

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

O.A. No.884 of 2018

This the 03rd Day of December, 2018

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

1. Mahesh Chand Bhateley, (age 55 years),
S/o Late Vidya Ram Bhateley
R/o B-728A, Sangam Vihar, New Delhi-110080.
Employee of Broadcasting (Group-C)
As Wireman, CCW, AIR,
Sirifort Auditorium Sub Division,
New Delhi.
2. Nathi Lal, (age 52 years)
S/o Late Devta Prasad,
R/o D-5/32, Gali No.5, Sangam Vihar, New Delhi.
Employee of Broadcasting (Group-C)
As Wireman, CCW, AIR,
Sirifort Auditorium Sub Division,
New Delhi.
3. Syed Sharfuddin Zadi (age 56 years),
S/o Late Hussain Ahmad
R/o J-15, Abul Fazal Enclave,
Jamia Nagar, New Delhi.
Employee of Broadcasting (Group-C)
As ARMO, CCW, AIR,
Sirifort Auditorium Sub Division,
New Delhi.
4. Naresh Kumar Gemini (age 52 years),
S/o Raj Kumar
R/o RZS-79, New Roshanpura,
Najafgarh, New Delhi.
Employee of Broadcasting (Group-C)
As Foreman, CCW, AIR,
Sirifort Auditorium Sub Division,
New Delhi.
5. Avdesh Kumar Bhateley (age 53 years)
S/o Shri Sukh Lal Bhateley,
R/o D-229, Gali No.5, Sangam Vihar, New Delhi
Employee of Broadcasting (Group-C)
As Wireman, CCW, AIR,
Sirifort Auditorium Sub Division,
New Delhi.

6. Pramod Kumar (age 54 years),
 S/o Late Ankhelal,
 R/o B-194, Sangam Vihar, New Delhi-110080
 Employee of Broadcasting (Group-C)
 As Pump Operator, CCW, AIR,
 Sirifort Auditorium Sub Division,
 New Delhi.

....Applicants

(By Advocate : Shri D.K. Sharma)

VERSUS

1. Chief Executive Officer,
 Prashar Bharti,
 Copernicus Marg,
 2nd Floor, Tower C,
 Mandi House, New Delhi.

2. Executive Engineer,
 CCW, A.I.R.
 8th Floor, Pocket-C,
 Soochna Bhawan, CGO Complex,
 Lodhi Road, New Delhi.

.....Respondents

(By Advocate : Shri S.M. Arif)

O R D E R (Oral)

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

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

- “i) Direct the respondent to consider/review the order dated 29.12.2017 passed by the Executive Engineer (Elect)-I;
- ii) Set aside/quash the notices dated 31.01.2018 issued by the respondent no.3 to the applicants directing to refund the LTC advance and 10 days leave encashment within 15 days from the date of receipt of the letter/notice;
- iii) Any other relief which this Hon'ble Tribunal may deem fit and proper under the facts and

circumstances of the case may also be granted in favour of the applicant in the interest of justice.”

2. Grievance of the applicants in this case is against the orders dated 29.11.2017 as also of notices dated 31.1.2018 and 1.2.2018. By order dated 29.11.2017, the respondents have forfeited the LTC claim submitted by the applicant for the block year 2014-2015 in lieu of Home Town from New Delhi to Havelock as the air tickets are not found genuine and the applicants were directed to refund the LTC advance and 10 days leave encashment with penal interest within 15 days from the date of receipt of the said Order and vide notices dated 31.1.2018 and 1.2.2018, the applicants were once again directed to refund the amounts as indicated in the notices.

3. Vide Order dated 22.2.2018, this Tribunal stated the effect of operation of notices dated 31.1.2018 and 1.2.2018 and the same is continuing till date.

4. Contention of the applicants that the LTC advance was sanctioned to the applicant by the respondents and in the said LTC advance application they have also annexed the tickets as such in view of the provisions of OM dated 21.8.2017, the conditions of booking the tickets through authorized travel agents stands waived and as such the stand of the respondents is not sustainable in the eyes of law.

4.1 Further contention of the applicants is 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.

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

4.3 Counsel also submitted that after submission of LTC Advance applications, the respondents had issued sanction of an admissible amount of LTC advance 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 receipt of a complaint from one Shir Vipin Kumar Sharma, then how it can be expected from the applicants to know about the OM for booking the air tickets from the authorized agents.

4.4 Counsel also submitted that impugned notices are liable to be set aside on the ground that the applicants have submitted their detailed representation dated 9.1.2018 to the respondent requesting to consider/review the order dated 29.12.2017 and set aside the same, instead of considering the same, they have passed the impugned notices dated 31.1.2018 and 1.2.2018 as such the impugned notices are liable to be set aside by this Tribunal.

4.5 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.

5. 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 applicants had submitted LTC claim based on fabricated/concocted air tickets booked through unauthorized agencies and as such the respondents have every right to forfeit the entire LTC claim of the applicants

5.1 Counsel also submitted that since the applicants have claimed reimbursement of LTC on fabricated/concocted air tickets booked through unauthorized agencies as is evident from certificates issued by the Air India, besides the aforesaid recovery, they are also liable to be prosecuted.

5.2 Counsel for the respondents further submitted that there was misrepresentation by the applicants by submitting fabricated/concocted LTC claims, as the air tickets had been purchased by the applicants from unauthorized agent/agency. Hence, the entire claims of the applicants are inadmissible.

6. 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 in this case entire LTC claims of the applicants were forfeited by the respondents in view of the fact that on receipt of complaint from one Shri Vipin Kumar Sharma, the respondents have conducted inquiries with regard to the air tickets submitted by the applicants while claiming LTC advance and final LTC claim from the Air India and the Air India issued certificate which evidently proved that the air tickets which were submitted by the applicants were of inflated amount whereas the price of the same during the said period when the applicants booked their air tickets were very low, as is evident from the page 128 of the paper book. As such the action of the respondents forfeiting the entire claim of the applicants is not sustainable in the eyes of law, as the other part journeys in relation to LTC from Delhi to Havelock was performed by the applicants through train and ferry ship and every employee of the Government is entitled to claim 10 days earned leave encashment while proceeding on LTC. It is admitted fact that the applicants have proceeded on LTC and as such the action of the respondents forfeiting the entire LTC claim of the applicants is required to be reconsidered by the respondents.

7. Further, 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.

8. The reliance placed by the applicant on the decision of Hon'ble Supreme Court (*supra*) is not relevant to the facts and circumstances of the present case.

9. 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."

10. It is further relevant to note here that in response to the show cause notice dated 19.7.2017, the applicants have admitted in their written statement dated 28.7.2017 that they purchased the air tickets from a third party and they had paid the full amount whereas in the present case the

applicants have stated that they had procured genuine Air India tickets from Kolkata to Port Blair and back by way of on line, which is totally a false statement.

11. In the result, in the peculiar facts and circumstances of the case, the applicants were found to have followed the LTC rules so far as train and ferry ship journeys are concerned and the same have been accordingly made. Hence, the applicants are allowed fares of these journeys, except air tickets. The applicants are also entitled for 10 days earned leave encashment as they have claimed the same by virtue of availing of LTC. However, this Court makes it clear that as there has been misdemeanor committed by falsely claiming the cost of Air Tickets, it is open to the respondents to take departmental action after serving notice to the applicants. Accordingly, the impugned orders dated 29.12.2017 as also notices dated 31.1.2018 and 1.2.2018 are quashed to the extent as observed above.

12. In view of the above, OA is dismissed with the observations as indicated in preceding paragraph. There shall be no order as to costs.

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

/ravi/