

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION No. 170/00859/2019

TODAY, THIS THE 27th DAY OF NOVEMBER, 2019

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Manjunath I. Pujar
S/o Shri Ishwarappa Pujar
Aged about 59 years
R/o S-77, Golden Enclave
Old Airport Road
Bangalore-560017.
Presently posted as
Asst.Commissioner of Income Tax
O/o the CCIT (TDS)
CR Building, Bangalore-560001.

...Applicant

(By Advocate Sri T.C.Gupta)

Vs.

1. Union of India
through the Finance Secretary

Ministry of Finance

Department of Revenue

Government of India

New Delhi-110 001.

2. Pr. Chief Commissioner
of Income Tax

Karnataka & Goa Region

Queens Road

Bangalore – 560001.

...Respondents

(By Advocate Shri M.Vasudeva Rao, Sr.PC for CG)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he is working as Assistant Commissioner of Income-tax under the control of 2nd respondent. While posted at Hubli, the applicant availed LTC from 7.7.2014 to 16.7.2014 from Hubli to Leh and submitted LTC bill for Rs.258113/-(Annexure-A2). The Air journey was made by Air India. The bill was passed for Rs.237790/- in 2014. On 21.3.2019, the applicant was informed by the DDO that the ZAO Hubli had ordered for recovery of Rs.237790 of LTC bill on the ground that the applicant had not purchased air ticket from the authorised agents(Annexure-A3). On 21.3.2019, the same day, the applicant applied for relaxation in the matter(Annexure-A4). His request for relaxation was rejected vide CBDT letter dtd.12.6.2019 without assigning any reason(Annexure-A1). Aggrieved by the same, the applicant filed the present OA seeking to quash the recovery order dtd.21.3.2019(Annexure-A3) and the order dtd.12.6.2019 of CBDT(Annexure-A1) rejecting his application for relaxation.

2. The applicant submits that as per DOPT OM dtd.10.12.2018(Annexure-A5), whenever any advance is sought or intention to avail LTC is conveyed by the Govt. Servant, he/she is required to book the air tickets directly from the airlines or by utilizing the services of the authorised travel agents viz., 'M/s. Balmer and Lawrie & Company', 'M/s Ashok Travels & Tours' and 'IRCTC' while undertaking LTC journeys. It is also advised to all the Ministries/Departments to ensure wide circulation and strict compliance of the guidelines i.e. procedure for booking of air-ticket on LTC as the Department still continues to receive numerous references from various Ministries/Departments and individuals seeking relaxation for booking of air tickets for the purpose of LTC through private travel agents. In most of the cases, the common

reasons cited by the Government employees are lack of awareness of the rules and work exigencies. It is also stated that henceforth only those cases, where it is established that bonafide mistake has occurred and the Administrative Ministry/Department is satisfied that undue hardship is being caused to the Government servant, shall be considered by the Department for relaxation provided that the information is received in the Proforma enclosed along with supporting documents. The applicant submits that his case is also a case of bonafide mistake and genuine hardship, therefore, ordering for recovery of the amount by the ZAO without providing any opportunity of being heard and to reject the claim of the applicant for relaxation, without assigning any reason is not justified but is arbitrary and illegal. By purchasing air tickets not from the authorised agent has not got any monetary or other benefit and it has not caused any loss to the exchequer. The claim made was restricted to the prescribed LTC-80 fare. The journey was also made by Air India only. The violation of the instructions has practically no effect. The applicant had also taken advance for the LTC but his DDO or any other officer did not advise him for purchasing the air tickets from the authorised agent.

3. The applicant further submits the LTC bill submitted by him in the year 2014 was passed by the controlling officer as well as the ZAO, Hubli in the year 2014, without raising any objection. After 5 years, the ZAO, through the DDO has informed about the objection in the bill that the air tickets were not purchased from the authorised agent or from the website of the Air-India but from private agency in violation of the GOI, Min. of Finance OM dtd.9.7.2013. Because, the Min. of Finance and the DOPT instructions in the matter were never circulated among the employees and given wide publicity, therefore, the applicant, his controlling officer and the Accounts Officer had

no knowledge of the instructions, therefore, the LTC bill with air tickets purchased from unauthorised agent was passed by everyone.

