

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

RARY

CALCUTTA BENCH

DA/962/2016

Shri Arun Kumar Dey, son of Late Gopal Chandra Dey, aged about 54 years, working for gain as Master Craftsman (Machinist), T.No. MS/217, under the General Manager, Rifle Factory, Ishapore, P.O. Ishapore-Nawabganj, Dist.- North 24 Parganas, and residing at Serampore Housing Estate, Block D, Flat No. 5, P.O.- Rishra, Dist.- Hooghly, West Bengal.

..... Applicant.

-Versus-

1. The Union of India service through the Secretary, Ministry of Defence, Department of Defence Production, having its office at South Block, New Delhi- 110011.
2. Ordnance Factory Board service through the DGOF & Chairman,

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Ordinance Factory Board, 10-A, S. K.
Bose Road, Kolkata- 700001.

3. The General Manager, Rifle Factory,
Ishapur, P.O. - Ishapur-Nawabganj,
Dist. - North 24 Parganas, West Bengal.
4. The Junior Works Manager/LB &
HOS/LB, Rifle Factory, Ishapur, P.O. -
Ishapur-Nawabganj, Dist. - North 24
Parganas, West Bengal.

.....Respondents.



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/962/2016

Date of Order: 22/11/18

Coram: Hon'ble Mr. A.K Patnaik, Judicial Member

ARUN KR. DEY -VS- M/O DEFENCE

For the Applicant(s): Mr. N.P Biswas, Counsel

For the Respondent(s): Mr. R. Roychowdhury, Counsel

ORDER

A.K Patnaik, Member (J):

The case of the applicant in nutshell is that in order to avail LTC to Radhanagar, Port Blair, A&N during the period 29.12.2014 to 05.01.2015, he has purchased air ticket from Spice Jet on 09.4.2014. On 23.6.2014 he has submitted application before the competent authority seeking sanction of leave and LTC. On 19.11.2014 the authorities sanctioned the LTC advance and leave in favour of the applicant. After availing the LTC, final claim was submitted by the applicant which was held to be not admissible and accordingly competent authority directed for recovery of the advance with penal interest. Representation submitted by the applicant having been rejected, the advance along with penal interest was recovered from him. According to the applicant, the rejection of the claim and recovery with penal interest, besides being bad in law, has caused him financial hardship. Hence, by filing the present OA he has prayed for the following reliefs:

- "i) An order/direction may be issued to cancel, withdraw and/or rescind the impugned order No. 410/23/LTC dated 20.03.2015 issued by the HOS/LB rejecting the representation of the applicant and directing that the entire advance amount paid would be recovered with penal interest and as contained at Annexure -A/5 to this application .
- ii) An order/direction may be issued to cancel, withdraw and/ or rescind the impugned order No. 410/23/LB/LTC dated 05.05.2015 issued by the JWM/LB rejecting the representations submitted by the applicant and informing that recovery action was being initiated without any further reference and as contained at Annexure A/6 to this application.

[Signature]

iii) A direction and/ or declaration may be issued to the effect that the recovery of LTC advances made from the wage bills of the applicant for the months of May, June and July, 2015 is arbitrary, perverse, without any rational basis and thus illegal.

iv) An order/direction may be issued to the respondent authorities and each of them, their agents and/or subordinates to admit the final claim for adjustment of advance drawn and make reimbursement of LTC to the extent of actual fare paid or fare by ship in the entitled class, whichever is less.

v) To issue direction and/or directions to each of the respondents, their agents or subordinates to forthwith refund the entire amount recovered from the wage bills for the months of May, June and July, 2015 in respect of the applicant and as contained at Annexure - A/7 to this application

vi) costs pertaining to this application

vii) And / or to pass such order or further order or orders and / or direction or directions as this Hon'ble Tribunal may deem fit and proper."

2. Respondents filed their Reply in which it has been stated that as per the DoP&T OM dated 26.9.2014, government servants not entitled to travel by air can perform Air travel only by Air India in economy class at LTC 80 fare or less. The applicant has purchased ticket on 09.4.2014 to go on LTC in Spice Jet which is prior to the DoP&T OM dated 26.9.2014. Thus, he was not entitled to the claim and accordingly his claim was rejected and the advance amount sanctioned earlier was recovered with penal interest. However, in paragraph 6.7 it has been stated that the Ministry of Civil Aviation vide OM dated 19.12.2014 permitted the Govt. officials to travel by an Air line other than Air India w.e.f. 19.12.2014 for the purpose of LTC in the event of non-availability of required number of seats on Air India for onward journey till 31.12.2014, however, with the condition that fare paid over and above the LTC 80 for the sector shall be borne by the concerned govt. officials. It has been stated that as per the OM, the purchase of ticket is done in accordance with the instruction issued by Ministry of Finance from time to time. It has been stated that as the case of the applicant does not come within the purview of the OMs stated above, the claim was rightly rejected.

AO

3. According to the applicant similar case had came up for consideration before this Bench in OA No. 350/00002/2015 which was disposed of on 29.3.2016 with direction to the authorities concerned to grant reimbursement of LTC claim restricting it to the fare of the entitled class of the applicant by ship from Calcutta to Port Blair as per DoP&T OM dated 18.2.2016. The present case is one of the same and hence direction may be issued to the Respondents to reimburse the claim restricting it to the extent of travel by the Ship from Calcutta to Port Blair.

4. Heard learned counsel for both sides and perused the records. It is not a case of fraud on LTC. The applicant availed LTC instead of Air India in private air lines. According to the Respondents relaxation to travel other than Air India was available w.e.f. 19.12.2014. In the instant case, I find that though the applicant purchased the ticket on 9.4.2014, he in actuality travelled on 29.12.2014 which was much after the cut- off date wherefrom such relaxation was granted. Trite is the position of law that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and judiciary is respected not on account of its power to legalise injustice, on technical grounds but because it is capable of removing injustice and is expected to do so (AIR 1988 SC 897). In view of the discussions made above and by following the earlier decision of this Tribunal, the impugned orders are quashed. The Respondents are directed to consider reimbursement of LTC claim restricting it to the fare of entitled class of the applicant by ship from Calcutta to Port Blair. This exercise shall be completed within a period of 30 (thirty) days from the date of receipt of a copy of this order.

In the result this OA is allowed to the extent stated above. No costs.

(A.K.Patnaik)

Member (Judicial)

RK

- (a) Sl. No. of the appln.
 (b) Name of the applicant.....
 (c) Dt. of presentation or application for copy.....
 (d) No. of pages.....
 (e) Copying fee charged/urgent or ordinary.....
 (f) Dt. of preparation of copy.....
 (g) Dt. of delivery of the copy to the applicant.....