

Central Administrative Tribunal, Allahabad Bench, Allahabad

Original Application No. 330/00020/2012

Reserved on 2.1.2018

Pronounced on 13.1.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Kishan Lal Taneja son of Late Asha Nand Taneja r/o Plot No. 108/3 Sainik Nagar, Ahiwan, Chakeri, Kanpur Nagar.

Applicant

By Advocate: Sri M.K. Upadhyaya

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Head Quarter, New Delhi, Kashmir House, New Delhi.
3. Chief Engineer, Central Command, Lucknow.
4. Commander Works, Engineer Air Force, Chakeri, Kanpur.
5. Garrison Engineer, Ministry Engineer Services, Air Force, Kanpur.
6. The Accountant, Office of Defence Account, Garrison Engineer (I) E/M, Chakeri Kanpur-08.

Respondents

By Advocate: Sri R.K. Srivastava

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant preferred this O.A. u/s 19 of the Administrative Tribunal Act, 1985 with the following reliefs: -

- i) This Hon'ble Court may be pleased to issue a writ order or direction in the nature of certiorari calling for the records pursuant to which the order impugned dated 22.10.2011 has been passed by the respondent No. 5 (Annexure No. 1 to the O.A.) and quash the same.
- ii) This Hon'ble Court may be pleased to issue a writ order or direction in the nature of mandamus commanding the respondents to settle the LTC claim of the applicant and make its payment along with the 18% interest,
- iii) This Hon'ble Court may be pleased to issue a writ order or direction in the nature of mandamus directing the respondents to make payment of withheld amount of Rs. 40,364/- towards LEC (leave encashment) along with the 18% interest.
- iv) Any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.
- v) Award cost of the original application in favour of the applicant.

2. The brief facts of the case are that the applicant was allowed All India LTC Tour for block period of 4 years. The applicant was given advance of Rs. 18,900/- which was utilized by him for performing journey and he availed aforesaid tour facility during 15.6.1998 along with his wife and four children and 11 other families of similarly situated employees through private recognized and authorized bus (PTO No. 17 dated 6.7.1998 is annexed as Annexure No.A-2). After returning back, he submitted the requisite bills along with documents for releasing the balance amount.

2. When the claim of the applicant was not released, applicant along with 18 others had filed O.A. No. 198/2001 before this Tribunal which was allowed by this Tribunal vide order dated 29th May, 2008 and direction was given by the Tribunal that prayer of the applicants for sanction of their LTC claim accordingly, be accepted as has been done in the case of other officials who had come before this Tribunal in O.A. No. 1293/2001. Learned counsel for the respondents points out that certain documents, in particular the certificate of sanction of travel by ITDC or STDS that the travel was undertaken in buses authorized by them, has not been produced by the applicants and in case they do the same, the respondents would consider their claim in accordance with the rules. Learned counsel for applicants undertakes to furnish a copy of the certificate to the respondents within a period

of 15 days from the date of receipt of a copy of this order. Tribunal also given three months time to decide the claim of the applicant and inform the applicants by a reasoned and speaking order. It was also observed that respondents, shall therefore, also consider such request for non-recovery from the applicants and if they are similarly situated as the applicants in the other OA, decided by this Tribunal and implemented by them, no recovery be made from the applicants herein as well.

3. Respondents have passed an order on 18th February, 2011 (Annexure A-6) by which it was stated that "According to court order, applicants were required to produce certificate for sanction of travel by ITDS or STDS certifying that travel was undertaken in buses authorized by them, within 15 days from the date of receipt of Hon'ble CAT order. However, you have failed to submit the requisite certificate as per Hon'ble CAT order, despite lapse of considerable time period. In view of the above, LTC claim submitted by you can not be progressed further."

4. In reply to the letter dated 18.2.2011, applicant vide letter dated 16.3.2011 and 26.3.2011 (Annexure A-7 and A-8) stated that since Original documents of ITDC or STDS VR. No. CV/45/12/FIM III dt. 22.8.1998 is deposited with GEE/M Chakeri Kanpur Nagar and GEE/M has not sent the original documents to the Defence Account Department, as such applicant has submitted the photo copies of the original documents.

5. Respondents again vide order dated 20.4.2011 (Annexure A-9) stated that in absence of the requisite certificate which has not been submitted by the applicant, respondents are unable to furnish the requisite documents to higher head quarter and again directed the applicant to submit the requisite certificate to enable this office to process the claim to obtain the sanction of competent authority.

6. Applicant along with letter dated 29.4.2011 submitted an affidavit reiterating the facts that original documents is deposited with GE/E/M Chakeri Kanpur Nagar and he is producing photo copies of the same like journey ticket, travel certificate, permit, progress list of journey, tentative tour program and verification certificate issued by Joint Director, Manipur Tourism.

7. Learned counsel for respondents in their counter affidavit submitted that an amount of Rs. 18,900/- on account of LTC advance was granted to the applicant and claim of LTC submitted by the applicant was not accepted for want of certain mandatory supporting documents which applicant had not produced even after order dated 29.5.2008 passed by this Tribunal in O.A. No. 198/2001. Therefore, vide order dated 22.10.2011, the outstanding amount of Rs. 18,900/- taken as advance was recovered with penal interest (Rs. 18900 + Rs. 24,885 = Rs. 43,785/-) from his leave encashment claim of Rs. 40,364/- and an amount of Rs. 3421/- is still outstanding against the applicant. As such the order dated 22.10.2011 passed by respondents is perfectly legal and valid.