4. The respondents, on the other hand, have submitted in their reply statement that the applicant had availed LTC from 7.7.2014 to 16.7.2014 from Hubli to Leh and claimed an Air fare of Rs.258113/- for the journey. He was paid an amount of Rs.237790/- towards bill for air fare. Office of Commissioner of Income Tax vide letter dtd.21.3.2019(Annexure-R1) forwarded ZAO Hubli letter dtd.6.3.2019, in which the applicant was requested to intimate his option for recovery of wrongly paid LTC claim. It is evident from the above letter that Internal Audit Wing(IAW), CBDT, Mumbai had requested to recover the wrongly paid amount to the applicant. The applicant has failed to adhere to the Govt. Instructions on purchase of air ticket and has violated the Govt. of India, Min. of Finance OM dtd.16.9.2010(Annexure-R2) and other related instructions as issued from time to time. The applicant being a senior officer of the Government cannot claim ignorance of rules and regulations as a defence. The respondents are bound to follow the Govt. of India orders and instructions and have duly considered and rejected the request for relaxation made by the applicant vide their letter dtd.12.6.2019(Annexure-R4) as per policy in vogue. The recovery was made in compliance to directions of Internal Audit Wing, Mumbai who has pointed out the excess payment of LTC to the applicant. Granting opportunity of being heard to each employee and officer by the audit party is neither administratively nor practically feasible. The applicant has claimed ignorance of rules in his defence, which is legally not tenable as ignorance of law is no excuse for breaking it. The ground raised by the applicant goes against this principle. The applicant has not disputed that he had purchased ticket from unauthorised agent in violation of extant instructions and policy in vogue. The claim of the applicant that he has not caused any loss to the exchequer

has no merit. If applicant's claim is accepted, it may set a precedent for violation of instructions, rules and procedures. His claim that a lapse of the period of five years may give him immunity is not tenable. The OM dtd.10.12.2018 quoted by the applicant states that 'only in those cases, where it is established that bonafide mistake has occurred and the Administrative Ministry/department is satisfied that undue hardship is being caused to the Government servant, shall be considered by the Department'. The said OM does not confer upon the applicant an indefeasible right of relaxation from the policy in vogue and rules and instructions issued by the Govt. of India. The present case is squarely covered by the order of this Tribunal, PB, New Delhi dtd.7.3.2019 in OA.3377/2018(Annexure-R3). Therefore, the applicant is not entitled to any relief and the OA is liable to be dismissed with costs.

5. The applicant has filed rejoinder reiterating the submission made in the OA and submits that the recovery was affected without giving any opportunity of being heard. Therefore, the order of recovery is bad in law. As soon as he came to know about the recovery on the ground that the ticket was purchased from unauthorised agent, the applicant applied for relaxation but it was rejected without giving any opportunity of being heard as well as without assigning any reasons. Therefore, the rejection order is not sustainable in the eye of law and is liable to be quashed. The case cited by the respondents i.e. OA.No.3377/2018 was rejected on the ground that the applicant therein did not file representations within the time available and thus without exhausting the departmental remedy available to them, directly approached the Tribunal. But in the present case, the applicant immediately, rather on the same day, made representation and applied for relaxation to the competent authority, in view of the provisions of the Govt. of India instructions/OM dtd.10.12.2018. In the said OM, it has been accepted that the earlier instructions on the issue were not given wide

circulation/publicity, therefore numerous references are being received regarding purchase of ticket from unauthorised agent. In his case, the administration/DDO never told the applicant about the instructions to purchase ticket from authorised agent, while giving LTC advance. Even the administration and the whole office including DDO and ZAO office were not aware of the relevant instructions. Further, the case of the applicant is squarely covered under the OM dtd.10.12.2018 being case of bonafide mistake and genuine hardship. The DOPT instructions regarding purchase of ticket from authorised agents is also not a logical or judicious decision. In Delhi, every travel agent is booking tickets in the name of Balmer and Lawrie & Company, the authorised agent, as all of them have liaison with the company on payment of certain commission. The CAT PB Delhi allowed the OA.No.3835/2017 in order dtd.28.5.2018 on the ground that this was not a case of false or excess claim and that for overlooking technical formalities, the individual should not be punished. Delhi High Court in order dtd.27.9.2017 in WP No.4933/2017 allowed expenditure of air journey in case of integrated tickets purchased from unauthorised agents. This Tribunal in OA.No.432/2017 wherein the department had rejected the request for relaxation without providing any opportunity of being heard and without assigning any reasons, has allowed the prayer of the applicant vide order dtd.30.8.2018 on the similar issue of relaxation for journey on tour made by airlines other than Air India, in violation of the similar DOPT OM. Therefore, the rejection order is liable to be quashed.

6. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The facts of the case are not disputed and the respondents have also not stated that this was a fraudulent claim or that more than what was permitted by the rules was reimbursed to the applicant. In other words,

apart from non-booking through one of the authorised agents, there was no other mistake in the claim and it is also accepted that the applicant had travelled by the authorised Airline and the claim was restricted to what was due as per rules. The same was settled in the year 2014 itself after having passed through the Accounts and other departments of the respondents. However, the respondents have chosen to initiate action in the year 2019 i.e. almost 5 years after the claim was settled. They have cited the orders of this Tribunal in Principal Bench in OA.No.3377/2018 and related cases vide order dtd.7.3.2019. From a perusal of the said decision passed by the Principal Bench of this Tribunal, it is clear that a view has been taken relating to the fact that the claim was not as per the instructions of the Govt. of India. As has been decided in any number of cases, by merely stating that he was not aware of the rules, persons like the applicant cannot be considered to be free from any blame. In the orders of the Principal Bench cited supra, in para-8.3, the Tribunal has observed that the restriction in respect of the agents is in the context to streamline the whole procedure and to avoid fraudulent and excess claims. As can be seen from the case in hand, the claim is neither fraudulent nor in excess of what was due as per rules. The applicant has also brought in the decision of the Principal Bench of this Tribunal in OA.No.3835/2017 wherein vide para-7.2 of the order dtd.28.5.2018, it is held as follows:

