

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH:  
NEW DELHI**

O.A. No.2411 of 2018

This the 28<sup>th</sup> Day of November, 2018

**Hon'ble Ms. Nita Chowdhury, Member (A)**

Mool Chandra,  
Aged, 46 years, Designation HC,  
S/o Late Sh. Sri Ram Sharma,  
R/o Village Veer Khare, PS Sikendrabad,  
Distt. Buland Shahar, UP.

....Applicant

(By Advocate : Shri R.K. Jain)

VERSUS

1. The Govt. of NCT of Delhi  
Through Commissioner of Police,  
Police Headquarter,  
I.P. Estate, New Delhi.
2. The Deputy Commissioner of Police [Security]  
Delhi Police,  
Vinay Marg, New Delhi.
3. The Deputy Commissioner of Police,  
Traffic, Eastern Range,  
P.S. Shankarpur, New Delhi.

.....Respondents

(By Advocate : Mrs. Harvinder Oberoi)

**ORDER (Oral)**

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "i. Quash and set aside the impugned action of the respondents, vide which the applicant has been asked to refund the amount of LTC claim of Rs.87,408/- paid to the applicant in the year 2013 and direct the respondents to refund the amount of Rs.5000/- already recovered by the respondents

along with interest @ 18% per annum from the date of recovery till the date of payment.

- ii. Cost of the proceedings may also be awarded to applicant;
- iii. Any other proceedings may also be awarded to applicant.
- iv. Any other relief which this Hon'ble Tribunal may also be passed in favour of the applicant.”

2. Brief facts of the case as enumerated in the OA are that applicant who is working as Head Constable in May 2013 applied for Leave Travel Concession for the block year 2012-13 and in May 2013, the respondents had sanctioned the LTC advance to him. The applicant along with his family members had gone to Nathula Pass through LTC.

2.1 After return from the said journey, the applicant has also applied for balance amount and the same was also paid to him by the respondents. It is worth to mention that the applicant had gone to LTC along with his family members and a total amount of Rs.87,408/- was paid to him by the respondents towards the LTC claim.

2.2 On 1.6.2018, suddenly after about 5 years, the applicant was called by the respondent no.2 in his office and stated that the applicant had to refund the above LTC claim amount, as the applicant has not booked the air tickets for the LTC tour from authorized agents.

2.3 Applicant contended that when the applicant had asked for any order regarding the recovery, the respondent no.2

threatened him saying that FIR will be registered against the applicant stating that applicant had taken the forged LTC claim and had taken a cheque dated 1.6.2018 amounting to Rs.5000/- forcibly from him towards part payment of the same and the same has been debited from the account of the applicant on 6.6.2018 and respondent no.2 had further asked the applicant to give in writing regarding refund of the LTC claim amount from his salary, which was given on 1.6.2018.

2.4 According to the applicant, pursuant to the aforesaid application of the applicant, the respondents will start making recovery from his salary.

2.5 Being aggrieved by the above action of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

3. This Tribunal vide Order dated 10.7.2018 stayed the operation of order of recovery of LTC and the same is continuing till date.

4. Pursuant to notice issued to the respondents, they have filed their counter in which they stated that during the posting in Security Unit, the applicant submitted an application for grant of LTC Advance on 18.4.2013 (Annexure A). The applicant has also submitted an undertaking mentioning therein that he will be responsible to adjust the LTC advance and submit all the related tickets/bills/papers (in original along with one set of photocopy) within one month from the date of completion of the return journey. The

applicant has also declared that **he will purchase the tickets from the authorized agent or from the Airlines concerned** (Annexure-B). On the basis of his request, he was sanctioned 90% LTC advance amount of Rs.66,200/- vide Office Order dated 14.5.2013 (Annexure-C).

4.1 On 13.6.2013, after availing journey with his family from Delhi to Bagdora and returned back, the applicant has submitted LTC adjustment bill amount of Rs.1,15,560/- which was diarised vide No.11409/Acctt./Sec. dated 13.6.2013 (Annexure-D). After scrutiny of LTC advance adjustment case, it is found that applicant is entitled for amount of Rs.87,408/- against Rs.1,15,560/-. Out of which an amount of Rs.66200/- was already given to him as advance. He was sanctioned amount of Rs.87,408/- and remaining balance amount of Rs.21,208/- was also paid to him.

4.2 respondents further stated that the Audit for the period from 2013-14 and 2014-15 has been conducted by the AG (Audit). The Audit Report dated 18.1.2016 (Annexure-E) has been received from Sr. Audit Officer (GS), Office of Pr. Accountant General (Audit), Delhi AGCR Building, I.P. Estate, New Delhi. It has been reported in Audit Report that during test check of LTC cases for the period 2013-14 and 2014-15, out of 403 cases, 189 cases were test checked from the site of Go-Airlines of passengers, who have travelled by Go Airlines (21 cases could not be verified from the site). In the rest of

168 cases, it was found that Air Tickets has been purchased from other than authorized agency/agent and in some cases agent name was not found. It was observed that Air fare claimed in LTC bills is more than the actual fare paid to the Airlines. Audit party further compared all the tickets submitted by the employees with the original ticket retrieved from the site and found that an amount of Rs.0.61 crore which was excess to the actual fare paid to the Airlines by the officials was reimbursed during this period. This clearly indicates that the employees have not submitted the original tickets of the Airlines for reimbursement and have submitted concocted tickets for claiming higher amount. Air fare claimed by the officials in LTC bills in contravention of the rules issued by the Ministry of Finance vide OM No.19024/1/2009-E.IV dated 16.9.2010 (Annexure-F). In the list of 168, the name of the applicant was also shown at Sl. No.183 and as per report, he has paid actually Rs.64445/- only to the Airlines instead of Rs.1,04,060/-.

