

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 858 of 2002
this the 10th day of March'2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Baij Nath, S/o late Rameshwar, R/o H.No.6 Golaghat,
Kanpur Cantt.

Applicant.

By Advocate : Sri R.K. Shukla.

Versus.

1. Union of India through the Secretary, Ministry of Defence, Department of Defence production, Govt. of India, New Delhi.
2. The Addl. DGOF, Ordnance Equipment Factories Gr. HQrs. 'Ayudh Upaskar Bhawan', G.T. Road, Kanpur.
3. The General Manager, Ordnance Parachute Factory, Kanpur.

Respondents.

By Advocate : Sri R.C. Joshi.

O R D E R

By this O.A., applicant has sought the following relief(s):

"(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order of/proposing of making recoveries of LTC advance together with penal interest issued by the respondent no.3 vide their no.CR-1591/CON/VIG/BN/LTC dated 30.5.2002 (Annexure no.A-1)

(ii) to declare the action of respondents deducting the leave encashment amount from Bill no. 86 dated 18.4.2002 in lieu of LTC advance and penal interest as void illegal and also direct to refund the said amount to the applicant forthwith.

(iii) to issue order or direction commanding the respondents to admit final adjustment claim of the petitioner and pay the balance.

(iv)

(v)"



2. It is submitted by the applicant that he was working as Tailor High Skilled Gr.II in Ordnance Parachute Factory, Kanpur, where he availed the facility of LTC for himself and his family members by travelling in bus controlled by Nagaland Tourism Department from Kanpur to Kanya Kumari. He was given 80% of the fare as advance for this purpose. After completing the journey he submitted his final adjustment claim, but vide letter dated 19.10.98 applicant was informed that the journey undertaken by him is inadmissible, therefore, advance amount will be recovered from his wages with penal interest. Being aggrieved, applicant alongwith 12 other persons had filed O.A. no. 1205/98 wherein he figured at sl. no.4 for challenging the order of recovery as the same was issued without giving any opportunity to the applicant. The said O.A. was allowed on 4.4.2001 alongwith O.A. no. 1154/98 whereby impugned orders Annexure A-8 & Annexure A-9 in O.A. no. 1154/98 and Annexure A-5 to Annexure A-17 in O.A. no. 1205/98 were quashed. However, liberty was given to the respondents to pass a reasoned order in accordance with law after giving opportunity of hearing to the applicant (page 21 to 24). Thereafter, no show-cause notice was given to the applicant and he was denied the wages for full month of July' 2001 and was paid only Rs.100/-. Being aggrieved, applicant filed Cp no. 187/2001 whereupon the respondents released the salary of the applicant. C.P. was accordingly dismissed. Thereafter, applicant retired on 31.1.2002 and it was after his retirement that vide letter dated 16.3.2002 applicant was called-upon to explain as to why the amount of Rs.18340/- alongwith interest should not be deducted from his retiral benefits on the ground that as per O.M. dated 9.2.98 the travelling could not have ^{been} undertaken by the bus hired by Nagaland Tourism department through the private parties because it could be admissible only for

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those, travelling ~~and~~ through the bus owned by Tourism Department only (page 17). Applicant gave a detailed reply on 31.3.2002 stating therein that after booking seats, he had duly informed the department about his journey being undertaken through Nagaland Tourism Department bus and the certificate issued by Nagaland Tourism Department had already been submitted alongwith the final claim of LTC. He has also submitted ~~therein~~ that he was never informed that incase he travels through the bus of Nagaland Tourism Department, the same would not be admissible. On the contrary, he was granted LTC vide PO part II dated 2.1.98, whereas O.M. dated 9.2.98 came into existence subsequently, therefore, the same is not applicable in his case. It was also categorically mentioned by the applicant in his representation that similar tours of final claims submitted by other employees have already been accepted and they have been paid the balance claim of 20% as well, whereas in his case the respondents ^{are} bent upon for taking back 80% of the amount as well, which would be totally arbitrary and illegal.

4. In spite of ~~ta~~ detailed representation, no final order was passed by the respondents, but the amount of Rs.1000/- was deducted from his DCRG and amount of Rs. 28610/- was withheld from his other retiral benefits without informing him even the break-up as to how they had deducted the amount of Rs. 28610/- from his leave encashment. It was in these circumstances that applicant filed the present O.A. claiming the relief(s) as mentioned above.

