

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

O.A. No.2410 of 2018
M.A. No.2669 of 2018

This the 28th Day of November, 2018

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

1. Joginder,
Age, 30 years, Designation Constable,
PIS No.28102750.
S/o Sh. Shilak Ram
Distt. Jind Haryana.
2. Sat Pal Singh,
Age 48 years, Designation ASI, Group" C
PIS No.28920010.
S/o Sh. Nathu Ram,
R/o Village Ismail, Distt. Rohtak, Haryana.
3. Dilawar Singh,
Age 55 years, Designation ASI, Group "C
PIS No.28860034.
S/o Late Sh. Dharm Singh,
R/o Ward No.19, Aryan Nagar Jhajjar,
Haryana.

....Applicants

(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,
West District
Rajouri Garden, New Delh.
3. The Deputy Commissioner of Police,
Outer District,
Pitampura, New Delhi.

.....Respondents

(By Advocate : Mrs. Harvinder Oberoi)

O R D E R (Oral)

MA 2669/2018

This MA has been filed by the applicants for joining together in a single OA. For the reasons stated in the MA, the same is allowed. The applicants are permitted to join together in a single Original Application.

OA 2410/2018

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

- “I. Quash and set aside the notice/order dated 28.02.2018; to the extent that it has been ordered to recover the entire amount of LTC paid to the applicants and direct the respondents to pay to the applicants the amount already recovered alongwith interest @ 18% from the date of recovery till the date of payment.
- II Cost of the proceedings may also be awarded to applicants;
- III. Any other relief which this Hon’ble Tribunal may also be passed in favour of the applicants.”

2. Brief facts of the case as enumerated in the OA are that applicant no.1 – Constable, Applicant nos.2 and 3 – ASI working with the respondents applied for LTC for the block year 2014-17 and applicant no.1 gone on LTC to Sri Nagar in June 2015, applicant no.2 in May-June, 2014 and applicant no.3 in April 2014 to Sri Nagar.

2.1 After return from the said journey, applicant no.1 applied for balance amount and the same was also paid to him as total amount of Rs.75,528/- was sanctioned and paid

to him by the respondents. Likewise applicant no.2 and no.3 applied for reimbursement of LTC claims, they were also sanctioned an amount of Rs.55,116/- and Rs.73496/- respectively.

2.2 However, suddenly on 28.02.2018, after about 4 years, the respondents issued the notice/order whereby it has been ordered to recover the entire amount of LTC paid to the applicants and the said recovery order has been issued on the ground that air tickets had been purchased by the applicants from the agent other than the authorized agents. Pursuant to the said notice, two installments of Rs.14706/-, Rs.9186 and Rs.18374/- from the applicants respectively have been recovered by the respondents.

2.3 Being aggrieved by the above action of the respondents, the applicants have filed this OA seeking the reliefs as quoted above.

3. This Tribunal vide Order dated 10.7.2018 stayed the operation of impugned order dated 28.2.2018 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 applicant no.1 performed LTC journey from Delhi to Srinagar on 1.6.2015 and back on 5.6.2015 by Indigo Airlines. The applicant was sanctioned LTC advance of Rs.66,175/- as per his request. After performing journey, on 29.6.2015, the applicant submitted an application for LTC claim along with other

relevant documents, i.e., LTC form, related tickets & bills, boarding pass & other papers, on the basis which he was sanctioned remaining amount of Rs.9,353/- i.e. total amount of Rs.75,528/- based on shortest route fare applicable for Srinagar.

4.1 Applicant no.2 performed LTC journey from Delhi to Srinagar on 26.6.2015 and back on 30.6.2015 by GoAir airlines. The applicant was sanctioned LTC advance of Rs.49,631/- as per his request. After performing journey, on 8.7.2015, the applicant submitted an application for LTC claim along with other relevant documents, i.e., LTC form, related tickets & bills, boarding pass and other papers, on the basis of which he was sanctioned remaining amount of Rs.5485/-, i.e., total amount of Rs.55,116/- based on shortest route fare applicable for Srinagar.

4.2 Applicant no.3 performed LTC journey from Delhi to Srinagar on 23.4.2014 and back on 27.4.2014 by GoAir airlines. After performing journey, on 19.5.2014, the applicant submitted an application for LTC claim along with other relevant documents, i.e., LTC form, related tickets & bills, boarding pass and other papers, on the basis of which he was sanctioned total amount of Rs.73,496/- based on shortest route fare applicable for Srinagar.

