

10
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1920/2003
WITH
O.A. NO.1273/2003

New Delhi, this the 29th day of January, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

O.A. NO.1920/2003

1. Shri Naresh Kumar, T.No.2613, V.M.(A.F.V.),
S/o Babu Ram, aged 47 years,
R/o CL-78, Pallavpuram-I, Meerut.
2. Shri Dharam Pal Singh, T.No.2561, V.M.(A.F.V.),
S/o Chhaga Ram, aged 50 years,
R/o K-1183, Shastri Nagar, Meerut.
3. Shri B.D.Sharma, T.No.2543, V.M.(A.F.V.),
S/o Late Shri R.D.Sharma, aged 57 years,
R/o Nai Basti Anoop Nagar, Fazalpur, Meerut.
4. Shri Dhirendra Kumar, T.No.2623, V.M.
S/o Ghosi Ram, aged 47 years,
R/o H.No.3, Sofipur, Gol Bhatta, Meerut.
5. Shri Mukund Lal Sharma, T.No.2531, V.M.(A.F.V.),
S/o Khacheru Dutt, aged 58 years,
R/o H.No.57, Shiv Hari Mandir Colony, Meerut.
6. Shri Rameshwar Dayal, T.No.1515, PTR,
S/o Tulsi Ram, aged 60 years,
R/o 179, Chhoti Durga Bari, Arvindpur, Meerut.
7. Shri Madan Lal Sharma, T.No.2820, V.M.(A.F.V.),
S/o Daya Ram Sharma, aged 43 years,
R/o H.No.250, Sadanpuri, Kankerkhera, Meerut.
8. Shri Mahesh Chand Sharma, T.No.2550, V.M.(A.F.V.),
(Now CM IIO) S/o Laxmi Narayain, aged 45 years,
R/o L-1833, Shastri Nagar, Meerut.
9. Shri Bijendra Kumar, T.No.2603, V.M.(A.F.V.),
S/o Lakhpur Rai, aged 47 years,
R/o Village & Post Bahadur Pur, Distt.Meerut.
10. Shri Bhanwar Singh, T.No.2755, V.M.(A.F.V.),
S/o Shri Raja Ram, aged 58 years,
R/o Village Thimjharpur, P.O.Pilona, Distt.Meerut.
11. Shri R.S.Chauhan, T.No.2587, V.M.(A.F.V.),
S/o Shri Karan Singh, aged 47 years,
R/o Village Palhera, Modipuram, Meeurt.
12. Shri R.B.Anand, T.No.2606, V.M.(A.F.V.),
S/o Late Shri Durga Prasad, aged 47 years,
R/o 483/4D-8, New Govindpuri, Kankerkhera, Meerut.
13. Shri Balarak Sain, T.No.2619 V.M.(A.F.V.),
S/o Late Shri D.D.Sain, aged 49 years,
R/o CL-1254, Phase-I, Pallavpuram, Meerut.

14. Shri Mool Chand, T.No.1823, (Mecht),
S/o Basant Ram,
R/o 152, Topkhana Bazar, Meerut.
15. Shri Rajendra Prakash, T.No.2442, T/M,
S/o Shri Kharak Singh, aged 55 years,
R/o Village & Post Saifpur, Distt. Meerut.
16. Shri Din Dayal, T.No.67, Welder, (Now CM-II
A.No.4135),
S/o Shri Harbans Lal, aged 58 years,
R/o 371/6-I, New Govindpuri, Kanker Khera, Meerut.
17. Shri Kanti Prakash, T.No.2795, V.M. (A.F.V.),
S/o Shri Radhuwar Saran Sharma, aged 46 years,
R/o H.No.1098, Master Colony, Brahmpur, Meerut.

... Applicants.

(By Advocate: Shri V.P.S.Tyagi)

Vs.

