

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW.

ORIGINAL APPLICATION NO: 335/2004 and 380/2004.
Lucknow this the 13th day of January, 2005.

HON'BLE SHRI SHANKER RAJU MEMBER(J)

HON'BLE SHRI S.P. ARYA MEMBER(A)

O.A. NO: 335/2004.

Vikram Verma aged about 44 years s/o Late Sri Kunwar Verma R/o
Postal Colony, Lakhimpur Kheri working as Postal Assistant Kheri
H.O.

...Applicant.

BY Advocate Shri A. Moin.

VERSUS

1. Union of India through Secretary, Ministry of Post
Dak Bhawan New Delhi.
2. Director, Postal Services, Bareilly Region Bareilly.
3. Superintendent of Post Offices, Kheri Division Kheri.

....Respondents.

BY Advocate Shri S.K. Pandey.

O.A. NO 380/2004.

H. S. Dwivedi aged about 50 years s/o Late Sri P.N. Dwivedi
R/o Mohalla Bahadurnagar Lakhimpur Kheri working as Assistant
Post Master Kheri.

.....Applicant.

By Advocate Shri A. Moin.

VERSUS

1. Union of India through Secretary, Ministry of Post,
Dak Bhawan New Delhi.
2. Director, Postal Services, Bareilly Region Bareilly.
3. Superintendent of Post Offices, Kheri Division Kheri.

.....Respondents.

BY Advocate Shri Rajendra Singh.

O R D E R

Mr. Shanker Raju, Member (J):

Though separate disciplinary and appellate orders are challenged, but the issue is grounded on the identical facts having a common question of law, these OAs are disposed of by this common order.

2. In OA No.335/2004 applicant in October, 1997 had undertaken a tour after availing LTC. A show cause notice was issued to applicant to recover the LTC amount already withdrawn on the ground that the bus in which the travel had been undertaken was not having a valid permit. This has been responded to with a recovery of Rs.15812/- against applicant. Applicant was also issued a major penalty chargesheet on 2.11.2004 under Rule 14 of the CCS (CCA) Rules. This has been challenged by applicant in OA 253/2001 which was disposed of on 28.11.2003. Accordingly a punishment order inflicting the major penalty was passed on 19.4.2004 with order of recovery on 20.4.2004 which was assailed in OA 222/2004 where by an order dated 28.5.2004 recovery was stayed till the appeal is decided by the respondents. As the appeal was decided on 19.7.2004 modifying the punishment, present OA has been filed.

3. Learned counsel of applicant stated that the appellate order is a mechanical order without giving any reasons and while drawing our attention to the statement of one Rama Kant Dubey, RTO, it is clear that the permit was issued from the Authority and it is neither false nor concocted. Further, relying upon the decision in Abdul Satta, PA, against whom proceedings on the same charge of submitting false LTC claim was made after consultation with the UPSC on 5.7.2004. He was exonerated of the charges on the advice of the UPSC dated 26.3.2004 which has ruled that as there is no correlation between the performance of journey and bus permit issued by RTO as Garhwal Mandal Vikas Nigam Ltd. being an authorised government organisation which hired the bus and conducted the tour, in the absence of any evidence that journey was not undertaken, the punishment is not enable and there is no misconduct either.

4. The learned counsel has also relied upon the judgment of the Lucknow Bench in OA No.334/2004 decided on 24.11.2004 in V.K.Mishra v. Union of India to contend that there is no correlation between the travel and the permit irrespective of whether it is invalid, yet for want of any evidence as to the effect that applicant therein had not undertaken the journey the punishment is set aside. The attempt of the learned counsel to persuade us to extend the benefit of the decision which according to him on all fours covers the case is made out.

5. On the other hand, learned counsel of respondents has vehemently opposed the contention of applicant. It is contended that documents submitted by applicant, i.e., the permit, was found to be fake. The journey having not been performed, a show cause was issued and disciplinary proceedings was held which does not suffer from any illegality.

