

O.A. 1330 of 2016

Dated : 06.09.2019

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. N. Chatterjee, Administrative Member**

Udayan Chandra Maitra,  
Aged about 55 years,  
Son of Late Gurudas Maitra,  
Residing at 120, Sarat Bose Road,  
Kolkata – 700 065  
And working to the post of Charge man  
In the Gun & Shell Factory, Cossipore,  
Kolkata – 700 002.

..... Applicant.

Versus

1. Union of India  
Service through the Secretary,  
Ministry of Defence (Defence and Production),  
Government of India, South Block,  
New Delhi – 110 001.
2. The Director General Cum Chairman,  
Ordnance Factory Board (OFB),  
Government of India,  
Ministry of Defence,  
Having his office at 'Ayudh Bhawan'  
10A, Shaheed Khudiram Bose Road,  
Kolkata – 700 001.
3. The General Manager,  
Gun & Shell Factory,  
Cossipore,  
Kolkata – 700 002.

..... Respondents.

For the applicant : Mr. P.C. Das, Counsel

For the respondents : Mr. B.B. Chatterjee, Counsel

**ORDER (Oral)**

**Per : Bidisha Banerjee, Judicial Member**

The Applicant in this O.A. has sought for the following reliefs:

"8.a) To quash and/or set aside the office order dated 02.08.2011 whereby and whereunder despite sanctioned in respect of amended the leave vide order dated 21<sup>st</sup> January, 2011, the respondent authority vide order dated 02.08.2011 passed an order of recovery of an amount of Rs. 50,402/- and directed your applicant to deposit the same being Annexure A-9 of this original application.

b) To quash and/or set aside the impugned Charge-Sheet Memo dated 10.09.2011 issued by the General Manager, Gun & Shell Factory, Cossipore being Annexure A-11 of this original application;

c) To quash and/or set aside the impugned Enquiry Report of the Enquiry Officer which was submitted vide letter dated 2<sup>nd</sup> November, 2011 to the applicant being Annexure A-15 of the original application.

d) To quash and/or set aside the impugned punishment order dated 17.02.2012 issued by the General Manager (Disciplinary Authority), Gun & Shell Factory, Cossipore by imposing penalty of reduction of pay by one stage and withholding the increment being Annexure A-17 of this original application.

e) To pass an appropriate order directing upon the respondent authority to consider the appeal preferred by the applicant before the appellate authority by setting aside and quashing the impugned punishment order dated 17.02.2012 passed by the Disciplinary Authority.

f) To declare that the action taken by the respondent authority by recovering the full amount of money as LTC Advance from your applicant along with penal interest and after receipt the same treating the applicant with a memorandum of charge-sheet with penalty order of punishment is a case of double jeopardy which is not permissible under the law and may be quashed and/or set aside along with all consequential benefits;

g) Costs;

h) Any other appropriate relief or reliefs as Your Lordships may deem fit and proper."

2. The admitted facts as could be culled out from the pleadings, are as under:

The applicant applied for LTC for the Block Year 2010-2011 / 2010-2013 to visit J&K (Pahelgaon). It was sanctioned vide GSF F.O. Pt-II No. 1857 dated 01.09.2010. The applicant was granted Leave from 20.09.2010 to 01.10.2010. He was sanctioned Rs. 46,170/- as an LTC Advance and paid through Cheque of SBI. Further he was paid Rs. 7400/- for encashment of Leave, as per LTC Rules.

The applicant applied for amendment of Leave due to non collection/booking of Air/railway tickets etc. He applied leave from 25.10.2010 to 03.11.2010 instead of the earlier sanction. Accordingly, the Leave period was amended vide GSF F.O. Py-II No. 2014 dated 22.09.2010.

He once again applied for amendment of leave and requested for grant of leave from 23.01.2011 to 31.01.2011 vide his application dated 18.10.2010. Accordingly, the Leave period was amended vide GSF F.O. Pt-II No. 2248 dated 19.10.2010.

For a 3<sup>rd</sup> time he applied, on 18.01.2011, for amendment of leave and requested for grant of leave from 15.05.2011 to 28.05.2011. Accordingly, the Leave period was amended vide GSF F.O. Pt-II No. 190 dated 21.01.2011.

Lastly, he intimated vide his application dated 20.07.2011 that due to his family problem he did not avail the said LTC and intended to start his journey on 14.08.2011 with his family.

As the competent authority considered application for amendment of journey date as well as the leave period, thrice, this time in response issued a Memo Bearing No. B/42/18/Bill/HRM dated 02.08.2011 with following advice: -

"It appears that you have failed to commence your journey repeatedly and holding the Govt. money with you in unutilized condition since 1 year. Not only that, you have further applied to defer the LTC journey date. The whole activity on your part is highly irregular. This will not leave any effect on any administrative action taken against you for keeping Govt. money unutilized for the purpose of LTC.

Hence, you are advised to deposited the full advance amount of Rs. 46,170/- (as drawn) + Penal interest 2% over GPF interest on the entire advance i.e. Rs. 50,402/- (Payable amount) within 7 working days in case failing which necessary action will be initiated against you to recover the above mentioned amount in one lump sum."

In response the applicant even requested to deduct the above said amount in 10 equal instalments. The competent authority did not apart the same and intimated vide Memo bearing No. B/41/18/Bill/HRM dated 14.08.2011 that the amount he had drawn of Rs. 7400/- towards leave encashment (10 days) against Bill No. 36-NG/NIE/TR/LS-LTC dated 06.09.2010 is also required to be refunded immediately apart from LTC advance. Accordingly Total amount of Rs.57,802/- was required to be deposited in one lump sum.

Finally the amount of Rs.57,802/- was recovered vide Bill No. 07/NG/NIE/OT Arrear dated 17.08.2011.

A Charge sheet under Rule 14 of CCS(CCA) Rules 1965 bearing No. 1142/UCM/CDL/GM dated 10.09.2011 was issued to the Applicant and he was directed to submit his written statement within 10 days of receipt of the same.

He submitted his representation dated 19.09.2011 where he admitted that he had violated the Govt. Rule and admitted his mistake. The enquiry proceedings were held on 31.11.2011 and the applicant accepted all the charges framed against him. The Enquiry Officer submitted his report dated 02.11.2011 to the General Manager/GSF for further necessary action.

The competent authority forwarded the Inquiry report to the applicant for his representation if any within 15 working days. In reply he once again accepted the charges and prayed for forgiveness vide his representation dated 13.11.2011. On completion of the Inquiry proceedings GSF authority ordered penalty vide order dated 17.01.2011 of Reduction of pay by one stage (equivalent to the amount of one increment earned immediately preceding imposition of this penalty) for a period of two years. Accordingly Factory Order Part-II No. 795 dated 11.03.2012 was published. Aggrieved with the said order, the applicant has preferred this OA.

3. According to the respondents, "as per the Rule on Misuse of LTC it is permitted to initiate disciplinary action, in addition to any penalty under disciplinary rules. Hence the action taken by the disciplinary authority is permissible under Rule and that the department has provided ample opportunity to the petitioner to defend and till date he has not appealed to the appellate authority as per Rule."
4. In view of the admitted position that the applicant has approached this Tribunal without exhausting the available statutory remedy of Appeal, the O.A. is disposed of with liberty to the applicant to prefer such appeal to the appellate authority within 20 days of receipt of a copy of this order.
5. In the event, such appeal is preferred within the prescribed period the same shall be disposed of by the competent appellate authority, in accordance with law, within 6 weeks of its receipt which shall accordingly govern his fate.
6. The O.A. therefore stands disposed of. No costs.

(Dr. N. Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member

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