**(2013) 01 RAJ CK 0079**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 174 of 2013

Union of India and Others APPELLANT

Vs

Jawahar Lal RESPONDENT

**Date of Decision :** 14-01-2013

**Acts Referred:**

**Citation :** (2013) LabIC 3306

**Hon'ble Judges :** Dinesh Maheshwari, J;Arun Bhansali, J

**Bench :** Division Bench

**Advocate :** Deep Chand Sharma and Yashwant Mehta, for the Appellant; Sukesh Bhati, for the Respondent

**Final Decision :** Dismissed

# Judgement

1. By way of this writ petition, the Employees'' Provident Fund Organization (''EPFO'') and its officials seek to question the order dated 29.08.2012 whereby the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (''the CAT'') has allowed the Original Application (''OA'') No. 13/2011 filed by the applicant-employee (the respondent herein) and, while setting aside the impugned orders issued by the present petitioners for recovery of a part of advance towards Leave Travel Concession (''LTC'') from the salary of the applicant, has restrained the petitioners from making any such recovery. The dispute leading to this writ petition arose essentially, for the reason that the applicant-respondent, while availing of an LTC with his family to North Eastern Region (''NER''), undertook a part of air journey through private airlines and not Air India. The present petitioners, essentially with reference to an Office Memorandum (''OM'') dated 13-07-2009, asserted that the payment of fare for the journey undertaken through private airlines could not be made and hence, sought recovery of a part of the advance allowed to the applicant-respondent. Aggrieved, the applicant-respondent preferred the OA that has been allowed by the CAT in the order impugned.

2. We have heard the learned counsel appearing for the petitioners as also the

learned counsel appearing for the applicant-respondent in caveat. Though the petitioners have not annexed with the petition all the relevant documents concerning the subject matter of this petition but, during the course of submissions, the pleadings and documents as filed before the CAT have been placed before us for perusal; and we have examined the matter with reference to the material as placed on record and as shown during the course of arguments.

3. The relevant background aspects of the matter could be noticed in the following: The applicant-respondent, working as a Section Supervisor in the petitioner organization in its sub-divisional office at Jodhpur, applied for the LTC for the block period of the years 2006-2009 (extended to the year 2010) in accordance with the CCS (LTC) Rules, 1988 (''the Rules of 1988'') for travelling to NER for a period of 10 days along with his 6 family members. Initially, on 21.04.2010, the respondent submitted the details of his proposed tour programme from 24.04.2010 to 04.05.2010 in the manner that he would be travelling from Jodhpur to Bagdogra by air, from Bagdogra to Yumthang by road and then, the similar nature return journey. For the said journey, he made a request for advance leave encashment towards one sided economy class air fare by Air India and one sided road fare, amounting to Rs. 3,38,220/-. The petitioners sanctioned the LTC by an order dated 22.04.2010 and allowed an advance of Rs. 1,50,000/- to the respondent. Subsequently, the respondent submitted an intimation in the office, allegedly on 27.04.2010, to the effect that due to non-availability of seats in Air India, he had to make deviation regarding the dates of the journey and the airlines. The respondent stated his revised tour programme in the following manner:--

It is submitted in the above matter that due to non availability of seats in airlines, I have to deviate my LTC tour programme, the details of tour programme is as under:--

1. Departure from Jodhpur to Delhi on 29.4.2010 by Air India at 2.15 p.m.

2. Departure from Delhi to Bagdogra on 30.4.2010 by spice jet at 11.20 a.m.

3. Return from Bagdogra to Delhi on 8.5.2010 by Go Air at 1.15 p.m..

4. Return from Delhi to Jodhpur on 9.5.2010 by Air India 3.20 p.m..

It is submitted for your kind information and office record, the E.L. Period will be from 29.4.2010 to 7.5.2010.

4. Neither any approval nor rejection was received by the respondent on the intimation aforesaid and he proceeded on the tour according to his deviated programme. It appears that when the respondent sought the sanction of his LTC bill after the journey, queries and questions were raised on his having undertaken a part of travel through the private airlines and not Air India. The respondent submitted a clarification dated 08.06.2010 referring to the fact of his having submitted the deviated tour programme because of non-availability of the seats in Air India flights from Delhi to Bagdogra and return for the period from

 

