**(2009) 02 UK CK 0006**

**In the Uttarakhand High Court**

**Case No :** Writ Petition No. 512 of 2003

Rajendra Singh APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 17-02-2009

**Acts Referred:**
Central Civil Services (Leave Travel Concession) Rules, 1988 — Rule 12, 12(2)

**Citation :** (2009) 1 UC 681

**Hon'ble Judges :** B.C.Kandpal, Acting C.J.;Brahma Singh Verma, J

**Bench :** Division Bench

**Advocate :** Rajendra Dobhal, for the Appellant; Beena Pandey, for Union of India, for the Respondent

**Final Decision :** Allowed

## Judgement

B.C. Kandpal, A.C.J.

1. By way of this writ petition, the Petitioner has sought the relief for issuing the writ or direction in the nature of certiorari quashing the orders dated 05-10-1999,22-10-1999,03-03-2003 and 06-08-2003 (Annexure Nos. 5, 6, 7 and 8 to this writ petition) passed by Respondent Nos. 3, 5 and Central Administrative Tribunal, Allahabad Bench, respectively.

2. Brief facts of the case are that the Petitioner is posted as Store Keeper, Grade II in the Department of Survey of India, Subhash Road, Dehradun. The Petitioner was entitled to get Leave Travel Concession (hereinafter referred as ''LTC'') for the block year 1998-2001 and accordingly, he applied for the same on 24-02-1998 for himself and his family members, in order to conduct the journey from Dehradun to Kanyakumari and return back. The application submitted by the Petitioner was allowed by the Department and he was received 90% of the total expenses of journey i.e. Rs. 22,680/- by the authorities concerned.

3. The Petitioner undertook the journey operated by Garhwal Mandal Vikas Nigam, Uttar Pradesh (Now under Uttarakhand Government Undertaking). The

 

Petitioner was under the impression by virtue of the notification dated 29-03-1988 that the tours operated and conducted by Garhwal Mandal Vikas Nigam were duly approved for L.T.C. Accordingly, the Petitioner undertook his journey from Dehradun to Kanyakumari and returned back, but surprisingly, after his returning back from the journey, the Petitioner was asked by Respondent No. 5 to refund the amount of advance on the pretext that despite instructions given by him to perform journey only by railway or Government owned transport, the Petitioner and his family travelled by Garhwal Mandal Vikas Nigam transport. The Petitioner submitted his explanation before the Respondent No. 5 and requested the authorities to sanction the claim of the expenses in pursuance to the bill submitted by him. The Petitioner also took the plea that the L.T.C. claims of the other office personnel were passed by Respondent No. 5 for the journey performed by them through Garhwal Mandal Vikas Nigam operated buses without any objection or adverse objection thereon, but the Respondents/authorities did not pass the bill and insisted upon for refund of the advance L.T.C. amount sanctioned to the Petitioner.

4. Feeling aggrieved by the order dated 05-10-1999 and 22-10-1999, the Petitioner filed an application before the Central Administration Tribunal, Allahabad Bench, but the same was also rejected by Central Administrative Tribunal, Allahabad Bench vide its order dated 03-03-2003. Thereafter, the Petitioner filed an application for review but the same also stood rejected vide order dated 06-08-2006.

5. The grievance of the Petitioner is that after the order passed by the Central Administrative Tribunal, Allahabad Bench, the Respondents have started deduction of Rs. 1,000/- per month from the salary of the Petitioner towards the amount paid to him for L.T.C. Hence, the Petitioner has approached the recovery of Rs. 1,000/- per month from the salary of the Petitioner in pursuance of the impugned orders dated 05-10-1999, 22-10-1999, 03-03-2003 and 06-08-2003.

6. The counter affidavit has been filed by the Respondents/Union of India and in the counter affidavit, it has been pleaded that the L.T.C. journey is permissible through rail or State owned buses. Even the cars or taxis are not permitted. It has also been pleaded that the Petitioner himself had given an undertaking that he will travel through rail or Government owned buses, but the Petitioner along with his family had travelled by the chartered buses of Garhwal Mandal Vikas Nigam, ignoring the office memorandum dated 09-02-1998 which clearly indicates that the Government employee would not be permitted to travel for L.T.C. by chartered buses on tour conducted by I.T.D.C/State Tourism Department Corporation or local bodies like, Garhwal and Kumaun Mandal Vikas Nigam Ltd., etc. In case, the tour is conducted/operated by the above bodies in buses owned by them and registered with the Regional Transport Authorities in the name of I.T.D.C. or local bodies, etc. It has been pleaded in the counter affidavit that the tour was undertaken by the Petitioner and his family members in the buses not owned by the Garhwal Mandal Vikas Nigam but in the buses

 

owned by the agent of the Garhwal Mandal Vikas Nigam. The Respondents have thus pleaded that the Petitioner was not entitled to undertake the L.T.C. in the buses owned by the private agent of the Garhwal Mandal Vikas Nigam. Hence, the recovery to be made from the salary of the Petitioner is perfectly justified.