4.3 Subsequently, the audit for the period from April 2014 to March 2016 was conducted by AG (Audit). The audit report dated 15.12.2016 was received from Sr. Audit Officer (GS),

Office of Pr. Accountant General (Audit), Delhi, which reads as under:-

“As per Government of India, Ministry of Finance – office memorandum No.19024/1/2009-E.IV dated 16 Sept., 2010, the following guidelines should be followed while availing of Leave Travel Concession.

- I. Travel by Air India only,
- II. In economy class only, irrespective of entitlement.
- III. LTC-80 ticket of Air India only to be purchased.
- IV. Air Tickets may be purchased directly from Airlines (at booking viz. M/s Balmer Lawrie & company, M/s Ashok Travels and Tours and IRCTC is the authorized as per DoP&T OM No.310011/6/2002-Estt.(A) dated 02.12.2009.

Test Check of record pertaining to LTC 932 cases) during the period 2014-16, it was noticed that these officials have purchased air tickets from agent other than authorized, resulting in irregular payment of Rs.24,86,228. The payment made is against the provisions of LTC rules as mentioned above. Similar other cases may be reviewed and got verified from the Civil Aviation department and the cases in which tickets have been purchased from the agents other than authorized may be checked and necessary action be taken under intimation to audit.”

4.4 On receipt of audit report, similar other cases wherein air tickets have been purchased from agents other than authorized were checked, where the cases of applicants were scrutinized and it was not found genuine. The recovery was ordered to be made by the competent authority after issue of recovery notice dated 28.02.2018 (Annexure B) wherein applicants were informed about audit observations and requested to deposit the inadmissible amount.

4.5 Moreover the applicant no.1 submitted air tickets amounting to Rs.75,528/- for 4 persons & 1 infant for to and

fro journey (Annexure C) whereas travel tickets of applicant bearing PNR No.GDCGKX got verified from Indigo airlines which shows an amount of Rs.42,964/- for four persons & Rs.2000/- only as infant charges booked through unauthorized agency, i.e., **TRAVEL Co (India)** (Annexure D). This clearly indicates that the applicant has not submitted original tickets of the Airlines for reimbursement and has submitted inflated/concocted tickets booked through unauthorized agents.

4.6 Applicant No.2 submitted air tickets amounting to Rs.55,116/- for 3 persons for to and fro journey (Annexure E) whereas the travel tickets of applicant bearing PNR No.S39HBO (Del-Sri) got verified from GoAir airlines which shows an amount of Rs.2,652/- per person i.e. Rs.7,956/- for 3 persons and the travel tickets of applicant bearing PNR No.H5MY2F (Sri-Del) got verified from GoAir airlines which shows an amount of Rs.4,585/- per person i.e. Rs.13,755/- for 3 persons. The total amount paid is Rs.21,711/- for the complete journey and tickets booked through unauthorized agency, i.e. **'Seven Seaz Vacations Pvt Ltd'** (Annexure F). This clearly indicates that the applicant has not submitted original tickets of the Airlines for reimbursement and has submitted inflated/concocted tickets booked through unauthorized agent.

4.7 Applicant No.3 submitted air tickets amounting to Rs.73,532/- for 4 persons for to and fro journey (Annexure G)

whereas the travel tickets of applicant bearing PNR No.M3XTPJ (Del-Sri) got verified from GoAir airlines which shows an amount of Rs.88,000/- for 16 persons, i.e., Rs.5,500/- per person (Total Rs.22,000/- for 4 persons) and the travel tickets of applicant bearing PNR No.3I2IJ8 (Sri-Del) got verified from GoAir airlines which shows an amount of Rs.96,000/- for 19 persons i.e. Rs.6,000/- per person (Total Rs.24,000/- for 4 persons). The total amount paid is Rs.46,000/-. This clearly indicates that the applicant has not submitted original tickets of the Airlines for reimbursement and has submitted inflated/concocted tickets.

4.8 Air fare claimed by the applicants in the LTC bills is in contraventions of the rules issued by the Government of India, Ministry of Finance OM No.19024/1/2009-E.IV dated 16 Sept., 2010 (Annexure I).