23.04.2010 to 15.05.2010; and alleged that he was never declined the permission on the deviated programme. The respondent also submitted a comparison of the air fare as was likely to be incurred upon taking the travel through Air India and that incurred for his travel through private airlines; and suggested that his travel by private airlines had been lesser expensive and resulted in the savings of Rs. 17,904/- in fare. However, the petitioners ultimately issued a communication dated 16.09.2010 informing the respondent that he had availed of LTC after the OM dated 13.07.2009 and, therefore, payment of the air fare could not be made for the travel through private airlines; and that his journey through private airlines had been regulated as the train journey of the class he was entitled to; and hence, an amount of Rs. 69,764/- was recoverable from him against the advance given. The respondent was further served with a reminder dated 11.01.2011 to deposit the said amount with a warning that in case of default, the same would be recovered from his salary from the month of January 2011 onwards. Aggrieved by the said recovery orders, the respondent-applicant preferred the OA leading to this writ petition.

5. Questioning the orders for recovery, the applicant-respondent submitted before the CAT, inter alia, that he had already intimated the change in the travel plan because of non-availability of seats in Air India and it was open for the Department to have directed against such travel but, no such direction was issued; and hence, the Department was estopped from seeking any recovery at the subsequent stage. The applicant-respondent also referred to the OM dated 02.05.2008 and clarification thereupon as issued on 14.05.2008 to contend that permission had been granted to the government servants of the specified categories for travel by air to NER on LTC. As regards the OM sought to be referred by the Department, the respondent contended that he was not at fault and neither any OM prohibited such air travel nor the suggested prohibition in the OM dated 13.07.2009 was applicable to EPFO. The applicant-respondent also asserted that the questioned OM was applicable only for the official journeys and not for the LTC cases.

6. Per contra, the present petitioners contended before the CAT that the applicant did not obtain any approval for the deviation in his travel plan and chose to travel with the private airlines, which was impermissible as per the OM dated 13.07.2009. It was also contended that the applicant had undertaken the journey on 29.04.2010 after the OM dated 13.07.2009 and hence, he was not entitled to travel by private airlines. It was further contended that the guidelines contained in the circulars dated 11.03.2010, 14.05.2010 and 16.09.2010 had specifically barred the employees from undertaking air travel through any airlines other than Air India; and the applicant, in spite of being well aware of all the concerned rules, deliberately avoided them and completed the journey as per his convenience. However, in rejoinder to the reply, the applicant averred that the referred circulars were inapplicable since he undertook the journey earlier; and that the EPFO, in their subsequent circular dated 03.01.2011, had clarified that the Ministry of Finance had exempted it from the effect of the circular dated

 

13.07.2009.

7. The CAT referred to the OMs/Circulars relied upon by the parties i.e., the OMs dated 02.05.2008 and dated 10.11.2008 read with the clarification dated 14.05.2008 as also the OM dated 13.07.2009. The CAT also referred to its order dated 20.07.2012 as passed in OA No. 192/2010 whereby a similar nature matter was decided in favour of the employee while holding that when the employee had undertaken the journey without any false representation, the Department was not justified in ordering recovery towards the alleged excess payment. The CAT observed that the Department did not issue any direction, whether in the affirmative or in the negative, on the deviated tour programme suggested by the applicant; and held him entitled to the claimed relief, of quashing of the orders impugned and restraining the respondents from making any recovery from his salary.

8. Seeking to question the order so passed by the CAT, the learned counsel for the petitioners has strenuously argued that the CAT has acted illegally and has proceeded contrary to the law applicable. The learned counsel has contended that when proceeding on LTC, the employee can undertake the journey as per the permission and not at his sweet will whereas, in the present case, the respondent did not undertake the journey from 24.04.2010 to 04.05.2010 as permitted but commenced the journey with effect from 29.04.2010; and in any case, he undertook a part of the journey on the private airlines, squarely contrary to the rules. The learned counsel has particularly referred to the OM dated 13.07.2009, and its further clarifications under the OMs dated 27.07.2009, 11.03.2010 and 22.03.2010. According to the learned counsel, none of the applicable OMs permitted the respondent to undertake the journey on LTC through private airlines for the stations connected by Air India but the respondent, knowingly and as per his own choice, undertook the journey through private airlines without obtaining any permission therefor. The learned counsel further contended that the respondent submitted the information about deviation only as a formality and without waiting for any decision thereupon, proceeded to undertake the journey for which, he could not have been reimbursed, particularly in regard to the air travel not undertaken through Air India. The learned counsel submitted that the referred decision of OA No. 192/2012 had no bearing on the present case because the applicant therein had undertaken the journey in the year 2008 whereas the journey in the present case commenced on 29.04.2010 when the OM dated 13.07.2009 had become applicable.

