

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No. O.A.380 of 1997

PRESENT: HON'BLE MR. B.N. SOM, VICE-CHAIRMAN(A)
HON'BLE MR. ASHOK S. KARAMADI, MEMBER(J)

SUBODH CHANDRA MAZUMDER

Vs.

1. Union of India, Service the Secretary, Ministry of Defence, New Delhi-11.
2. The Chief Engineer, (HQ) Eastern Command, Fort William, Calcutta-21.
3. The Engineer-in-Chief, Army Head Quarter, DHQ, Post Office, New Delhi-11.
4. The Enquiry Officer, Shri P. Chatterjee, ASW, HQ Eastern Command, Fort William, Calcutta-21.

For the Applicant : Mr. S.N. Roy, Counsel

For the Respondents : Mr. M.S. Banerjee, Counsel

Heard on: 3.8.2005

Date of Order: 5/8/05

ORDER

MR. ASHOK S. KARAMADI, J.M.:-

This O.A. was filed under Section 19 of the A.T. Act, 1985 by the applicant seeking for the following reliefs:-

- (a) Direction upon the respondents concerned not to give effect or further effect to the office Memo No.137028/27/SCM/71/Engrs/E-7 CON DATED 2ND July, 1994 imposing the penalty of "Reduction to one lower stage from Rs.1500/- to Rs.1475/- in the scale of pay Rs.950/- 20-1150-EB-25-1500 he is drawing for a period of three years during this period of reduction he will not earn increment of pay and on the expiry of such period the reduction will have the effect of postponing the future increment of his pay. He will not be allowed the next tow sets of Leave Travel Concession i.e one to home town and one to any place in India in addition to the set withheld during the pendency of the proceedings" being Annexure-"Q" to the application.
- (b) Direction upon the respondents concerned not to cause any recovery of the alleged amount from the salary of the applicant pending disposal of the instant application.
- (c) A direction upon the respondents concerned more particularly the appellate authority to dispose of the appeal in accordance with law by passing a reasoned speaking order and also communicate the decision to the applicant.

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- (d) Direction upon the respondents concerned to reimburse the deductions which have been illegally deducted from the salary of the applicant.
- (e) any other order or further order be passed as the Hon'ble Court may deem fit and proper."

The brief facts of the case which are necessary for the disposal of the application are as under:-

The applicant was appointed in Military Engineering service by the Chief Engineer, Eastern Command HQ on 8.12.1965 and presently he is working as Lower Division Clerk. On 17th December, 1990 the applicant had applied for and received a sum of Rs.9800/- by way of advance on his Leave Travel Concession (L.T.C.) for travel along with his family consisting of 6 adults and 2 children. On receipt of such advance, the applicant purchased tickets for 6 adults and 2 children for a journey from Howrah to Kanyakumari in Ist class by 8 Up. Madras Mail on 14th January, 1991, those tickets were on the waiting list. The said waiting list tickets were produced before his Administrative Officer(II), Chief Engineer Head Quarter, Eastern Command for endorsement on such tickets. Despite the applicant's best efforts, the said waiting list tickets could not be confirmed and he was advised by the railway authorities to try for some other train. Accordingly, on 3rd January, 1991 the applicant cancelled the said Madras Mail Tickets and purchased tickets (6 adults and 2 Children) in Coromandal Express for journey on 14th January, 1991. According to the applicant, the tickets in Coromandal Express were confirmed by the Railway Authority at the eleventh hour and, hence the applicant was not able to inform his office regarding the commencement of his journey in person but did so by his letter dated 14.1.1991 addressed to the Chief Engineer, HQ Eastern Command, wherein the applicant mentioned the PNR number of his new tickets in Coromandal Express. Having completed his journey and upon return the applicant on 31st January, 1991 submitted an adjustment bill for the sum of Rs.13,096/- being the total return railway fare less the earlier advance of Rs.9800/-. Along with such bill, the applicant had enclosed his cancelled tickets of 3 UP Madras Mail as he had only those in his possession, the tickets of Coromandal express by which he had actually travelled

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having been surrendered to the railway authority upon reaching destination. The applicant in his aforesaid claim did not state that he had travelled by Coromandal Express. In respect of inward journey from Kanya Kumari to Howarah the applicant, as per L.T.C. rules, was required only to provide ticket numbers, which the applicant duly provided in his said claim. He has also produced the lodging bill of Rs.400/- of Hotel Ganga, Kanyakumari.

