

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

O.A. No.111/92
Syed Afzal Mustafa

Applicant

versus

Union of India & 2 others

Respondents.

Shri Raza Zaheer
Shri D.S. Randhawa

Counsel for Applicant
Counsel for Respondents.

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Hon. Mr. S.N.Prasad, Member Judicial.

The applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 to quash the order dated 20.1.92 passed by respondent No. 3 as well as order dated 12.6.91 passed by respondent No. 2 and to stay the recovery proceedings initiated ~~against~~ by the respondent No. 2 ~~for~~ the applicant during the pendency of this application; and to direct the respondents to refund all the recovered amount from September, 1991 till date deducted from the salary of the applicant, and for further directing the respondents to pass L.T.C. bill of the applicant.

2. Briefly stated, the facts of the case, inter alia, are that the applicant is a Senior Accountant in the office of the Director Accounts (Postal), Lucknow and is entitled to the Leave Travel Concession (in short 'L.T.C.') like other Central Govt. employees. The applicant initially wanted to go to Kovalam and for that purpose he applied for the permission to go the aforesaid place (Kovalam), but due

to certain unavoidable problems, the applicant was compelled to change his itinerary and decided to go to Kanyakumari and in this regard on 24.5.90 the applicant submitted the tickets vide No. 13611 (six tickets) valuing Rs 10,560/- in the office concerned, and on 26.5.90 the office had released an amount of Rs 8000/- as advance in favour of the applicant. The proposed and scheduled visit of the applicant was from 26.5.90 to 8.6.90. The U.P. Tourism Development Corporation had arranged the Bus for the aforesaid proposed journey and number of passengers was indicated in the passenger list which is Annexure-1 to this application. The applicant alongwith his wife, two sons, one daughter and his old mother went to Kanyakumari in the Bus No. URE 5353 on 26.5.90 and all the aforesaid members of the family of the applicant including himself, after return the applicant submitted the required bill of L.T.C. on 30.7.90 before the authorities concerned, against which after a gap of 4 months as per order of respondent No. 2, the applicant was required to submit more proof regarding his performance of the journey alongwith his family members vis-a-vis the applicant was asked to explain as to why he visited a place other than the declared place (vide Annexure-2 to the application). The applicant, in reply to the aforesaid letter dated 9.11.90, Annexure 2 submitted his clarification vide Annexure No. 3. The respondent No. 2, vide his order dated 12.6.91 rejected the claim of the applicant for L.T.C. and the applicant, with reference to the above

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order dated 12.6.91 further specifically clarified in his reply dated 27.6.92 that since only two persons are allowed to stay in the suite of Gopi Niwas at Kanyakumari and since the applicant had only to stay only for a day time alongwith his family members, from 6 A.M. to i.e. 2.6.90 of 2.6.90 till the evening of that day. The counter clerk allowed all the six persons to stay and to keep the luggage in a room and at the time of departure the applicant asked for receipt which the counter clerk gave vide receipt No.723 in which he had written two persons, which, as per rules he has to scribe in the receipt, when the applicant pointed it out to the clerk concerned and he correctly wrote six and in place of 2, and similarly the room is to be booked for a day as per rules and accordingly the counter clerk put the date of next day i.e. 3.6.90. It was again pointed out by the applicant that he was leaving in the evening of 2.6.90, so the date was also correct by the aforesaid clerk and instead of 3.6.90, 2.6.90 was entered (photo stat copy of reply of applicant is Annexure -5). In reply to the letter dated 19.7.91 (Vide Annexure 6) the applicant explained the entire position (vide Annexure 7) but the respondent No. 2 in sheer haste started recovery from the salary of the applicant @ Rs 1016/- from the salary bill of September, 1991 till the date of filing of this application and due to aforesaid recovery the applicant is getting quite meagre amount which is not enough to support himself and his family members. The above acts of the respondents No. 2 and 3 are quite arbitrary, malafide and illegal and only with a view to ~ and impugned orders~

harm and harass the applicant and as such the applicant has approached this Tribunal.

3. Counter Affidavit has been filed by Shri S.R. Abidi Assistant Chief Accounts Officer, on behalf of the respondents, with the contentions inter alia, that the applicant applied for grant of L.T.C. advance to proceed Kovalam (Trivendrum) for the block year 1986-89 for self, wife, two sons, one daughter and mother (six members) and an advance of Rs 8,000/- in two instalments was granted against the fare for 5½ seats for the tour from Lucknow to Kovalam (Trivendrum) to the applicant on cash receipt/ticket No. 013611 dated 24.5.90 (Annexure R-1 to the counter affidavit.) issued by Uttar Pradesh State Tourism Development Corporation, Lucknow for journey from Lucknow to Kanyakumari via Kovalam (Trivendrum). As a matter of verification of genuineness of travellers, who reached their destination an order controlling the L.T.C. claim for dropping of a postcard in the name of head office was introduced and as per instructions from the office of the respondents, the applicant posted a post card from Kanyakumari instead of Kovalam (Trivendrum) and on review of the postcard it is seen that instead of writing the date of reaching Kovalam a line was drawn, Annexure R-II to the counter is the photo-stat copy of that post card which does not contain the signature of the official concerned (Applicant) which shows that the post-card was given to some other passenger by the applicant to post the same and after filling the same, who posted the same from Kanyakumari without filling