9. The learned counsel further contended that the CAT has proceeded as if LTC had been a matter of right and has ignored the fundamental aspect that it were only a concession and not a right. According to the learned counsel, the CAT has erred in not comprehending the position that the expression "leave" in the instant case is used as a noun and not as a verb; and when the word "leave" is used as a noun, the journey of the respondent would always come within the realm of permission; and no relief beyond that permissible could be granted.

 

10. On the other hand, the learned counsel for the applicant-respondent has duly supported the order impugned and submitted that neither the OM dated 13.07.2009 could be construed as that of total prohibition of journey by private airlines nor could be made applicable to the case of the applicant serving in EPFO. According to the learned counsel, the OM dated 13.07.2009 provided the instructions only for official tours and not LTC whereas the OM dated 02.05.2008 made the provision for relaxation of travel to visit NER in case of LTC, and therein, no such compulsion of travel by Air India was stipulated. The learned counsel further contended that the applicant undertook a part of the journey through private airlines only under the force of circumstances where seats were not available in Air India; and by such a journey, he did not cause any loss to the petitioners and rather, there had been the savings of an amount of Rs. 17,904/- for his travel through private airlines.

11. After having given thoughtful consideration to the entire matter, we are clearly of the view that no case for interference in the writ jurisdiction is made out; and this writ petition does not merit admission.

12. The respondent raised the plea that the action of petitioners in not allowing air fare for the travel through private airlines was contrary to the guidelines issued in OM dated 02.05.2008 read with the clarification dated 14.05.2008 whereby and whereunder, it was permissible for the government employees to travel to North Eastern Region by private airlines subject to conditions laid down in Department of Expenditure OM dated 24.03.2006. The aforesaid OM dated 02.05.2008 and the relevant part of the clarification thereupon dated 14.05.2008 read as under:--

OM dated 02.05.2008

Subject-. CCS (LTC) Rules, 1988 - Relaxation for travel by air to visit NER.

The undersigned is directed to say that in relaxation of CCS (LTC) Rules, 1988, the Government have decided to permit Government servants to travel by air to North Eastern Region on LTC as follows:--

(i) Group A and Group B Central Government employees will be entitled to travel by Air from their place of posting or nearest airport to a city in the NER or nearest airport.

(ii) Other categories of employees will be entitled to travel by air to a city in the NER from Guwahati or Kolkata.

(iii) All Central Government employees will be allowed conversion of one block of Home Town LTC into LTC for destinations in NER.

2. These orders shall be in operation for a period of two years from the date of issue of this O.M.

3. Data regarding number of Government employees availing LTC to NER may be maintained.

 

4. In their application to the staff serving in the Indian Audit and Accounts Department, these orders issue after consultation with the Comptroller and Auditor General of India.

Clarification dated 14.05.2008

Subject:--Central Civil Services (LTC) Rules, 1988-clarification regarding reimbursement of fare in respect of travel by air to visit NER:

After issue of DOP&T O.M. No. 31011/4/2007-Estt.(A) dated 2nd May, 2008 allowing Government servants to travel by air to North Eastern Region on LTC. Clarifications on certain points have been sought by Government servants/ various Ministries/Departments. The doubts raised by various authorities are clarified as under:--

13. By another OM dated 10.11.2008, it was stated that only the cheapest economy fare will be allowed for LTC.

14. On the other hand, the OM dated 13.07.2009, as referred to and relied upon by the petitioners, reads as under:--

In partial modification of this Ministry''s OM No. F. No. 7 (2)/E.Coord/2005 dated 23rd November, 2005 and in supersession of this Ministry''s OM No. 19024/ IE.IV/2005 dated 24.03.2006, it has been decided that in all cases of air travel, both domestic and international, where the Government of India bears the cost of air passage, the officials concerned may travel only by Air India.

2. For travel to stations not connected by Air India, the officials may travel by Air India to the hub/point closest to their eventual destination, beyond which they may utilize the services of another airline which should also preferably be an alliance partner of Air India.

3. In all cases of deviation from these orders because of operational or other reasons or on account of non-availability, individual cases may be referred to the Ministry of Civil Aviation for relaxation.

