

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No.O.A.889 of 2015

Date of order: 25.02.2016

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

1. SULAY DAS
2. UTTAM DAS
3. ASHIM BASU
4. AMITAVA CHAKRABORTY

VS.

UNION OF INDIA & OTHERS
(O.F.B.)

For the applicants : Mr. N.P. Biswas, counsel

For the respondents : Mr. B.P. Manna, counsel

ORDER

This application has been filed seeking the following reliefs:-

"i) An order/direction may be issued to cancel, withdraw and/or rescind the impugned order No.410/23/LTC dated 11.05.2015, issued by the AWM, For G.M., R.F.I. to each of the applicants No.1,2&4, rejecting the representations submitted by the applicants and directing recovery of entire amount of LTC advances paid to the applicants and as contained at Annexure A/8 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, R.F.I to applicant No.3, rejecting the representations submitted by the applicant and directing recovery of entire amount of LTC advances paid to the applicant and as contained at Annexure-A/8 to this application;

iii) To issue direction and/or directions to each of the respondents, their agents or subordinates not to make any recovery against the advances of LTC paid to the applicants till the final claims are admitted;

iv) An order/direction may be issued to the respondent authorities and each of them, their agents and /or subordinates to forthwith to make reimbursement of LTC to the extent of actual fare paid.

v) To direct the respondents to forthwith refund the recoveries already made from the pay/wage bills of the applicants;

vi) To issue an ad interim order in terms of the prayers made in the paragraph 9 herein under;

vii) To permit the applicants to file this application jointly under the provisions of sub-rule (5)(a) of Rule 4 of the Central Administrative Tribunal(Procedure) Rules, 1987;

viii) Costs pertaining to this application.

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

2. The points for consideration of the matter would be as under:-

The applicants planned to visit Port Blair with family during the period from 22.12.2014 to 01.01.2015 against their entitlement of L.T.C. for the relevant block and accordingly booked air tickets of Jet Airways on 26.01.2014 and 05.02.2014 to ensure that the cost of air journey was low and nearer to the fare of ship in First/A Cabin Class as per their entitlement corresponding to their respective Grade Pay of Rs.4200/4600. D.O.P& T issued O.M. dated 26.09.2014 granting special dispensation and permitting non-entitled employees to travel by air in Air India in Economy Class at LTC-80 rate or less while visiting A&N on LTC. The applicants applied for sanction of leave to avail LTC and payment of advances. Necessary factory orders were also issued granting sanctions on 10.11.2014, 11.11.2014 and 13.11.2014 respectively. The applicants obtained relaxation from Ministry of Civil Aviation for journey by private airlines as per existing instructions due to non-availability of seats in Air India flights during the proposed journey period. After return from Port Blair they submitted the final claims. The applicants would be aggrieved as the respondents refused to regularize the LTC claim as communicated on 24.03.2015 by way of a communication on behalf of the General Manager which is extracted verbatim hereunder below for clarity:-

"This is to inform you that you have availed LTC from 22.12.2014 to 01.01.2015 with Leave Encashment for 10 days vide your application dtd. 07.11.2014.

02. You have been given an advance of Rs.27530/-(Twenty Seven thousand Five hundred Thirty only)

03. Thereafter, you have submitted final LTC claim on 06.02.2015.

04. Your submission has been examined and following has been observed:-

- a) You have purchased the air tickets from Jet Airways on 26.01.2014. This is much earlier to your application for LTC dtd. 07.11.2014. Hence, your purchase of air tickets and application for LTC are two different incidents having no relationship with each other.
- b) You have approached Ministry of Civil Aviation on your own without routing it through proper channel. This is again a violation of service conduct rules. It is also not clear whether you have brought out all the facts in your letter to Ministry of Civil Aviation.
- c) Your attention is drawn to a paragraph of O.M.No.AV/18011/05/2012-AI dtd. 27/09/2013. The paragraph is reproduced below:-
 "Those seeking relaxation on ground of Non-Availability of Seats (NAS) must enclose NAS Certificate/Endorsement from AI Office/Govt. authorized travel agents-M/s. Balmer Lawrie & Co., Ashok Travels & Tours and IRCTC (to the extent IRCTC is authorized as per DOP&T OM No.31011/6/2002-Estt.(A) dtd.02/12/2009)/ a copy of the website of AI i.e airindia.in."
- d) You have not submitted any such NAS from the appropriate authority/agency.
- e) You have to purchase ticket from Air India under LTC-80 scheme or otherwise to obtain relaxation from Ministry of Civil Aviation on NAS.

05. You may also know that NAS is to be obtained on the date of purchase of the tickets for LTC which has been duly approved by your LTC approving authority.

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In view of above, your claim is not admissible and the entire advance amount paid to you will be recovered with penal interest as per Govt. rules."

