (Department of Personnel and Training), Govt. of India, New Delhi.
3. Accountant General (Audit-I), UP, O/o the A.G. (Audit-I) UP Allahabad.

. . . Respondents

By Adv: Sri S. Chaturvedi

Alongwith

Original Application No. 220 of 2000

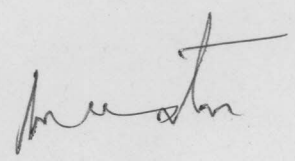
Parasu Ram Gupta, S/o late Sudama Ram, R/o 36/2-B/113, Bhawapur, Allahabad.

. . . Applicant

By Adv: Sri O.P. Khare

V E R S U S

1. Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
2. Secretary, Departmental of Personnel, Public Grievances and Pension (Department of Personnel and Training), Govt. of India, New Delhi.



3. Accountant General (Audit-I), UP, O/o the A.G.
(Audit-I) UP Allahabad.

. . . . Respondents

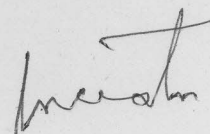
By Adv: Sri S. Chaturvedi

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The applicants in these two OAs are employees of the office of the Accountant General UP Allahabad. They are aggrieved that after payment of the LTC bill for journey under taken by the applicants alongwith their members of families in March 1998 they have been directed to refund the same. The applicant in OA 02.000 undertook the journey from 07.03.1998 to 22.03.1998, the applicant in OA 220/00 undertook the journey from 14.03.1998. The respondents issued order on 08.03.1999 and subsequently on 19.11.1999 (the impugned orders) informing the applicants that the LTC bill was not reimbursable in terms of the instruction of the Govt. dated 09.02.1998. By these orders the applicants were directed to refund the amount to the Govt.

2. The journey was undertaken with prior permission on the competent authority by bus belonging to Garhwal Mandal Vikas Nigam Govt. of UP. This agency was approved for undertaking the journey as per the LTC rule in vague. The applicants, therefore, performed the journey with permission of the competent authority and in a bonafide manner.



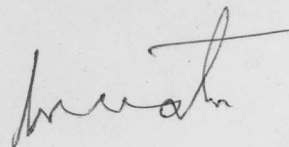
Before undertaking the journey they were not informed of any change in the rules.

3. Applicant in No. 02/2000 has stated that after completion of the journey 22.03.1998 he submitted his reimbursement claim as admissible under the rules after observing necessary formalities for an amount of Rs. 19100/-. After scrutiny of the bill by the controlling officer, the applicants claim was passed without raising of any objection for payment of the amount which the applicant received in July 1998. The facts regarding the applicant in OA 02/2000 are similar only the dates of journey, amount of the bill and date of payment are different.

4. However, the applicants were shocked to receive on 31.03.1999 office order No. PC/V/LTC/16 dated 08.03.1999 whereby the applicants, alongwith several other officials were directed to refund the money paid to them in respect of their LTC claim. It was stated in the order as follows:

"As per orders received from Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), New Delhi, vide OM No. 31011/4/97-Estt(A) dated 9.2.98 and Comptroller and Auditor General Clarification regarding LTC claims in respect of journeys performed between the period 9.2.98 to 19.3.98 have been disallowed."

5. Applicants prayed for staying the operation of the order to refund the amount. On 28.04.1999 the applicants received copy of the letter of respondent



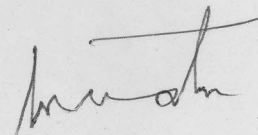
No. 1 dated 10-.03.19989 alongwith the copy of the letter dated 09.02.1998 of the DOPT. It was stated that this letter was received in the office of respondent No. 3 on 19.03.1998. But according to the applicant this was not brought to the notice of the applicant before commencement of the journey which was 08.03.1998 in respect of applicant in OA 02/12000 and 14.03.1998 in respect of applicant in OA 220/98.

6. With this submission the applicant in both the OA have prayed for the following reliefs:

- "a. This Hon'ble Tribunal be graciously pleased to quash the direction to refund Rs. 19,100/- (already paid in bonafide manner) contained in Office order issued by respondent No. 3 dated 8.3.99 and reiterated in Order dated 19.11.99 in respect of the Applicant at Serial No. 4 being arbitrary and passed in violation of provisions of principles of natural justice and not sustainable in the eyes law which are Annexures - A-2 and A-3 to this OA.
- b. This Hon'ble Tribunal be graciously pleased to direct the respondent No. 1 and 3 to recover the amount finally from salary , in case, the applicant is unable to refund the amount of Rs. 19,100/- reimbursed as bus fare towards Leave Travel Concession claim already passed and paid in bonafide manner in the facts and circumstances of the case.
- c. The Hon'ble Tribunal be graciously pleased to grant any other and further relief including the costs to the applicant in the facts and circumstances of the case."

