

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH, CHENNAI.

OA/310/00716/2017

Dated this the day of September, 2019

PRESENT

The Hon'ble Mr. T .Jacob , Member(A)

S. Jayakumar
S/o Sambath,
No.2/1, V.O.C Street,
Sri Devi Nagar, Kamarajar Nagar,
Avadi, Chennai – 600 071.

....Applicant

By Advocate M/s K.T.S. Shiva Kumar

Vs

1. The Union of India
Rep by its Secretary,
Dept of Defence Production,
Ministry of Defence,
South Block, New Delhi.
2. The Chairman/Directorate General of
Ordnance Factories,
Ordnance Factories Board,
Ayudh Bhawan, No.10-A,
S.K.Bose Road, Kolkata- 700 001.
3. The General Manager,
Ordnance Clothing Factory,
Avadi, Chennai – 600 054.

....Respondents

By Advocate Mr. K. Rajendran

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefS:

I. To quash and set aside the notice dated 07.04.2017, No.1846/LB/LTC issued by the 3rd respondent seeking for recovery of LTC amount of Rs.53,024/- claimed under "LTC 80 claim" together with penal interest at present summed up to Rs.11,678/- calculated at the rate of 2% over and above GPF interest rate;

II. To quash and declare the impugned action of the 3rd respondent seeking for recovery of LTC amount together with penal interest from the wages of the applicant in terms of the notice dated 07.04.2017 being its No.1846/LB/LTC as illegal, arbitrary, whimsical and violative of the extent rules and law;

III. Consequently to declare the recovery proceedings of the respondents initiated against the applicant shall not be operative or permissible..."

2. The brief facts of the case as submitted by the applicant are as follows:-

The applicant entered service as Tailor on 20.05.1985 in the Ordnance Clothing Factory, Avadi. On the date of superannuation on 30.06.2017, he was holding the post of Tailor/HS-I which falls under the category of Group 'C'. While in service, he was permitted to avail LTC to travel to Port Blair by the competent authority during the year 2015. He travelled by Air India flight under the LTC-80 claim by utilising the service of the private agency. He was also sanctioned advance claim under the LTC-80 on 26.02.2015 after thorough scrutiny of the Air Tickets in economy class. It is stated that the private agency had booked the tickets in economy class through website of Airline in compliance with the conditions laid down in the DoP&T OM dated 26.09.2014.

While so, the third respondent, without examining each case in consonance with the recommendations made by the DoP&T to identify the genuineness of each case which deserves for relaxation, has issued a notice dated 07.04.2017 directing the applicant to refund the entire claim amount of Rs.53,024/- with penal interest at present summed up to Rs.11,678/- calculated at the rate of 2% on or before 15.04.2017 considering his journey with family on LTC-80 fare as fraudulent claim solely for the purpose of claiming alleged excess payment in respect of travelling tickets purchased from Air India. The applicant's explanation vide representation dated 12.04.2017 did not elicit any reply. The applicant states that he suffers at the hands of 2nd respondent when there has been no fault on the part of him and the 2nd respondent has not acted accordingly in terms of notification issued on several occasions by the 1st respondent on the subject issue, aftermath, resulting in impugned action of recovery of LTC-80 claim from the wages of the applicant which would be iniquitous, arbitrary and violative of Article 21 of Indian Constitution. Hence he has filed this OA seeking the above reliefs, inter alia on the following grounds:-

- i. The impugned action of the 3rd respondent in seeking refund as per the terms of notice dated 07.04.2017 is contrary to the facts and evidence of the case.
- ii. The action of the 3rd respondent in initiating recovery proceedings and the order of recovery against the wages from the applicant suffers from non-application of mind and against the probability of law.
- iii. The 3rd respondent has no statutory right to appropriate wages from the applicant.
- iv. The recovery of LTC 80 claim against this applicant alone is wholly unfair and shows bias on the part of the 3rd respondent.

