

(2019) 09 CAT CK 0029

In the Central Administrative Tribunal

Case No : Original Application No. 3144 Of 2018

Manju Lochav

APPELLANT

Vs

Union Of India & Ors Through

RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Citation : (2019) 09 CAT CK 0029

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : M.D. Jangra, Manish Kumar

Final Decision : Disposed Off

Judgement

1. The applicant Smt. Manju Lochav was ANM in the Rural Health Training Centre, Najafgarh under the respondents. She was sanctioned leave for availing of LTC to Port Blair, along with leave encashment and LTC advance. Initially she sought leave from 23.11.2017 to 28.11.2017 but subsequently she changed the dates from 01.01.2018 to 06.01.2018 due to non-availability of tickets. She performed the journey till Kolkata by train and from Kolkata to Port Blair and back by private airlines Spicejet. Her claim was disallowed by the respondents not being as per the rules and some recovery was done from the advance.

2. It is the contention of the applicant that she performed journey upto Kolkata by train after booking the tickets from IRCTC, therefore, she is entitled to reimbursement of the train tickets amount. Further, the journey from Kolkata to Port Blair and back was performed through Spicejet after booking the air tickets directly on the website of the concerned airlines. She has claimed that the respondents are illegally denying her LTC claim and not even sanctioning that part of the journey which was performed through Indian Railways. She has sought the following reliefs:-

"(i) To quash and set aside the impugned order dated 26.06.2018 (A-1), 16.03/09.04.2018 (A-2), 16/20.03.2018(A-3) & 07.03.2018 (A-5);

(ii) To declare the action of the respondents in recovering LTC advance amounting to Rs.88,583/- with interest @ 9.6 as illegal, arbitrary and unjustified.

(iii) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case;

(iv) To allow the OA with exemplary cost."

3. The respondents have denied the claim of the applicant. They have stated that the applicant applied for six days earned leave from 23.11.2017 to 28.11.2017 on 31.08.2017 which was sanctioned on 06.09.2017. She also applied for ten days' leave encashment on 31.08.2017 which was sanctioned on 06.09.2017, LTC advance of 90% for Rs.88,583/- was also credited to her bank account on 28.09.2017 through PFMS. The respondents have stated that they took prompt action in the matter as is evident from the dates given. On 23.11.2017 the applicant submitted an application stating that she wanted to change the dates of earned leave and requested for earned leave from 01.01.2018 to 06.01.2018 as the tickets for LTC was confirmed for the said dates on 30.12.2017. This request of the applicant was acceded to and accordingly leave was sanctioned for the requested dates on 06.12.2017. The respondents have stated that deliberately the applicant travelled through private airlines in violation of the rules since all sanctions were promptly given by the respondents and the applicant herself changed the dates of travel citing non-availability of air India tickets on the earlier dates and stated that tickets for the LTC was confirmed for 30.12.2017. During the External Audit in April, 2018, the applicant was advised to submit a Certificate from Air India regarding non-availability of air tickets. However, till date the applicant has not submitted the non-availability certificate. The respondents have further emphasized that the applicant intentionally performed the journey from Kolkata to Port Blair and back by private airlines keeping the authorities in the dark, therefore as per rules, recovery along with interest and penal interest has to be done.

4. Heard Mr. M.D. Jangra, learned counsel for the applicant and Mr. Manish Kumar, learned counsel for the respondents. I have also perused the records.

5. It is clear that there was no delay on the part of the respondents in issuing sanctions, be that for the earned leave for LTC, the LTC advance or the leave encashment. It was the applicant herself who asked for change of dates giving the reason that LTC tickets were confirmed for the revised dates. The inference from this is clear that the change of dates was done to get tickets as per rules of the LTC which would mean purchase of tickets through Air India. Thereafter, it is incomprehensible as to why the applicant travelled by a private airlines.

6. Several rulings have been cited by the applicant in support of her claim, one of which being the decision of Hon'ble High Court of Punjab & Haryana in the case of Union of India & Ors. vs. S.S. Bawa & Anr. [(2006) 143 PLR 590]. In the said matter relaxation from travel by Air India had been sought by the applicant and a non-availability certificate regarding Air India tickets had also been furnished by

him. In the current OA no such things have been done. In fact, on being asked by the respondents for the same, no non-availability certificate of air tickets has been submitted by the applicant. Further, the change of dates requested for by the applicant was on the ground that LTC tickets were available on the revised dates.

7. The applicant cannot get the benefit from the decision of Ernakulam Bench of this Tribunal in the matter of Jayachandran K. & Ors. vs. Employees Provident Fund Organization & Ors. [OA No.807/2014 decided on 25.10.2016] cited by the applicant, since the said decision was based on certain relaxations of OMs and conditionalities, which have not been claimed in this case.

8. The applicant has also relied upon the decision of this Tribunal in the case of Philip Thanglienmang vs. Govt. of NCT of Delhi & Anr. [OA No.3491/2013 decided on 27.04.2017] but the circumstances of the said case are once again different since that was a case of an employee belonging of NER and was going to home on LTC wherein the Tribunal noted the compassionate circumstances of the applicant and cited the government policy stating that the Government has been encouraging people of the North-East to take up jobs in the mainland for better national integration. At the same time, the Tribunal also issued a warning for the future to the applicant in the cited case. The circumstances in the current OA are quite different.

9. The applicant in the rejoinder has claimed benefit of the decision in the case of State of Punjab & Ors. Etc. vs. Rafiq Masih (White Washer) Etc. [2015 (2) SLJ 151]. In the said case, certain reliefs from recovery were granted where benefits flowed to them consequent to the mistake committed by the competent authority. Even in such cases, the Hon'ble Apex Court made a distinction and held the following:-

"In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee."

In the current OA, the fault is that of the employee/ applicant who did not perform the travel as per the laid down rules. Therefore, no benefit can be claimed by the applicant under the said decision of the Hon'ble Apex Court.

10. Having gone through the records and the rulings cited by the applicant, I am of the view that the journey performed by the applicant by Spicejet Airlines from Kolkata to Port Blair and back cannot be said to be performed as per the rules. Therefore, the LTC claim for this journey is not admissible. However, keeping in view the fact that the applicant is a Group 'C' employee, no penal interest should be charged from her by the respondents. On the contention of the applicant that

even the claim pertaining to the journey performed by Indian Railways till Kolkata and back for which the tickets were purchased from the IRCTC has not been allowed by the respondents, the respondents are directed to pass the LTC claim for that portion of the journey that has been performed as per

11. This OA is disposed of in light of the observations above. There shall be no order as to costs.