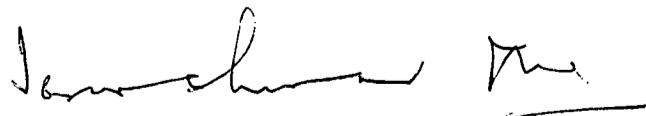
1. Union of India (Through Secretary),
Ministry of Defence, South Block,
New Delhi.
2. The Director General, EME (Civ.)
MGOS Branch, Army HQRs.,
DHQ PO New Delhi.
3. The Controller of Defence Accounts (Army),
Balvedier Complex,
Meerut Cantt.,
4. The Commandant,
510 Army Base Workshop,
Meerut Cantt.

... Respondents.

(By advocate: Shri K.R.Sachdeva)

O.A.No.1273/2003

1. Shri Onkar Singh, VM (AFV) T.No.2500,
S/o Sh. Ujagar Singh, Aged about 49 years,
R/o 39 Sainik Colony, Quasin Pur,
Meerut Cantt.
2. Shri Gurdev Singh, MCM, T.No.272,
S/o Sh. Sohan Singh, aged 60 years
R/o H.No.50, Subhash Puri,
Kanker Khera, Meerut Cantt.
3. Shri Sarbachan Singh, MCM, T.No.1064,
S/o Sh. Randhir Singh, aged 59 years
R/o Village & Post Dabathua, Meerut.
4. Shri K.P. Sharma, VM (AFV) T.No.2612,
S/o Sh. Baljit Sharma, aged 42 years
R/o Village Dabana, P.O. Didoli,
Distt. Ghaziabad.



5. Shri J.S. Heera, CML,
S/o Sh. Surinder Singh Heera, aged 44 years
R/o 19, EME Colony, Sardhana Road,
Meerut.
6. Shri Mahender Pal, MCM, T.No. 2665,
S/o Sh. Niwas, aged 46 years
R/o Village & P.O. Motra, Ghaziabad.
7. Shri Vatan Singh, CM-II, T.No. 2553,
S/o Sh. Mangat Singh, aged 59 years
R/o H.No.115, Ram Nagar,
Kanker Khera, Meerut.
8. Shri Rakesh Sharma, VM T.No. 2751,
S/o Sh.C.D. Sharma, aged 44 years
R/o Village & P.O. Chindauri, Meerut
9. Shri J.C. Sharma, TCM. T.No. 3255,
S/o Sh. Bhagirath Sharma, aged 57 years,
R/o Vill & P.O. Arnawali, Meerut.
10. Shri Tej Ram, V.M., T.No. 2681,
S/o Sh. Raja Ram, aged 42 years
R/o Village & P.O. Mandera, Meerut.
11. Shri Dharam Chand, VM (AFV), T.No. 3436,
S/o Sh. Bhichha Ram, aged 57 years,
R/o 150 'A' Subhash Puri
Kanker Khera, Meerut Cantt. Applicants

(By Advocate: Shri V.P.S.Tyagi)

Versus

1. Union of India (Through Secretary),
Ministry of Defence, South Block,
New Delhi.
2. The Director General, EME (Civ.)
MGOS Branch, Army HQRs.,
DHQ PO New Delhi.
3. The Controller General of Defence
Accounts West Block V, R.K.Puram
New Delhi.
4. The Controller of Defence Accounts (Army),
Balvedier Complex,
Meerut Cantt.,
5. The Commandant,
510 Army Base Workshop,
Meerut Cantt. Respondents.

(By advocate: Shri K.R.Sachdeva)

O R D E R (ORAL)

Heard.



2. As the applicants in the above two OAs have identical cause of action and have prayed for similar relief, these are being disposed of by this common order.

