

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.938 OF 2012

Cuttack this the 6th day of May, 2014

Jeeban Sahu...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *yes*


(R.C.MISRA)
MEMBER(A)

14

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CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Jeeban Sahu
Aged about 59 years
S/o. late Hrusikesh Sahu
Permanent Resident of Vill/PO-Kosala
Dist-Angul(Orissa)
Presently working as Manager
Postal Printing Press
Bhubaneswar-10

...Applicant

By the Advocate(s)-Mr.T.Rath

-VERSUS-

Union of India represented through

1. The Secretary
Ministry of Communication & I.T.
Department of Posts
Dak Bhawan
New Delhi-110 001
2. The Chief Post Master General
Odisha Circle
Bhubaneswar-751 001
Dist-Khurda
3. The Superintendent, RMS 'N' Division
Cuttack-753 001
Dist-Cuttack
4. The Director of Accounts (Postal)
Mahanadi Vihar
Cuttack-753 004

...Respondents

By the Advocate(s)-Mr.S.Barik



18

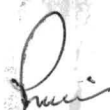
ORDER

R.C.MISRA, MEMBER(A):

Applicant is an employee of the Department of Posts and presently working as Manager, Postal Printing Press, Bhubaneswar. He has approached this Tribunal seeking the following relief.

- i) The objection raised by the audit under Annexure-A/6 and the consequential order for recovery of Rs.58,400/- vide Annexure-A/7, Annexure-A/13 and Annexure-A/15 may be quashed; and
- ii) consequently, orders may be passed directing the Respondents not to make any recovery from the applicant in future or in the event of any recovery such amount may be directed to be refunded to the applicant; and
- iii) to pass appropriate order/orders as may be deemed fit and proper in the facts and circumstances of the case and allow the O.A. with costs.

2. Shorn of unnecessary details, the facts of the case are that the applicant gave an application to the Senior Superintendent of Post Offices, RMS 'N' Division, Cuttack, i.e., Respondent No.3 for sanction of LTC advance of Rs.1,74,580/- to visit Shillong in lieu of home town LTC for the extended Block Year 2006-07 and to travel by Air in economy class in terms of O.M.No.F.No.31011/4/2007-Estt.(A) dated 2.5.2008, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training. Respondent No.3, after checking the admissibility, sanctioned advance to the tune of Rs.1,56,000/- being 90% of the estimated air fare. Thereafter, applicant booked air ticket on 14.10.2008 in economy class in the King Fisher Airlines. After completing the journey,



19

applicant submitted LTC bill on 4.11.2008 which was sanctioned by Respondent No.3 on 9.11.2008 for an amount of Rs.1,73,575/-. Subsequent development about this matter is that internal audit raised objection on 21.3.2011 that as per Ministry of Finance letter dated 4.12.2008, one may choose any airlines provided that the fare would not exceed the fare offered by NACIL (Air India) under LTC - 80 scheme starting from 1.12.2008. Respondent No.3 complied with the audit memo stating that the LTC bill of the applicant was sanctioned on 9.11.2008 under economy class air fare before the issue of the said Government of India OM dated 4.12.2008. In spite of this clarification of Res.No.3 in the final audit report the audit recommended for recovery of Rs.58,400/- from the applicant in connection with the LTC journey. Thereafter, Respondent No.3 gave direction to the Manager, Postal Printing Press, Bhubaneswar for recovery of the excess amount from the applicant. Aggrieved with the order of recovery, applicant made representation to Res.No.3 stating that the instruction regarding LTC 80 scheme was issued to give effect from 1.12.2008 whereas he had completed his journey on 28.10.2008 after purchasing air tickets on 14.10.2008. Applicant further pleaded that the Ministry of Finance letter dated 1.10.2008 does not specify any amount but says that the cheapest fare would be admissible. The other ground which the applicant had taken is that the Ministry of Finance letter dated 1.10.2008 was circulated by the Circle Office, Bhubanesswar on 20.10.2008, which was further circulated by the Senior Superintendent, RMS 'N' Division on 27.10.2008. Therefore,



20

there was no occasion for the applicant to know about the contents of the letter dated 1.10.2008 of the Ministry of Finance before undertaking the journey on 26.10.2008. However, Respondent No.3 rejected the representation of the applicant and held that the audit objection is sustainable. Thereafter, applicant submitted a representation to the CPMG, Orissa Circle, ventilating his grievances. His representation was disposed of by enclosing a letter dated 30.11.2012 from the Assistant Chief Accounts Officer, Internal Audit addressed to the Director of Postal Services. In the above backdrop, applicant has approached this Tribunal seeking the relief as aforementioned.

