

Central Administrative Tribunal
Principal Bench, New Delhi

OA No.3197/2018

Reserved on: 29.08.2019

Pronounced on: 05.09.2019

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

Mrs. Nirmal Gupta (197503000), Age 62,
W/o Raj Kumar Gupta,
28, Chander Lok Enclave,
Pitampura, New Delhi.

...Applicant

(By Advocate: Sh. Yogesh Kumar Mahur)

Versus

1. Govt. of NCT of Delhi through
Chief Secretary,
New Secretariat, IP Estate,
New Delhi.
2. The Director of Education,
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat,
New Delhi-110 054.
3. The Principal,
Sarvodaya Vidyalaya,
Sharka Niketan,
Delhi – 110 034.
4. The Principal,
Govt. Girls Sr. Secondary School,
Anandvas, Delhi – 110 034. ...Respondents

(By Advocate: Mr. M.L. Chawla for Mrs. Harvinder Oberoi)

O R D E R

The applicant has filed the instant Original Application
under Section 19 of the Administrative Tribunals Act, 1985
seeking the following reliefs:-

“a). Quash and set aside the impugned order no.SV/SN/2299 dated 1-7-2016 issued by the respondents whereby the applicant has been subjected to recovery of LTC amount to the tune of Rs.59459/- on the pretext that the tickets have not been purchased by the applicant from the authorized agency.

b). To direct the respondents to fund an amount of Rs.59,459/-, recovered from applicant, along with interest @ 24% from the date of 05.08.2016 till the date of payment.

c). Quash and set aside the impugned order no.GGSSS/AVS/2018/4179 dated 21.7.2018 whereby the respondents have ordered recovery of penal interest of Rs.23,060/- on account of forfeiture of LTC amount which has already been recovered by the respondents.

d). Direct the respondents to grant all consequential benefits to the applicant.

e) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the applicant.

f). Cost of the proceedings be awarded in favour of the applicant and against the respondents.”

2. Brief facts of the case are that the applicant while working as TGT (English) in S.V. Sharda Niketan (1411124) had availed LTC for visiting Sikkim in the month of October, 2012 for the Block year 2010-13 for which she was sanctioned an amount of Rs.53,513/- as 90% advance on 28.09.2012 for purchasing the air tickets etc. The applicant travelled on 02.10.2012 and after return from the journey, she submitted the final bill of Rs.64,694/- for settlement/reimbursement. It is the case of the applicant that though her claim of LTC was Rs.64,694/-, but the bill

was finally settled at Rs.59,459/-, which was reimbursed to her after deduction of Rs.5235/-.

2.1 The applicant further submitted that to her utter surprise after 3-4 years of settlement of her LTC claim and even after her retirement on 31.05.2016, she received a Memorandum dated 01.07.2016 asking her to refund the entire claim of Rs.59459/- along with penal interest @ 2% over and above the prevailing GPF interest rate as per orders of the audit party within 30 days as the audit party, after audit found that while availing LTC claim for the Block Year 2010-13, the applicant purchased the tickets through private agency instead of authorized agency. Being aggrieved, the applicant submitted representations requesting the respondents to withdraw the aforesaid order of recovery, but when her request was not acceded to by the respondents, the applicant finally deposited the amount of Rs.59,459/- vide cheque No.44305 on 05.08.2016, but did not deposit the penal interest which was calculated at Rs.23060/-.

2.2 The applicant further submitted that after her retirement, she was re-employed and the respondents started recovering the penal interest of Rs.23.060/- vide order dated 21.07.2018 on account of forfeiture of LTC claim from her salary of May, 2018, which was ironically the last month of her tenure of re-employment.

2.3 To support her claim, applicant has taken certain grounds which are as follows:-

- i) Neither the applicant was aware of the rule pertaining to purchase of air tickets from authorized agents nor there was no communication whatsoever in any form with regard to purchase of air tickets from any authorized agent;
- ii) Similar nature of travel done by other employees with the same kind of purchase of tickets have been left out and the applicant along with others have been singled out;
- iii) It is illegal to recover the LTC amount with penal interest belatedly to say after 3-4 of performance of journey.

2.4 The applicant has also placed reliance on the following decisions of various judicial fora:-

- (i) **Govt. of NCT of Delhi and others vs. Shakuntala Devi** in Writ Petition (Civil) No.2079/2019 decided on 13.3.2019 by the Hon'ble Delhi High Court;
- (ii) Raj Kumar Nirala and others vs. the Director, NTTRD and another in OA 947/2018 decided on 22.8.2019 by this Tribunal;
- (iii) Surender Kumar vs. Commissioner of Police and others in OA 3835/2017 decided on 28.5.2018 by this Tribunal;

