

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.381/2002

MONDAY, THIS THE 11th DAY OF OCTOBER, 2004

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

C.Velayudhan,
Upper Division Clerk(SG),
Regional Provident Fund Commissioner Office,
Bhavishyanidhi Bhavan,
Pattom, Trivandrum. - Applicant

By Advocate Mr Vellayani Sundara Raju

Vs

1. Union of India represented by
Secretary to Government,
Ministry of Labour,
New Delhi.
2. The Regional Provident Fund Commissioner-I,
Regional Office,
Trivandrum.
3. The Additional Central Provident Fund
Commissioner(HR) and Appellate Authority,
Bhavishya Nidhi Bhavan, 14,
Bhikaji Cama Place,
New Delhi. - Respondents

By Advocate Mr N.N.Sugunapalan(for R.2&3)

The application having been heard on 27.7.2004, the Tribunal
on 11.10.2004. delivered the following:

O R D E R

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

The applicant, an Upper Division Clerk in the office
of the Regional Provident Fund Commissioner, Trivandrum in
challenging A-1 disciplinary orders and A-2 appellate order is

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seeking a declaration that he has not violated any of the clauses of (i) and (iii) of sub rule (1) of Rule 3 of the CCS(Conduct) Rules 1964 read with Regulation 27 of the EPF(Staff and Conditions of Service) Regulation 1962 and that punishment disproportionate to the charges levelled has been imposed in violation of natural justice. Facts in brief are that the applicant was sanctioned LTC Advance of Rs.21,300/on 1.8.1997 for visiting Delhi with his family on 2.8.1997. The amount was disbursed to him on 1.8.1997 and the applicant claims to have booked the tickets through a Travel Agency. But he changed his travel plan when he came to know that the office bearers of the Staff Association were travelling to Delhi on 3.8.1997. He wanted to join them for availing the convenience of companionship, but the Agency would procure only wait listed tickets. He got these tickets cancelled and purchased ordinary tickets on 3.8.1997 before the commencement of journey. He did not inform this change of plan to his office. The applicant stayed in the house of a friend in Delhi and returned to Trivandrum on 8.8.1997. On 18.8.1997 he was asked to submit the final bill. On that very day the applicant refunded the unutilised balance of Rs.15,300/- and submitted the final bill for Rs.5,084/- (against Rs.6,000/outstanding) on 1.9.1997. He could not produce the tickets on which the journeys were performed, as these had been surrendered at the exist gates of the Railway Station of Delhi and Trivandrum. The applicant was informed on 25.11.1997 that if the tickets were not produced, the claim would be disallowed. On 4.12.1997, the applicant explained why he could not submit the original tickets and requested

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that bill be passed. The applicant was then asked to furnish the address and telephone number of the Travel Agency which were duly furnished. However, on 15.4.1998 (A-6) the Regional Provident Fund Commissioner by memo dated 15.4.1998 ordered full recovery of the LTC Advance with penal interest on the ground that the bill submitted by the applicant was a bogus one, as on verification from Railways it had been confirmed that the xerox copies of tickets enclosed to the bill as evidence of journey undertaken, had actually been cancelled on 1.8.1997 and charges had been refunded to the purchaser. The applicant thereupon remitted Rs.6,128/-, being the principal amount due and penal interest thereon, by challan dated 24.4.1998. The respondents recovered a further sum of Rs.484/- from his salary by note dated 29.6.1998. Then, on 4.2.1999 a charge sheet was issued and an enquiry was instituted under Rule 10 of the EPF Staff Classification, Control and Appeal Rules 1971. The charges were as follows:

"Article I.

That Shri V.Velayudhan, while working as UDC(SG) in the Regional Office of the EFO at Thiruvananthapuram has fraudulently withdrawn money from the office under the guise of availing LTC facility for the block year 1994-97 to visit New Delhi along with his family members namely Smt.Leelamma, depend mother, Smt.P Sudha, wife, Sheeba Kumary, daughter, Shri S.Shibu and Shri V.S.Shiju, sons. He has thus failed to maintain absolute integrity and has behaved in a manner unbecoming of an employee of the CBT, EPF, violating clause (i) & (iii) of sub rule (I) of Rule 3 of the CCS(Conduct) Rule 1964 read with Regulation 27 of the EPF (Staff & conditions of Service) Regulation 1962.

Article II.

That Shri C.Velayudhan, while working as UDC(SG) in the Regional Office of the E.P.F.O. at

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Thiruvananthapuram has fabricated a Leave Travel Concession bill with a definite motive to defraud the EPF Organisation of money amounting to Rs.5084/- and has thus failed to maintain absolute integrity and has behaved in a manner unbecoming of an employee of the CBT, EPF, violating clause (i) & (iii) of Sub Rule (I) of Rule 3 of the CCS(Conduct) Rules 1964 read with Regulation 27 of the EPF (Staff & Conditions of Service) Regulation 1962.

2. The enquiry found the applicant guilty. The disciplinary authority imposed the penalty of reduction of pay by five stages in the Time Scale (A-1). The appellate authority after considering an appeal filed by the **applicant** on 14.5.2001 confirmed the penalty imposed by the disciplinary authority (A-2).

