(2008) 12 CAL CK 0001

In the Calcutta High Court

Case No : W.P.C.T. No. 387 of 2004

Union of India and Others APPELLANT

Vs

Haradhan Denre and Others RESPONDENT

Date of Decision : 24-12-2008

Acts Referred:

Citation : (2008) 12 CAL CK 0001

Hon'ble Judges : Prasenjit Mandal, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Sardar Amjad Ali, Karabi Ghosh and Sahin Imam, for the Appellant; Purnendu Kr. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Kalyan Jyoti Sengupta, J.—I have gone through the draft judgment prepared by my learned Brother. I agree with His Lordship''s finding. I have thought I should add few words of mine with His Lordship''s judgment. The respondents, at the relevant time, had been working in the Metal and Steel Factory, Ichapore, 24-Parganas, (North). They undertook travel tour from Calcutta to Manali while availing themselves of leave travel concession facility, which commenced from 20th to 22nd April, 1998. They withdrew 90% advance for meeting their expenses of journey. They traveled by bus operated by the West Bengal Tourism Development Corporation. After completion of journey they submitted their claim for reimbursement of remaining 10% of the cost of traveling by bus. The applicants, before us, instead of granting aforesaid 10% balance claim directed the respondents to deposit the enter advance amount of traveling expenses which had been withdrawn earlier on the plea that the said journey was undertaken in violation of the DOPT order dated 9th February, 1998. Now subsequent fact has been considered and recorded by His Lordship, so I do not repeat it. The whole question is whether the aforesaid Circular dated 9th February, 1998 is applicable in case of the applicants or not. The learned Tribunal after going through the facts found that the said Circular had not been circulated to the employees individually before they undertook their journey and it was only brought to their notice after completion of their journey. The aforesaid fact finding has not been challenged by the applicants before us. It is also observed by the learned Tribunal going by the language of the said Circular dated 9th February, 1998 that the respondents before us have not violated the same as it has been certified by the West Bengal Tourism Development Corporation Limited that the said travel tour was operated and/or conducted directly by the said authority which is a West Bengal Government undertaking and not by a private party or person under the permit No. 9860/ST AIWB dated 17th April, 1998. The relevant portion of the said DOPT Notification dated 9th February, 1998 is reproduced hereunder:

As the Ministry of Finance etc. are aware Central Government employees are entitled for Home Town LTC once in a block of two years and All India LTC once in a block of four years. The Leave Travel Concession is not admissible for journey by a private car (owned, borrowed or hired) or a bus, van or other vehicle owned or operated or chartered by private operators. However, travel by private buses operating as regular service from point to point as regular intervals on fixed fare rates with the approval of Regional Transport Authority/State Government concerned, is admissible. Similarly, journeys by chartered buses are admissible for LTC only in those cases, where the tour is wholly operated and conducted by the India Tourism Development Corporation (ITDC)/State Tourism Development Corporations (STDCs) either by their own buses or buses taken on hire from outside. In such cases, it is to be clearly certified by the ITDC/State Tourism Development Corporations concerned that the tour was actually conducted/ operated by them and not by any private party/person.

2. Therefore, the intent and purport of the above Circular is very clear and it suggests that the tour by private operator is not permissible. The language of the Certificate issued by the West Bengal Tourism Development Corporation, in my view, fully satisfies the conditions mentioned in the aforesaid Rule. The said Certificate is not questioned though it was produced at a later stage for inspection. Therefore, there was no difficulty to allow the claim of the respondents before us.

3. Under those circumstances, I think the learned Tribunal has come to a correct finding and granted appropriate relief. Accordingly, the judgment and order of the learned Tribunal is upheld.

Prasenjit Mandal, J.

4. This application is directed against the order dated 29,03.2004 as corrected by another order dated 21.04,2004 passed by the Central Administrative Tribunal, Calcutta Bench in Original Application No. 506 of 2003 whereby the learned Tribunal has disposed of the O.A. application directing the respondent authorities to settle the claim of the applicants and the admissible amount be reimbursed to them (applicants) within two months from the date of communication of the

order.