the gap i.e. the date of reaching Kanyakumari, although the advance was taken for visiting Kovalam(Trivendrum) and as such it is apparent that the applicant did not visit the place for which approval was given by the competent authority, but he visited ~~to~~ the other place for which he had not sought any approval of the competent authority, and the receipt No. 723 dated 2.6.90, (copy whereof is Annexure R-3 issued by Gopi Niwas Lodge, East Car Street Kanyakumari in proof of vising the Kanyakumari) shows that only two persons visited Kanyakumari and since there was cutting and over writing in Hotel receipt, vide Annexure R-4, it becomes clear that only two persons including the applicant visited Kanyakumari and ~~have~~ stayed in room No. 12 which also makes the claim of the applicant regarding the performance of the journey in question doubtful. It has further been contended that since the applicant did not visit the place for which L.T.C. advance was sanctioned, his claim was rightly rejected by the competent authority and the applicant is also liable for disciplinary action under Rule 14 of C.C.S.(C.C.A.) Rules, 1965. It has further been contended that the impugned orders have been passed by the authority concerned legally, validly and there is no illegality or irregularity and in view of the above circumstances, the applicant is not entitled to any relief.

4. Rejoinder Affidavit has been filed by the applicant

wherein he has reiterated almost all those very points as mentioned in the main application.

5. I have heard the learned counsel for the parties at length and have thoroughly gone through the records of the case.

6. The learned counsel for the applicant while drawing my attention to the contents of the application/ counter affidavit and Rejoinder affidavit and to the papers annexed thereto, has argued that the journey was performed by the U.P. State Tourism Development Corporation, Lucknow which shows that the applicant and other 5 members of his family had travelled by U.P. State Tourism Development Corporation Ltd U.P. tourist permit U.R.E 5353 and tour programme of aforesaid Bus was from 26.5.1990 to 8.6.1990 starting from Banda and passing through the Lucknow, Allahabad and other places upto Kanya Kumari and back to Banda traversing through the Lucknow, and has further argued that since the applicant initially wanted to go to Qualam and for that purpose he applied for the permission to go to the aforesaid place, but due to certain unavoidable transportation problems the applicant was compelled to change his itinerary and destination and decided to go to Kanya Kumari and as such on 25.5.1990 the applicant submitted the tickets vide No. 13611 (6 tickets) valuing Rs. 10,560 and has further argued that keeping in view his change destination, the from Lucknow to Kanya Kumari instead of Qualam. The applicant submitted an application on 24.5.90 for payment of 2nd advance and after verification of the same by the authorities concerned, the 2nd advance payment was

made which shows the implied approval of the change of destination by the authorities concerned; and has further argued that after reaching Kanya Kumari the post card was posted by the applicant which bears clear stamped seal of Kanya Kumari post-Office; and has further argued that due to rules in vogue the Manager of the Gopi Niwas Lodge of Kanya Kumari showed names of only 2 persons as having stayed in the room, though in fact all the members of the family including the returned on the same date on which they had reached after spending some hours and that's why the Annexure R-3 receipt shows the booking time and Departure time of the same date i.e. 2.6.90; and has further argued that there has been no any breach of any rule and procedure and there has been no fraudulent practice on the part of the applicant or on the part of his family members; but the respondents have been annoyed due to the representation made by the applicant for fixation of special pay of Rs. 35/- and since the applicant has championed the cause of the other employees as well regarding fixation of Rs. 35/- as special pay as detailed in para 15, ~~xxx~~ of the application, the respondents no. 2 & 3 having been annoyed started harassing the applicant by taking resort to issue of charge-sheet and enquiry and by passing impugned order and as such the application of the applicant be allowed and reliefs sought for be granted.

7. The learned counsel for the respondent while advertizing the pleadings of the parties and while re-iterating the view points and contentions as set out in the counter-affidavit, has argued that journey

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performed by the aforesaid ~~Bus~~ of the Tourism Department of U.P. should not be relied upon; as the letter dated 8.3.1991 of Gopi Niwas Lodge, Kanya Kumari (Vide annexure R-4 to the counter-affidavit) shows that 2 person including the applicant Shri M.M. Mustafa stayed in room no. 12 of the aforesaid lodge from 2.6.1990, 6.00 A.M. to 3.6.1990; and has further argued that since the applicant did not seek approval of the journey to Kanya Kumari instead of Qualam, the above application of the applicant dated 24.5.90 (Annexure R-1 to the R.A. of the applicant) should not in any way be construed to mean implied approval of the respondents as that application was for payment of the 2nd advance; and has further argued that all the annexure R-1 to R-10 annexued to the counter-affidavit go to establish that the applicant did not perform the journey of ~~Kumam~~ for which he was permitted; but the applicant performed the journey of Kanya Kumari for which approval was not obtained by the applicant; and has further argued that the receipt of the aforesaid Gopi Niwas Lodge (R-3) shows also only the names of the applicant and as such the applicant is not entitled to get any relief and as such the application of the applicant be dismissed.

