
(2019) 08 CAT CK 0068

In the Central Administrative Tribunal

Case No : Original Application No. 947 Of 2018

Raj Kumar Nirala And Ors

APPELLANT

Vs

Director And Anr

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Citation : (2019) 08 CAT CK 0068

Hon'ble Judges : Mohd. Jamshed, Member (A)

Bench : Single Bench

Advocate : Yogesh Kr. Mahur, Krishna Kumar

Final Decision : Partly Allowed

Judgement

Mohd. Jamshed, Member (A)

1. The applicants are working in various capacities in National Institute of Tuberculosis and Respiratory Diseases under Ministry of Health and Family Welfare. During the period 2012-2015, they availed LTC and travelled to various places including, Jammu, Sikkim, Port Blair etc. Their LTC was duly sanctioned and authorised by the respondents. The applicants undertook travels and completed their journeys as per their entitlements. On completion of their journeys, they submitted the tickets to the department claiming reimbursement as per their entitlements. The department reimbursed the amount so claimed between 2012-2015. After a lapse of many years, the respondents vide orders dated 04.01.2018, 09.01.2018 and 10.01.2018 issued to the applicants, advised that for their respective journeys undertaken during 2012-2015, Audit has pointed out that the air tickets submitted by them for respective journeys had been purchased from unauthorised travel agents and this being against the LTC Rules, the LTC of the applicants for the above period stand cancelled. It was also directed that they should refund back the amount as claimed by the applicant/applicants for their air fare and earned leave encashment, failing which the amount will be recovered from their salary.

2. The applicants replied to the order issued by the respondents. However, the same was not considered by the respondents and recovery of the reimbursed amount of LTC, paid to the applicants three to six years back, was started. It is also submitted that the respondents had issued the LTC sanction orders in all cases without indicating any guidelines or conditions for purchasing the tickets only from the authorised agents. Therefore, such cancellation of LTC and recovery of the amount already paid is patently illegal. It is submitted that in certain similar cases, the Tribunal and the Hon'ble Delhi High Court have ruled that no recovery on account of purchase of tickets other than the authorised agents shall be made. Aggrieved by this action on part of the respondents, the applicants have sought the following reliefs:-

"(a) Quash and set aside the Impugned Orders issued by the Respondent No. 1, as below:

(i) Impugned Order No. Adm 2/20188537 dated 9-01-2018 addressed to the Applicant No. 1.

(ii) Memo No. Adm. 2/2017/8174 dated 4-1-2018 (received by Applicant No. 2 on 10-1-2018) & impugned order no. 2/2018/8580 dated 10.1/2018 addressed to the Applicant No. 2.

(iii) Impugned Order No. Adm 2/2018/8538 dtd 9-1-2018 addressed to Applicant No. 3.

(iv) Memo No. Adm 2/2017/8168 dated 4-1-2018 (received by the applicant on 10-1-2018) and Order No. 2/2018/8587 dated 10-1-2018 addressed to Applicant No. 4.

(v) Memo No. Adm 2/2017/8166 dated 4-1-2018 (received by the applicant on 10-1-2018) and Order No. 2/2018/8588 dated 10-1-2018 addressed to Applicant No. 4.

Which are common in nature, arising out of similar cause of action whereby the respondents have illegally and arbitrarily ordered to initiate the recovery of the LTC amount which was reimbursed to the applicants in the year 2012 to 2015 on the pretext that the tickets have not been purchased by the applicants from the authorized agency.

(b) Direct respondents to not to recover the Reimbursed amount from the applicants on the pretext of tickets not been purchased from the authorized agency.

(c) Direct the respondents to grant all consequential benefits to the applicant.

(d) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the applicant.

(e) Cost of the proceedings be awarded in favour of the applicant and against the respondents."

