
(2006) 04 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4490 CAT of 2006

Union of India (UOI) and Others

APPELLANT

Vs

S.S. Bawa and Another

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Central Civil Services (Leave Travel Concession) Rules, 1988 — Rule 12, 12(3), 18
Constitution of India, 1950 — Article 14, 226, 227

Citation : (2006) 143 PLR 590

Hon'ble Judges : S.S. Nijjar, J;Ajai Lamba, J

Bench : Division Bench

Advocate : Daya Chaudhary, Assistant Solicitor General of India, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—The Union of India has filed this writ petition under Articles 226/227 of the Constitution of India challenging the order dated 13.1.2006 (Annexure P-3) passed by the Central Administrative Tribunal, Chandigarh (hereinafter referred to as "the Tribunal") in O.A. No. 585-CH of 2005. Applicant-Respondent No. 1 filed the aforesaid O.A. challenging the order dated 20.5.2005 passed by the petitioners-Union of India rejecting his claim for reimbursement of the Leave Travel Concession (hereinafter referred to as "the LTC").

2. It was not disputed before the Tribunal nor is it disputed before us that applicant-respondent No. 1 had proceeded on duly sanctioned L.T.C. from 12.1.2004 to 23.1.2004. The journey was to commence from Chandigarh and was to end at Port Blair. Respondent No. 1 had a number of options to reach Port Blair from Chandigarh. Respondent No. 1 claims that he was constrained to travel by Jet Airlines as the arrangement to travel by rail did not fructify. After visiting Port Blair along with his family, respondent No. 1 had been given LTC advance in the sum of Rs. 44,000/-. The entire expenses for travel had been assessed at Rs. 49,350/-. The petitioners i.e. the Union of India rejected the claim of the

respondent No. 1 and directed recovery of Rs. 45,000/-. The applicant-respondent No. 1 was informed that he is not entitled to travel by Air in view of the provisions contained in Rule 12(3) of the Central Civil Services (Leave Travel Concession) Rules, 1988 (hereinafter referred to as "the LTC Rules"). He was informed that under the aforesaid Rule, a Government Servant may travel by Air between places not connected by road or where an alternative mode of travel is either not available or is very expensive. He was further informed that where a government servant performs the journey by Air between places connected by Rail, his reimbursement may be restricted to the fare of the entitled class by Rail, other than Rajdhani/Shatabadi Express. Even these provisions are not applicable in respect of journeys undertaken by Private Airlines. On the rejection of his claim, respondent No. 1 again submitted his claim by drawing the attention of the authority to Rule 18 of the L.T.C. Rules which provides for relaxation by the competent authority if the department is satisfied that operation of any of these rules causes undue hardship in any particular case. On the asking of the Department, respondent No. 1 also provided a certificate from Indian Airlines regarding non-availability of the seat during those particular days. In spite of the aforesaid fact, the claim of the petitioner has been rejected by order dated 20.5.2005.

3. The petitioners-Union of India filed a written statement before the Tribunal contesting the claim of the applicant-respondent No. 1. It was pleaded that the applicant-respondent No. 1, at no stage, had informed the office that he was proposing to travel from New Delhi to Port Blair and back by Air instead of undertaking journey by rail for which he had taken L.T.C. advance. It was further pleaded that the power of relaxation under Rule 18 of the L.T.C. Rules was not exercised considering that private mode of transport is not permissible for reimbursement under the L.T.C. Rules.

4. The Tribunal considered the submissions made by both the parties and accepted the plea put forward by the applicant-respondent No. 1. The Tribunal has come to the conclusion that the applicant-respondent No. 1 was entitled to travel by rail. The Tribunal has also come to the conclusion that in case any employee who is entitled to travel by rail, in fact traveled by Air, only the fare to which the employee is entitled, can be reimbursed. Since the applicant-respondent No. 1 was entitled to travel by rail, a direction has been issued to the petitioners-Union of India to reconsider the claim of the applicant-respondent No. 1 and to make payment of the amount to which he is found entitled.