3. The ground taken by the applicant in this O.A. is that the objection by the audit is totally unjustified since he had performed his journey in the economy class and Respondent No.3 had granted advance for LTC journey and sanctioned the LTC bill as per the existing guidelines issued in the OM dated 2.5.2008 issued by the DOP&T, Government of India. Regarding the contents of O.M dated 1.10.2008 issued by the Ministry of Finance, Department of Expenditure, applicant has taken the ground that this letter was circulated by Res.No.3 only on 27.10.2008 and since the applicant had performed his journey on 26.10.2008 which was before the circulation of the said letter, he had no scope to have any information in this regard. Had the applicant come across the said instructions of the Ministry of Finance, he would have postponed the journey with the entire family. Further, in the Ministry of Finance O.M dated 4.12.2008, the LTC - 80 scheme as contained

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in this letter is applicable only with effect from 1.12.2008. Since the sanction of LTC was much before the issue of this letter, this will not apply to the case of the applicant.

4. The further argument submitted by the applicant is that no recovery under law is permissible basing only on the audit report and since the facts of the case are such that the objection of the audit is not sustainable, the order of recovery in his case also will not stand the test of law.

5. Respondents have filed their counter reply in which they have submitted that the LTC claim of the applicant was not cancelled, but regularized by the internal audit in accordance with the Ministry of Finance order dated 1.10.2008. In this order issued by the Ministry of Finance, cheapest economy fare was specified to leverage the discount being provided by airlines. Clarification regarding the cheapest air fare was sought by Res.No.3 from NACIL, Bhubaneswar who in turn replied in their letter dated 15.12.2008 which is available at Annexure-R/3 to the counter. This was taken into account by the audit party. Therefore, the issue was not regarding LTC - 80, but it was about the cheapest fare. The further argument given by the Respondents is that there was sufficient scope for the applicant to know about the contents of the Government order dated 1.10.2008 before he could undertake his journey on 26.10.2008. It is further submitted that the internal audit first issued a rough memo on 21.3.2011 and ² the final inspection report was issued on 22.12.2011. The internal audit incorporated their objection observing that full economy ^{fare} ~~fare~~ ²

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~~Q~~fare was irregularly reimbursed to the applicant in respect of journey from Kolkata to Guwahati and back in contravention of the Ministry of Finance letters dated 1.10.2008 and 4.12.2008 instead of the cheapest economy fare to leverage the discounts being provided by the airlines. They also observed that it was ascertained from the Station Manager, NACIL, Bhubaneswar vide letter dated 15.12.2008 that the cheapest air fare was Rs.3625 from Kolkata to Guwahati. Accordingly, they regulated the claim of the applicant to the cheapest fare communicated by the NACIL. It is also seen that when the draft memo of objection was given by the audit, the office of Res.No.3 complied with the objection stating that the LTC bill of the applicant was sanctioned on 9.11.2008 before issue of the Ministry of Finance OM dated 4.12.2008. However, in the final audit report, the audit observed that the tickets were actually purchased on 14.10.2008 by the applicant after the issue of guidelines on austerity measure by the Ministry of Finance on 1.10.2008 and therefore, these guidelines will apply in the case of the applicant and recovery in accordance with the same will have to be effected. The main contention of the Respondents in the counter reply is that the Ministry of Finance OM dated 1.10.2008 will take effect from that date and the plea of the applicant that he was not aware of this OM before undertaking journey cannot be accepted. Further, the Respondents have also emphasized that the objection was not regarding LTC - 80 but about the cheapest fare.