3. Basically the applicants are challenging the impugned orders issued to them by the respondents dated 09.01.2018 to Applicant No. 1, dated 10.01.2018 to Applicant No. 2, dated 04.01.2018 to Applicant No. 3 and dated 10.01.2018 to Applicant No. 4. Interim relief as prayed, for staying the operation of impugned order till the final disposal of the OA was granted by the Tribunal and the recoveries have been stopped vide order dated 01.03.2018.

4. The respondents have opposed the OA in their counter reply indicating that Rules framed by Ministry of Finance, Department of Expenditure vide OM dated 19. 07.2017 clearly provide guidelines on air travel on LTC which have been violated by the applicants. These directives issued from time to time clearly stipulates that the Travel should be by Air India and Tickets may be purchased directly from Airlines (at Booking counters/office/Website of Airlines) and, if needed, by utilizing the services of three Authorized Travel agents viz. M/s Balmer Lawrie & Company Limited (BLCL), M/s. Ashok Travels & Tours (ATT) and Indian Railways Catering and Tourism Corporation Ltd. (IRCTC). The copies of the tickets submitted by the applicants show the place of issuance of tickets as Safdarjung Airport, New Delhi. However, after the Audit inspection, the respondents inquired from the concerned airlines i.e. M/s Air India, regarding the details of the travel agents through which these tickets were booked. On receiving the information from the concerned airlines, explanations were sought from all the employees who had booked their tickets from unauthorized travel agents. As the explanations given by these employees were not found satisfactory, LTC claims were cancelled and they were directed to refund back the amount claimed by them failing which the amount is to be recovered from their salaries. It is further submitted that the applicants booked their tickets for air travel through unauthorized travel agents and this amounts to fraudulent claim of LTC for which LTCs have been cancelled by the Competent Authority. It is also stated that disciplinary inquiry will also be initiated against the applicants for the fraudulent claim of LTC.

5. The respondents have also quoted the guidelines vide various OMs dated 24.03.2006, 16.09.2010 and 9. 07.2013. All these OMs have indicated that the travel should be by Air India and Air Tickets be purchased directly from Airlines (at Booking counters/office/Website of Airlines) and, if needed, by utilizing the services of three Authorized Travel agents viz. M/s Balmer Lawrie & Company Limited (BLCL), M/s. Ashok Travels & Tours (ATT) and Indian Railways Catering and Tourism Corporation Ltd. (IRCTC). The latest O.M. No. 19024/22/2017-E.IV dated 19.07.2017 of Ministry of Finance, Department of Expenditure reads as under:-

"Office Memorandum

Subject: ? Guidelines on Air Travel on Official Tours - Purchase of air ticket from authorized agent.

The undersigned is directed to refer to this Departments' O.M. No. 19024/1/2005-

Ely dated 24.03.2006, O.M. No. 19024/1/2009-E.IV dated 16.09.2010 and O.M. No. 19024/1/2012-E.IV dated 09.07.2013 regarding guidelines on Air travel. As per these guidelines, in all cases of Air Travel where the Government of India bears the cost of air passage, Air Tickets may be purchased directly from Airlines (at Booking counters/office/Website of Airlines) and if needed, by utilizing the services of three Authorized Travel Agents viz. M/s Balmer Lawrie & Company Limited (BLCL), M/s Ashok Travels & Tours (ATT) and Indian Railways Catering and Tourism Corporation Ltd. (IRCTC).

2. This Department is receiving a large number of proposals from various Ministries/Departments seeking ex- post-facto relaxation of the prescribed procedure for purchase of air tickets from authorized travel agents only.