5. The Learned Counsel for the petitioners-Union of India vehemently argues that under Rule 12(3) of the L.T.C. Rules, respondent No. 1 would not be entitled to any reimbursement as he along with his family had undertaken the journey by a private Airline. Learned Counsel also relies on Circulars issued by the Union of India dated 19.2.1990 and 28.4.1995.

6. With the assistance of the learned Counsel for the petitioners, we have perused the Rules as well as the paper-book. Rule 12 of the L.T.C. Rules is as

under:

12. Entitlement.- (1) For travel under the Scheme of Leave Travel Concession the entitlement shall be as under:

JOURNEY BY AIR/RAIL Pay Range Entitlement Rs. 18400 and above Air Economy (Y) Class by National Carriers or AC 1st Class by train, at their option Rs. 16400 and above but less than AC First Class Rs. 18400 Rs. 8000 and above but less than 2nd AC 2 Tier Sleeper Rs. 16400. Rs. 4100 and above but less than 1st Class/AC 3 Tier Sleeper AC Rs. 8000 Chair Car. Below Rs. 4100 2nd Sleeper

All Government servants who are entitled to travel on LTC by First Class/ AC 3 Tier Sleeper/ AC Chair Car may, at their discretion, travel by AC 2 Tier Sleeper in cases where any of the trains connecting the originating and destination stations concerned by the direct shortest route do not provide these three classes of accommodation

TRAVEL BY RAJDHANI EXPRESS TRAINS. Pay Range Entitlement Rs. 16400 and above AC First Class Rs. 8000 and above but less 2nd AC 2 Tier Sleeper Rs. 16400 Rs. 4100 and above, but less than AC 3 Tier Sleeper (Vide OM dated Rs. 8000 21.7.1999) TRAVEL BY SHATABADI EXPRESS TRAINS: Pay Range Entitlement Rs. 16400 and above Executive Class Rs. 4100 and above, but less than AC Chair Car. Rs. 16400

Note:Entitlement by Rajdhani/Shatabadi Trains would be applicable in cases where journey is actually undertaken by these trains and not for determining entitlement on notional basis. Both ends of the journey i.e. place of start of the journey and the destination should be directly connected by Rajdhani/Shatabadi Express. (See OM dated 31.3.1999 for clarifications- SI. No. 52).

(B) JOURNEY BY SEA OR RIVER STEAMER: "Pay Range Entitlement Rs. 8000 and above Highest Class. Rs. 6500 and above but less than If there are two classes only on the Rs. 8000 steamer, the lower class. Rs. 4100 and above, but less than If there are three classes, the middle Rs. 6500 or the second class. If there be four classes the third class. Below Rs. 4100 The lowest class.

According to the learned Counsel, respondent No. 1 was in the scale of Rs. 10000-325-15200. Therefore, he was not entitled to travel by Air at all. At best, he was entitled to travel by AC 2 Tier Sleeper. Learned Counsel has placed strong reliance on the Circular dated 19.2.1990 (Annexure R-2), as clarified by Circular dated 28A.1995 in which it is categorically provided as under:

Regulation of LTC Claim when the journey is performed by Air-

xxx xxx xxx xxx xxx

2. The matter has been considered and it has been decided that reimbursement of fare in cases where a Government servant performs journeys on LTC by air between place connected by rail, may be restricted to the fare of the entitled class by rail other than Rajdhani/Shatabadi Express.

3. These provisions are, however, not applicable in respect of journeys undertaken by private airlines.

7. The Tribunal has noted all the aforesaid submissions and has held that Clause (3) of the aforesaid Circular (Annexure R-2) is illegal. The Clause has been quashed and set aside. Learned Counsel for the petitioners submits that the findings recorded by the Tribunal are beyond the jurisdiction of the Tribunal. She further submits that the classification between Private Airlines and National Airlines for the purposes of availing LTC cannot be said to be either irrational or arbitrary.