8. Rejoinder reply is also filed by the applicant through which he has reiterate the facts as stated in the O.A. and denied the contents of counter reply.

9. Heard the learned counsel for applicant Sri M.K. Upadhyaya and learned counsel for respondents Sri R.K. Srivastava.

10. Learned counsel for the applicant has submitted that applicant along with his family members and other employees of the respondent's department availed LTC and performed the journey and when his LTC bill was not settled, they all filed the O.A. No. 198/2001 and the Tribunal while disposing of the O.A. vide order dated 29th May 2008, directed the respondents to consider the prayer of the applicants of this O.A. keeping in view the earlier OAs and order passed by this Tribunal governing LTC claim and take a decision in the matter within a period three months in accordance with law.

11. In the light of the order passed by this Tribunal, the applicant again requested the respondents to settle his LTC claim. The respondents rejected the claim of the applicant only on the ground that applicant has failed to produce the requisite certificate for sanction of travel by ITDS or STDS certifying that travel was undertaken in bus authorized by them. Counsel further submitted that since the applicant has already submitted the necessary documents with GE/E/M Chakeri Kanpur Nagar as such he is again submitting the photo copies of the same. Counsel for applicant also drew our attention to the certificate /letter dated 26th April 2003 issued by the Joint Director, Manipur Tourism, Govt. of Manipur addressed to Capt. Jaswant Singh AGE 'T' Officer of the Garrison Engineer (I) E/N, Chakeri, Kanpur by which they certified that tour was fully organized and conducted by Manipur Tourism

and travel was performed from Kanpur to Trivandrum and the applicant was one of them. Further, the other relevant documents has already submitted by the applicant with GE/E/M Chakeri, Kanpur Nagar and he has again submitted the photo copies of the same but without considering the said documents, the respondents have passed the impugned order asking the applicant to refund the amount of advance taken against the LTC along with penal interest and they deducted the said amount from the leave encashment amount of the applicant. Counsel further submitted that in the similar journey performed by the other employees along with applicant, respondents have sanctioned the LTC claim of other employees discriminating the applicant on frivolous ground.

12. Counsel for respondents submitted that after disposal of the O.A. No. 198/2001 in 2008, the applicant was asked to furnish requisite certificate but he failed to produce the same and respondents have not left with any option but to recover the LTC advance from leave encashment amount of the applicant along with interest. Since the applicant during that period retired from service, the was recovered from his leave encashment and there is nothing illegal on the part of the respondents.

13. We are unable to accept the contentions raised by the learned counsel for the respondents.

14. It is true that applicant has travelled by a bus of Manipur Tourism and a certificate was issued by the Joint Director, Manipur Tourism to this effect that the journey was performed by the applicant along with his family members and other persons and tour was fully organized and conducted by the Manipur Tourism, Govt. of Manipur. Respondents have not denied that no such certificate was submitted by the applicant. The ground on which they refused the claim of the applicant is that applicant has not submitted the certificate in original. Applicant has stated that original documents has already been submitted by him in the respondents organization where he was posted at the relevant time. Further, from the documents available on record, it is clear that applicant has filed along with this certificate, other necessary documents showing genuineness of his journey from Kanpur to Trivendram by bus of Manipur Tourism. The respondents have tried to show the journey performed by the applicant as suspicious only on the ground that there was other facilities like trains were available, why the applicant and other persons have performed the journey by a private bus. From perusal of documents, it is clear that this bus was not a private bus the same was registered with Manipur Tourism Department who have issued the certificate to the effect that applicant and other persons have actually performed the journey from Kanpur to Trivendum and back. It is also not denied by the respondents that other persons who also travelled with the applicant have been granted LTC amount. Since the applicant has already deposited original documents with the respondents where he was earlier posted, the respondents cannot deny the claim of applicant only on the ground of non-availability of original documents. Thus, the applicant has successfully demonstrated before us that he has actually performed the journey by the bus of Manipur Tourism and the said tour was fully organized and conducted by the Manipur Tourism Department. Hence the respondents have no reason to reject the claim of the applicant and recover the amount of LTC advance along with interest from the applicant's leave encashment amount.

15. The respondents have utterly failed to demonstrate before us or produced any sufficient documentary evidence that applicant has never travelled in the bus as alleged by him along with his family members. More so, when the respondents have sanctioned LTC claim to the persons who have also performed the same journey with the applicant, there is no ground for rejecting the claim of the applicant.

16. In view of the above, order dated 20.4.2011 is liable to be quashed. It is accordingly quashed and respondents are directed to settle the LTC claim of the applicant on the basis of documents submitted by the applicant and take a decision in this regard as early as possible. Since the matter is quite old, it is expected that respondents will settle the claim of applicant within a period of two months. It is further directed that respondents will make payment of the total amount of leave encashment measuring 40,364/- to the applicant within the aforesaid period. In case, the amount is not refunded within the aforesaid period, the applicant will be entitled for 6% interest on the amount of leave encashment from the date it was illegally adjusted against the LTC advance and penal interest till its actual payment. No order as to costs.

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(Justice Dinesh Gupta)
Member (J)

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