

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos.479/2011 & 792/2011

Monday, this the 3rd day of September, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

O.A.No.479/2011

Babu Swaminathan.M.V.,
Transmission Executive,
Doordarshan Kendra,
Kudappanakkunnu.P.O.
Thiruvananthapuram-43. - Applicant

(By Advocate Mr Vishnu S Chempazhanthiyil)

v.

1. The Director,
Doordarshan Kendra,
Kudappanakkunnu.P.O.
Thiruvananthapuram-43.
2. The Director General,
Doordarshan Bhawan,
Copernicus Marg,
New Delhi-1. - Respondents

(By Advocate Mr N.N.Sugunapalan Senior with Mr S Sujin)

O.A.No.792/2011

K.R.Rajini, W/o Jyotish Kumar,
Senior Hindi Translator,
O/o the Chief Postmaster General,
Thiruvananthapuram-695 033,
Residing at Ammu, 74 Ravi Nagar,
Peroorkada, Thiruvananthapuram-695 005. - Applicant

(By Advocate Mr Vishnu S Chempazhanthiyil)

v.

1. The Accounts Officer,
O/o the Chief Postmaster General,
PMG Junction, Thiruvananthapuram-695 033.
2. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram-695 033.
3. Union of India represented by
the Director General & Secretary,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi-110 116. - Respondents

(By Advocate Mr A.D.Raveendra Prasad)

This applications having been finally heard on 27.06.2012 and 07.08.2012, the Tribunal on 03.09.2012 delivered the following:

ORDER

HONBLE Dr K.B.S.RAJAN, JUDICIAL MEMBER


As the legal issue involved in the two cases is one and the same, these are dealt with in this common order..

Brief facts:

OA No. 479 of 2011: The applicant is presently working as Transmission Executive in Doordarshan Kendra, Thiruvananthapuram. His scale of pay as per the revised pay Scale in the wake of the VI Pay Commission Recommendations, is Pay Band 2 with Pay Band of Rs 4,600/-. He had, under due sanction, availed of the LTC facility for the four year block 2006-2009 from Thiruvananthapuram to Tawang (Arunachal Pradesh) in

early 2010. He travelled from Thiruvananthapuram to Dibrugarh by Air, from Dibrugarh to Guwahati and from Guwahati to Tawang and back by Road and from Guwahati to Thiruvananthapuram by air. He had preferred a LTC bill accordingly. The respondents have disallowed his claim for travel by Air from the place of Duty i.e. Thiruvananthapuram on the ground that as per order dated 2nd May, 2008 (Annexure A-7), it is only Group A and Group B officers who are entitled to travel by Air from place of posting to a city in the NER or nearest airport. Other categories of employees will be entitled to travel by air to a city in the NER either from Guwahati or Kolkatta. The said order was to operate for two years. And, the post of Transmission Executive is a Group C post as per the Statutory Rules.

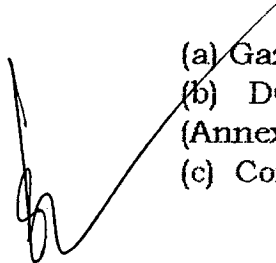
2. The applicant, however, relies upon a gazette notification published on 09-04-2009, according which, a Central Civil Post carrying the grade pay of Rs 5,400/- Rs 4,800/-, 4,600/- and Rs 4,200/- in the scale of pay of Rs 9,300 – 34,800 in Pay Band -2 has been classified as Group B posts. Since by Annexure A-7 communication dated 21-03-2011 the applicant was informed that her entitlement to LTC would be restricted to Rs. 39,930 and that she having been paid an advance of Rs 85,000/- the balance of Rs 45,070 would be recovered from her and by Annexure A-9 communication dated 01/4th August, 2011, the same was confirmed stating that the entitlement to Air travel would be restricted only from Guwahati/Kolkatta to North Eastern Region and further since by Annexure A-10 communication dated 02-09-2011 and another



communication dated 16-08-2011 the applicant was informed that her salary will be withheld due to excess drawal of the LTC advance, the applicant has sought the following reliefs:-

- (i) Direct the respondents to settle the LTC bill submitted by the applicant at Annexure A-4 forthwith.
- (ii) Direct the respondents to consider sanctioning the LTC bill as claimed in Annexure A-4.
- (iii) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
- (iv) Award the costs of these proceedings to the applicant.

