

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW, BENCH LUCKNOW**

ORIGINAL APPLICATION No: 249/2010

This, the 8th day of April, 2011.

HON'BLE SHRI D. C. LAKHA, MEMBER (ADMINISTRATIVE)

Amir Husain, aged about 55 years, son of Late Jhingur Miyan,
resident of 1640/4, Mangal Pandey Road, Cantt., Lucknow.

Applicant

Versus

By Advocate Shri Dharmendra Awasthi.

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Controller General of Defence Accounts, West Block-5, R.K. Puram, New Delhi.
3. Principal controller of Defence Accounts, Central Command, Lucknow.
4. The Garrison Engineer (West), M.E.S, Lucknow Cantt., Lucknow.

Respondents

By Advocate Shri Pankaj Aawasth for Shri Rajendra Singh.

ORDER

By Shri D. C. Lakha, Member-A

The present O.A. has been filed against the order dated 1.1.2005 passed by the respondent No. 4 for the recovery of LTC amount along with interest from the applicant. The total amount of recovery is Rs. 32,541/- only. The reliefs sought in this O.A. is to set aside this order and to direct the respondents to refund the recovered amount of Rs.32,541 along with 18% interest to the applicant. The prayer is also made to allow the present O.A. with costs. The facts of the case are that the applicant was duly sanctioned LTC Advance after proper verification as per his application. He underwent the journey by the private buses run by the Tourism Department in the year 1998. On being sanctioned, the



advance was utilized by the applicant and his family members for the purpose of the journey. The rest of the amount was spent from his own pocket. Later, the final claim for the purpose of getting remaining expenses incurred by him along with adjustment of advance was submitted to the respondents as per rule. The same has been rejected on the ground that the recognition of private buses hired by the Tourism Department has been cancelled by the Government of India w.e.f. 9.2.1998. The circular dated 9.2.1998 is marked as Annexure 2. Before sanctioning of the advance and undertaking the journey, the circular dated 9.2.1998 was not in the knowledge of the applicant. It seems that the authority sanctioning the LTC Advance also did not know about the circular. The applicant put up certain representations for the payment of his LTC claim, but the respondents have recovered the amount of Rs. 32,541 (Rs. 18300/- Principal + Rs. 13641/- Penal interest). It is also stated in the O.A. that in some other identical cases, similarly situated persons took the matter in Hon'ble Central Administrative Tribunal, Lucknow Bench by filing O.A. No. 323/2001 connected with O.A. No. 365/2001, O.A. 381/2008 and O.A. 332/2004 which had been decided on 25.1.2000, 25.8.2009 and 4.5.2006 respectively. The copies of the orders of the Tribunal have been annexed by the applicant as Annexure 4. It is also stated that the circular dated 9.2.1998 has also been amended by Government of India by circular dated 30.7.2002 and journey by buses hired by the Tourism Department is allowed in LTC case. The copy of the amended circular of 30.7.2002 is marked as Annexure 5.

2. On notice, the respondents have contested by filing the counter affidavit. The facts about LTC Advance having been sanctioned and the journey having been actually undertaken



by the applicant and his family are not disputed . It is admitted that LTC Advance was granted as per the entitlement under the provision of LTC Rules. Since, the facility to travel by buses hired by the Tourism Department was suspended by the circular dated 9.2.1998, the order of recovery was issued in the case of the applicant.

3. Both the counsels for the parties are heard and the documents available on record are also perused. The learned counsel for the applicant has stated that in view of the orders referred to in more than one the O.As by CAT Bench Lucknow, the O.A. may be decided in favour of the applicant by ordering the refund of the amount recovered by the respondents. The learned counsel for the respondents has vehemently contested the case saying that recovery has taken place in view of the circular of Government of India dated 9.2.1998 and the later circular dated 30.7.2002 is not applicable. Other pleas taken in the CA are also repeated by the counsel for the respondents.

4. I have given thoughtful consideration to the pleadings and arguments of both the counsels and have perused the record in this case. It is seen that the recovery of LTC Advance along with the interest in this case has been effected in view of the circular of government of India No. 31011/4/97-Estt. (A), Government of India Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training), New Delhi dated 9.2.1998. Later on, the applicant has been submitting representations from time to time from the year 2001 to 2009 for the refund of the recovery with reference to circular of Government of India, DOP&T) dated 30.7.2002 which reads as under:-



"The under signed is directed to say that under the existing instructions contained in this Department's O.M. No. 31011/4/97-Estt. (A) dated 9th February, 1998, Leave Travel Concession is not admissible if the journeys are performed in private buses or buses hired or chartered by ITDC/State Tourism Development Corporations from outside. The staff side has raised a demand in the National Council (JCM) that the tours, conducted by the ITDC/State Tourism Corporations, either in their own buses or buses hired or chartered by them may 'b' made admissible for availing the facility of Leave Travel concession. The matter has been reconsidered and it has been decided that tour conducted by ITDC/State Tourism Development Corporation either their own buses or buses hired or chartered by them from out side will qualify for the purposes of availing Leave Travel Concession provided the ITDC/State Tourism Development Corporations certify that the journey has actually been performed by the Government servant and his family members for which he is claiming the leave, Travel concession.

The above instructions will be applicable as and when OM dated 2.3.2001 suspending LTC facility is withdrawn. ; The cases of exempted retiring employees and pending cases where decision is yet to be taken may be decided in the light of instructions laid down in para 1 above. However, the past cases decided otherwise not be proponed."

5. In various OAs, as referred to above, filed by some of the similarly situated persons in Lucknow Bench of CAT which have been decided in favour of the applicants by giving the benefit of circular dated 30.7.2002 issued by the DOP&T on the subject. Such a decision has also been taken by the Allahabad Bench of CAT in Ram Avtar and others Vs. Union of India and Others vide order dated 8th April, 2003 as well as in O.A. No. 191/2002 and in order dated 16.8.2002 in O.A. No. 956/2002.

6. I am inclined to endorse the views of the coordinate benches in other OAs. as referred to above pertaining to the similarly situated persons. The DOP&T has itself modified the circular on the subject on 30.7.2002. In view of the representations for refund of the recovery moved by the



applicant in this case, the matter may be treated as open and may be decided with respect to the circular dated 30.7.2002.

7. In view of the above, O.A. is allowed. The respondents are directed to refund the amount of principal and penal interest totalling to Rs. 32,541/- to the applicant along with interest payable at GPF rate till the date the actual refund will be made to the applicant. Let this order be complied with within three months from the date the certified copy of the order is received by respondent No. 4. No order as to costs.


(D.C. Lakha)
Member (A)

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