4.9 They further stated that the mistake can be rectified at any time on coming to know of the same and on being pointed out by the office of AG (Audit), the LTC case of the applicants were verified from concerned airlines which clearly shows that they had submitted inflated/concocted tickets booked through unauthorized channel, which is in contraventions to the guidelines/rules issued by the Government of India, Ministry of Finance vide aforesaid OM dated 16.9.2010. They further stated that besides recovery, the applicants are also liable to be prosecuted for claiming LTC on inflated/concocted air tickets.

4.10 Lastly they stated that the applicants are not entitled to any relief since the action of the respondents is bonafide for the reasons stated above and the application is liable to be rejected by this Tribunal.

5. Applicants have also filed their rejoinder reiterating the averments made in the OA and denying the contents of the counter affidavit filed by the respondents.

5.1 Applicants further stated that the respondents have neither explained nor filed any documents as to how the tickets submitted by them are inflated. Hence, this plea has been taken just to recover the amount in view of audit objection, without properly verifying the same and without providing the applicants the details as to how the tickets are inflated and without giving the applicants' the opportunity to submit his defense against the same. Hence, the recovery is bad in law and liable to be set aside.

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

7. During the course of hearing, counsel for the applicants 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 to the applicants. 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 applicants have not been given an opportunity to show cause to submit their representation before starting recovery, which is against the principles of natural justice.

7.4 Counsel 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.

7.5 Counsel further submitted that the respondents have mentioned DoPT OM dated 18.6.2010, Ministry of Finance OM dated 16.9.2010 and DoPT OM dated 2.12.2009 in the

impugned order regarding authorized agents. In OM dated 16.9.2010, it has been mentioned that air tickets may be purchased directly from the airlines or by utilizing the services of authorized travel agents, regarding LTC. This shows that it is not mandatory to purchase the tickets directly from the airlines or from the authorized agents. Hence, the impugned action of the respondents is illegal and arbitrary.

7.6 Counsel 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 LTC Rules & Regulations are available on the website of DoP&T and are in public domain, besides these rules are also widely publicized by all Ministries/Departments. As such, the applicants cannot claim that they were not aware of the same. Besides, the applicant had submitted LTC claim based on inflated/concocted air tickets booked through unauthorized agencies and as such they are liable to be prosecuted.

8.1 Counsel for the respondents also submitted that notices regarding recovery of irregular payment of LTC for the period from 2014-15 and 2015-16 dated 27.2.2017 were issued to the respondents, copies of which are annexed as Annexure 'B'. Instead of filing reply to the said show cause notices, the

applicants have approached this Tribunal and as such the present OA is also liable to be dismissed on the ground of non-exhausting the departmental remedy as they have not submitted any representation before coming to this Tribunal.

8.2 Counsel also submitted that since the applicants have claimed reimbursement of LTC on inflated/concocted air tickets booked through unauthorized agencies as is evident from Annexure D, F and H, besides the aforesaid recovery, they are also liable to be prosecuted.

8.3 Counsel for the respondents further submitted that there was misrepresentation by the applicants by submitting inflated/concocted LTC claim, which had been purchased by the applicants from unauthorized agent/agency. Hence, the entire claim of the applicants 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 so far as applicants' contention that no show cause notice was issued to them is concerned, from Annexure 'B' of the counter affidavit, it is quite clear that applicants were issued notice on the issue of recovery. However, they have not filed any reply to the same and filed this OA on 21.6.2018 as such this OA is liable to be rejected on the ground of non-exhausting of departmental remedy.

10. Even if it is presumed that the applicants were not aware who is authorized agent or from which Airlines air tickets be purchased, they ought to have made a request to the respondents to apprise them about the same. When such request had not been made by the applicants, it is the right presumption that they are 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 applicants that they were never informed by the respondents regarding booking of air tickets from the authorized agent in any manner.

11. So far as contention of the applicants as noted in para 7.2 above is concerned, the respondents presuming that the documents submitted by the applicants for final adjustment of LTC claims, are based on true disclosure of facts and therefore, they have sanctioned the admissible amount against the claim made by the applicants in their LTC claims. However, on the basis of audit report pertaining to period from 1.4.2014 to 31.3.2016, as quoted above, the respondents have issued the notice dated 27.2.2018.

12. Having regard to the averments of the respondents in this case as mentioned in paras 4.5 to 4.7, and the above observation, the action of the respondents cannot be said to be unreasonable.

13. 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.

14. 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."

15. 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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