OA No. 792 of 2011: The applicant is functioning as Senior Hindi Translator in the pay scale of Rs 9,300 – 34,800 plus Grade Pay of Rs 4,600/-. She was sanctioned LTC for travel to the North East Region for self and family during April, 2010. A sum of Rs 85,000/- was also paid to her as advance. The journey was completed by 11-05-2010. According to the applicant, vide Annexure A-1 OM, Group A and Group B Central Government employees will be entitled to travel by air from their place of posting or nearest airport to a city in North East Region or nearest airport. Annexure A-2 order dated 14-05-2008 refers. According to the applicant, by virtue of the following orders, which specify that pay band 2 (Rs 9300 – 34800/- with Grade pay of Rs 4,600 and above are all graded as Group B posts and as such, she and her family are entitled to travel by air from the place of posting:-

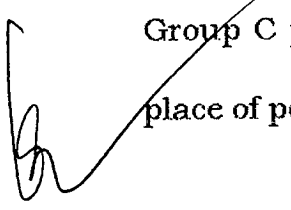
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- (a) Gazette notification dated 09-04-2009 (Annexure A-3)
 - (b) DOPT OM. No. 11012/7/2008 Estt(A) dated 17-04-2009 (Annexure A-4).
 - (c) Communication dated 14/10-2009 vide Annexure A-5

3. However, by Annexure A-9 order dated 1st/4th August, 2011, the applicant was informed that the post held by the Applicant being a Group C post, the LTC entitlement by air is restricted only from Guwahati/Kolkata to the NER or nearest Airport. Thus, there was a truncation in her LTC entitlement and she has been directed to refund the excess amount drawn by her towards the said LTC. Hence, this O.A. seeking the following reliefs:

- (i) Call for the records leading to the issue of Annexure A-10 and A-10(a) and set aside Annexure A-10 and A-10(a),
- (ii) Call for the records leading to the issue of Annexure A-7 and A-9 and set aside Annexure A-7 and A-9.
- (iii) Direct the respondents to settle the LTC bill submitted by the applicant and direct the respondents to consider sanctioning the LTC bill as claimed by the applicant.
- (iv) Any other further relief or order as this Hon'ble Court may deem fit and proper to meet the ends of justice.
- (v) Award the cost of these proceedings.

4. Counsel for the applicant submitted that there was genuinely a doubt in the mind of even the administration in that the pay scale attached to the applicants (in both the cases) enabled the applicants to travel by Air from the place of posting to the NER and back. In this regard, the counsel invited the attention to Annexure R-3 DO letter to the DDG, Department of Posts, New Delhi, dated 08th April, 2011.

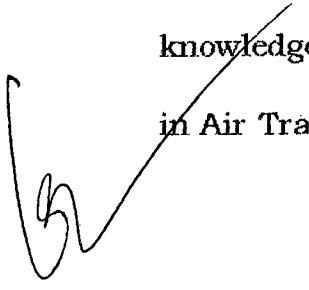
5. Counsel for the respondents submitted that as per the Recruitment Rules, the posts in question, which the applicants are holding are only Group C posts and hence, they are not entitled to travel by air from the place of posting to NER.



6. Arguments were heard and documents perused. The purpose of travel by Air to NER sector was with a view to encouraging tourism at that remote area and for inter action amongst the public from various parts of the country. The purpose is thus laudable. Entitlement to Air Travel is normally restricted to Group A and Group B personnel, as contained in the Gazette notification. It may be true that the post of Senior Hindi Translator as well as Transmission Executive might have been a Group C post. However, when the pay scales have changed and as per the gazette notification dated 9th April, 2009, the pay scale in Pay Band 2 with minimum of Rs 4,600 as grade pay has been held to be Group B post, genuine view would have arisen in the minds of everyone about the entitlement to Air Travel. It is not that the individual had not undertaken the travel. They did travel by Air. The fact that LTC advance has also been given reflects that even the administration did not have initially any doubt about the same. It is however, when the clarification has been given that the respondents had decided to recover the excess amount.