5. The fact of the cases in short is that the applicants are working in the Metal and Steel Factory, Ichapore. They availed themselves of the L.T.C. and completed journey from Calcutta to Manali from 20th to 22nd April, 1998 in batches after drawing 90% advance of their L.T.C. claim. On return from journey, they submitted their regular bills but the respondent authorities passed orders directing the applicants to refund the entire advance amount on the ground that they had traveled by the bus hired by the West Bengal Tourism Development Corporation and such tour by such private bus hired by the West Bengal Tourism Development Corporation was not permissible at all in view of the departmental order dated 09.02.1998. Being aggrieved by the said orders, the applicants filed O.A. No. 607 of 1999 which was disposed of directing the respondent authorities/ applicants herein to consider the matter afresh by passing a speaking order. Accordingly, the respondent authorities passed the speaking order dated 30.05.2002 rejecting the claim of the applicants. Being aggrieved by the said order, the applicants preferred the O.A. Case No. 506 of 2003 which was disposed of by passing the impugned order. Thereafter the respondent authorities have preferred the present petition.

6. Upon hearing the learned Advocates of both the sides and perusing the materials on record, we find that the reason for disallowing the claim for L.T.C. is that journey was undertaken in violation of the D.O.P.T. order dated 09.02.1998. For convenience, the relevant portion of the said order dated 09.02.1998 is re-produced below:-

The matter has been reconsidered and it has been decided that tours conducted by ITDC/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 provided the ITDC/State Tourism Development Corporation certify that the journey has actually been performed by the Government servant and his family members for which he is claiming Leave Travel Concession:

2. The above instructions will be applicable as and when OM dated 02.03.2001 suspending LTC facility is withdrawn. The cases of exempted retiring employees and pending cases where decision is yet to be taken may be decided in the light of instructions laid down in para 1 above. However, the past cases decided otherwise need not be re-opened.

7. Mr. Ali learned Senior Advocate for the applicant authorities submits that in view of the D.O.P.T. order dated 09.02.1998 the applicants are not entitled to undertake journey by luxury bus hired by the said Tourism Development Corporation and so they are bound to refund the advance L.T.C. already drawn.

8. So short question involved in the application is whether the applicants are entitled to claim L.T.C. by traveling by the luxury bus provided by the West Bengal Tourism Development Corporation Limited.

9. It is pertinent to mention here that though the said order was passed on 09.02.1998, it was published displaying on in the Notice Board only on 16.04.1998 that is just before the date of commencement of journey. by the concerned employees. Subsequently the said order was served upon the applicants individually in the month of June, 1998.

10. The West Bengal Tourism Development Corporation Limited had issued certificate to the effect that the trip from Calcutta to Manali and back by luxury bus No. WB-25-4278 from 20th to 22nd April, 1998 to 12.05.1998 was directly operated/conducted by it, not by any private party/person under the permit No. 9860/STA/WB dated 17.04.1998. It is also referred to therein that the ticket costs does not include any element of board and lodging. Therefore, such certificate of the Tourism Development Corporation clearly indicates that they have claimed only the charges from Calcutta to Manali and back by the said luxury bus. The applicants have claimed the traveling charges from point to point and nothing more in their LTC claim.

11. Previously, the applicants filed the O.A. No. 607 of 1999 and the learned Tribunal duly considered the journeys performed by the applicants by the luxury bus and observed that unless the order dated 09.02.1998 was duly circulated and brought to the notice of the employees the same cannot be applied against the employees. The learned Tribunal held in two matters being O.A. No. 903 of 2001 and O.A. No. 1282 of 2001 filed by a group of employees without circulation the said order dated 9th February, 1998 cannot be applied. The respondent authorities did not challenge the findings of the learned Tribunal in O.A. No. 607 of 1999 filed by the applicants. So the observations made by the learned Tribunal as noted above, being not challenged by the respondent authorities, have become binding and final and it will operate as res judicata against the respondent authorities. Last of all, we find that the order dated 09.02.1998 was in force for a very limited period and it was withdrawn by issuing a fresh order dated 30.07.2002. The effect was that the order dated 09.02.1998 is not in force at present and it was not properly circulated to the concerned applicants before their journey. For further clarification the order dated 30.07.2002 is mentioned below:-

The matter has been reconsidered and it has been decided that tour conducted by ITDC/State Tourism Development Corporation 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 provided the ITDC/State Tourism Development Corporation certify that the journey has actually been performed by the Government Servant and his family members for which he is claiming the Leave Travel Concession.

12. In view of the entire situation and such further clarification dated 30.07.2002 which is generally prospective in nature and the certificate issued by the West Bengal Tourism Development Corporation Limited as mentioned earlier, we are of the view that the respondent authorities are not entitled to recover the advance

LTC granted to the applicants. Rather they should have passed the L.T.C. bills filed by the concerned employees. We are of the view that there is nothing to interfere with the impugned order passed by the learned Tribunal.

13. Accordingly, the application is dismissed.

14. Considering the circumstances, there will be no order as to costs.

