

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 516/2017

Reserved on: 06.09.2018
Date of decision: 25.09.2018

Hon'ble Mr. A. Mukhopadhyaya, Member (A)

Dr.Sneh Arya Wife of Dr.Sanjeev Poonia, aged about 38 years, resident of Plot No.212-B, Amar Nagar-C, Khatipura, Jaipur and Presently working as Senior Medical Officer, CGHS, Jyoti Nagar Dispensary, Jaipur.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. The Union of India through it's Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. Director General, CGHS, Nirman Bhawan, New Delhi.
3. Additional Director, CGHS, Kendriya Sadan Parisar, 'B' Block, Ground Floor, Sector-10, Vidhyadhar Nagar, Jaipur-302023.
4. Senior Audit Officer, CRA-II, Office of Principal Director of Audit (Central), Branch Office, Jan Path, Jaipur-302005.

...Respondents.

(By Advocate: Shri Kinshuk Jain for R-1 to R-3 and
Shri Rajendra Vaish for R-4)

ORDER

This Original Application, (OA), relates to the recovery of an amount of Rs.1,98,056/- from the applicant on account of this amount purportedly having been wrongly sanctioned and paid to her as LTC for journey undertaken in October 2011.

2. Briefly, the facts of the case are that the applicant was appointed in the CGHS on 20.10.2008. Thereafter, she applied for

(2)

LTC during the period extending from 12.10.2011 to 30.10.2011 for the block year 2010-2013 for travel anywhere in India and availed of the same in order to visit Port Blair. Subsequently, an objection was raised during the CAG audit of the Department vide Memo dated 13.11.2014, (Annexure A/6), to the effect that the applicant had been allowed this benefit before the time it became due to her. Vide order No.CGHS/JPR/P.F.(6)/2016-17(Admn.)/21467-72 dated 14.02.2017, (Annexure R-13), the amount was fully recovered in instalments. During this entire period, the applicant made a series of representations to the respondents in this regard stating that the LTC in question had been availed by her after due sanction as well as sanction of leave and advance for the same and this should not therefore be recovered from her as she was not at fault in this matter. However, despite her representations, the amount was finally recovered vide the aforementioned order dated 14.02.2017. The applicant contends that the respondents acted in accordance with the audit objection without necessary application of mind. She cites DoP&T OM No.31011/3/2015-Estt.(A.IV), dated 18.02.2016, (Annexure A/16), Item No.4 which provides that whenever a Government servant applies for LTC, he/she may be provided with a copy of the guidelines which need to be followed while availing LTC and states that although she was a new recruit with scant knowledge of rules and regulations, this mandatory requirement was not fulfilled in her case. The applicant has also

(3)

cited DoP&T OM No. 31011/3/2013-Estt.(A.IV) dated 26.09.2014, (Annexure A/4), and DoP&T OM No.31011/4/2007-Estt.(A.IV) dated 18.05.2015, (Annexure A/5), in support of her claim.

3. In reply, the respondents aver that the sanction of LTC advance and thereafter the LTC claim of the applicant were issued in bonafide error. It was pointed out by the audit that as per LTC rules the applicant was not entitled for all India LTC upto the end of December 2011. Thus, the all India LTC availed by her in October 2011 was irregular and therefore the amount in question was correctly recovered from her as per rules. They contend that the representations made by the applicant in this regard were duly considered at the departmental as well as Ministry level in the light of DoP&T OM No. 31011/4/2008-Estt.(A) dated 23.09.2008, (Annexure C/1 refers), and then a view was taken that the applicant's entitlement for the LTC for any place in India begins from 01.01.2012 only and therefore her availing of this facility during October 2011 was actually wrong; (as per letter dated 06.02.2015 - Annexure R/2). Further to this, the Ministry of Health & Family Welfare also, after having examined the case, came to the same conclusion vide letters dated 02.02.2016, (Annexure A/12), and 27.01.2017, (Annexure R/12), and therefore the recovery made from the applicant was justified as per rules.

(4)

During arguments, counsel for both the applicant and the respondents reiterated their respective positions, as detailed earlier.