7. The question, therefore, is whether the applicants' claim should be rejected.

8. An identical situation had occurred in a batch of cases at Jodhpur Bench in OA No. 192 of 2012 and connected cases. There, of course, the knowledge of the order dated May 2008 which provided for the restriction in Air Travel from Guwahati/Kolkatta to NER (and not from the place of



posting in respect of non entitled personnel) was not there when the journey was undertaken. Here, in the instant case, the travel had taken place much later, but the respondents had granted due advance for LTC for air travel from place of posting.

9. In the case of Jodhpur Bench, the case had been analysed as under vide their order dated 20th July, 2012:-

"8. After having gone through the pleadings of the parties and the arguments submitted by their learned counsel the following facts in issue emerge:

(i) *Whether the respondent organization was aware of the two circulars namely 10.11.2008 and 4.12.2008 at the time of issuing the sanction letter to the applicant dated 12.11.2008 [A4]?*

(ii) *Whether the respondent organization was bound to call for show cause making the deductions from the salaries of the applicant?*

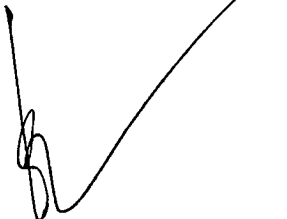
(iii) *What relief can be provided to the applicant?*

Whether the respondent organization was aware of the two circulars namely 10.11.2008 and 4.12.2008 at the time of issuing the sanction letter to the applicant dated 12.11.2008 [A4]?

9. The relevant portion of OM dated 2.5.2008 is as follows:

"The undersigned is directed to say that in relaxation of CCS (LTC) Rules, 1988, the Government have decided to permit Government servants to travel by Air to North Eastern Region on LTC as follows:

(i) *Group A and Group B Central Government employees will be entitled to travel by air from their place of posting or nearest airport to a city in*



the NER or nearest Airport.

- (ii) *Other categories of employees will be entitled to travel by air to a city in the NER from Guwahati or Kolkata.*
- (iii) *All Central Government employees will be allowed conversion of one block of Home Town LTC into LTC for destinations in NER.*

2. These orders shall be in operation for a period of two years from the date of issue of this OM.

3. Data regarding number of Government employees availing LTC to NER may be maintained.


4. In their application to the staff serving in the Indian Audit and Accounts Department, these orders issue after consultation with the Comptroller and Auditor General of India."

10. The relevant portion of OM dated 10.11.2008 reads as under:

"Reference is invited to the guidelines on austerity measures issued vide OM of even number dated 5th June, 2008, and DoPT OM No.31011/4/2008-Estt(A) dated 23rd September, 2008 regarding acceptance of Sixth Pay Commission's recommendations related to LTC. Vide the OM of DoPT, it has been stipulated that travel entitlements for the purpose of official tour/transfer or LTC will be the same but no daily allowance will be admissible for travel on LTC. In order to meet the objective of expenditure management in view of the current Economy Measures, it is further stipulated that insofar as travel on LTC is concerned for those entitled to travel by air, the cheapest economy fare ticket will be allowed, irrespective of entitlement of such officers to travel while on tour.

These orders come into effect from the date of issue."

11. One finds that the order of sanction had been passed on 12.11.2008 [A4]. The aforementioned two Office Memoranda were issued on 10.11.2008 and 4.12.2008. Admittedly the second OM had been issued after issue of the sanction letter [A4] and hence is not binding on the applicant. As regards the first OM dated 10.11.2008 the difference was only of two days before issuing the sanction letter. It is well accepted



that the Government circulars take their own time in percolating down to the field level and there is normally an information lag between the two, even in these days of fast communication by internet and fax machines. One can imagine the condition which prevailed in the late eighties, when these means were so readily available. Otherwise there is nothing that explains as to how the sanction letter came to be issued as if the aforementioned OM namely OM dated 10.11.2008 did not exist.

12. Moreover it has to be considered that having issued the sanction letter the applicant has undertaken their journey and had incurred expenditure. The fact that the OMs dated 10.11.2008 and 4.12.2008 became applicable from the date of their issue the onus lay upon the respondent organization to ensure that all such persons in whose respect the sanction letters had been issued were asked not to undertake the journey and submit fresh proposals for the same. Even so, the respondent organization is bound to bear the costs involved in cancellation etc. Having not done that and having allowed the applicants to proceed with their respective journeys the respondents are barred by the law of estoppel from not allowing the remaining part of the LTC claim and in making the recoveries. The presumption of facts here would be that the respondents are aware of the OMs and if they had failed to implement the same they must bear the consequences arising therefrom. There is no stake from this position.