2. It appears that thereafter some query was made about the age of members of the family of the applicant as noted in the tickets which allegedly did not tally with the details of the family declared in his office records. However, a charge memo was issued against the applicant on 21.4.93 alleging that the applicant had lodged false L.T.C. claim for the block year 1990-93 to cheat the government and to derive undue benefit which amounted to misconduct under the CCS (Conduct Rules). Thereafter, the applicant was asked to refund the Rs.9800/- together with panel interest, against which he made a representation and thereafter filed an application before this Tribunal being O.A. No.713 of 1993. Ultimately, the punishment of reduction of one lower stage in the time scale of pay for a period of three years was issued on 2-7-1994. Thereafter, the applicant submitted an appeal and eventually he filed this O.A. challenging the said order

3. The respondents have filed their reply and stated that the respondents have held enquiry and the following charges were framed against the applicant:-

- (a) 'That MES 206645 Shri S.C. Mazumder, while functioning as LDC in the office of Chief Engineer, Eastern Command, Calcutta-21 during the period from 27th May 86 till to-date was preferred a fraudulent LTC claim for the block of four year i.e.1990-1993 for self and family members from duty Station (Howrah) to Kanya Kumari and back without performing any journey.
- (b) Shri S.C. Mazumder by his above act exhibited lack of integrity and conduct unbecoming of Govt servant, thereby violating Rule 3 of CCS (Conduct) Rule, 1964."

4. The enquiry officer recorded his findings against the applicant and held that the L.T.C. claim submitted by the applicant was fraudulent and, hence, both the articles of charges framed against the applicant were correctly proved. In the findings of the enquiry officer it has been stated that the applicant admitted in his defence

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statement that he along with his family members did not undertake journey on 14.01.1991 by Madras Mail as shown in his LTC but undertook journey by Coromandal Express on the same day after purchasing fresh confirmed tickets. In support of his visit to Kanya Kumari he also produced zerox copy of lodge house "Ganga" Kanya Kumari bearing No B-2177 dated 19.1.91. and further stated that he purchased fresh tickets for coromandal express for journey on 14.1.91 from broker but he could not name the broker nor his address. Basing on the enquiry report findings, The Chief Engineer, HQ Eastern Command, Calcutta-21 passed an order vide dated 2-7-1994 which is just and proper and, therefore, seeks for the dismissal of the application.

5. We have heard ld. counsel for both parties.


6. Having regard to the facts and circumstances of the case as pleaded by the applicant in support of his contentions and documents produced by him, which clearly go to show that the enquiry conducted against the applicant by the respondents is against the principles of natural justice and the findings recorded by the enquiry officer are also not based on proper materials even though the applicant has stated and submitted certain documents in support of his journey. On the other hand, the respondents contended in the reply statement that as he has claimed LTC by a particular train and he has taken the advance amount based on the same information which he has furnished to the department and subsequently he has cancelled and produced only cancellation ticket and, therefore, the action taken against the applicant is in accordance with rules. As the findings recorded by the enquiry officer are not based on proper appreciation of the materials placed before the enquiry officer nor the proper enquiry was held with verification regarding the particulars furnished by the applicant with regard to his subsequent journey and the explanation given by the applicant that due to the reasons stated there which was beyond his control, could not produce the original ticket of the journey which he had undertaken.

7. Having regard to these findings recorded against the applicant, the contention of the respondents cannot be accepted as the same is against the principles of natural justice. The applicant has not been given any proper opportunity nor the enquiry

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conducted is just and proper on the other hand it is arbitrary one and as such the respondents have denied the genuine claim of the applicant. It is not the case of the respondents that the applicant has misused the amount and acted contrary to the objective of the L.T.C. given to the government servants and he has acted upon contrary to the rules and his behavior is questionable one which calls for action as per the law. In the absence of sufficient materials to the contrary, we hold that the enquiry conducted against the applicant is not just and fair and therefore we are setting aside the impugned order dated 2nd July, 1994 and remand the matter back to the respondents to hold a further enquiry by giving sufficient opportunity to the applicant and pass an appropriate order in accordance with rules by giving proper reasons. On taking into consideration of the grounds of this application also, during the course of the argument, ld. counsel for the respondents have stated that the appeal which was filed by the applicant was disposed on 11.11.97 which affirmed the punishment and, therefore, we found that no reasons to express our opinion regarding the appeal as we are remanding the matter for fresh decision.

8. Accordingly the application is allowed. The matter is remitted back to the authorities with a direction to dispose of the same by speaking order within three months from the date of receipt of copy of this order. No order as to costs.


MEMBER(J)


VICE-CHAIRMAN(A)