23

6. Applicant has filed rejoinder to the counter to which Respondents have also filed a reply.

7. I have heard the learned counsel for both the sides and perused the documents in connection with this case.

8. It has been brought to my notice that vide OM on 2.5.2008, DOP&T has made a relaxation for travelling by air to visit North Eastern Region (NER) on LTC, in which they have clarified that Group-A & B Central Government employee^s will be entitled to travel by air from their place of posting or nearest airport to the city in the NER or nearest airport. All Central Government employees will be allowed conversion of one block of home town into LTC to destinations in NER. Under the authority of this OM dated 2.5.2008, Res.No.3 has sanctioned payment of Rs.1,56,000/- to the applicant towards LTC advance for his visit to Shillong with effect from 25.10.2008 in lieu of home town LTC. This was based on the application of the applicant made on 14.10.2008. It also appears that applicant^{purchased} ~~was~~ ^{travelling} ~~travelling~~ through Sky King, a private travel agent, which has sent a letter dated 14.11.2008 to Res.No.3 confirming that the applicant with his family had undertaken a journey by air from Bhubaneswar to Shillong on 26.10.2008 and returned on 28.10.2008. Coming to the objection raised by the audit vide their rough memo dated 21.3.2011, they have stated that the Ministry of Finance OM dated 4.12.2008 has clarified that the officers and their family members may choose to travel on LTC by any airline provided that the fare would not exceed the fare offered by NACIL under their LTC 80



24

scheme with effect from 1.12.2008. In reply to this rough memo, Res.No.3 clarified that before issue of OM dated 4.12.2008, LTC bill was sanctioned on 9.11.2008. On perusal of the contents of O.M, dated 4.12.2008 issued by the Ministry of Finance, it reveals that that was regarding enforcement of economic ^lmeasure and rationalization of expenditure and guidelines with regard to LTC. The instruction contained in the O.M is that the fare should not exceed the fare offered by NACIL under their LTC - 80 scheme effective from 1.12.2008 for the sectors covered under the scheme and for the sectors that are not covered by the LTC 80 scheme, officers should ensure that the cheapest economic tickets are purchased for undertaking the journey. It is an admitted fact that the LTC journey had been completed by the applicant in the month of October, 2008 and his LTC bill was sanctioned on 9.11.2008 and therefore, it was much before the issue of the O.M. dated 4.12.2008. This being the situation, by no stretch of imagination O.M dated 4.12.2008 would be applicable to the case of the applicant. However, it reveals that although in the rough memo audit had pointed out and made a reference about O.M dated 4.12.2008, but in the final inspection report, they pointed out the Ministry of Finance OM dated 1.10.2008. Therefore, O.M dated 1.10.2008 needs to be examined threadbare. O.M dated 1.10.2008 issued by the Ministry of Finance stipulates that as a measure of austerity, each Ministry/Department would have to ensure that they devise internet ^{all} processes to leverage the discounts being provided by the Airlines. This includes buying the cheapest fare in Economy/Business Class travel;

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preferably by getting information through the internet and using Corporate Coupons for economy/business class travel through proper planning and coordination. It is, therefore, a direction issued to the various Ministries/Departments to make necessary arrangements in this regard to ensure compliance of austerity measures. It is the case of the applicant that this O.M dated 1.10.2008 was circulated through the Department of Posts to all Heads of Circles on 14.10.2008 vide their communication placed at Annexure-A/10. This was received by Respondent No.3 on 24.10.2008 and the Res.No.3 on 27.10.2008 circulated this to HRO, Cuttack. On this basis, applicant has pleaded that before he proceeded on LTC trip on 26.10.2008, he had no knowledge about the issue of this O.M by the Ministry of Finance. On the observation of audit party, Respondents have pleaded that the O.M. should be enforced from 1.10.2008 i.e., from the date of its issue. There is no doubt that the O.M takes effect from the date of its issue, i.e, 1.10.2008. However, for implementation of economic measures as stipulated in the said O.M., a reasonable time for communication of the same would have ^{to be} taken into account since after the issue of guidelines of the Ministry of Finance, the Department of Posts, on a subsequent date communicated this to the Head of the Circles and again at a much later date this was communicated to various subordinate offices. Para-2 of the O.M. indicates that the Department would have to ensure that they devise internet ^{at} processes to leverage the discount being provided by the airlines. Therefore, by the time these administrative