Repeated representations of the applicants against the order of recovery remained futile.

They sent legal notices requesting not to effect any recovery. The respondents have already realized 50% of the advances by making recovery from the Pay/Wage Bill of May, 2015.

3. Ld. counsel for the applicants would strenuously urge that in terms of CCS(LTC) Rules, 1988, and the instructions issued by the Office of the Controller and Auditor General of India, LTC could be availed in private airlines and basic criteria for selection of private airlines i.e. airlines other than Indian Airlines/Air India, would be "better and more competitive prices being offered by other airlines" and "officers in order to get the benefits of discounted fares should try to make their bookings in advance to the extent possible" and therefore, there was no logic in depriving the LTC claim of the present applicants for having availed of LTC through private airlines. The Id. counsel would press the O.M. issued by the DOP&T on 11.03.2010 clarifying that the restriction of travel by Air India only did not apply to non-entitled officers who travelled by air and claimed LTC reimbursement of entitled class of rail/ship. The Id. counsel also pressed Annexure A-4 to the O.A. communicating the ex-post facto approval of the Ministry of Civil Aviation to the proposed air journey undertaken/to be undertaken for LTC by airlines other than Air India, in regard to the applicants.

4. Per contra, the Id. counsel for the respondents would vociferously argue that in terms of DOP&T's O.M. dated 26.09.2014, the applicants could travel only by Air India in Economy Class at LTC-80 fare or less and, therefore, the respondents were justified in disallowing the claim of the applicants. However, they admitted as follows:-

It is mentioned that Ministry of Civil Aviation vide OM dated 19.12.2014 permitted Government officials to travel by an Airline other than Air India w.e.f. 19.12.14 only for the purpose of LTC block year ending on 31.12.14 and only in cases of Non-Availability of required number of seats on Air India for onward journey till 31.12.2014 and also subject to the condition that the fare charged by any private airline, which is over and above the LTC 80 fare for the sector, shall be borne by the concerned Government official and also subject to the condition that purchase of tickets is done in accordance with the instructions issued by Min. of Finance from time to time.

5. The respondents have also contended that the air tickets being purchased long before commencement of journey by the applicants, was on their own volition which have nothing to do with their date of application for LTC. They have further contended that it was not acceptable that Air India ticket for 22.12.2014 at LTC 80 fare or less was not available in the

month for January/February, 2014. Hence, Civil Aviation circular dated 19.12.2014 was not applicable to them. They have alleged that the applicants took a calculated chance when DOP&T issued its order on 26.09.2014 because out of total 3500 employees, only four have come with such queer claim.

6. The counsels were heard and the materials on record, perused.

7. The basic contention of the respondents could be noted that the applicants were to obtain a certificate of non-availability of seats in Air India before the purchase of tickets from private airlines and the applicants had to purchase air tickets in order to gain advantage of relaxation of concession granted by DOP&T in its O.M. dated 26.09.2014, after the said date.

8. It would be useful to quote some observations of the Hon'ble High Court of Punjab & Haryana at Chandigarh dated 18.04.2006 in case of **Union of India & Others vs. S.S. Bawa & Another, CWP 4490 C.A.T. of 2006**

"6. In modern times and circumstances, thinking of good management has undergone a big change. It is now accepted that for getting optimum output from employees, the management must send them on leave, periodically. In advanced countries, like USA etc., not only employees are encouraged to proceed on leave, but their leave period is financed by the Management on the plea that a relaxed employee, in a healthy state of mind, would be more useful than an over-burdened person. Leave Travel Concessions were thought of and enforced by Govt. of India with these objects in mind. However, one is only surprised when such parochial thinking, belonging to the 19th Century,

is still persisted even in 21st

Century by saying that

the decision taken by Govt. of India on the mode of travel or entitlement of persons shall not be applicable merely because journey was not undertaken by the employee through Indian Airlines or some other national carrier but were undertaken through private airlines which may, otherwise, provide better travel services and on cheaper rates as compared to the national airlines.

We are conscious of the scope of judicial :10:

intervention when policy decisions are made subject of challenge by a litigant before a Court of law. Yet, the Courts would not hesitate and, in fact, would feel compelled to interfere when such policy decision are shown to be not only perverse and arbitrary but also without any rational basis and without any nexus with the object to be achieved, which in this case relates to the Leave Travel Concession and claim put up by a senior officer, like the applicant, after actual availing of the leave granted to him and having visited the places alongwith his family members as per the plan approved. We, thus, declare Clause 3 of Annexure R-2 as illegal. We also declare the portion of Annexure A-6 as illegal which denies the applicant reimbursement as per his entitlement to the rail fare, only on the ground that he had undertaken the journey by a private airline. Clause 3 of Annexure R-2 and Annexure A-6 are hereby quashed and set aside. We hope and expect that Govt. of India will taken note of this order and take steps for doing away with the restriction as given in Clause 3 of Annexure R-2 in OM dated 28.4.1995.

