

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

RESERVED

Dated: This the 28th day of Aug 2009

Original Application No. 846 of 2007

Hon'ble Mr. S.N. Shukla, Member (A)

N.H. Ansari, S/o late Mohd. Shafique Ansari, R/o H. No. 132-B, Ompurwa, Kanpur Nagar.

. . . Applicant

By Adv: Shri R.K. Shukla

V E R S U S

1. Union of India through Secretary, Ministry of Defence, Deptt. Of Defence Production & Supplies, New Delhi - 11.
2. The Secretary, Ordnance Factory Board, 10-A, Shaheed Khudiram Bose Road, Kolkata - 1.
3. The Principal Controller of Accounts (Fys), 10-A, Shaheed Khudiram Bose Road, Kolkata - 1.
4. The General Manager, Ordnance Equipment Factory, Kanpur.

. . . Respondents

By Adv: Shri R.K. Srivastava

O R D E R

Through this OA the applicant seeks following reliefs:-

- i. to issue a writ, order or direction in the nature of Certiorari directing the respondents to quash their order dated 11.08.2007 making recovery from the pay & allowances of the petitioner.
- ii. to issue a writ, order or direction in the nature of Mandamus directing the respondents to admit the final settlement of bill dated 17.07.2006 as submitted by the petitioner and pay balance amount of the bill.
- iii. to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.
- iv. To award cost of the petition to the petitioner."

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2. The facts as submitted by the applicant are as under:-

- i. The applicant is working in the Ordnance Equipment Factory at Kanpur and drawing a basic pay of Rs. 5150/- per month. As per LTC Rules of 1988, the applicant claims to be entitled to four years LTC (anywhere in India). Accordingly, he availed the LTC for self and six family members to visit Agartala (Tripura) via Kolkata.
- ii. On an application, the applicant was allowed an advance to travel from Kanpur to Kolkata by train and from Kolkata to Agartala by air stated to be the shortest route (Annexure A-3 to the OA).
- iii. The respondents No. 3 and 4 scrutinized the advance claim for LTC and passed and paid 80% of total to and fro fare including air fare from Kolkata to Agartala.
- iv. It is clarified by the applicant that as per Rule 12 (i) (A) the applicant was entitled to travel in Ist class/AC 3 tier/Sleeper AC/Chair Car. His pay being more than Rs. 4000/- but less than Rs. 8000/-. On completion of journey the applicant submitted an adjustment claim of Rs. 62458/-, the same was scrutinized by respondent No. 4 and

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finally forwarded to respondent No. 3. Vide their recovery audit memo dated 18.10.2006 certain observations were made and the respondent No. 4 was directed to recover Rs. 36960/- from the applicant on account of non entitlement of air travel from Kolkata to Agartala.

- v. A representation was made to respondent No. 3 for adjustment of the claim as per C&AG circular No. 1253-N GEI/63-78-II dated 28.04.1980 (Annexure A-5 to the OA). The respondent No. 4 agreeing with the applicant's view requested the Principal Controller of Account (FYs) Kolkata vide their letter No. A/Bills/TA/III/207/Debit dated 17.7.2006 (Annexure A-7 to the OA).
- vi. The respondent No. 3 however, did not agree and insisted on the recovery of Rs. 36960/-. Accordingly, the applicant was directed by respondent No. 4 to deposit the cash in the office (Annexure A-8 to the OA).
- vii. The applicant thereafter, submitted a detailed representation dated 27.01.2007 indicating that he has performed journey from Kanpur to Howrah by train (1018 Kms) and from Kolkata to Agartala by air (299 Kms) equal to a total of 1317 kms which is the shortest route as compared to rail route

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from Kanpur to Guwahati (1613 Kms), Guwahati to Dharamnagar (452Kms) and Dharamnagar to Agartala (not mentioned in the Railway Time Table) and accordingly the journey is covered by Government Circular dated 24.04.1980 (Annexure A-2 to the OA).

viii. The said representation of the applicant remained unconsidered. However, the respondent No. 3 wrote to respondent No. 4 that circular dated 28.04.1980 is not applicable in the case of the applicant, hence the recovery was justified (Annexure A-9 to the OA). As a consequence respondent no. 4 finally ordered recovery of Rs. 36960/- in six installments commencing from the month of August, 2007.

3. In the counter affidavit it is submitted that after auditing the applicant's bill the Principal Controller of Account (Fys) Kolkata had restricted the LTC claim performed by the applicant and his family in AC three tier by train from Kanpur to Dharamnagar and from Dharamnagar to Agartala by bus disallowing an amount of Rs. 36960/-. After examining the representation of the applicant the Principal Controller of Account (Fys) intimated that according to LTC Rules the applicant should have performed the journey by direct and shortest route and accordingly Kanpur to Dharamnagar by Train and

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Dharamnagar to Agartala by bus is the shortest route. Further that the C&AG circular dated 28.04.1980 was relevant where journey commenced from Kolkata and where the train fare plus bus fare between Kolkata to Agartala was '**less than the air fare**'. Since none of the conditions were satisfied in the present case the circular dated 28.04.1980 is not applicable.