8. This is important to point out that annexure R-3 to the counter-affidavit filed by the respondents clearly makes mention of booking time 2.6.90 at 6.00 A.M. and departure time 2.6.90 and in this R-3 there is no specific mention of the time of departure; and similarly in annexure R-4 also there is no mention of the time of departure. This fact should not be lost sight of that this annexure R-3 which is photostat copy

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of the receipt of Gopi Niwas Lodge receipt No. 723, in respect of room no. 12 of the aforesaid Gopi Niwas Lodge, Kanya Kumari shows that the booking time and the departure time both are of 2.6.1990 and in the booking time there is specific mention of the time as 6 A.M.; but departure time has not been specifically mentioned. Thus, this being so, the above argument of the learned counsel for the applicant to the effect that in fact the applicant and all his family members did not stay in the night but they stayed for some hours and returned on the same date by the aforesaid bus of U.P. State Tourism appears to be sound and tenable.

9. This is also important to point out that annexure R-1 to the Counter-affidavit shows the journey was started by the aforesaid bus on 26.5.1990 and terminated on 8.6.1990. Annexure R-2 to the C.A. which is photostat copy of the post-card sent by the applicant bears clear stamp of Kanya Kumari.

10. This is also significant to point out that annexure-1 to the application shows the names of the applicant, applicant's wife, two sons and one daughter and old mother in total 6 passengers and also shows the itinerary and the names of the place from which the journey started and journey terminated, and it further shows that all the aforesaid members including applicant and other passengers toured by U.P. State Tourism Department corporation Ltd. tourist permit, bus no. U.R.E. 5353 as per tour programme from 26.5.90 to 8.6.90; and it further shows that the above bus started from Banda and passed through Lucknow, Allahabad, Maihar, Jabalpur, Nagpur, Sholapur, Bejjapur, Bangalore, Mysore, Trichi, Rameshwaram, Kovalam ~~and~~ ~

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14. Thus, from the foregoing discussions and after scrutinising the entire material and evidence on record and keeping in view the provisions contained under order no. 49 as quoted above, I find that the above argument of the learned counsel for the applicant appear to be sound and tenable, whereas the above argument of the learned counsel for the respondents appear to be devoid of force and weight.

15. Having considered all the facts and circumstances of the case and having pondered over all aspects of the matter, I have come to the conclusion and hold that the applicant alongwith all his family members, as specified in annexure -1, travelled through Bus No. U.R.E. 5353 from Lucknow to Kanya Kumari via ~~Kozlam~~ and returned by the aforesaid Bus and journey was commenced from 26.5.90 and terminated after return journey on 8.6.90 and there was no ir-regularity and no breach of rule was committed by the applicant and as such I find that the impugned order dated 20.1.1992 (Annexure-1) and order (Memo) dated 12.6.91 (Annexure-4) being illegal and invalid are liable to be quashed and are accordingly quashed; and the applicant is found entitled to get L.T.C. Bill in question passed and is also entitled to get refund of all the amount, which have been recovered from him so far.

16. In the result, the application of the applicant is allowed as above. The respondents are directed to comply with the above direction, within a period of three months from the date of receipt of the judgement. In the circumstances of the case, parties are directed to abide by their own costs.

(RKA)

Dated : 10.9.1992.

Member (J)

10.9.92

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and Kanyakumari and back to Lucknow via Mysore, Solapur etc

11. This is also important to point out that Annexure R-1 to the C.A. which is photostatecopy of "Cash Receipt cum Ticket" shows that the tour of the applicant in question alongwith his family members was from Lucknow to Kanyakumari via Kovalam.

12. This fact should also not be lost sight of that a careful perusal of the application of the applicant dt. 24.5.90 Annexure-1 to the R.A. of the applicant and Keeping in view all the facts and circumstances of the case it becomes obvious that the authority concerned gave implied approval for performing journey from Lucknow to Kanyakumari to the applicant and his family members as specified above and made payment of 2nd advance before the start of the journey.

13. Swami's compilation on Leave Travel Concession at page 16-17 provides circumstances regarding the change of declared place of visit which reads as follows :

CHANGE OF THE DECLARED PLACE OF VISIT :-

"The declared place of visit can be changed before the commencement of the journey, with the approval of the controlling Authority. It cannot be changed after the commencement of the journey."

EXCEPTION - "If, however, it is established that the request for change cannot be made before the commencement of the journey owing to condition beyond the control of the government servant, this condition may be relaxed by the Administrative Ministry/Department or by the Head of Departments, as the case may be, and the claim allowed.- Order No. 49".

TRAVEL TO DIFFERENT PLACES -

"The Government servant and /or member(s) of his family may visit either the same place or different places of their choice. It is not necessary that all of them should visit the place. Order No. 49."

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