7. We hereby further declare that action of respondents in denying the LTC claim to the applicant as per his entitlement to the rail fare of :11:

the entitled class, and wherever rail connection was not available, through established permissible modes of his entitlement, as illegal, further holding recovery made from the applicant of the entire amount, given to him in advance, as illegal. We hold him entitled

to payment of LTC claim under the LTC rules, read with Govt. of India decisions applicable to him subject to our above

observations and findings. Respondents are directed to reconsider the case of the applicant for reimbursement of his claim of LTC for journey performed by him along with his family members which could have been done by respondents earlier also by application of Rule 18 of the Central LTC Rules, 1988.

8. Respondents shall comply with the above orders within a period of two months from the date of receipt of a copy of this order by making payment to the applicant of the amounts to which he is found entitled to."

We are of the opinion that Clause (3) of Circular (Annexure R-2), even if it was relevant at that time when India had a closed economy, has clearly lost its significance with the new policy of liberalization, globalization and privatization. Clause (3) would, in the present circumstances, would have no nexus with any object to achieve. Once it is accepted that private airlines are offering same quality of service, if not better service than the National :12:

Airlines and at more competitive fares, there would be no rationale in limiting the air travel of the employees to national carriers. In our opinion, such a Clause would be clearly violative of Article 14 of the *Constitution* of India. There is an additional reason which would tend to show that Clause 3 is not only unreasonable, but also arbitrary. The purpose of granting LTC is to facilitate an employee to travel throughout India on established modes of travel. Certain maximum limits which are permissible under the Rules have been prescribed. Even in case of non-availability of travel by Rail and non-availability of the travel facility by a National Carrier, an employee cannot be forbidden to travel by any other alternative mode of travel. Adopting such an interpretation would negate the very purpose of the rules as in case of non-availability of rail travel and non-availability of national air carrier, the employee would not be entitled to the benefit of LTC at all. Clause 3 would, therefore, in our opinion, defeat the very object underlying the LTC Rules. In our opinion, restricting of the LTC to the maximum permissible limits under the category to which the employee belongs, would ensure that there is no misuse of the LTC.

Therefore, there is no justification in inserting Clause 3 restricting the Air Travel only to National Carrier.

We are also of the opinion that the petitioners-Union of India have illegally rejected the claim of respondent no.1 for relaxation. The applicant- respondent no.1 had been directed to furnish a certificate from the Indian Airlines about the non-availability of the ticket during the relevant period.

He had submitted such a certificate. Even then, the authorities did not find it fit to relax the rule. In our opinion, the authorities had failed to exercise the jurisdiction which has been vested in them to remove hardship in a :13:

particular case. We may now notice that the Tribunal has issued a direction to the respondents to re-consider the claim of the applicant-respondent no.1 under the relevant rules. Learned counsel for the petitioners has, however, submitted that this direction cannot be complied with as the applicant- respondent no.1 would not be entitled to any reimbursement. This submission is without any merit. Admittedly, respondent no.1 and his family had travelled on LTC approved and granted to him. He had been granted Rs.44,000/- as advance for meeting the travel expenses. The advance was to be adjusted in lump sum from the LTC bill of the Officer.

The entire expenses for travel had been assessed at Rs.49,350/-. The claim was rejected and an amount of Rs.45,000/- was recovered from him, when he submitted the final bill. Therefore, it can be said that the Officer was not "entitled" to any reimbursement. In view of the opinion expressed by us, we direct the respondents to comply with the order of the Tribunal without any further delay.

Consequently, the writ petition fails and the same is dismissed."

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9. Inarguably, the applicants had purchased the tickets long before the concession was granted by DOP&T and no certificate of non-availability was there. Yet, it is also a fact that C.A.G. allowed journey by availing LTC in private airlines on the ground that more competitive prices were offered by other airlines. Further, it could be noted that in the present case, ex-post facto sanction was already obtained from the Ministry of Civil Aviation in regard to travel by airlines other than Air India. Therefore, there was no occasion for the General Manager to take a view contrary to such sanction. Once the ex-post facto sanction was obtained from the Ministry of Civil Aviation, that had to be followed by the department unless the department got it changed or modified by referring the matter to the Ministry of Civil Aviation appropriately.

10. Accordingly I do not find justification in denying the LTC claim of the applicants. I would, therefore, direct the respondents to refund the recovered amount to the applicants within two months from the date of communication of this order.

11. The O.A. is accordingly disposed of. No cost.

(Bidisha Banerjee)
Judicial Member

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