4.3 On receipt of aforesaid report of Audit, the applicant was informed about the Audit objection and requested to deposit the inadmissible amount, i.e., Rs.87,408/-. As such the applicant attended the office of the respondents and explained that due to illness of his mother, he is unable to deposit payment of Rs.87,408/- in lump-sum and gave a cheque amounting to Rs.5,000/- and also gave his

willingness to deduct the remaining amount from his salary on monthly basis.

4.4 It is further stated by the respondents that on the basis of Audit report, a Memo dated 29.11.2016 has been issued to all concerned Districts/Units to recover the inadmissible LTC amount from the individuals from they are posted. An opportunity for personal appearance was provided to the applicant when he was called to deposit inadmissible amount on 1.6.2018. Even he gave a cheque of Rs.5000/- and also gave in writing to recover the remaining amount on monthly basis instead of lump-sum.

5. Applicant has also filed his rejoinder reiterating the averments made in the OA and denying the contents of the counter affidavit filed by the respondents.

6. Heard learned counsel for the parties and perused the material placed on record.

7. During the course of hearing, counsel for the applicant submitted that the action of the respondents is illegal, arbitrary and against the provisions of law as the respondents have violated the Articles 14, 16 and 21 of the Constitution of India.

7.1 Counsel further submitted that applicant was never informed by the respondents regarding booking of air tickets from the authorized agent in any manner.

7.2 Counsel also submitted that after submission of adjustment of LTC bill, the respondents had issued sanction of an admissible amount of Rs.87,408/- and accordingly, balance amount after deducting the advance amount was also paid to the applicant in May 2013. As such the respondents were themselves not aware about the booking of the air tickets from the authorized agents and they came to know about the same after the audit objection, then how it can be expected from the applicant to know about the OM for booking the air tickets from the authorized agents.

7.3 Counsel also submitted that impugned notice/circular is liable to be set aside on the ground that the applicant has not been given an opportunity to show cause to submit his representation before starting recovery, which is against the principles of natural justice.

7.4 Counsel also submitted that respondent no.2 had taken a cheque amounting to Rs.5000/- by threatening the applicant towards the part payment of the LTC claim without providing any copy of the order regarding recovery.

7.5 Counsel further argued that the alleged recovery had been started after 5 years of the amount of LTC tour paid to the applicant, which is illegal.

7.6 Counsel for the applicant also placed reliance on the Order of this Tribunal dated 28.5.2018 in OA 3835/2017 as

also of Order dated 1.3.2017 passed in OA 678/2015 which was upheld by the Hon'ble High Court of Delhi in Writ Petition (Civil) No.4933/2017 vide Order dated 27.09.2017.

7.7 Counsel for applicant also placed reliance on the Hon'ble Supreme Court's judgment dated 18.12.2014 in the case of **State of Punjab vs. Rafiq Masih** in Civil Appeal No.11527/2014 and contended that the aforesaid recovery is not permissible.

8. Counsel for the respondents submitted that the applicant was aware about the Rules & Regulations of LTC claim issued by the Govt. of India and even the applicant has submitted an undertaking to that effect while taking LTC advance and gave declaration that he will purchase ticket from the authorized agent or from the Airlines concerned.

8.1 Counsel for the respondents to the issue of show cause notice as raised by the applicant submitted that on the basis of Audit report, a Memo has been issued to all concerned Districts/Units to recover the inadmissible LTC amount from the individuals from they are posted and also referred to Annexure H in this regard. He further submitted that an opportunity for personal appearance was provided to the applicant when he was called to deposit inadmissible amount on 1.6.2018. Even he gave a cheque of Rs.5000/- and also gave in writing to recover he remaining amount on monthly basis instead of lump-sum by citing his personal reasons, a

copy of such willingness is annexed by the applicant himself in the OA as Annexure-A as also a copy of cheque which was issued by the applicant dated 1.6.2018. Counsel for the respondents has vehemently denied that the said letter or cheque had been issued by under any duress.

8.2 Counsel for the respondents further submitted that there was misrepresentation by the applicant by submitting LTC claim as the Air tickets which had been purchased by the applicant was not in accordance with the undertaking given by the applicant but from other than authorized agency/agent. Hence, the entire claim of the applicant is inadmissible.