3. At the very outset, the learned counsel for the respondents raised the question of limitation, as these were filed only in May/August, 2003, whereas the orders against which the applicants have filed these OAs had been passed by the respondents in February/March/April, 2001. The learned counsel for the applicant, however, submitted that the applicants had filed representations in the matter with the respondents in January/February, 2002 itself and the same have not been disposed of by the respondents, resulting in filing of the present OAs. In other words, the learned counsel for the respondents has sought to argue that the respondents had not disposed of the representations as submitted to them in the matter till the OAs were filed with the Tribunal. The learned counsel for the respondents has referred to the provisions under Section 21 of the Administrative Tribunals Act, 1985 to submit his contention that these applications have not been made within the period prescribed under the said Section of the Act. It is observed that provisions under Section 21 (b) permit filing of an application within one year from the date of expiry of the period of six months since an appeal or representation has been submitted to the respondents/authorities concerned. It is observed from the submissions of the learned counsel for the applicants that they had filed representations to the respondents in January/February, 2002 and the OAs in May/August, 2003 and the Original Applications thus filed



were quite within the period provided for the purpose. Reference by the learned counsel for the respondents to the decisions of the Hon'ble Supreme Court in S.S. Rathore Vs. State of Madhya Pradesh as given on the 6th September, 1989 is also not considered to be relevant particularly when it is observed that one of the observations made by the Hon'ble Apex Court was as under:

"In every such case until the appeal or representation provided by a law is disposed of, accrual of the cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made."

4. The above observation read with the provisions under Section 21 (b) of the Administrative Tribunals Act, 1985 make it clear that the applicants have filed their Original Applications within the time permissible. A reference by the learned counsel for the respondents to the decisions of this Tribunal (Principal Bench) and also of the Chandigarh Bench in OA Nos. 2370, 2372 of 1998 with other OAs and in OA Nos. 274/CH/2002 and 362/CH/2000 respectively is not appreciated as the decisions of the Tribunal in the said OAs, instead, hold that the benefit is to be given only from the date of filing application which is in the context of extending the benefit and not in the context of filing the OA as such. Similarly, as held by the Chandigarh Bench of the Tribunal, denying similar benefit to others is discriminatory.

5. The learned counsel for the applicant has submitted that the cases of the applicants are squarely



covered under the orders of this Tribunal given in OA 2327/2002 and, therefore, has prayed that the benefits as given in the said OA may be extended to the applicants in the instant cases also. Having considered the submissions of the two learned counsel and also keeping in view the observations as made above, I do not find these OAs as time barred.

6. The above OAs have been filed against the impugned orders of the respondents issued on different dates in February/March/April, 2001 (Annexure A-1) whereby the LTC claims filed by the applicants for the block year 1990-1993 had been found to be forged/fraudulent and whereby different amounts have been ordered to be recovered from them.

7. The facts of the matter, briefly, are that the applicants are serving as Defence civilians in different Industrial Trades in the Organisation of respondent No.4 (The Commandant, 510 Army Base Workshop, Meerut Cantt) under the control of respondent No.2 in the Ministry of Defence. They availed themselves of LTC facility for the four year block 1990-1993 which had been extended upto 1997-98 for visiting the declared places in charted bus. On completion of visits, they submitted their reimbursement claims individually for the amounts as detailed under paragraph 4.2 of the OAs. As proof of the journey having been performed, they submitted cash receipts issued by the approved State Tourism Development Corporation after verifying the claims and their genuineness. The respondent No.3 passed the claims and

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made the payment during the year 1997-1998 and thus the claims were finally settled in the same year. However, after a lapse of 4-5 years, after settlement of the claims, the applicants were asked to refund the amounts as already paid to them. Their grievance is that their already settled and paid claims have been ordered to be recovered without putting them to notice and without affording them any opportunity of prior hearing. They have also complained that they have not been provided with a copy of the information received from CDA (Army), Meerut Cantt (Respondent No.3) on the basis of which respondent No.4 issued the impugned orders. Verbally the applicants were told that their claims have been found forged/fraudulent on verification of Bus Permits from the concerned RTOs and that the tour programme did not tally. Accordingly, a view was taken that the claims were not free from doubt. The applicants have submitted that mere suspicion would not make definite proof in the eyes of law. The representations of the applicants which were submitted on 23.2.2002 to respondent No.4 with copy to respondent No.3 have not been replied to by the respondents.