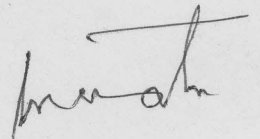
7. The grounds on which the orders of the respondents have been challenged are as follows:

- a. The applicants question the competence and authority of respondents including the DOPT in modifying the existing LTC rules by issuing a clarificatory order. It is stated by them that the rules regarding



admissibility of journey under taken by the buses hired by the Stated Tourism Department was incorporated in Provision 12 (2) (III) of LTC rules. These rules were statutory in nature framed under the authority of the constitution. Therefore, such rules cannot be changed by a mere clarificatory order without amending the provision as per manner laid down. It is stated that the clarification of the OM dated 09.02.198 was not legally valid.

- b. The payment was already made of the LTC claim to the applicants by a bonafide orders of the respondents. Therefore, it was not open to the respondents to take another stand in the matter and ask for refund.
- c. The respondents have admitted that the clarificatory order dated 09.02.1998 were received in the office of respondent No. 3 on 19.03.1998. It was further stated by the respondents that it was immediately put up in the notice board for general information. But the fact remains undisputed that on the date of journey for applicants in both the OAs the information was not available with respondent No. 3. Nor was it notified for information of the applicants. The applicants therefore made a bonafide journey without knowing the revision in the rules which the Govt. was intending to make.
- d. The journey was already undertaken by the applicants alongwith their families and the amount was not a small sum. It was not only unfair but totally illegal to attempt to make recovery of the same from the applicants.



8. The respondents refuted the allegation. In para 10 of the counter affidavit they have defended their decision as follows:

"That in reply to the contents of paragraph No. 4.6 of the OA it is stated that the order dated 09.02.1998 was brought to the notice of all officers and staff vide letter No. PC-V/LTC/29 dated 03.3.1998 on the very day it was received in the concerned selection. It was well displayed on the office notice board(s).

Decision to select a particular mode of conveyance of LTC is an individual employee's discretion. If an employee decides to select a mode of conveyance which has finally been banned by Government, the modus of recovery is ought to follow in due course.

It is further submitted that Rule 42 of the General Financial Rules, 1978 clearly provides that sanction or order shall come into force from the date of issue unless any other date from which they shall come into force is specified. For convenient perusal Rule 42 of the General Financial Rules, (hereafter referred to as G.F.R.) is quoted below:-

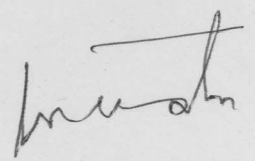
"Subject to fulfillment of the provisions of Rule 6 of the Delegation of Financial Powers Rules, 1978 all rules sanctions or order shall come into force from the date of issue unless any other date from which they shall come into is specified."

In view of the aforesaid rule it is clear that the direction issued vide office memorandum dated 9.2.1998 became enforceable from the said date of itself i.e. 9.2.1998 and the applicant can not derive any benefit only because directions contained in the Office Memorandum dated 9.2.198 were not brought to his knowledge before commencement of his journey dated 7.3.1998 by his family members."

9. It is further stated by the respondents that after receiving representations from a number of officials whose LTC claim was subsequently directed to be refunded, a reference was made to the nodal department i.e. DOPT. It is further stated that DOPT clarified the matter vide OM No. 31011/6/2002-Estt.(A) dated 30.07.2002. The DOPT, however, did

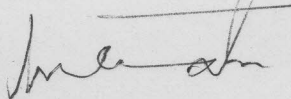
not agree to make any relaxation in favour of such officials.

10. We have gone through the pleadings and heard the arguments. The facts of the case presented by the applicants in both the OA have not been disputed by the respondents. It has not been stated by the respondents anywhere that the journey was a fake journey and no expenses were incurred by the applicants. There is no question that on the date of commencement of the journey both applicants were unaware of the revision made by the orders dated 09.02.1998. This was also not brought to their notice upon their return. The claim which was submitted by the applicants was also passed after necessary scrutiny. We do not think it is proper at this stage to ask the applicants to refund the amount which is a hefty amount already incurred by them as expenses towards the journey by the members of their respective families on LTC. The tour was duly approved. The details of the journey were communicated to the competent authority and their sanction obtained. It does not therefore behove the respondents to pertinaciously stick to their point that it would not be possible to make any relaxation whatever be the circumstances of their case. The question raised by the applicants regarding the competence of the respondents to change statutory



provisions by clarificatory orders is also pertinent.

11. Having considered the matter in depth we are of the view that the decision of the respondents to recover the LTC claim already paid to the applicants is illogical nor can it be stated to be in order as per the rules. A mere clarificatory Order cannot replace a rule. ~~under a satisfaction.~~ We find that there is merit in these two OA which ~~we~~^{are} therefore allowed. The impugned order dated 08.03.1999 and 19.11.1999 are quashed. No cost. *Let a copy of this order be placed on the record go. A No 220/2000.*



Member (A)

Vice-Chairman

/pc/