- v. The 3rd respondent has not followed the 1st respondent guidelines and notifications issued on several occasions in this regard.
- vi. Without providing any opportunity to elicit the truth or otherwise of the genuineness of the tickets submitted by the applicant, issuing order of recovery of the entire claim is not sustainable in law.
- vii. The 3rd respondent ought to have considered that the "LTC 80 claim" advance was ascertained and sanctioned to the applicant by the concerned competent authority only after thorough scrutiny of the tickets submitted prior to more than 30 days before the applicant performed his journey.
- viii. As per the notification issued by DoP&T which was circulated to all Departments under MoD dated 26.09.2014 being it's F.NO.31011/3/2014-Estt.(A-IV) (Annexure-2) it is the duty of the administrative authority to verify the tickets from concerned airline with regard to the actual cost of Air Travel, the cost indicated on the air tickets submitted before the journey was performed by the employee.
- ix. The applicant has not made any false declaration or unlawfully procured any fake tickets. It is also not the case of 3rd respondent that the applicant deliberately or with intention to cheat or gain unlawfully had connived or conspired in any manner with any person for claiming excess amount than actual ticket fare. On the other hand, the applicant had actually performed the journey along with his wife which is the subject matter of the LTC claim and paid the claim amount as advised by the private agency as actual ticket fare.
- x. The 3rd respondent failed to look upon the notification issued by the DoP&T which was circulated to all Departments under MoD dated 01.04.2015 being its F.No.31011/3/2015-Estt. (A-IV) (Annexure-3). It is the duty of the administrative authority to scrutinize the tickets and check as to whether it has been booked directly from airline or through any approved agency.
- xi. The third respondent owes responsibility for not exercising due care and complete liability was cast upon the scrutinizing officer for not

following the sine quo non procedures.

xii. The action of the respondents recovering LTC claim amount of Rs. 53,024/- together with penal interest at present summed up to Rs. 11,678/- calculated at the rate of 2% terms of the reference notice dated 07.04.2017 from the applicant wages at the time of retirement (i.e.), 30.06.2017 would lead to undue hardship to his family and also being violative of the mandate contained in Article 14 of the Indian Constitution.

xiii. The 3rd respondent has failed to refer for one time relaxation to settle these cases considering the genuine claims of Group 'C' and 'D' employees who had availed "LTC 80 claim" by purchasing Air Tickets from other than the authorised agents and called for the details of rejected LTC claims for travel to NER, A&N, and J&K. With reference to MOD Letter No.MoD I.D.No.11(1)/2013-D(Civ-II) dated 03-02-2017 (Annexure-5), the DoP&T had recommended and advised the Administrative Ministry to examine each case on a case to case basis to ascertain whether it involves any bonafide mistake and where the Ministry/Department is satisfied that undue hardship is being caused in any particular case, it may be referred to them for "relaxation". Hence, the 3rd respondent has failed to examine in consonance with suggestion made by DoP&T and to identify the genuineness of the case of the applicant for one time relaxation.

3. The respondents have filed a detailed reply statement stating that the applicant had availed the LTC for the Block Year 2014-2017 (All India) to Port Blair (Andaman & Nicobar Islands) on 22.03.2015 for self and wife vide F.O Part – III No. 66 dt. 11.02.2015 by availing relaxation to travel by Air as envisaged vide O.M No. 31011/3/2014-Estt. (A-IV) dated 26.09.2014. The tickets as submitted by the applicant did not bear the name of the agents. In fact the tickets submitted by the applicant showed that they have been purchased from