9. Having regard to the aforesaid facts and circumstances of this case and also having regard to the submissions of the learned counsel for the parties, this Court observes that the applicant while applying for the aforesaid LTC advance has given an undertaking which reads as under:-

“UNDERTAKING

MOOL CHAND No.2221/SEC has taken LTC/TA/DA Advance for the Block Year 2012-13 Town/All India Tour name of place Nathula Pass, NORTH-EAST Region. In the month of 16.5.2013. I will be responsible to adjust the LTC/TA/DA advance and submit all the related Tickets/Bills/Papers ( in original along with one set of photocopy) within one month from the date of completion of the return Journey.

**I do undertake that I will purchase the tickets from the authorized agent or from the Airlines concerned.**

I also undertake that on receipt of LTC/TA/DA advance in my account. I will purchase the tickets within 10 days or also perform journey within one month from the date of receipt of advance.”

(Emphasis supplied)

10. From the aforesaid undertaking, it reveals that the applicant was aware of the fact that LTC tickets for air travel is required to be purchased from the authorized agent or from the Airlines concerned. Even if it is presumed that he was not aware who is authorized agent or from which Airlines, he ought to have made a request to the respondents to apprise him about the same. When such request had not been made by the applicant, it is the right presumption that he is aware of the instructions of the Govt. of India with respect of purchase of air ticket while proceeding on LTC. Therefore, this Court is unable to accept the contention of the applicant that the applicant was never informed by the respondents regarding booking of air tickets from the authorized agent in any manner.

11. So far as contention of the applicant as noted in para 7.2 above is concerned, the respondents presuming that the documents submitted by the applicant for final adjustment of LTC claim, are based on true disclosure of facts and therefore, they have sanctioned an amount of Rs.87408/- against the claim amount of Rs.1,15,560/-. However, on the basis of audit report dated 18.11.2016 as at Annexure E, the respondents have issued order dated 29.11.2016 to FA to CP.

Delhi alongwith audit para and its reply sent to Sr. DAG(GS), AGCR, Dehi as also to all Salary Seats/Acctt. Br./Sec. for making recovery in r/o police personnel mentioned in the enclosed list, the relevant para of the said order reads as under:-

“The inadmissible amount shown in column no.- 16 of enclosed annexure ‘A’ may be recovered from the police personnel posted in your Distt/Unit. It is further clarified that the reply to audit para was sent to Sr. Dy. Accountant General (GS), Office of Principal Accountant General (Audit), AGCR, vide this office letter No.17780/Genl.(II)/Security, dated 18/04/2016, but this office has been conveyed vide FA to C.P., Delhi letter No.4545-48/F.A.(SI-II), dated 24/11/2016 that reply is not tenable, as the recovery of excess amount only has been initiated instead of disallowing the entire claim due to non-obtaining of tickets from authorized agencies. No recovery has been made from the claimants, so far by this unit.

The police personnel mentioned at Sl. No.2, 3, 4, 8, 11, 14, 15, 23, 26, 34, 35, 47, 56, 57, 60, 61, 62, 65, 66, 70, 71, 77, 80, 83, 84, 85, 86, 87, 94, 97, 99, 103, 104, 107, 118, 119, 120, 121, 129, 130, 131, 132, 133, 134, 135, 140, 141, 142, 143, 145, 150, 152, 156, 158, 159, 160, 161, 162, 163, 164, 166, 169, 174, 175, 176, 177, 178, 183 have already been transferred to Distt./Unit as mentioned in the enclosed Annexure-A.

In view of the above the inadmissible amount as mentioned in the enclosed list may be recovered from the concerned police personnel under intimation to this office for further necessary action.”

12. The aforesaid Order was issued on 29.11.2016 and was also given a wide publicity as the same had been sent to all Salary Seats/Acctt. Br./Sec. for making recovery in r/o police personnel mentioned in the enclosed list. The applicant’s name is mentioned at serial no.183 in the said list in which it is mentioned that applicant had actually made the payment

of Rs.**64445/-** to the Airlines as against the sanctioned claim of Rs.**87408/-** and that the air tickets had been purchased through VIA Flight Raja Travels Pvt. Ltd. Therefore, the action of the respondents cannot be said to be unreasonable.

13. Further contention of the applicant that the applicant under duress gave in writing about recovery as also a cheque of amount of Rs.5000/- is not sustainable in the eyes of law in the absence of any such evidence of duress. Rather the said letter as well as issuance of aforesaid cheque of Rs.5000/- itself proves the fact that the applicant had admitted that he had not adhered to the undertaking given by me.

14. The reliance placed by the applicant in the aforesaid decisions of this Tribunal as well as of Hon'ble Supreme Court (supra) is not relevant to the facts and circumstances of the present case.

15. It is further relevant to mention here recent judgment of the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh** in Civil Appeal No.3500/2006 decided on 29.7.2016, the Hon'ble Apex Court held as follows:-

“9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time

when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10 In *State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc.*, (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.” (emphasis supplied).

11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs.”

16. In the result, for the foregoing reasons, this Court does not find any reasonable ground to interfere in the present case. Accordingly, the present OA is dismissed. There shall be no order as to costs.

**(Nita Chowdhury)**  
**Member (A)**

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