5. Respondents in their short Counter have stated that subsequently the matter was re-considered by the Govt. of India and it has been decided that the tours conducted by ITDS/State Tourism Development Corporation

either in their own buses or buses hired or chartered by them from outside will qualify for the purpose of availing LTC. O.M. dated 3.7.2002 has been annexed as Annexure CA-1. They have further submitted that in view of the above facts, the present petition has become infructuous, the same may, therefore, be dismissed.

6. I have heard both the counsel and perused the pleadings as well.

7. Counsel for the applicant relied on the judgment given by Calcutta Bench in O.A. no. 903/2001 decided on 29.7.2002 in the case of Tushar Kanti Sarkar & Others Vs. U.O.I. & Ors. wherein it was held as under :

"It is not the case for the respondents that the applicants had not undertaken the journey and the claim is false. As a matter of fact, the applicants in O.A. no. 903/2001 have filed a certificate dated 29.6.1998, issued by the West Bengal Tourism Development Corporation Limited stating that a trip to Derhatoon was made in luxury bus from 17.5.98 to 5.6.98 and the bus was directly operated/conducted by the West Bengal Tourism Development Corporation Limited and not by any private party or person. In another certificate dated 9.7.98 it is certified by West Bengal Tourism Development Corporation Ltd. that the various applicants had undertaken journey in the bus. It is, thus borne out that the applicants did undertake the journey and they have actually spent the amount which they are claiming. It is not disputed that if the clarificatory order dated 9.2.98 is ignored, the applicants are entitled to the amount claimed by them."

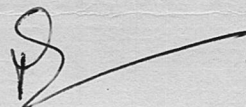
8. In the present case before me also, it is not disputed by the respondents that the applicant had not undertaken the journey as mentioned by him and have not even disputed the facts that the applicant had given the details to the department about his undertaking journey through the bus ^{used by P2} Nagaland Tourism Department, for which purpose he was, infact given the amount of advance also. Infact, it is seen from the representation given by the applicant that the O.M. dated 9.2.98 was issued after grant of his LTC vide PO part II number 7 dated 2.1.1998, meaning thereb

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that his LTC claim to the tune of 80% advance was already allowed on 2.1.98, whereas O.M. dated 9.2.98 was issued only subsequently, therefore, in this case the O.M. dated 9.2.98 cannot be applied. Infact the applicant had also ^{stated in} the said representation that the similar tours, LTC final claim submitted by other employees of the Factory have also been accepted and they have been paid the balance amount of 20% as well, even this aspect of the matter has not been denied by the respondents. At this juncture, it would be relevant to point-out that even as per earlier judgment, liberty was given to the respondents to pass a fresh reasoned order in accordance with law but even then the respondents have not shown to ^{have} passed any reasoned order thereon. Therefore, without dealing with the submissions raised by the applicant, respondents could not have deducted the amount of Rs. 28610/- from his leave encashment or Rs.1000/- from his gratuity on the ground that the LTC is not admissible to him, since he had travelled through Nagaland Tourism Department bus. Respondents have not even filed a detailed Counter affidavit in spite of having been given number of opportunities and in spite of the specific directions given by this Court on 3.2.2003 and 19.1.2004 ^{to take instructions} as the applicant's counsel had made a specific statement that out of all 15 persons, who had approached this Tribunal earlier, all others have been paid the balance amount except the applicant, therefore, respondents' counsel was given time to file an affidavit to explain as to how the applicant has been discriminated against, but in spite of taking number of adjournments, no affidavit has been filed by the respondents to explain the position. I am, therefore, drawing an adverse inference against the respondents. If 15 persons had approached this Tribunal for the same relief and 14 out of those 15 have been

given the balance of having travelled from Nagaland Tourism Department, I see no justification as to why the applicant alone should be discriminated against and not paid the balance amount of 20% and why the advance already paid to him should be deducted from his retiral benefits.

9. In view of the above, show-cause notice dated 16.3.2002 is quashed and set-aside. Respondents are directed to pay the withheld amount i.e. 28610/- from the leave encashment and Rs.1000/- from DCRG as the same was withheld on the ground that it was not admissible to the applicant as he had travelled through hired bus of Nagaland Tourism Department and also to pay 20% balance amount also to the applicant after passing his LTC claim within a period of 4 months from the date of receipt of copy of this order. The O.A. is accordingly allowed with no order as to costs.



MEMBER (J)

GIRISH/-