4. In this case, it is undisputed that the recovery made from the applicant is based on the interpretation of DoP&T OM No. 31011/4/2008-Estt.(A) dated 23.09.2008, (Annexure C/1 refers), and that at the time when the applicant made the journey in question, (i.e. 12.10.2011 to 30.10.2011), the clarificatory OMs of 26.09.2014, (Annexure A/4), and 18.05.2015, (Annexure A/5), had not yet been issued. Also, it is noted that when the CAG audit was completed and the audit objection under discussion dated 13.11.2014, (Annexure A/6), was issued, only the clarificatory OM of 26.09.2014, (Annexure A/4) could have been available to the auditor. Thus in finding that the applicant was not entitled to LTC anywhere in India during the calendar year 2011, the auditor appears to have relied on the illustrations given in DoP&T OM dated 26.09.2014; (Annexure A/4). The first illustration in this OM closely corresponds to the applicant's case and indicates that where a person joins service in 2008, (as in this case), the LTC for any place in India is available only from 01.01.2012 onwards. However, the important point here is that this OM dated 26.09.2014, (Annexure A/4), was not in existence at the time of sanction and utilisation of the anywhere in India LTC facility by the applicant in 2011 and therefore, in all fairness,

(5)

the only OM which can be taken into account in this case should be the DoP&T OM dated 23.09.2008; (Annexure C/1 refers). A plain reading of the relevant portion of the 6th CPC recommendations relating to LTC which is a subject matter of this OM indicates the following position:-

"Fresh recruits to Central Government may be allowed to travel to their home town along with their families on three occasions in a block of four years and to any place in India on the fourth occasion. This facility shall be available to the Government officers only for the first two blocks of four years applicable after joining the Government for the first time. The blocks of 4 years shall apply with reference to the initial date of joining the Government even though the employee changes the job within Government subsequently. The existing blocks will remain the same but the entitlements of the new recruit will be different in the first eight years of service. All other provisions concerning frequency of travel under LTC are retained."

5. The para quoted above clearly shows that the instructions allowed fresh recruits, such as the applicant, to travel to their home towns along with their families on three occasions in a block of four years and to any place in India on the fourth occasion. However, it must be admitted that it was not made clear in this para that the three occasions relating to home town LTC would have to chronologically precede the fourth occasion to travel anywhere in India. The clarification issued later on 26.09.2014, (Annexure A/4), was related in part to addressing this very ambiguity with detailed illustrations and tables. Again, it is argued by the respondents that the sanction and release of

LTC payment for travel anywhere in India was made by the respondents in bonafide error. If so, this strengthens the impression that it was not clear at the time of sanction and payment that the journey made to any part of India other than home town would necessarily have to be chronologically the fourth such journey with LTC for new recruits. Given that the respondents are prepared to view the sanction and payment of the LTC claim by her seniors/superiors as a bonafide error, it would appear to be unfair and harsh to consider the same error of interpretation as being unforgivable on the part of a new recruit who undisputedly travelled on LTC only after obtaining due sanction for the concession as well as leave to avail the same from the selfsame seniors/superiors. Here the citation of the case in **State of Punjab & Others etc. vs. Rafiq Masih (White Washer)**; (2015) 2 SCC (L&S) 33 by the counsel for the applicant becomes relevant. Para 18 (v) of this judgment stipulates that the recovery should not be effected from the employee 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.

6. In the present instance, where the department is prepared to condone the sanction of all India LTC as well as making payment for the same as a bonafide error on the part of senior

(7)

level competent authority, it would be unfair and unduly harsh to penalise the applicant, who, at worst, fell into the same error of interpretation. Therefore, considerations of fairness and natural justice dictate that the applicant in this case should not be penalised for making the same error of interpretation as appears to have been made by her seniors and controlling authority. Accordingly, the OA is allowed and the respondents are directed to refund the amount of Rs.1,98,056/- as LTC claim recovered from the applicant, preferably within a period of two months from the date of receipt of a certified copy of this order.

7. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

/kdr/

(8)

At the outset, counsel for the applicant stated that he wishes to cite and place on record a letter No.36-9/2002 dated 24.03.2003 of the Ministry of Communication which is extremely pertinent to the Resolution of the issues involved in this case. Counsel for the respondents having perused the document has no objection to this. Accordingly, the document is taken on record as Annexure C/1.

Heard.

Reserved for orders.

(A.Mukhopadhyaya)
Member (A)

/kdr/