3. The matter has been reconsidered in this Department. All Ministries/Departments are again directed to:

(i) Ensure strict compliance of extant guidelines for purchase of air ticket directly from Airlines (at Booking counters/office/Website of Airlines) or from three authorized Travel Agents viz. M/s Balmer Lawrie & Company Limited, M/s Ashok Travels & Tours and IRCTC only by all officials/offices under their control. Henceforth relaxation on account of ignorance/unawareness of these guidelines will not be considered by this Department.

ii) In case of non-availability of authorized agent at a particular place, ticket may be booked from website of Airlines or web portal of Balmer Lawrie & Company Ltd., M/s Ashok Travels & Tours and IRCTC.

iii) In respect of Non-officials of Committees/Boards/Panels, the concerned Ministry/Department have to mention in the meeting notice that the Non-official Member has to purchase the ticket from authorized travel agent only otherwise his claim will not be settled by that Ministry/Department.

iv) All Ministries/Departments of the Government of India, etc. have to widely circulate this O.M. in all offices including attached/subordinate offices/autonomous bodies under their control with specific instructions to Heads of Departments concerned for strict compliance of these guidelines. Non-compliance of these guidelines by Ministries/Departments will be treated as lapse on the part of the concerned Ministry/Department."

6. The learned counsel for the applicants argues that this is a settled case and in OA No. 678/2015, the Tribunal vide order dated 01.03.2017 has held that since the applicants have purchased their air-tickets directly from the airline, they are entitled for reimbursement of their claim, which was denied by the respondents and the OA was allowed. In another OA No. 2537/2016, the Tribunal vide order dated 26.09.2018 partly allowed the OA. The said OA was challenged by the respondents in the Hon'ble Delhi High Court by filing W.P. (C) No. 2072/2019. The Hon'ble Delhi High Court dismissed the Writ Petition and up held the orders of the Tribunal. Learned counsel for the applicants reiterated that as the

guidelines issued by the government were not being provided to the applicant and, therefore, they were unaware of such guidelines.

7. Learned counsel for the respondents argued the points made in the counter reply stating that Government has issued guidelines from time to time and the same have been brought to the notice of all concerned. Despite these the applicants have purchased tickets in violation of these guidelines and also received the reimbursed amount. Orders were therefore issued cancelling the LTC and recoveries were started. Learned counsel for the respondents also contested the arguments that in this case, the applicants are all in service and, therefore, the same is not covered by the Hon'ble Apex Court Judgment in the case of State of Punjab vs. Rafiq Masih in SLP in 11527 of 2014 arising out of SLP (C) No. 11684 of 2012.

8. Heard Mr. Yogesh Kr. Mahur, learned counsel for the applicant and Mr. Krishna Kumar, learned counsel for the respondents, perused the records and relied upon judgments.

9. The applicants availed of LTC facility and undertook journeys during 2012-2015 to Jammu, Sikkim and Port Blair. They were permitted to travel on LTC and were duly authorised by the respondents during this period. In the sanction orders issued by Director of Institute, no guidelines were prescribed or attached indicating that the travel should be by Air India and Air Tickets may be purchased directly either from Airlines (at Booking counters/office/Website of Airlines) and, if needed, by utilizing the services of three Authorized Travel agents viz. M/s Balmer Lawrie & Company Limited (BLCL), M/s. Ashok Travels & Tours (ATT) and Indian Railways Catering and Tourism Corporation Ltd. (IRCTC).

10. The applicants have primarily explained their action being ignorant of the existing rules and guidelines on the subject which resulted in the applicants purchasing tickets from other than authorised agents, although the travel was undertaken by Air India only. They have also indicated that their claims were duly submitted and passed by the respondents without any objection. The respondents have issued the impugned order after many years of having settled their claims. Their representations explaining their position have also not been considered and the recoveries have been started.

11. It is evident that the applicants have travelled on duly authorized LTC and submitted claims for reimbursement which were settled by the respondents without any objection between 2012-2015. It is also a fact that in the sanction orders mentioned no such condition or guidelines regarding the restriction of purchase of tickets from other than the authorised agents. It is also a fact that the applicants have actually travelled by Air India and submitted their claims which were passed by the respondents without any objection.