8. We have considered the submissions made by the learned Counsel for the petitioners. A perusal of LTC Rules reproduced above, would show that there is a definite Scheme incorporated therein regulating the grant of LTC. The employees have been granted LTC according to their status which has been graded by the pay-scales enjoyed by them. The Officers enjoying the higher pay-scales are held entitled to Travel by Air Economy (Y) Class by National Carriers or AC 1st Class by train, at their option. Officers enjoying the pay scales of Rs. 8000 and above, but less than Rs. 16,400/- are entitled to travel by 2nd AC-2 Tier Sleeper. This is the Category in which applicant-respondent No. 1 was entitled to claim the LTC. The aforesaid Rule is further amplified by the Circulars dated 19.2.1990 and dated 28.4.1995. In these Circulars, it is provided that whenever travel by Train is not available, an employee has the option to travel by Air. However, in those cases, the reimbursement of the LTC would be limited to the rail fare. Clause (3) of the Circular (Annexure R2) provides that these provisions are not applicable in respect of Journey undertaken by private Airlines.

9. Having considered the entire matter, we are of the opinion that the view expressed by the Tribunal on this point is unexceptionable. For ready reference, we may reproduce the relevant paragraphs of the order dated 13.1.2006 (Annexure P-3) passed by the Tribunal as under-

5. We have also been shown Annexure R2, which is C&AG Circular dated 19.2.1990, along with OM dated 28.4.1995, conveying the decision that reimbursement of fare in cases where Govt. servant performs journey on LTC by air between places connected by rail, may be restricted to the fare of the entitled class by rail other than Rajdhani/Shatabadi Express. Here also a Clause has been added that these provisions are not applicable in respect of journeys undertaken by private airlines. We could understand decision of Govt. of India not to reimburse the expenses where undertaken by private buses or through agents , Journeys were undertaken or were said to be running organized routes on private buses. Reason was that Govt. discovered that large number of employees had put up fraudulent/false LTC claims. Present is, however, a case where it is undisputed that applicant, with his family, has traveled on LTC as per the plan given by him to the department after taking advance and that he has travelled by Jet Airways. In this modern age of computerization, even otherwise, journeys by airlines, even belonging to private companies, can be very well verified. We

are at a loss to understand the rationale of denying LTC concession on the ground that journeys undertaken by private airlines are not recognized. Is Govt. of India trying to promote monopoly of an airline which is called national airline? That possibly cannot be the motive and if it be, that shall have to be declared illegal.

6. In modern times and circumstances, thinking of good management has undergone a big change. It is now accepted that for getting optimum output from employees, the management must send them on leave, periodically. In advanced countries, like USA etc., not only employees are encouraged to proceed on leave, but their leave period is financed by the Management on the plea that a relaxed employee, in a healthy state of mind, would be more useful than an over-burdened person. Leave Travel Concessions were thought of and enforced by Govt. of India with these objects in mind. However, one is only surprised when such parochial thinking, belonging to the 19th Century, is still persisted even in 21st Century by saying that the decision taken by Govt. of India on the mode of travel or entitlement of persons shall not be applicable merely because journey was not undertaken by the employee through Indian Airlines or some other national carrier but were undertaken through private airlines which may, otherwise, provide better travel services and on cheaper rates as compared to the national airlines. We are conscious of the scope of judicial intervention when policy decisions are made subject of challenge by a litigant before a Court of law. Yet, the Courts would not hesitate and, in fact, would feel compelled to interfere when such policy decision are shown to be not only perverse and arbitrary but also without any rational basis and without any nexus with the object to be achieved, which in this case relates to the Leave Travel along with his family members as per the plan Concession and claim put up by a senior officer like the applicant, after actual availing of the leave granted to him and having visited the places approved. We, thus, declare Clause 3 of Annexure R-2 as illegal. We also declare the portion of Annexure A-6 as illegal which denies the applicant reimbursement as per his entitlement to the rail fare, only on the ground that he had undertaken the journey by a private airline. Clause 3 of Annexure R-2 and Annexure A-6 are hereby quashed and set aside. We hope and expect that Govt. of India will take note of this order and take steps for doing away with the restriction as given in Clause 3 of Annexure R-2 in OM dated 28.4.1995.

