

Central Administrative Tribunal ,Lucknow Bench, Lucknow.

Original Application No. 459/2006

Reserved on 19.2.2014

Pronounced on 13th March, 2014

**Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms.Jayati Chandra, Member (A)**

Hem Raj aged about 51 years son of late Ram Adhar r/o Village Bairagar, Post Legucha, District- Kheri.

Applicant

By Advocate: Sri Amit Verma for Sri A.Moin

Versus

Union of India through:

1. 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: Sri Jitendra Kumar for Sri K.K. Shukla

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present O.A. is preferred by the applicant under section 19 of the AT Act with the following reliefs:-

- a) to quash the impugned punishment order dated 31.3.2004, 20.4.2004 and 10.4.2001 passed by the respondents No.3 as contained in Annexure No.A-1, A-2 and A-4 to the O.A. with all consequential benefits.
- b) to quash the impugned order dated 25.7.2006 passed by the respondent No. 2 as contained in Annexure No. 3 to the O.A.
- c) to direct the respondents to refund the recovered amount of LTC claim and refund the same to the applicant within specified time with interest @ 18% per annum.
- d) to direct the respondents to pay the cost of this application.
- e) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant while working in the respondents organization as Postal Assistant sought an advance of Rs. 22480 towards the LTC for the block year 1994-97 for undertaking tour from Lakhimpur to Trivendrum. The applicant after performing journey strangely received a show cause notice after a period of 3 years in which the applicant was informed that the bus on which the applicant and his family

members travelled was not having a valid permit but had a fake permit which showed that the applicant and his family members has not travelled by the said bus and as such applicant was asked to show cause as to why the claim should not be rejected. The applicant submitted reply to the aforesaid show cause notice indicating therein that his family members have duly purchased the tickets and had travelled by the said bus during the aforesaid period and in case the bus was not having a valid permit, then the same was a default on the part of the corporation and the applicant and his family members having travelled during the aforesaid period could not be held liable for the same. It is also indicated by the learned counsel for the applicant that without considering the aforesaid reply, the respondent No. 2 through order dated 10.4.2001 had directed to recover a sum of Rs. 22480/- along with penal interest from the applicant in a lump sum and has rejected the LTC claim. It is also indicated by the learned counsel for the applicant that in the show Cause notice, the applicant was only asked to show cause regarding bus valid permit of the bus while in the impugned order of recovery, it has been stated that the route permit and the passenger list supplied by the applicant has been found to be fake and as such it is prima facie apparent that the applicant was not put to any show cause regarding the passenger list submitted by him. Learned counsel for applicant vehemently argued that the family members of the applicant under took journey through valid travel agent that is Garhwal Mandal Vikas Nigam Limited ,an approved recognized Travel Agency and neiher it was practically possible nor was it the duty of the applicant or his family members to know in any manner as to whether the bus which had been booked by Garhwal Mandal Vikas Nigam Limited had a valid permit or not as such, the applicant cannot be held liable for any such fraud which the respondents have leveled allegation against the applicant. The applicant feeling aggrieved by the said, action filed O.A. No. 260/2001 and the recovery was stayed by the Tribunal vide order dated 27.4.2001. It is also indicated by the learned counsel for the applicant that after that , applicant was served with a charge sheet indicating therein that he has submitted a LTC claim of Rs. 19850/- on the basis of fake documents, such as route pemit issued byARTO, Sant Ravidas Nagar with an intention to gain financial benefits from the Department. The earlier O.A.

preferred by the applicant was disposed of with a direction to the respondents to keep the orders of recovery in abeyance and to complete the proceedings under Rule 14 within a period of 4 months from the date of receipt of copy of the order and thereafter, the enquiry got completed by the respondents within a period of 4 months and indicating therein that the charges leveled against the applicant found to be proved against the applicant and subsequently, after the representation of the applicant, the impugned order dated 31.3.2004 was passed reducing the pay of the applicant by one stage in pay scale of Rs. 4500-7000/- for one year. The applicant preferred the appeal and the same was also considered and rejected by the Director of Postal Services. The applicant feeling aggrieved by the aforesaid order, filed the present O.A.

3. The learned counsel for respondents filed the objection as well as Counter reply and through counter reply, it was indicated by the respondents that the applicant while working as Postal Assistant, applied for LTC advance in 1997 for the block year 1994-97 and subsequently a bill amounting to Rs. 25805/- was submitted and during the verification of papers submitted by the applicant, it was revealed that the inter state road permit purported to have been issued by the ARTO, Sant Ravidas Nagar was not genuine. Accordingly the claim of the applicant was rejected and official was informed of the fact. Thereafter the Post Master Kheri was directed to recover the amount of LTC advance in lump sum along with penal interest at prescribed in the LTC Rule. The said recovery was stayed by the Tribunal in O.A. No. 260/2001. Subsequently, a proceeding under rule 14 of CCS (CCA) Rules was initiated against the applicant. The enquiry was conducted and enquiry officer submitted its report and found that the charges leveled against the applicant stands proved. After going through the enquiry report, memo of charges and all other relevant records, the disciplinary authority found that the charges leveled against the applicant are fully proved and applicant was awarded punishment of reduction of pay by one stage from Rs. 5750 to Rs. 5625/- in the time scale of pay of Rs. 4500-125-7000/- for a period of one year w.e.f. 1.4.2004 with cumulative effect. The applicant preferred the appeal. The appeal of the applicant was decided by the appellate authority and the punishment was modified for reduction of pay by one stage from Rs.