12. As stated by the respondents, during the Audit inspections, subsequent to settlement of LTC bills, this aspect was highlighted and the respondents took action for recovery of reimbursed amount. The OM's quoted by the respondents,

however, do provide guidelines for purchase of tickets only from Air India or from the authorised agents. Other OM's have indicated that various representations have been made wherein Ministries/Departments are seeking ex-post-facto relaxation for purchase of air tickets from authorised agents only. This has also been considered and vide Ministry of Finance OM dated 19.07.2017 by which the Departments and Ministries were again directed for compliance of the earlier guidelines, however, in this OM it was directed that all Ministries/Departments of Govt. of India should widely circulate this OM and non-compliance of these guidelines would be treated a lapse on the part of Ministry/Department. It has also been indicated that henceforth relaxation on account of ignorance/unawareness of these guidelines will not be considered by this Department. It is thus obvious that the guidelines have been issued from time to time by Ministry of Finance, Department of Expenditure regarding purchase of tickets for LTC purposes directly from the Air Lines or from three nominated authorised agents. It is also evident from various OM's that there have been aberrations in a number of cases and similar situations have arisen, where tickets have been purchased by employees from other than authorised agents for various reasons, often relating to unawareness of the guidelines. Order of the Tribunal in OA No. 678/2015 dated 01.03.2017 is relating to a case wherein tickets were purchased by the applicant from the portal of Indigo Airlines directly and the reimbursement was denied. Further, the Tribunal allowed the OA holding that the applicants have purchased their air-tickets directly from air lines and as such they are entitled to their claim.

13. The subject matter of another OA No. 2537/2016 is similar to the present OA. Vide order dated 26.09.2018, the Tribunal directed as under:-

"The matter was heard at length. It was admitted by the applicant that they had travelled to Andaman under LTC-80 Scheme even though the tickets were not purchased from authorised agencies as was prescribed under the provisions of LTC-80 Scheme (para 4 supra). However, the advance drawn and the claim was already settled in 2012 itself with total amount of three tickets being Rs.1,60,494.

However, since the tickets were not drawn from the authorised agencies, the respondents have subsequently disallowed the same and recovered the entire amount from gratuity. However, it is not the case of the respondents that the applicant has not travelled at all.

It is seen from the reply submitted by the respondents that Air India charge was Rs.22,775 per person and since three persons had travelled, an amount of Rs.68,325 would have been spent by applicant had she purchased the ticket as per LTC-80. Thus certain overcharging is apparent. However, be that as it may, it is taken that an amount of Rs.68,325/-for the three tickets, is due to be reimbursed to the applicant.

9. This is a case of a retired employee now and hence under the peculiar circumstances of the case(advance was drawn, journey was performed,

expenditures were settled in the year 2012, complaints received subsequently and found to be correct, full recoveries were subsequently made in the year 2015), respondents are now directed to pay Rs.68,325/-to the applicant within a period of eight weeks for journey performed in 2012.However, no interest shall be payable on this amount. Accordingly, OA is partially allowed with these directions. No order as to costs."

14. The applicants in the present OA did not purchase tickets from authorised agents and submitted their claims which were duly settled by the respondents. At a later stage, the same was disallowed and the entire amount was recovered. The respondents had mentioned that if the applicants in that OA had purchased the tickets directly from Air India it would have been at a much lower price. The Tribunal allowed the same and permitted reimbursement only to the extent of cost of ticket if the same had been purchased directly from Air India as per LTC-80. The respondents filed a Writ Petition (C) No. 2072/2019 in the Hon'ble High Court of Delhi challenging the Tribunal's order. The Hon'ble High Court of Delhi vide order dated 13.03.2019 dismissed the Writ Petition upholding the orders of the Tribunal, the operative paras of which read as under:-

"5. The only contention raised before us by the learned counsel for the petitioner is that once it was found that the tickets on which the respondent and her family members had travelled were purchased from an unauthorised agent, the respondent was not at all entitled to any reimbursement under the LTC scheme. Therefore, the direction of the Tribunal to pay her the amount which she would have been entitled to, had she purchased the ticket directly from Air India, is wholly unsustainable. He submits that the respondent being a government servant, could claim the LTC benefit only in accordance with the scheme which mandated that the tickets should be purchased either directly from the airlines, or by utilising the services of the authorised 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) dt. 02.12.09) and, thus, once it was an admitted position that she had purchased the ticket from an unauthorised agent, the petitioner was justified in deducting the said amount from the gratuity payable to her.