“7.2 It is not the case of the respondents that the applicant did not avail the LTC or that the claim is fraudulent. It is largely the responsibility of the department to ensure that Government Circular and terms of such OMs are effectively communicated to the employees. It is not hard to accept the contention of the learned counsel of the applicant that an employee of the level of the applicant at hand, may not have known about a DoP&T Circular/OM and the intricacies involved. Indeed, ignorance of law cannot come to rescue of the defaulters but this maxim has to be applied after evaluating the facts in their entirety. Schemes like Leave Travel Concession (LTC) and Home Travel Concession (HTC) etc. have been carved out as a kind of a reward/motivation for the work put in by the government officials for long years of dedicated service, (once in 04 years

or 02 years as the case may be). The condition of buying the tickets through the authorized agents is to streamline (presumably) and to ensure that the Scheme is not misused by way of fraudulent or inflated claims. The same is not the case here. The applicant unaware of the provisions of LTC and technicalities to be followed, bought the tickets from a genuine travel agent and availed of the concession, which he believed to be legally due to him. The reimbursed amount is neither false, nor inflated. Courts have consistently held (though in different contexts) that individuals should not be punished for overlooking technical formalities and be deprived of his claims, which he is otherwise entitled to as per law.”

7. It is not in dispute that the respondents in their wisdom has every right to prescribe the procedure by which the travels have to be undertaken and claims have to be made. It is a fact that even as late as 2018 vide Annexure-A5, the respondents have been reiterating the issue since a large number of such cases continued to flow despite repeated instructions. The respondents have also clarified that it has to be established that there was a genuine mistake and undue hardship has been caused to the Govt. servant. Otherwise the cases should not even be taken up for relaxation. The Airline and the authorised agents are also part of the public sector and the respondents at the time the scheme was originally conceived could have felt the need for routing of the LTC travels through such agencies so as to maintain a control against fraudulent or excess claims. We also need to note the fact that, as rightly contended by the applicant, he was not informed in advance before availing LTC relating to the purchase through authorised agency and thereafter the claims were admitted and settled by the Accounts and other departments of the respondent organisation in the year 2014 itself. Therefore, taking up of this issue suddenly in the year 2019 just when the applicant was about to retire based on audit observations is clearly not justified. The respondents have not stated that the claim was fraudulent or in excess of what was due to the applicant. It may be worthwhile for the respondents to examine whether the restrictions on the Airline to take and purchase through authorised agents have in fact reduced the cost to the public exchequer since these

expenses are settled from the taxpayers money. The respondents cannot have a case that merely to sustain certain public sector organisations, any kind of expenditure can be tolerated. Nowhere has it been established that the travel through the authorised Airline or the purchase through the authorised agents has resulted in maximum benefit to the exchequer and reduced the claim on the taxpayers' hard earned money. In cases where, through large scale tenders, the organisations are able to avail of much lesser prices for the facility or the goods enjoyed by them for example in the case of purchase through E-Gem or the then DGS&D, such restrictions can have justification. Apparently, there is no evidence to suggest that organisations like the authorised agents offer the minimum prices to their own owner namely the Govt. of India. LTC and other claims are settled only on the production of original boarding passes and similar such vouchers and therefore there appears to be no case for holding on to such archaic regulations which probably breed only inefficiency in the said organisations with no tangible benefit either to the respondents or to the taxpayers.

8. The OA is allowed. No costs.

(C.V.SANKAR)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER(J)

/ps/

Annexures referred to by the applicant in OA.No.170/00859/2019:

Annexure-A1: Copy of respondent order 12.6.2019

Annexure-A2: Copy of LTC bill

Annexure-A3: Copy of DDO recovery letter dtd.21.3.2019 communicating the ZAO
objections

Annexure-A4: Copy of application for relaxation

Annexure-A5: Copy of DOPT OM dtd.10.12.2018

Annexures with reply statement:

Annexure-R1: Letter dtd.21.3.2019 of Commissioner of Income Tax

Annexure-R2: OM dtd.16.9.2010 of Min. of Finance

Annexure-R3: Order dtd.7.3.2019 in OA.3377/2018 of CAT, PB, N.Delhi

Annexure-R4: OM dtd.16.8.2018

Annexure-R5: Notice in OA.859/2019

Annexures with rejoinder:

-NIL-