5750/- to 5625/- in the time scale of pay Rs. 4500-125-7000 for a period of two months and the recovery of amount of loss if any. The learned counsel for the respondent pointed out that there is no lapses in the impugned order, as such it does not require any interference by the Tribunal.

4. Learned counsel appearing on behalf of the applicant has filed Rejoinder Reply and through rejoinder reply, it was indicated by the applicant that he took LTC advance for the block year 1994-97 and he along with his family members undertook the tour but he was informed that the bus on which the applicant and his family members travelled was not having the valid permit, is not the responsibility of the applicant. It is also indicated by the learned counsel for the applicant that it was the default on the part of the corporation from which he had booked the tickets. But the charge sheet issued under Rule 14 of CCA (CCA) Rules is solely based on the basis that the bus on whom the applicant and his family members undertaken journey was not having the valid road permit issued by the ARTO, as such the intention of the applicant was not fair and to gain financial benefits from the Deptt., he has submitted fake claim. Learned counsel for applicant vehemently denied the charges and reiterated the averments made in the O.A.

5. Learned counsel for respondents have filed their Supple. C.A. reiterating the averments made in the C.A. and denied the averments made in the R.A.

6. Heard the learned counsel for the parties and perused the record.

7. Admittedly, the applicant was working in the respondents organization, applied for LTC advance and after undertaking journey, submitted the LTC bill which was subsequently found not genuine on the basis that bus by which the applicant and his family members performed the journey was not the valid permit. Accordingly, the recovery order was issued and the said recovery order was challenged by the applicant in O.A. No. 260/2001. During the pendency of the recovery proceedings, the applicant was served with the charge sheet under Rule 14 of CCS (CCA) Rules and thereafter, the O.A.No. 260/2001 was decided with direction to the respondents to conclude the disciplinary proceedings within a period of 4 months, and thereafter the respondents issued impugned order reducing the pay of the applicant by one stage for a period of one year with cumulative

effect. The applicant preferred the appeal and in the appeal, he has categorically pointed out that during the course of enquiry, it is pointed out by the enquiry officer that the ARTO has denied the issuance of permit to the bus and the applicant has submitted the LTC bill to obtain financial benefits from the Deptt. The applicant has also pointed out in his appeal that the enquiry officer has not allowed the applicant to cross examine the ARTO and interpreted the certain documents in his own way which is not permissible at any cost. Apart from this, the applicant has also indicated that as regard the valid permit is concerned, the passengers cannot be held responsible for the same and the same is the duty of the travel agency. The applicant in his appeal has also indicated that he has purchased the ticket from the agency Garwal Mandal Vikas Nigam Ltd. Lucknow which is authorized by the Deptt. and on the basis of the same, he has submitted his LTC claim. The respondents indicated that the bus permit was fake and it followed as a normal corollary that the applicant has not performed the journey, claimed to have been undertaken by him. A vehicle cannot be said to have undertaken journey in absence of valid permit. This reasoning *prima facie* is not acceptable and in fact the enquiry officer had also not accepted this reasoning since it is not for the party travelling in the bus to find out whether the vehicles has a valid permit or not. It is a matter of common knowledge that many times vehicles ply even without any permit, what to talk of valid permit, what the respondents was required to prove was that the applicant had not in fact travelled by the said bus in respect of which permit was found to be fake. It is also pointed out that no official of Garwal Mandal Vikas Nigam Limited was examined to establish the genuineness or otherwise of the claim preferred by the delinquent official. That the Garwal Mandal Vikas Nigam Limited, Lucknow being an authorized organization, had hired the bus and conducted the tour and issued the ticket to the official concerned, as such the charges leveled against the delinquent official did not stand proved and the same should have been dropped and the charged official be exonerated. Since the applicant under a bonafide belief purchased the ticket from said agency which is a Govt. organization and there was no occasion for the applicant to verify that the bus hired by the corporation is having a valid permit or not. The charges leveled against the applicant as well as punishment imposed

upon the applicant appears to be unjustified. Accordingly, we are inclined to interfere in the present O.A. and accordingly the impugned order dated 31.3.2004, 20.4.2004 and 10.4.2001 contained as Annexure No. A-1, A-2 and A-4 as well as order dated 25.7.2006 contained as Annexure No. A-3 are quashed. Consequential benefits will follow. Accordingly, O.A. is allowed. No order as to costs.

J.Chandra
(JAYATI CHANDRA)
MEMBER (A)

HLS/-

Navneet Kumar
(NAVNEET KUMAR)
MEMBER(J)