7. We have heard Sri Rajendra Dobhal, Learned Counsel for the Petitioner and Smt. Beena Pandey, Learned Counsel for the Respondents/Union of India and perused the record.

8. The record reveals that in the year 1988, there was a Government Notification No. 58088-Estt.(A), dated 29-03-1988 (Annexure No. 2 to the writ petition) indicating therein that the tours wholly operated and conducted by Garhwal Mandal Vikas Nigam, which is a public undertaking setup by State Government of Uttar Pradesh either by their own buses or buses taken on hire from the outside would be admissible for L.T.C. to the Central Government Employee. The contention of the Petitioner is that the subsequent Government Notification dated 09-02-1998, which was circulated in the office of the Petitioner vide letter dated 20-04-1998 was not in the knowledge of the Petitioner at the relevant point of time i.e. 24-02-1998, when he availed the facility of L.T.C.

9. It is quite clear from the perusal of Annexure No. 3 annexed to the writ petition that there is a covering letter along with the Government Notification dated 09-02-1998, which indicates that the Notification dated 09-02-1998 was circulated in the office of the Petitioner through office letter dated 20-04-1998. This fact has not been denied by the Respondents by making any kind of averment in the counter affidavit. Therefore, we do not have any other option expect to rely the averments made by the Petitioner in the writ petition that notification dated 09-02-1998 was not in the knowledge of the Petitioner at the time when he undertook the facility of the L.T.C. on 24-02-1998.

10. Another point for consideration in this matter is that the Rule 12 of Central Civil Services, Leave Travel Concession Rules, 1988 (hereinafter referred as ''CCS(LTC) Rules'') which deals with regard to the entitlement for travel under the scheme of L.T.C. and Sub-Rule (2) of the aforesaid Rule 12 deals with regard to the journey by road. Again Clause (iii) of the aforesaid Sub Rule (2) reads as follows:

(iii) Notwithstanding anything contained in Sub-rule (I) or Clauses (i) and (ii) of Sub-rule (2), where a Government servant traveling by road takes a seat or seats in a bus, van or other vehicle operated by Tourism Development Corporations in the Public Sector, State Transport Corporations and Transport services run by other Government or local bodies to visit any place in India, the reimbursement shall be either the actual hire charges or the amount reimbursable on the journey to the declared place of visit had the journey been undertaken by entitled class by rail by the shortest direct route, whichever is less. Reimbursement shall not be admissible for journey by a private car (owned, borrowed or hired), or a bus, van or other vehicle owned by private operators.

 

11. Perusal of the aforesaid Rule makes the picture quite clear that in case, Government Servant travelling by road takes a seat in a bus when another vehicle operated by Tourism Development Corporations in the Public Sector, State Transport Corporations and Transport services run by other Government or local bodies to visit any place in India, the reimbursement shall be either the actual hire charges or the amount reimbursable on the journey to the declared place or visit had the journey been undertaken by entitled class by rail by the shortest direct route, whichever is less.

12. This Rule further makes the picture clear that the reimbursement shall not be admissible for journey by a private car or other vehicle owned by private operators. The aforesaid Sub-Rule nowhere disentitles the Petitioner from the reimbursement of the money spent by him on his L.T.C. tour.

13. We are of the view that the notification dated 09-02-1998, which was communicated in the office of the Petitioner vide letter dated 20-04-1998 would not override the statutory rule contained in Rule 12 of CCS (LTC) Rule, 1988 (discussed above), as it is the settled rule that the notification will not override the statutory rule.

14. It is worthy to mention here that the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), New Delhi vide notification dated 30-07-2002 has again made a clarification on the subject - "Leave Travel Concession to Central Government Employees Travel by State Tourism Development Corporation buses-clarification regarding" and in this clarification the Government has decided that the tours conducted by I.T.D.C/ State Tourism Development Corporations, either in their own buses or buses hired or chartered by them from outside, will qualify for the purpose of availing Leave Travel Concession facilities. This office memorandum dated 30-07-2002 has been annexed as annexure No. 9 to the writ petition and the Respondents have also not denied the existence of this office memorandum dated 30-07-2002.

15. In view of the discussion made above, we are of the definite view that the recovery which is being made from the salary of the Petitioner is not justified and against the provisions of law. We, accordingly, quash the impugned orders dated 05-10-1999, 22-10-1999, 03-03-2003 and 06-08-2003 (Annexure Nos. 5, 6, 7 and 8 to this writ petition) as well as order passed by the Central Administrative Tribunal, Allahabad Bench respectively. The Respondents are directed to refund the amount already recovered from the salary of the Petitioner, as yet. The Respondents are also directed to pay the balance amount to the Petitioner withheld by them out of the total amount of the L.T.C. claimed by the Petitioner.

16. With the aforesaid observations, the writ petition is allowed.

 