4. Heard the parties counsel and perused the pleadings on record. The C&AG Circular No. 1253-N GEI/63-78-II dated 28.04.1980 is reproduced below:

"GOVERNMENT OF INDIA'S DECISIONS

(1). Admissibility of reimbursement of air fare for the journey from Calcutta to Agartala and back to avail of LTC to any place in India. - I am directed to invite a reference to the correspondence resting with this Office Letter No. 1525-NGEI/63-78 Vol.II, dated 26-5-1979, with reference to your Letter No. Admn. II/LTC/814, dated 6-3-1979, where under it was clarified that general permission for air travel to non-entitled persons between Calcutta and Agartala on tour transfer allowed under the Ministry of Finance, O.M. No. F. 5 (74)-E. IV/59, dated 2-6-1959, read with SR 48-B can be extended to journeys between these places under the Leave Travel Concession Scheme as well. Thereafter, this question has been considered by the Government of India, Department of Personnel and Administrative Reforms and it has been decided by them that under para 27 in Section 9 of the Brochure on LTC, **travel by air is permissible only where an alternative means of travel is either not available or is more expensive.** Since there is land route from Calcutta to Agartala, i.e., from Calcutta to Guahati (993km) from Guahati to Dharama Nagar (452 km) and from Dharama Nagar to Agartala by road, the Leave Travel Concession claim for a journey performed by air should be regulated on the basis of actual air fare or the rail/bus fare of the entitled class, whichever is less. Accordingly, the reimbursement under the Leave Travel Concession Scheme to Government servants, entitled to Second class travel by rail, may please be restricted to Second Class rail fare plus the bus fare which is less than the air fare between Calcutta and Agartala. However, as the First Class rail fare plus bus fare between these two stations by the above route is more than air fare, the Government servants entitled to travel by First Class by rail, performing journeys under the LTC by air between these places, would be reimbursed the actual expenses incurred, i.e., air fare.

[C. & A.G., Circular Letter No. 1259-NEGI/63-78-II dated the 28th April, 1980]"

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5. A few things are clear from reading of this circular. The very heading of the circular indicates that it relates to reimbursement of air fare for the journey from Kolkata to Agartala and back to avail of LTC to any place in India. No where does it indicate that (i) the concession granted under this circular is restricted to journey commencing from Kolkata, (ii) the travel by air is permissible only where alternative means of travel either not available or it is more expensive -----

 ----- *however as the first class rail fare + bus fare between these two stations by the above rule is more than air fare the Government servant is entitled to travel by first class by rail, performing journey by air between these places in LTC, would be reimbursed the actual expenses incurred i.e. air fare.*

6. To this extent this Tribunal has noticed that the expression "C&AG circular dated 28.04.1980 was relevant where journey commenced from Kolkata and when the train fare + bus fare between Kolkata and Agartala was less than the air fare" wherever used, such as in para 'J' of the counter affidavit, para 1 of parawise comments at page 15 of the counter affidavit, para 5 of the parawise comments as also at few more places in the averments on behalf of the respondents is totally contradictory to the expression used in the said circular. Therefore very premise of denying the benefit of the circular on a wrong

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understanding of the language and on a contradictory reproduction of the language used, on the face of it, lacks application of mind. This Tribunal is of the considered view that the circular No. 1253-N GEI/63-78-II dated 28.04.1980 is applicable in the case of the applicant provided the entitled class fare of the applicant between Kolkata and Agartala was more than the air fare. The fact that the first class rail fare + bus fares between these two stations is more than the air fare is indicated in the circular itself. Therefore, the authorities need to check that if the applicant is entitled to the class of travel i.e. first class etc as claimed by him then the benefit of this circular is available to him.

7. The next issue to be considered is as to what is the shortest route between the two stations. As per the authorities the shortest route between Kanpur and Agartala is Kanpur to Dharamnagar by train and Dharamnagar to Agartala by bus. The definition of shortest direct route is defines in Swamis CCS Leave Travel Concession book as under:-

"Shortest Direct Route - the Government Assistance will be limited to the fare by the shortest direct route calculated on a through ticket basis, irrespective of the fact whether the journey was performed by the shortest or any other route."

8. In the instant case it would appear that there being no train service covering the entire distance between Kanpur to Agartala "through ticket basis" as an expression used in Rule 14 cannot be fully applied.

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Similarly it would also appear that if a Government servant is entitled to a particular class of travel he will be entitled to undertake the travel on the shortest available route by entitled class and mode of journey which may not necessarily be direct route. This can also be illustrated by following example:-

"A situation can be visualized where the senior Government employee who are entitled to air travel on LTC/HTC is required to travel between Allahabad and Chennai. There being no direct flight between Allahabad to Chennai, the officer concerned has to necessarily take the shortest air route available between Allahabad to Chennai as may be available at given time. Merely because no air service between Allahabad to Chennai the officer cannot be compelled to travel by train on the shortest train route between Allahabad to Chennai which do not have even an AC first Class compartment."

9. With the above example it is clear that the applicant was not exceeding his entitlement when he redistricted his claim of journey between Kanpur to Kolkata to the entitled class via the shortest and direct route regardless of different routes the family members may have taken as stated in the counter affidavit. If however the journey is performed in a lower class the claim obviously needs to be restricted to the shortest and direct route between Kanpur and Kolkata in the class of journey performed. As regards the journey between

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Kolkata and Agartala the Tribunal has already held that circular dated 28.04.1980 applicable in the case of the applicant.

10. In view of the above observations the impugned order dated 11.08.2007 is quashed and set aside. The amount already recovered from the applicant is directed to be refunded and any amount due to the applicant is directed to be paid within eight weeks of receipt of the order.

11. In view of the above OA is allowed. No cost.

Member (A)

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