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measures could be implemented by the concerned Department and the subordinate offices, LTC claims in respect of the applicant had already been sanctioned on 9.11.2008 after he completed his journey on 28.10.2008. Journey was undertaken under the authority of O.M dated 2.5.2008 issued by the of the DoP&T, in which relaxation was given for air travel to visit NER. Applicant booked the air ticket on 14.10.2008 in the King Fisher airlines in economy class and before booking of this ticket, he was sanctioned 90% of the estimated air fare. It is, therefore, clear that the objection raised by the audit that applicant had purchased the ticket on 14.10.2008 after the issue of the Ministry of Finance O.M dated 1.10.2008 does not have any justification, since it appears from the record that neither the applicant nor the sanctioning authority in this case had ^{any} ~~not~~ knowledge of the measures to be enforced in pursuance of O.M dated 1.10.2008. Further, when the rough memo was issued by the audit, it was on the basis of the Ministry of Finance O.M dated 4.12.2008 and not O.M dated 1.10.2008. The concerned administrative authorities, i.e. Respondent No.3 at the time of sanction had no knowledge regarding the OM dated 1.10.2008 and also obviously, O.M dated 4.12.2008. There has been no fraud perpetrated by the applicant nor any misrepresentation made which would necessitate a recovery from the dues that were already sanctioned in his favour under the guidelines which existed at the relevant point of time. It is also observed by the audit that it was ascertained from the Station Manager, NACIL, Bhubaneswar vide their letter dated 15.12.2008

27

that the cheapest air fare was Rs.3625/- from Kolkata to Guwahati. This communication is also available on record filed by the Respondents at Annexure-R/3. In this regard, the admitted fact is that Respondent No.3 made a communication to NACIL on 10.¹²~~10~~.2008 and the latter sent the reply on 15.12.2008. Therefore, this again was much after the sanction of the claim of the applicant. However, it reveals that the ***cheapest air fare quoted by NACIL, Bhubaneswar is in respect of air fare from Kolkata to Guwahati*** whereas applicant has admittedly performed his ***journey by air from Bhubaneswar to Shillong***. ***NACIL has not quoted what ^{is of} the exact cheapest air fare from Bhubaneswar to Shillong under the LTC 80 scheme.***

In the circumstances, the ***calculation made by the audit on the basis of cheapest air fare from Kolkata to Guwahati*** and the consequential recovery of excess amount in that behalf ***is unfounded and baseless, since it is not the case of the audit that the air fare sanctioned in favour of the applicant from Bhubaneswar to Shillong was at a higher rate than the rate prescribed by NACIL under LTC 80 scheme from Bhubaneswar to Shillong.*** Viewed from the above, the whole basis of coming to the conclusion by the Respondents that the applicant has been sanctioned excess air fare than the air fare prescribed by NACIL is patently wrong.

10. Apart from the above, I am inclined to hold that there should have been a reasonable interpretation of the various guidelines issued in this regard and if no fraud or mischief has been played by the concerned employee and his claims were duly sanctioned by the concerned authorities

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under the guidelines covering the field at the relevant point of time, there is no ground to inflict an order of recovery from the concerned Government servant. It is no doubt a fact that in respect of the dues as admissible to a Government servant, if at all over payment has been made, Government at a subsequent point of time can make recovery of the same so as to obviate an unjust enrichment. However, the facts in a given circumstance will decide whether an amount duly sanctioned is an unjust enrichment or not. Here is a case where the Government servant/applicant under the relaxed guidelines visited NER with his family availing of LTC as a substitute of home town LTC. He was given advance and also sanctioned the claims as due to him under the guidelines, relevant at that point of time. The journey admittedly, has been completed and applicant as well as the sanctioning authority have not only ^{not} violated the rules which were in force at the relevant point of time but also acted in good faith. Therefore, I am of the opinion that passing of an order of recovery on the basis of audit objection hardly has any validity ^{be} to legally sustained ^{be}.

11. For the reasons discussed above, Annexures-A/7, A/13 and A/15 to the O.A. which have been issued in pursuance to audit report, are hereby quashed and set aside. It may be noted here that while admitting the O.A., as an interim measure, this Tribunal vide order dated 18.12.2012 directed the Respondents not to make any recovery from the pay of the applicant in pursuance of the orders under Annexure-A/7, A/13 and A/15 and this interim order is in force till date. However, if any recovery has been

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29

effected prior to the interim stay being granted by the Tribunal,
Respondents are directed to refund the same to the applicant forthwith.

12. In the result, O.A. is allowed as above. No costs.


(R.C.MISRA)
MEMBER(A)

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