3. The respondents filed their counter reply opposing the claim of the applicant. They have submitted that during the

course of audit conducted by Directorate of Audit, GNCTD for the period 2012-13 to 2014-15, the Audit Party found irregularities in LTC claim of 11 employees of the said school including the applicant. The said Audit Party found that the air tickets were purchased by the applicant and other employees from private agency in an unauthorized manner. It was opined by the Audit Party that the applicant has wrongly been reimbursed the LTC bill amounting to Rs.59,459/- by the HOS of S.V. Sharda Niketan. Accordingly, the respondents issued letter dated 01.07.2016 to the applicant mentioning the decision of the Audit Party and asking her to refund the entire amount of LTC amounting to Rs.59,459/- along with 2% interest over and above the prevailing GPF interest rate. Since the applicant stood retired from service on 31.05.2016 and was re-employed, the aforesaid letter was also sent to the Principal, GGSSS, Anandwas for taking necessary action as directed by the Audit Party. The respondents further submitted that though the applicant deposited the amount of Rs.59,459/- but avoided to pay/deposit the penal interest, which was calculated at Rs.23,060/-. The respondents further submitted that all the sanctions and payments made by the Government department are subject to scrutiny by the Audit Department and the LTC claim of the applicant was also reimbursed to the applicant on the basis of her undertaking that in case of

any recovery raised due to non-fulfillment of norms, the same would be recovered from her salary.

3.1 The respondents further submitted that since during the course of audit conducted by the Audit Party for the period 2012-13 to 2014-15, the Audit Party found certain irregularities qua purchasing of air tickets, the claim of the applicant has been rejected and she has been subjected to deposit the entire amount of LTC amount along with penal interest. It is also pertinent to mention here that the applicant was fully aware of the rules pertaining to purchase of the air ticket while availing LTC. Had she not been aware, she would not have deposited the entire amount of LTC. The respondents have also submitted that the as applicant has admitted her fault/irregularity committed by her while purchasing the air tickets from unauthorized agent, now she cannot escape from the liability of paying penal interest.

4. Heard Sh. Yogesh Kumar Mahur, learned counsel for the applicant and Sh. M.L. Chawla for Mrs. Harvinder Oberoi, learned counsel for the respondents.

5. Insofar as Reliefs (a) and (b) are concerned, the same have become infructuous since the applicant has herself deposited the entire LTC amount of Rs.59,459/- as per the Audit Report conveyed to her by the respondents vide order dated 01.07.2016 which amounts to admission on part of the applicant. Therefore, she cannot now seek a direction from

this Tribunal to the respondents for releasing the said amount in her favour as the tickets were admittedly purchased from unauthorized agent and the said act is against the rules in this regard. Be that as it may, she deposited the LTC amount on receipt of Audit objection, hence, once having refunded the amount, nothing remains to be decided on this matter.

6. Now the sole question remains to be adjudicated upon is whether the applicant is liable to pay the penal interest after forfeiture of the LTC claim, which has been calculated at Rs.23,060/-?

7. In this regard, it is noticed that the applicant has taken LTC advance to the tune of Rs.53,513/- (being 90% of the total claim) on 28.09.2012 for purchasing air tickets and thereafter her LTC claim was settled at Rs.59,459/-. However, when an objection was raised by the Audit Party that the air tickets purchased by the applicant were found to be purchased from unauthorized agent, the applicant had refunded/deposited the said alleged amount on 05.08.2016. Hence, it is clear that the applicant has not utilized/refunded the portion of advance within the stipulated time and this act of the applicant is clearly violative of LTC Rules, relevant part of which reads as under:-

“Claim.- 1. When advance is taken, (a) the claim should be submitted within one month from the date of return journey. If not, outstanding advance will be recovered in one lumpsum and the claim will be treated as one where

no advance is sanctioned. Further, penal interest at 2% over GPF interest on the entire advance from the date of drawl to the date of recovery will be charged. “

8. From the above rule position, it is amply clear that the respondents have rightly levied penal interest on the applicant as per the rules treating the amount of LTC advance having not been utilized as the applicant purchased air tickets from unauthorized agent and refunded the said amount only on 05.08.2016 i.e. after nearly four years from the date of drawl of LTC advance. Hence, the demand of interest as ordered by the respondents vide order 21.7.2018 is per the provisions of the Rules and cannot be called as a recovery being asked for by the respondents. In terms of the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih and others***, 2015 (4) SCC 334, the issue clearly pertains to the amount disbursed by the Government before retirement of Group 'C' and Group 'D' on account of hardship which may be caused to them, if recovery was on account of payments made many years ago by the employer without any request of the employee. The call for payment of interest does not come in the category covered by the judgment of Apex Court in ***Rafiq Masih*** (supra) is not applicable to the facts of this case and hence, no relief can be given on that basis

9. So far as reliance placed by the applicant on the aforesaid decisions is concerned, we have perused the same and found that the same are not helpful to the applicant being distinguishable on facts as the applicant in this case

has already accepted the demand of the respondents to refund the advance taken by her towards LTC and hence, this point is now not open to adjudication.

10. In view of the above facts and circumstances of the case and for the foregoing reasons, we do not find any merit in this OA and the same is accordingly dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

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