the Air India directly. Hence, it is clearly apparent that the purchaser of ticket made conscious efforts to hide the source of purchase of ticket, which was revealed subsequently after clarification from Air India. Even while claiming the advance, the applicant had not declared that the above tickets were being booked through private agency. The final claim submitted by the individual was passed by Local Accounts on the basis of tickets and Boarding pass submitted in proof of travel on LTC. Later, as a part of Vigilance Exercise, Tickets submitted by the applicant were forwarded to the Vigilance Department of Air India for verification of its source of purchase. The report forwarded by the Vigilance Department of Air India indicated that the applicant had booked the Air India tickets to travel on LTC for self & wife from Vinayaka Tours & Leisures (an unauthorised agent), from Chennai to Port Blair on 22.03.2015 and from Port Blair to Chennai on 27.03.2015. The report also indicated the amount paid by the applicant to Air India is Rs. 19,876/- though he claimed Rs.53,024/- during the submission of final bill and the same was paid to him. From the above, it is clear that the applicant had booked the air tickets from other than prescribed agents and hidden the fact from the management and also the amount paid to Air India was less than the amount mentioned in the tickets presented as purchased from Air India. Thus the applicant was found prima facie guilty of submitting a fraudulent claim. As per CCS (LTC) Rules, 1988, the LTC claims if it is found fraudulent, the advance should be recovered in full with penal interest and not in instalments. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the

pleadings and documents on record.

5. The short point for consideration in this OA is whether the LTC-80 claim submitted by the applicant is as per the CCS (LTC) Rules, 1988.

6. Admittedly the applicant while working in the Group 'C' post of Tailor /HS-I had obtained advance for travel to Port Blair along with his wife on 22.03.2015 by availing LTC for the Block Year 2014-2017 but failed to purchase the Air Tickets directly from the Airline counters/ authorised travel agency, which is one of the necessary conditions for availing the LTC benefits. Non compliance of this condition itself would be sufficient to decline the LTC claim by the respondents. Even the sanctioning letter for LTC advance clearly stipulates that if the conditions contained in the said letter or in the Rules or Regulations relating to grant of advance is violated, the sanctioning authority would be in its competence to charge penal interest as per the rules.

7. The respondents on receipt of the report forwarded by the Vigilance Department of Air India indicated that the applicant had booked the Air India tickets for self and wife from an unauthorised agency namely Vinayaka Tours & Travels and travelled on LTC from Chennai to Port Blair on 22.03.2015 and from Port Blair to Chennai on 27.03.2015 have initiated action against him. The report also indicates that the applicant has paid Rs.19,876/- to the Air India and claimed Rs.53,024/- during submission of final bill and the same was also paid to him. It is clear from the above that the applicant has intentionally booked the air tickets from other than the authorised Government agency and submitted a fraudulent claim for pecuniary gains. As per CCS (LTC) Rules, 1988, the LTC claims if it is found fraudulent, the advance should be recovered

in full with penal interest and not in instalments. At the time when the action was initiated for recovery of the LTC claim amount, the applicant was in service and he was due to retire on superannuation on 30.06.2017. It could be seen on perusal of the records that the respondents had taken up the proposal for one time relaxation in respect of LTC-80 reimbursement claims of Defence Civilian employees with the Government of India, Ministry of Defence, New Delhi wherein the Ministry vide ID Note of even number dated 24.07.2015 had informed that the DoP&T has not agreed for granting bulk relaxation to Group 'B' and Group 'C' Defence Civilian employees and had advised for scrutinising the tickets booked through private travel agency individually. The Ordnance Factory Board, Kolkata has also issued letter dated 27.03.2017 on the above subject and stated as follows:-

"02. Now MOD has communicated vide letter cited under Ref(a) above about the decision of DOP&T that the proposal for granting bulk relaxation is not agreed to. DOP&T has also suggested that the Administrative Ministry needs to examine each case whether it involves any bonafide mistake and where the Ministry/Department is satisfied that undue hardship is being caused in any particular case, it may be referred to them for relaxation. In cases of any fraudulent claim/attempts to inflate the claims, appropriate disciplinary action may be taken....."