6. Having considered the submissions of the learned counsel for the petitioner, we are unable to persuade ourselves to interfere with the impugned order. In view of the undisputed fact that the respondent, who stands superannuated w.e.f. from 31.05.2015, had indeed travelled to Port Blair along with her two family members by purchasing tickets from an unauthorised agent, as also the fact that there is no allegation of the tickets being fake or forged, the finding of the Tribunal in the impugned order holding that even though she may not be entitled to the amount of Rs. 1,62,216/-as had been claimed by her, she was entitled to receive atleast the amount of Rs. 68,325/-i.e. @ Rs. 22,775/-per ticket which would be the amount payable to her had she purchased the tickets directly from Air India at the time of her travel, was fully justified in the facts of

the case.

7. We find no reason to interfere with the impugned order. The writ petition, being meritless, is dismissed along with the pending applications."

15. It is a fact that Government guidelines have been issued through a number of OM's from time to time clarifying position in this respect. It has also been indicated that these guidelines should be brought to the notice of all the employees. However, the clarity about these instructions has come about only through OM dated 19.07.2017, clearly stating that henceforth relaxation on account of ignorance/unawareness of these guidelines will not be considered by the department. The responsibility has also been given for non compliance of these guidelines, and the same shall be treated as lapse on part of the concerned Ministry/Department. How the Department/Ministry brings this aspect to the notice of their staff is left to them, whether by way of attaching these guidelines along with sanction order or by obtaining undertaking etc.

16. In the present OA, the applicants claimed reimbursement after purchasing tickets from unauthorised travel agents and these claims were also settled by the respondents without any objection. Through a subsequent Audit inspection, it was pointed out and impugned order was issued by respondents disallowing LTC and earned leave encashment. As the journeys have been undertaken by the applicants by Air India only as prescribed in the Government guidelines, the lapse could possibly be on account of ignorance/unawareness of instructions regarding purchase of tickets from other than Air India authorised travel agents by the Government. As a similar matter has already been dealt with by the Tribunal and is partly allowed in OA No. 2537/2016 and by the Hon'ble Delhi High Court order upholding the same, this becomes a covered matter being a case of similarly placed persons.

17. Having considered the above mentioned and submissions made by the learned counsels, it is evident that the applicant did travel and availed the LTC benefit. The tickets purchased were also in order. The only irregularity therein was not purchasing the tickets from authorised agency or Air Lines directly. It could possibly be on account of unawareness of the rules as stated by the applicants. This has also not been pointed out at the time of reimbursement of their claims by the respondents. In view of the above, the applicants are entitled to the similar relief as has been granted by this Tribunal in OA No. 2537/2016 and upheld by Hon'ble Delhi High Court in the above referred order dated 13.03.2019.

18. It is also obvious that the applicants are not entitled to the entire amount as claimed by and reimbursed to them but only to the extent that the amount is equivalent to the fare of Air India Tickets for these journeys if the same had been purchased from Air India. The respondents are, therefore, directed to work out the amount as per the fares if the tickets had been purchased from Air India directly and reimburse to the applicant only that amount. The balance amount,

over and above that if already paid shall however be reimbursed by the applicant or recovered from their salaries by the respondents. Reimbursement would, thus, be the amount payable to the applicant had she/he purchased the tickets directly from Air India or authorised agent. Other entitled amount paid towards LTC and earned leave etc. shall not be recovered from the applicants.

19. The impugned orders are quashed and set aside. The OA is partly allowed with the above directives. There shall be no order to costs.