

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 33 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Sanjukta Das, aged about 63 years, W/o Late Balakrushna Parida, At-Plot No. 1107-D, Sector-7, CDA, Cuttack-14 was serving as Superintendent in the Office of Deputy Commissioner, Central Excise, Customs and Service Tax, Cuttack Division, Cuttack.

.....Applicant

VERSUS

1. Union of India, represented through the Chief Commissioner, Central Excise & Service Tax, L.R.Building, Rajaswa Bihar, Bhubaneswar, Dist.-Khurda.
2. Deputy Commissioner, Central Excise, Customs and Service Tax, Cuttack (C.X Division), Sector-6, Plot No.5(P), Abhinaba Bidanasi, Cuttack-14.

.....Respondents.

For the applicant : Mr.A.K.Mohanty, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 6.9.2019

Order on : 30.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

By filing this OA, the applicant seeks the following reliefs:-

- “(i) The OA be admitted, respondents be issued notice, after given opportunity of hearing all the parties the OA be allowed and the impugned order of Deputy Commissioner (Respondent No.2) dated 1.10.2014 under Annexure A/5 unilateral recovery of LTC benefit from unpaid unutilized leave salary dated 20.11.2014 under Annexure A/7 and rejection of Respondents of the applicant (Annexure A/10) be quashed. The respondent be directed to release the LTC benefit which was illegally recovered or as an alternate release the medical allowance with interest.
 - (ii) And this Hon'ble Tribunal be pleased to pass any other order/orders, direction/directions as would be deem fit and proper.”
2. The applicant's case in brief is that while she was working as Superintendent under the respondents, she proceeded to Mumbai accompanying her husband for treatment as he was suffering from cancer. It is stated in the OA that the doctor while referring her husband's case for treatment in Tata Memorial Hospital in Mumbai, recommended one or two escorts to go with the patient. The applicant applied for availing the LTC and requested for advance. It is stated that her application was duly verified by the office and an amount of Rs. 19070/- was sanctioned by the competent authority towards the leave encashment. It is stated that the condition of the patient was so critical that he had to be shifted to Mumbai by Indigo airlines on 9.10.2013. On completion of journey, the applicant submitted the LTC bills on 6.11.2013. She retired from service on 30.6.2014. It is further stated in the OA

that when she approached the respondent no. 2 due to delay in release of retirement benefits, she was misbehaved and then she submitted a representation dated 26.8.2014 (Annexure-A/4) for release of her retirement dues.

3. Thereafter, the applicant then was served with a show cause notice dated 1.10.2014 (Annexure-A/5) for availing the LTC fraudulently and it is stated that the amount of Rs. 64894/- sanctioned to her for LTC was recovered from her retirement dues vide order dated 20.11.2014 (Annexure-A/7) without giving any opportunity of hearing to her. The applicant had submitted a representation dated 21.4.2015 (Annexure-A/9) with reminders dated 24.2.2016, 10.6.2016 and 4.7.2016, to consider her case sympathetically by sanctioning her journey as per the Medical Attendance Rules in case the LTC claim is not allowed. It is stated that no action was taken on such representations. When the applicant moved through the mechanism of the CPGRAMS website, the matter was considered and vide order dated 1.12.2016 (Annexure-A/10), the said request of the applicant was rejected.

4. The counter filed by the respondents stated that the applicant did not avail the following LTCs as entered in the Service Book of the applicant :

- i) One LTC to Jammu & Kashmir for the Block Year 2010-11;
- ii) Home Town LTC for the Block Year 2012-13;
- iii) All India LTC to Mumbai for the Block Year 2010-13.

It is stated that as per the LTC rule she was entitled to avail two Home Town LTCs or one Home Town LTC and one All India LTC during a Block Year. Since during the Block Year 2010-13, the applicant had availed two Home Town LTCs, she was not entitled to avail one more LTC during the same Block Year from 9.10.2013 to 1.11.2013 along with leave encashment for 10 days. It is stated that the applicant was given an opportunity to explain why due to fraudulent/wrong availing of All India LTC, the amount paid will not be recovered from her. It is further stated that payment of wrong LTC claim was due to clerical error on the part of the Administration Section since one of the two LTCs availed by the applicant had not been entered in the Service Book of the applicant inadvertently, for which 3rd LTC was allowed and 10 days' leave encashment of Rs.19,070/- was sanctioned in favour of the applicant. It is further stated in the counter that for all TA/LTC claim by Government employees, primary responsibility lies on the employee concerned and the applicant should have ensured that no extra LTC was availed by her. The authority had sanctioned LTC on account of the error as pointed out. It is further stated that the amount of Rs.64,894/- paid to her towards inadmissible LTC claim during 2010-11 was recovered from her unutilized leave salary since

it was a fraudulent claim. Regarding the request for TA under the medical attendance rule, it is stated that for availing the treatment facility outside the place of work, no TA/DA is admissible and if the treatment facility is not available in the station where she is working, then the sanction of TA as per rule is permissible. It is further mentioned that in the instant case, the applicant has taken her husband to a private medical practitioner and got referral made for treatment at Tata Memorial Hospital, Mumbai. As per the medical attendance rule, leave is granted if such treatment facility does not exist in Orissa. It is stated that for treatment of cancer there are number of facilities available at Orissa. But the applicant chose to shift her husband to Tata memorial Hospital, Mumbai out of her own choice. It was therefore contended that the TA for medical attendance cannot be considered in favour of the applicant.