Whether the respondent organization was bound to call for show cause making the deductions from the salaries of the applicants?

13. It is by now commonly accepted that a show cause and opportunity of being heard before recoveries are made is a mandatory position. In a decided case ***Awadh Kishore Tiwari (since deceased) by LRS Vs. Damodar Valley Corporation, Calcutta [(1995) SCC(L&S) 146*** discrepancies were found in the claim submitted under LTC Scheme for journey to Kashmir and medical claim for the treatment undertaken there. A show cause was issued to the appellant represented by LRs for making a false claim and three increments were deducted. He was also asked to refund the amount and he refunded the amount drawn under the LTC bill. A suit was decreed to that effect by the trial court disallowed by the Additional District Judge, Dhanbad. The Hon'ble Supreme Court held:

"2. Mr.P.P.Rao, the learned counsel for the appellants, has contended that the learned additional district judge

erroneously assumed in paragraph 9 of his judgment that the increments of the plaintiff were not stopped with cumulative effect, and on that basis held that Regulation 98(1) requiring the holding of an enquiry was not applicable. Mr. Mukherji, appearing on behalf of the respondent State, did not dispute the fact that by the order impugned in the suit the plaintiffs three increments had been stopped with cumulative effect. If that is so then Regulation 98(1) is clearly attracted. Admittedly no enquiry was held where the plaintiff could have led evidence in support of his explanation mentioned in the show cause notice. It follows, therefore, that the trial court was right in decreeing the suit and the first appellant court as well as the High Court were misled by the assumption of wrong facts, in dismissing the suit. Consequently their judgments are set aside."


14. It is apparent from above that the Hon'ble Court have made it mandatory to hold enquiry before making the reductions even under the LTC, not followed in the instant case. No show cause has even called for from the applicants.

What relief can be provided to the applicant?

15. The applicants have drawn attention of the Tribunal to the effect that identical matter was considered by this Tribunal in OA Nos.259, 261, 262, 263, 264, 265, 266, 267, 268, 269 and 272 of 2010 by its order dated 6.10.2010 wherein it was held that:

"9. Having considered the arguments of both sides and after going through the OAs and the documents annexed with the OAs I find that all the applicants were duly permitted to avail the LTC to travel to NER by the competent authority and the competent authority had accorded sanction of LTC advance. I further find that the order of recovery of alleged excess amount was passed by the authorities after the applicants had already performed their journey to NER under LTC. This shows that the applicants were not at fault and performed their journey in Economy Class by the order of the competent authority. They have not made any false representation and therefore, I am of the view that the respondents are not justified in ordering recovery from the salary of the applicants towards the alleged excess amount, since the LTC advance was sanctioned to them by the competent authority after thorough scrutiny of the request of the applicants.

10. In the result, I find merit in all the OAs and as such they are hereby allowed and the respondents are restrained



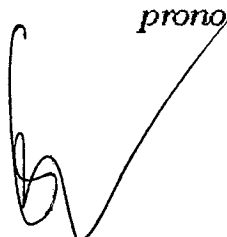
from making any recovery from the salary of the applicants towards alleged excess amount paid to the applicants in respect of their LTC claim. No order as to costs."

16. The above cases being identical the same ratio is to be followed in the instant case also. Therefore, all of the aforementioned OAs are allowed. There shall be no order as to costs.

17. A copy of this order shall be placed in all the OAs mentioned above."

10. It is settled law that decision of a larger bench has to be adopted by smaller bench. The above order had been passed by a Division Bench, in which the undersigned is also one of the signatories. The law laid down by the Apex Court in the case of **Sub-Inspector Rooplal v. Lt. Governor**, (2000) 1 SCC 644, the Apex Court is as under:-

"If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.



11. In view of the above, the **two O.As are allowed**. The impugned orders therein are quashed and set aside. It is declared that the applicants' LTC by air from the place of posting to NER is in order and there is no need to recover any amount from them in this regard. The Bills are therefore, directed to be settled accordingly.

12. Under the circumstances, there shall be no orders as to cost.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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