3. The grounds on which, the learned counsel for the applicant assails A-1 and A-2 orders are as follows:

(i) The process of enquiry was vitiated as the applicant was not provided adequate opportunity to defend himself. His Defence Assistant was transferred to Kozhikode and he was prevented from assisting him during the last phase of the enquiry.

(ii) Witnesses, who could have been material to the case, were not called for examination. The applicant had requested that the Manager of the Travel Agency which booked his ticket and one K.Ramachandran Nair at whose residence the applicant and his family members resided during their visit to Delhi, be called as witnesses. But this was denied.

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(iii) The applicant had sought the production of records available with the CPFL Guest House, New Delhi, to prove the claim that the applicant reached Delhi on 5.8.1997. That was denied.

(iv) No pecuniary loss has been suffered by the respondents as the applicant had deposited the whole amount shown as outstanding against him.

(v) There was no intention to defraud the respondents as the applicant had no past record of deceit and in the present case too he had shown exemplary behaviour by purchasing tickets for a lower class than what he was normally entitled.

4. The learned counsel for the respondents contesting the grounds made the following points:

i) It was established on verification that the xerox copies of tickets enclosed to the LTC bill were not the ones on which the applicant travelled to Delhi or returned to Trivandrum. These tickets had been cancelled on the very day these were purchased. If these were not the relevant journey tickets, then why were they enclosed to the Bill?. Further, assuming for once that the applicant did not in fact travel to Delhi on an ordinary second class ticket, then the amount paid for this ticket would definitely be different from that shown on a sleeper class ticket.

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It would be evident from the confirmed three tier sleeper class ticket from Delhi to Trivandrum that Rs.2,542/- includes the reservation charges also. Thus, if the applicant was being truthful, then he should have at least claimed the correct amount. Instead the applicant chose the devious way of passing off refunded a ticket for obtaining, refund. This should leave no one in doubt that the TA Bill was bogus and the journey was never performed.

(ii) It is true that the defence assistant was not available during the last sitting, though he was available for the previous four sittings without interruption. But the fact is that the defence assistant, one M.Sreekumaran Nair had not obtained the approval of the competent authority, despite which he was allowed by the inquiry officer to participate in the proceedings. The inquiry officer, in his report made a strong observation in favour of the applicant holding the defence assistant responsible for his absence in the last sitting. Had the defence assistant taken the required permission from the competent authority, the situation would not have arisen. Further, certain records, which were not very material, were to be verified in the last sitting. The enquiry has neither suffered on this account, nor has the enquiry officer relied on any such evidence remaining unverified in the proceedings, upon which the enquiry conclusions have been based.

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(iii) Since the applicant has purchased the ordinary class ticket himself, without involving the Travel Agency, as declared by himself, the Manager of the Travel Agency would not have been material to his defence. One Mr Ramachandran Nair in whose house the applicant stayed, and who was not called as witness, also would not have been material to defence as there was no basis to place reliance on the statement of a friend of the applicant, when evidences were clear that the journey was faked.

(iv) Entries in the Guest House at Delhi could not have contained any evidence in favour of the applicant as he did not stay in that Guest House.

(v) The issue is not of pecuniary loss, it is primarily an issue of conduct unbecoming of an employee.

5. Heard the counsel. We also called for the files relating to the enquiry proceedings and related documents which the respondents produced. On the basis of evidences available, we are convinced that LTC Bill submitted by the applicant was not supported by the relevant documents. The applicant was clearly on the wrong in enclosing xerox copies of tickets, which he knew he had himself got cancelled on the date of purchase. Evidently the applicant had taken recourse to blatant untruth to defend his indefensible conduct. His ground of lack of adequate defence is not quite convincing as

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the results he sought to achieve by the witnesses or documents are not reasonably comprehensible in the context of clear evidences to the contrary. Absence of the defence witness on the last day of hearing has not marred his defence in any manner. We have seen from the proceedings of the enquiry that even his companions who sought to protect him have made contradictory statements thereby destroying the support canvassed. The applicant must know clearly that the financial aspect of the matter, or the pecuniary loss to the respondents is not the subject matter of this adjudication. Even when the advance amount has been recovered, the case still remains as to conduct of the employee. We do not, therefore, find any fault in the disciplinary process including in the enquiry process. Since the enquiry and disciplinary processes are not vitiated, we desist from interfering into the rationale of punishment awarded. The appellate process too stands unvitiating, and we have no ground to interfere in the appellate award confirming the punishment. In regard to proportionality of punishment, there could be no dereliction graver than loss of integrity and that is what the disciplinary authority contemplated while considering the more severe penalty of dismissal. But considering the long record of service of the applicant he settled for reduction in pay, which the applicant could gracefully accept.

6. In the result, we dismiss the application. No order as to costs.

Dated 11.10.2004.

H. P. Das

H. P. DAS
ADMINISTRATIVE MEMBER


AV HARIDASAN
VICE CHAIRMAN

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