8. In pursuance of the above instructions, the respondents have issued the impugned order dated 07.04.2017 to the applicant seeking refund of the LTC claim amount of Rs.53,024/- drawn towards journey with family to Port Blair in the Block Year 2014-2017 along with penal interest ((2%) over and above GPF interest rate) of Rs.11,678/- and a total amount of Rs.64,702/- on or before 15.04.2017, failing which, to recover the same from his wages as per Government Rules.

9. It is the case of the applicant that a private agency booked his tickets through website of Airline in compliance with the conditions laid down by the DoP&T OM dated 19.06.2015 and the competent authority had accorded sanction of LTC advance only after thorough scrutiny of the tickets submitted by him prior to more than 30 days before he could perform the journey. Final bills/claims were also submitted in the prescribed format together with Air Tickets and boarding pass within time and the same was settled after due scrutiny by the concerned competent authority. The applicant further states he is holding the Group 'C' post of Tailor and lacking education and coming from socio economic weak background and not well versed with the rules governing the Leave Travel Concession through Air Travel. However, treating his claim as fraudulent claim the respondents have recovered the amount from the salary during his service.

10. I have considered the matter. Undisputedly the respondents have sanctioned the advance for travel under the LTC-80 in accordance with the rules and regulations governing the LTC benefits. The relevant directions for this LTC-80 Scheme are contained in OM dated 16.09.2010. The relevant para of the same is reproduced below:-

"2. LTC

- (i) Travel by Air India only.
- (ii) In Economy class only, irrespective of entitlement.
- (iii) Air Tickets may be purchased directly from Airlines (at Booking counters/Website of Airlines) or by utilizing the services of Authorized Travel Agents viz. M/s Balmer Lawrie & Company, M/s Ashok Travels & Tours and IRCTC (to the extent IRCTC is authorised as per DoP&T OM No.31011/6/2002-Estt.(A) dated 02.12.2009)".

Since one of the conditions requiring purchase of LTC-80 tickets from Airline

counters/authorised travel agents viz. M/s Balmer Lawrie & Company, M/s Ashok Travels & Tours and IRCTC has not been complied with, the respondents have initiated action for recovery and it is open for the sanctioning authority to decline the LTC claim when it comes to the knowledge that the Air Tickets have been obtained from an unauthorised agency. The issue raised herein is already covered by Order dated 21.12.2012 in OA.No.863/2012 (Radhey Shyam and others vs. DTC). In so far as the submissions made by the applicant with regard to recovery of the actual amount paid for the journey, the same has been verified by the airlines concerned and confirmed that the tickets have not been booked from the agency authorised by the Government of India. Regarding relaxing the rule as an one time measure, it would be for the applicant to take up this matter separately with the respondents for their consideration.

11. As stated above, the respondents following the instructions on the subject had sent bulk cases of the Defence civilian employees falling under Group 'C' and 'D' for one time relaxation in respect of LTC-80 reimbursement to the DoPT through MoD, vide their letter No.11(1)/2013-D (Civ-II) dated 03.02.2017 and the DoPT has turned down the said proposal with an advice to scrutinize the cases individually. The respondents have failed to give any reply as to why they have not scrutinized the cases individually but have given an omnibus answer for all such cases. Hence, in view of not following the advice given by the DoPT in its true perspective, the respondents are directed to process the claim of the applicant and take a decision after examining the reply given by the applicant, if any, within a period of 90 days of receipt of a copy of

this order. When individually scrutinising the case of the applicant, the same may be undertaken in the form of a questionnaire which is given below.

- i. Name and designation
- ii. Whether entitled for air travel and if so the conditions to be fulfilled.
- iii. Exact condition which does not stand fulfilled
- iv. Amount involved.
- v. Whether fulfilment of conditions required at the time of advance complied with.
- vi. If not whether objections raised.
- vii. Whether relaxation of unfulfilled conditions is recommended.
12. With the above direction, the OA is disposed of . No costs.

(T.Jacob)
Member(A)
-09-2019

/Kam/