6. In OA 380/2004 recovery was ordered for submission of false LTC claim as the permit was found fake which was assailed in OA 257/2001 and after disposal on 28.11.2003 a major punishment was imposed vide order dated 12.4.2004 and recovery order has been passed which was stayed by a direction dated 24.5.2004 in OA No.220/2004 till the appeal is made. As the appellate order dated 20.7.2004 modifying the punishment has been passed, hence the present OA.

7. The grounds raised are identical to what have been raised in OA 335/2004.

8. Respondents filed their reply and vehemently opposed the contentions. It is stated that the permit was found fake and the applicant had crossed over number of States and without a genuine permit, one cannot perform journey. As such the charges are proved on the basis of evidence and there is no legal infirmity in the proceedings conducted against the applicant.

9. The learned counsel stated that UPSC's advice is given in a post-retirement case and is not binding on government, and further stated that decision in OA 334/2004 (supra) has been challenged before the High Court of Delhi.

10. We have carefully considered the rival contentions of parties and perused the material on record. No doubt, while a government servant avails LTC, he would be reimbursed the fare only when the journey is actually undertaken. The journey undertaken by an organisation like Garhwal Mandal Vikas Nigam Ltd. which is a government owned body, the issue of permit for journey is not attributed to applicants. They have no role to place in securing the permit. Merely because the permit is fake is not an ample proof that the journey has not been undertaken, if not established otherwise. There is no correlation between the permit and the journey undertaken.

11. It is trite law that there cannot be a distinction in the matter of disciplinary proceedings between a serving and a retired government servant. They are being subjected to the same proceedings under Rule 14 of the CCS (CCA) Rules and Rule 9 of CCS (Pension) Rules, 1972. The same evidence is adduced and conclusion arrived at. The only distinguishing feature between the two is that in the former an order is passed by the disciplinary authority whereas in the case of latter only the President of India is empowered to do so. The advice of the UPSC may

or may not be binding but once it has been relied upon to set aside the punishment by an observation of the President that there is no correlation between the performance of journey and permit issued by RTO as Garhwal Mandal Vikas Nigam and other touring authorised authorities have hired the bus and conducted the tour, it was their responsibility to verify the genuineness of the bus permit. There is no requirement of certificate of genuineness of permit from the government servant along with the LTC claim.

12. In our considered view this advice of UPSC which has been acted upon by the government in case of retired government servant, the same is equally binding on the respondent in case of a serving government servant and the respondents are estopped from taking a contrary view as the President of India being the head of the Executive and when the orders have been passed in identical circumstances, be extended to the case of applicant also. Moreover, the decision in V.K.Mishra (supra) fully covers the issue and the consequent recovery of LTC amount cannot be sustained in law. The aforesaid decision is still to be reported to be overturned by the High Court. As such this is a valid precedent and binding on us.

13. We further find that while an LTC is claimed and the journey is performed through authorised tour operator, merely because the permit was found to be fake, though in the present cases RTO has certified the genuineness of the permit, yet applicants are not responsible for the same and it cannot be presumed that they had not performed the journey. No evidence had come forth in the enquiry to establish otherwise that the journey to the desired destinations had not been performed. Merely because the permit was fake would not be a conclusive or rational proof to prove otherwise. In such view of the matter, this technical objection, or may be a ^{lacuna} ~~law~~ which is not attributable to applicant, cannot be construed to be a misconduct as they had no role to play in procurement of a valid permit as it was the responsibility of the authority concerned.

14. The misconduct in the memorandum alleged against applicants is that they have gained undue financial benefits from fake road permits but it is not alleged that they had not travelled. As such, the LTC is subjected to the actual travel undertaken by the government servant and if it is so, any impediment which is not attributed to them or is not effected by their fraud or misrepresentation, would not constitute a misconduct even applying the test of a common reasonable prudent man.

(5)

15. In the result for the foregoing reasons, OAs are allowed. The impugned orders of penalty and recovery are quashed and set aside. Applicants would be entitled to all consequential benefits and in case any recovery is effected pertaining to LTC claim from them, same shall be refunded within a period of two months from the date of receipt of a copy of this order.

16. Let a copy of this order be placed in each of the OAs.

S. P. Arya
(S. P. Arya)
Member (A)

san.

S. Raju
(Shanker Raju)
Member (J)