7. We hereby further declare that action of respondents in denying the LTC claim to the applicant as per his entitlement to the rail fare of the entitled class, and wherever rail connection was not available, through established permissible modes of his entitlement, as illegal, further holding recovery made from the applicant of the entire amount, given to him in advance, as illegal. We hold him entitled to payment of LTC claim under the LTC rules, read with Govt. of India decisions applicable to him subject to our above observations and findings. Respondents are directed to reconsider the case of the applicant for reimbursement of his claim of LTC for journey performed by him alongwith his family members which could have been done by respondents earlier also by

application of Rule 18 of the Central LTC Rules, 1988.

8. Respondents shall comply with the above orders within a period of two months from the date of receipt of a copy of this order by making payment to the applicant of the amounts to which he is found entitled to.

We are of the opinion that Clause (3) of Circular (Annexure R-2), even if it was relevant at that time when India had a closed economy, has clearly lost its significance with the new policy of liberalization, globalization and privatization. Clause (3) would, in the present circumstances, would have no nexus with any object to achieve. Once it is accepted that private airlines are offering same quality of service, if not better service than the National Airlines and at more competitive fares, there would be no rationale in limiting the air travel of the employees to national carriers. In our opinion, such a Clause would be clearly violative of Article 14 of the Constitution of India. There is an additional reason which would tend to show that Clause 3 is not only unreasonable, but also arbitrary. The purpose of granting LTC is to facilitate an employee to travel throughout India on established modes of travel. Certain maximum limits which are permissible under the Rules have been prescribed. Even in case of non-availability of very object underlying the LTC Rules. In our opinion, restricting of the travel by Rail and non-availability of the travel facility by a National Carrier, an employee cannot be forbidden to travel by any other alternative mode of travel. Adopting such an interpretation would negate the very purpose of the rules as in case of non-availability of rail travel and non-availability of national air carrier, the employee would not be entitled to the benefit of LTC at all. Clause 3 would, therefore, in our opinion, defeat the LTC to the maximum permissible limits under the category to which the employee belongs, would ensure that there is no misuse of the LTC. Therefore, there is no justification in inserting Clause 3 restricting the Air Travel only to National Carrier.

10. We are also of the opinion that the petitioners-Union of India have illegally rejected the claim of respondent No. 1 for relaxation. The applicant-respondent No. 1 had been directed to furnish a certificate from the Indian Airlines about the non-availability of the ticket during the relevant period. He had submitted such a certificate. Even then, the authorities did not find it fit to relax the rule. In our opinion, the authorities had failed to exercise the jurisdiction which has been vested in them to remove hardship in a particular case. We may now notice that the Tribunal has issued a direction to the respondents to re-consider the claim of the applicant-respondent No. 1 under the relevant rules. Learned Counsel for the petitioners has, however, submitted that this direction cannot be complied with as the applicant-respondent No. 1 would not be entitled to any reimbursement. This submission is without any merit. Admittedly, respondent No. 1 and his family had travelled on LTC approved and granted to him. He had been granted Rs. 44,000/- as advance for meeting the travel expenses. The advance was to be adjusted in lump sum from the LTC bill of the Officer. The entire expenses for travel had been assessed at Rs. 49,350/-. The claim was rejected and an amount

of Rs. 45,000/- was recovered from him, when he submitted the final bill. Therefore, it can be said that the Officer was not "entitled" to any reimbursement. In view of the opinion expressed by us, we direct the respondents to comply with the order of the Tribunal without any further delay.

Consequently, the writ petition fails and the same is dismissed.