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O.A. No. 192 of 2006

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**PATNA BENCH, PATNA**

OA No.192 of 2006

Date of order : 19<sup>th</sup> Sep., 2006

**C O R A M**

Hon'ble Mr. Justice P.K.Sinha, Vice-Chairman

D.K.Mitra, son of late N.N.Mitra, Director, S.I.S.I. Ministry of Small Scale Industry, Govt. of India, Pataliputra Industrial Estate, Patna – 13. .... Applicant.

**VS.**

1. The Union of India through Secretary, Ministry of Small Scale Industries, Govt. of India, Nirman Bhawan, New Delhi.
2. The Development Commissioner, Small Scale Industries, Govt. of India, Nirman Bhawan, New Delhi.
3. The Deputy Director [Admn.] Small Scale Industries, O/o the Development Commissioner, Govt. of India, Nirman Bhawan, New Delhi.
4. Director, S.I.S.I., Ministry of Small Scale Industries, Govt. of India, 111 and 112, "B.T.Road", Kolkata -8.
5. Pay and Accounts Officer, Small Scale Industries, Govt. of India Kolkata. .... Respondents.

Counsel for the applicant : Shri M.P.Dixit

Counsel for the respondents : Shri S.C.Jha, Id. A.S.C



## ORDER [ORAL]

**Justice P.K.Sinha, Vice-Chairman :-**

Heard both sides. In the circumstances of the case, this application is being disposed of at this stage.

2. Admitted fact is that the applicant when was posted as Deputy Director [IMT] under Small Scale Industries, had performed official tours by Jet Airways from Kolkata to New Delhi, and return, in the following manner :-

S.S.2002 New Delhi to Kolkata

25.11.2002 Kolkata to New Delhi

27.11.2002 New Delhi to Kolkata

3. There is no dispute that these tours were made by the applicant in his official capacity and at that time he was entitled to travel by air. The dispute is that the respondents claim that according to the Rules [SR 48 A], journey might be performed by a private airlines only in <sup>a</sup> case where station to which the Govt. servant has to go on official tour is not connected by Indian Airlines/Vayudoot. It is also admitted position that all these journeys were

conducted by the applicant by Jet Airways, a private airline and that at that time, Kolkata and New Delhi were connected by the flights of Indian Airlines. It is also admitted position that the cost of 1st two journeys amounted to Rs.27,500/- bills for which were cleared, limiting the same for the fare of Indian Airlines vice part 2 of Annexure-A/2. It is also admitted that the cost of 3<sup>rd</sup> journey when added to the aforesaid amount, the total would come to Rs.35000/- recovery of which was ordered, rejecting the prayer of the applicant to grant ex post facto approval for those journeys by private airlines. As is clear from Annexure-A/8, a representation filed by the applicant dated 22.7.2005 by which time he was promoted to the post of Director, that a total sum of Rs.35,889/- including panel interest had been deducted from his salary.

4. The learned counsel for the applicant has submitted that firstly by their letter dated 7.6.2004, the Deputy Director [Admn.], New Delhi Headquarters had intimated the Director of Small scale Industries Service Institute Kolkata that the reason given by the applicant for approval by private airlines was not convincing, also adding that it was not clear as to on what basis the concerned official had passed the claim of TA while the two sectors were served by the Indian Airlines [Annexure-A/1].

5. Through Annexure-A/2 dated 25.2.2004/1.3.2004, the Assistant



Director [Admn.] vide his memo issued to the applicant had referred to the first two journeys [including back journeys] also stating that air fare of private airlines was admitted by PAO/SSI/Kolkata duly restricting the same to the fare of Indian Airlines for a sum of Rs. 27,500/-. It was also intimated that the internal audit inspection team had raised objection for journey by private airlines and advised, that to regularise the above two claims the applicant should submit an application for ex post facto approval of Ministry of Civil Aviation otherwise the total amount would have to be refunded.

6. The applicant thereafter filed a representation to the Development Commissioner at New Delhi through Annexure-A/3 dated 28.9.2004 relating to the aforesaid two journeys and another journey by Air Sahara on 8.2.2003 but for which [last journey] the bills were yet to be adjusted. The applicant informed that he was not in a position to bear the loss of Rs. 35,000/- and requested for approval of the journeys. Through Annexure-A/4 the filled up format for the aforesaid was also placed.

