

**Central Administrative Tribunal
Principal Bench**

OA No.612/2018

New Delhi this the 10th day of July, 2019

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

Sh. Mahavir Singh Dahiya,
1102, Trimurti CGHS (GH),
Sector-39, Gurugram-122003,
Haryana

- Applicant

(By Advocate: Mr. Mukesh Chander)

VERSUS

1. Union of India
Through Ministry of Labour,
Shram Shakti Bhawan,
New Delhi-110001& Ors.

2. Director General,
ESI Corporation, CIG Marg,
Delhi-1110002

3. Chairman, Air India,
Safdarjung Airport,
Aurbindo Marg, New Delhi

- Respondents

(By Advocates: Ms. Satya Siddiqui with Mr. Sarfraz Ahmed for respondents 1 &2 and Ms. Kriti Chopra for respondent no.3.

ORDER (Oral)

The present OA has been filed by the applicant,
seeking the following reliefs:-

“8.1 The order of the authority which sanctioned the recovery from the provisional pension and implemented by the Medical Superintendent, ESIC Hospital, Basai Darapur may be quashed;

8.2 That since the recovery has already been made, the Competent authority, the Director

General, ESIC, may be directed to refund the same with interest;

8.3 That heavy cost may be imposed upon the ESIC for this illegal recovery from the provisional pension in violation of CCS(CCA) and CCS Pension Rules by the authorities thus compelling the applicant to come to the Hon'ble Tribunal causing him mental harassment and financial loss including the legal expenses besides the violation of Fundamental Rights under Article 14 of the Constitution of India as discussed in Supreme Court's decisions in the State of Punjab & others V/s Rafiq Masih in case in CA No. 11527 of 2014 (Arising out of SLP(C) No. 11684 of 2012).

8.4 Any other relief which the Hon'ble Tribunal may be pleased to give."

2. The applicant, in this OA, is aggrieved by the order dated 04.09.2014 whereby recovery of Rs.70,851/- has been ordered from the withheld amount of 10% gratuity under intimation to the office. The applicant has alleged that this recovery pertains to some missing coupons issued by the Air India under a scheme and purchased by ESIC from an agent in the name and style of M/s Oasis Tours India Pvt. Ltd. and these missing coupons were never received by him. The applicant has further alleged that these missing coupons were detected in the month of July, 2009 whereas he was transferred from this branch and relieved on 07.01.2009. He thus submitted that the person, who took charge of the branch after him, is to be enquired upon and held

responsible for any pecuniary loss to the ESIC. He has further submitted that he was retired on 30.04.2014 and has thus governed by the CCS(Pension) Rules, in particular Rule 9 which does not give mandate to even the Director General to recover this amount that too without proper inquiry. Hence, the recovery made from him is illegal in the light of decision of the Hon'ble Supreme Court in the **State of Punjab & Ors. Vs. Rafiq Masih** in CA No. 11527 of 2014 (arising out of SLP(C) No. 11684/2012) and against the principles of natural justice and in the light of .

3. The respondents have controverted the aforesaid submissions of the applicant. They have filed the reply in which they have stated that the said unauthorized purchasing of coupons was not known to Cash Branch which is the nodal Branch. They have contended that the matter came to light once the agency raised the claim against those coupons. Thus, the said act of the applicant is proven in a first instance. The respondents have contended that the applicant was requested to give the details about such coupons which were purchased by him, vide office letters dated 02.07.2009, 16.07.2009, 12.08.2009, 10.09.2009, 12.07.2010, 07.01.2011, 07.03.2011 and 17.06.2009 while the applicant was in

service but he did not reply. Hence, they have contended that there is no violation of principles of natural justice.

4. After hearing learned counsel for the parties, the Tribunal asked the applicant to show any sanction order issued by the higher authorities for the purchase of the missing coupons in question. He is unable to show any sanction order and without such sanction, any action undertaken by the applicant himself is held illegal and he must be held fully responsible. In any organization, an employee, who wants to travel somewhere has to first obtain the sanction from the sanctioning authority and then submit an indent for issue of tickets to the concerned officer. In this case, the applicant of this OA, without showing any approved travel plans, was not in any way authorized to take tickets from any authorized travel agency. The applicant repeatedly states that the missing coupons were detected in the month of July, 2009, i.e. after seven months when he was relieved from the Branch and hence, he is not responsible for any purchase made. This argument of the applicant is totally fallacious, as the employee remains responsible for whatever action has been undertaken by him for the period when he was in the said post. It is because of this, the authorities repeatedly issued letters asking him

to give details of the air tickets purchased by him and to whom, he had distributed the said tickets. These queries have been asked to the applicant of this OA starting from 02.07.2009 as shown in Annexure A/3 (colly) of this OA. The queries which had been raised to the applicant were as follows:-

- “(1) Name of the passengers who travelled on above coupons.
- (2) Date of Journey
- (3) Destination for which the above mentioned coupons were used.”

If the above information had been found on the record itself, there would have been no need of the respondents to repeatedly send letters on 02.07.2009, 16.07.2009, 12.08.2009, 10.09.2009, 12.07.2010, 07.01.2011, 07.03.2011 and 17.06.2009 and try to get this information so that they could settle the bills in respect of TA/DA for journeys performed through the above coupons.

5. The Tribunal is also unable to accept the contentions of the applicant that as he had subsequently handed over the charge of post in question, no query should be raised to him about the purchase and utilization of tickets for the period when he was in fact in charge of the said office. The applicant has been unable to show under whose authorization and approval he had

obtained the said four economy coupons and two business class coupons. In fact, from the query raised to him, it becomes clear that the applicant issued four economy class coupons to one officer without ensuring that there was an approved tour programme before issue of the said coupons.

6. As far as the plea of the applicant that after having retired, he should not be subjected to any recovery in the light of Rafiq Masih's case (supra) is concerned, the Tribunal did not find any merit in the same. In the Rafiq Masih's case, the most essential factual component to invite the umbrella of the same was that the employee was not guilty of furnishing any incorrect information which led to the competent authority to commit the mistake of making the higher payment to the employee. The matter in this OA is totally different. In this matter, the applicant was wholly responsible for wrongly purchasing and issuing travel coupons to persons who did not have approval of tour programmes. The applicant of this OA is fully responsible for his actions and, therefore, he cannot take the plea that he be exempted from refunding the amounts for the coupons which were wrongly issued by him without legal authority. The respondents in their CA and during arguments today

have been able to show that the applicant of this OA had kept the travel coupons with himself and did not handover the same to the staff of the branch in question. Hence, they made due efforts to first find out the details of the travel coupons and only after they failed to establish the same, they asked him to provide the details of the authorization to purchase the coupons and the details of the record of the utilization of the same. The applicant was repeatedly requested vide office orders dated 02.07.2009, 16.07.2009, 12.08.2009, 10.09.2009, 12.07.2010, 07.01.2011, 07.03.2011 and 17.06.2014 to give the details in this matter. Quite clearly, the applicant of this OA had not submitted a satisfactory reply to the respondents and has now waited for his superannuation to seek the benefit of the reliefs given in the Rafiq Masih's case. Hence, recovery made on account of the irregular action of the applicant cannot be held illegal in light of the Rafiq Masih's case (supra). Hence, there is no merit in the contentions of the applicant and the OA is accordingly dismissed.

(Nita Chowdhury)
Member (A)

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