5. Rejoinder has been filed by the applicant reiterating the contentions in the OA that the respondents allowed her to avail the LTC after due verification of the records. It is stated that as per the letter at Annexure A/9 series journey for LTC by airlines other than Air India was allowed with the approval of Ministry of Civil Aviation for her travel in airlines other than Air India. It is further stated that the respondents have admitted the clerical error and the mistake was also on the part of the Administration Section for which the LTC benefit availed by the applicant cannot be attributed to the applicant. It is necessary for the competent authority to have verified the eligibility before sanctioning the same. It is further mentioned that there is no rule to recover any amount from unutilized leave encashment bill from a pensioner and it is also averred that the applicant has not fraudulently availed the LTC and she has availed only after proper sanction. It is further stated that Asst. Commissioner was vindictive and created the problem for which the applicant has to filed the OA.

6. Heard learned counsel for the applicant and the respondents. The applicant's counsel besides reiterating the points, has cited the following judgments in support of the claims :-

- i) Aswin Kumar Das -vs- The Chief Executive Officer, NESCO Ltd. & Another [114 (2012) CLT 365]
- ii) State of Punjab & Others etc. -vs- Rafiq Masih (White Washer) etc. [AIR 2015 SC 696]

7. In the case of Aswin Kumar Das (supra), the dispute related to recovery of excess payment from the retired employees on account of commutation of pension which was committed by the authorities due to erroneous interpretation by the respondents. It is stated as under :

"13. Similar question arose in the case of SYED ABDUL QUDIR & Ors. -vs- State of Bihar Commissioner(2000) 3 SCC 475 wherein the Supreme Court in

very clear terms laid down that in catena of decisions the Supreme Court has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, & (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation or rule/order, which is subsequently found to be erroneous. The Supreme Court further clarified that the relief against recovery is granted by Courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. However, it is further ruled by the Supreme Court that if it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, Courts may, on the facts & circumstances of a particular case, order for recovery of the amount paid in excess."

8. The applicant's counsel has also cited the judgment of Hon'ble Supreme court in the case of Rafiq Masih (supra), in which the dispute was regarding recovery of excess payment which was made to the applicant due to a mistake on the part of the Administration and the employees were not guilty of furnishing any document which led to the mistake committed by the authorities. It was also not on account of misrepresentation on the part of the employees concerned. In such a situation, it was held by Hon'ble Apex Court as under :

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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."

9. Applying the ratio of the judgment in Rafiq Masih case in the present OA, it is seen that the applicant has applied for availing the LTC for the Block Year 2010-13 when she had already availed LTC twice and the 3rd LTC was not admissible as per the rules. In the case of Rafiq Masih the employees did not submit any claim or submission by virtue of which excess payment was made

due to the mistake committed by the authorities. It was an erroneous decision on the part of the authorities which led to the excess payment and the employee was not connected with such error. Hence, the present OA is factually distinguishable, since excess payment in this OA was on account of submission of the LTC claim application of the applicant who cannot take a stand that she was not responsible at all for the mistake committed by the authorities in wrongly allowing the LTC claim/bill of the applicant. The order of Ministry of Civil Aviation at Annexure A/9 series by which the approval to the applicant to travel by private airlines was accorded does not condone the wrongful claim of LTC which could not be detected by the respondents while sanctioning the said LTC claim.

10. The cited judgment in the case of Aswin Kumar Das (supra) as discussed in para 7 above relates to the case in which excess payment was made due to erroneous interpretation by the authorities and the employees did not have any role in such interpretation. As explained above in this case, the applicant had submitted the LTC claim and she cannot take the stand that she had no role in submission of her LTC claim. Her contention that the respondents have approved the LTC claim for which, the applicant does not have the responsibility, is not acceptable. On the other hand, the respondents' contention that the applicant had fraudulently submitted the LTC claim is not supported by the facts on record, since there is no evidence on record to show that the applicant knowingly furnished wrong claim to commit a fraud.

11. In the circumstances, I am of the view that for wrong payment of LTC both the applicant as well as the Administration are responsible. The respondents cannot take the plea that the full responsibility is on the applicant since the failure to detect the wrong claim was due to the fact that one LTC was not entered in the Service Book of the applicant, which was on the part of the administration a lapse. Further, previous LTC details could have been verified from other records with the respondents, since all the LTCs availed by the applicant are required to be sanctioned and the orders should be available with the respondents. Hence, the respondents cannot take a stand that the applicant was fully responsible for such mistake or error as has happened in this case.

12. For the reasons mentioned above, I am of the view that the applicant is responsible to the extent of 50% of the amount in question i.e. Rs.64,894/- and rest 50% of the loss is to be recovered from the employees in the Administration Section who would be found responsible for wrong sanction of the said LTC claim and the respondents will be at liberty to recover 50% of Rs.64,894/- from the persons responsible for such wrong payment to the applicant. Accordingly the applicant is entitled for refund of 50% of the amount in question i.e. Rs.64,894/- and such amount be refunded to the applicant by

the respondents within a period of two months from the date of receipt of the copy of this order, failing which, the interest at the rate of 9% per annum would also be payable to the applicant from the date of this order. The OA stands partly allowed as above with no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

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