4. All Ministries/Departments of the Government of India are requested to strictly adhere to these instructions.

5. These orders will also apply to officials in autonomous bodies funded by Government of India.

15. In a comprehension of the matter with reference to the OMs aforesaid, it is noticed that the OM dated 02.05.2008 and its clarification dated 14.05.2008 relate specifically to the subject of relaxation of the Rules of 1988 for travel by air to visit NER; and compulsion to travel by Air India is not envisaged therein. In the Clarification dated 14.05.2008, the specific question about permissibility of travel by a private airlines for LTC journey to NER has been answered in the affirmative. Viewed in this context, it is difficult to agree on the submissions that the OM dated 13.07.2009 could be considered applicable to the specific and

 

particular case of LTC journey to NER, as covered by the OM dated 02.05.2008. By the OM dated 13.07.2009, the OM dated 02.05.2008 had not been modified or superseded. In any case, the proposition that the OM dated 13.07.2009 does not apply to availing of LTC to NER appears to be a possible view of the matter; and the CAT cannot be said to have committed any jurisdictional error in not accepting the submissions of the petitioners.

16. Secondly and significantly, even if it be assumed that OM dated 13.07.2009 is applicable to the case of LTC to NER yet, the said OM cannot be said to have put an absolute prohibition on air travel through private airlines for availing such LTC. It is noticed that as per clause (3) of the OM dated 13.07.2009, in cases of deviation due to operational or other reasons or on account of non-availability, individual cases may be referred to the Ministry of Civil Aviation'' for relaxation. In the instant case, it remains indisputable that the respondent employee did submit his deviated program to the competent authority; and stated that the reason for deviation was non-availability of seats in the airlines. The petitioners could have forwarded his application to Ministry of Civil Aviation for consideration of his case for relaxation, but the petitioners chose not to take any such action. It is noticed that in the reply submitted before the CAT, the petitioners merely stated that no request was received by their office from the applicant seeking relaxation from the Government to travel by private airlines while disputing the date of submission of deviated programme by the applicant and while asserting that he sent the intimation only on 28.04.2010. Whether the applicant submitted the intimation on 27.04.2010 or on 28.04.2010 is hardly of any relevance in the matter. Whenever such an information was received, and even after undertaking of the journey by the applicant, his case could have definitely been referred to the Ministry of Civil Aviation for relaxation. The petitioners having omitted to do so, the respondent cannot be penalized for their inaction. Noteworthy it is that neither any reason is forthcoming as to why the case of the respondent was not forwarded to the Civil Aviation Ministry nor has it been shown if there was any impediment in seeking such an available relaxation.

17. It is clear that the applicant had given cogent reasons for deviation i.e., non-availability of the seats in Air India and then, the extended period of his LTC was coming to an end on 01.05.2010. The applicant being not guilty of any fraudulent conduct and the petitioners themselves being at fault in not referring his matter for relaxation, no recovery could have been countenanced for a part of travel through private airlines.

18. Thirdly, and more significantly, it is noticed that the basic idea in circulating various instructions in the OMs from time to time regarding the LTC or official tours has been to provide for the measures for maintaining austerity and economy in all such travels. The applicant-respondent, in his representation dated 08.06.2010, had placed before the authorities the comparison of the air fares of Air India vis-?-vis the private airlines on the said routes; and had categorically shown that he had been able to save an amount of Rs. 17,904/- by

 

travelling through the private airlines instead of Air India. The petitioners have not denied the facts so asserted by the applicant-respondent. Thus, apparent it is that no monetary prejudice has been caused to the petitioners by the applicant''s travel through private airlines. On the contrary, such a travel had only resulted in saving of an amount of Rs. 17,904/-.

19. The submissions as made on behalf of the petitioners about the grammatical connotations of the expression "leave" have hardly any bearing on the subject matter of this case. So far the question of permission is concerned, the applicant, indeed, undertook the journey after seeking permission and cannot be said to have committed any such violation of the rules as to be subjected to recovery from the advances.

20. We may in the passing observe that as per the circular dated 03.01.2011 issued by the EPFO on the basis of the communication of the Department of Expenditure, Ministry of Finance, it is borne out that EPFO had been exempted from the effect of OM dated 13.07.2009. It appears that the said circular came to be issued when it was found that the proposal of exempting EPFO would result in reduction in the expenditure. Such a decision having been taken after the travel in question, it may not have a direct bearing on the present case but it does indicate the material aspect that reduction of expenditure had been the concern of the petitioners. Thus, in the ultimate analysis, when the action of the respondent did not cause any monetary loss and rather resulted in savings, the order as passed by the CAT cannot be faulted at.

21. Thus, in the ultimate analysis, the order as passed by the CAT appears to be just and proper; and does not appear suffering from any jurisdictional error as to call for interference in the writ jurisdiction. Consequently, the writ petition fails and is, therefore, dismissed.

 