7. Through Annexure-A/5, the Deputy Director [Admn.] at New Delhi intimated the Director of Small Industries Service Institute, Kolkata, who had forwarded the letter of the applicant at Annexure-A/3 which sought approval of journeys by private airlines, that IF Wing to whom the



matter had been referred to, had observed that due to lack of very convincing reasons, the case could not be recommended for approval.

8. Shri M.P.Dixit, ld. counsel for the applicant argued that this way even the prayer of the applicant for consideration of the authorised official of the Civil Aviation to grant ex post fact approval was not sent to that official, and the decision which was to be taken by the official of the Civil Aviation was, thus, taken by an official of the Ministry of Small Scale Industries.

9. It was in that context that Annexure-A/8 was pointed out, another representation sent by the applicant dated 22.7.2005 addressed to the Development Commissioner, Small Scale Industries, Nirman Bhawan, New Delhi submitting a fresh prayer for consideration, requesting to grant approval for travels by air or, at least, to limit his travelling allowances to the fare of AC 2 Tier class by Rajdhani Express train, as the journeys were on account of performing official duties. It is pointed out that a sum of Rs.35,889/- had already been deducted.

10. It has not been denied that the applicant had made those journeys by air for performing his official duties. He also was entitled to travel by air. Only question is that contrary to the directions issued in that regard he had travelled, on all those occasions, by private airlines instead of Indian Airlines which was flying on the route at that time. The learned counsel for



the applicant has also submitted, while making arguments, that by now, Govt. of India has removed this restriction for travelling only by Indian Airlines.

11. If an officer who has performed official duty and for that purposes has travelled out-side the headquarters, and has filed his bill for reimbursement then, if it is found that he was not entitled to the higher charges on account of any rule, still he had to be paid the lower charges which were admissible to him. It is for the sanctioning authority to find out what was the lower fare admissible to him which the officer making journey should be paid. On the ground that he had travelled by air in violation of rules, he cannot be asked to bear the entire cost for making official tours. He has to be paid the amount of fare for a journey, either by air or by train or by any other means, to which he was entitled at the time he made those journeys.

12. Moreover, if ex post facto approval was to be granted by an official of the Ministry of Civil Aviation and if for that an application was filed by the applicant on the advise made by the parent department of the applicant vice Annexure-A/2, then any official of that department should not have taken upon himself the role to decide as to whether or not applicant be given ex - post facto approval. This should have been left to the concerned official of the Ministry of Civil Aviation. Indeed



through Annexure-A/2 the Minister of SSI, Govt. of India had advised the applicant to submit an application for ex post fact approval of the Ministry of Civil Aviation. Obviously, as communicated through Anenxure-A/5 dated 5.11.2004, the application was not even sent or recommended for approval.

13. On the other hand the learned counsel for the respondents submitted that since the applicant had performed journeys in violation of the rules, he would not be entitled to air fare by private airlines. However, when asked, he admitted that he would be entitled to the admissible fare for conducting journeys for official purposes.

14. In the circumstances, this application is disposed of by directing the applicant to file a fresh application for ex post facto approval of the journeys to the Ministry of Civil Aviation through the proper channel within a month of the receipt of certified copy of this order which will be forwarded by his department to the Ministry of Civil Aviation or to the authority who is empowered to consider prayer for grant of such ex post facto approval.

15. It is made clear that even if such approval is not granted, the applicant would be entitled to an amount equivalent to his entitlement for making such journeys. Therefore, he would be entitled to be paid a sum equivalent



to the train fare for AC 2 Tier journey by Rajdhani Exp. from Kolkata to New Delhi and return. His travelling bills, on receipt of a copy of this order, will be reconsidered by the respondents and, pending the matter of ex post facto approval, the applicant will be paid back the fare for journey to and fro New Delhi to which he might have been entitled at the time he made those journeys. This will be equivalent to the amount of fare for journeys in AC 2 Tier in Rajdhani Express, if he was then entitled to travel in Rajdhani Express. This should be done within a period of two months of the receipt of a copy of this order. If the applicant files a fresh representation for ex post facto approval of the competent authority and if approval is granted, then the applicant will be paid back the rest of the amount of bill. If approval is not granted, the applicant would be entitled to the train fare as aforesaid only.

16. This application is, thus, disposed of. No costs.



[ P.K.Sinha ]  
Vice-Chairman

mps.