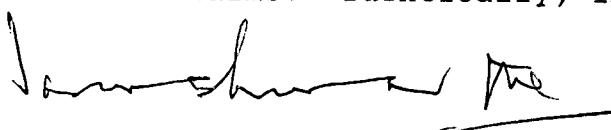
8. A reference in paragraph 4.9 of the OA has been made to the effect that some other individuals in an identical matter have filed Original Application No.2327/2002 before the Tribunal, which has, in the meantime, been decided and the same has been referred to by the applicants during the course of arguments on 29.1.2004, seeking the benefit of the decision in the said OA being extended to them.

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9. The respondents, in their reply, have confirmed the fact of the applicants having availed themselves of LTC for the four year extended block 1990-93 in 1997-98 and reimbursement claims having been paid to them. However, on having received a letter from CDA (Army) Meerut it was later found that the claims of the applicants were forged and accordingly they issued orders (Annexure R-1) for recovering the amounts paid to the applicants @ 1/3rd of the claim each month from their salaries. Accordingly, they have confirmed that the recoveries were completed by October, 2001.

10. The applicants have also filed rejoinder in which they have disputed the averments made by the respondents in different paragraphs of their written statement and has submitted that the reliefs extended vide order of the Tribunal in OA No.2327/2002 in Sardara Singh V/o UOI & Others may be allowed to them, as the said case is similar to the applicants'. They have also submitted in the rejoinder that the question of holding the permits issued to the charted buses as forged has already been rejected by this Tribunal in a catena of cases of identical nature and whereunder it has been held by the Tribunal that the applicants cannot be held guilty therefor.

11. On perusal of the orders as passed by this Tribunal in OA No.2327/2002 (Annexure 10), it is observed that the applicants in the said OA had also availed of LTC for the four year block 1990-93 extended upto 1997-98 and in their case also payments had been made after verifying the claims. Identically, in their case also recovery was



ordered after the claims had been settled 5 years ago, treating the claims as forged and fraudulent. In the said case also recovery had been completed. It has been held that the applicants should have been given notice before the recovery was effected. Another view which has been projected in the said case is that once a claim has been settled, it cannot be reopened after a lapse of more than five years without sanction of CFA. Accordingly, it has been made out that recovery had been made in the said case in violation of regulation 186-B of Financial Regulations, Part-I of the Army as well as Articles 14, 16 and 21 of the Constitution of India. References have also been made to the decisions of this Tribunal in other cases, namely, OA No.466/2002 decided on 24.10.2004 and also the decision of the Hon'ble Apex Court in D.K. Yadav v. J.M.A. Industries Ltd., 1993 SCC (L&S) 723, on the point of reasonable opportunity to show cause being given to a Govt. servant, and also emphasising the need to respect the principles of natural justice and fair hearing. Accordingly, the said OA has been partly allowed and the impugned orders have been quashed and set aside. It has also been directed by the Tribunal that the recovered amount should be refunded to the applicants within a period of two months from the date of receipt of the said order. Respondents were, however, granted liberty, if so advised, to take further action against the applicants in so far as the LTC claim is concerned.

12. On perusal of the facts of the case as decided by the Tribunal vide OA No.2327/2002, it appears that these are identical cases and, therefore, it would be quite



justified and reasonable to partly allow these OAs with a direction to the respondents to consider the matter as has been represented to them by the applicants and also submitted in these OAs and to extend the same benefits/reliefs as made available to the applicants in OA No. 2327/2002 if on verification of the relevant records it is confirmed that the case of the applicants is identical to those of the applicants in the above said OA. The respondents are further directed to comply with the above directions within a period of two months from the date of receipt of a copy of this order. No cost.

13. With this, MA No.1639/2003 in OA 1920/2003 and MA No.1165/2003 in OA No.1273/2003 also stand disposed of.


(Sarweshwar Jha)
Member (A)

/pkr/