IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2016

CORAM:
THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.7459 of 2016

1. Union of India,
rep. By its Director (V-II),
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel and Training,
Government of India, New Delhi.

2. The Deputy Director (Admin),
Central Bureau of Investigation,
Plot No.5-B, Seventh Floor, CGO Complex,
Lodhi Road, New Delhi.

3. The Head of Branch,
Central Bureau of Investigation,
Anti-Corruption Branch, Chennai,
rep. By Superintendent of Police. ... Petitioners

Vs.

1. K.Suryanarayana
S/o.Veeraiah,
employed as Public Prosecutor,
Central Bureau of Investigation,
Anti-Corruption Branch (ACB), Chennai,
No.F-40, CBI Quarters, K.K. Nagar,
Chennai 600 078.

2. The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai 600 104. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records relating to the impugned order dated 01.05.2015 passed by the Central Administrative Tribunal, Chennai in O.A.No.310/00549 of 2014, and to quash the same.

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For Petitioners: Mr.G.Rajagopalan,
Additional Solicitor General
assisted by
Mr.Rabu Manohar,
Senior Central Govt. Standing Counsel

For 1st Respondent: Mr.L.Swaminathan

O R D E R

(Order of the Court made by S.VAIDYANATHAN,J.)

Challenging the order dated 01.05.2015 passed by the Central Administrative Tribunal in O.A.No.310/00549/2014, the Union of India, Department of Personnel and Training and the Central Bureau of Investigation have filed this Writ Petition.

2. Facts leading to the filing of the Writ Petition are as follows:

2.1. The 1st respondent viz. K.Suryanarayana, while functioning as Public Prosecutor, Central Bureau of Investigation (BS & FC), Bangalore, intended to proceed to his home town Kakinada along with this family members by availing LTC facility for the Block year 2008 to meet his ailing brother. He booked tickets for both onward and return journey, i.e. on 31.12.2008 and 03.01.2009, respectively. However, before commencing the journey, he received a message that the condition of his ailing brother was deteriorating. Hence, he cancelled the tickets and proceeded to Kakinada by car. After returning from Kakinada, his son was subjected to Tuberculosis and was under continuous treatment including hospitalisation. To meet out hospital expenses, the 1st respondent applied GPF Advance of Rs.60,000/- together with Medical Bills for Rs.1,414/- and LTC claim of Rs.10,435/- enclosing the xerox copy of the tickets declaring that the original tickets were surrendered to the Ticket Collector. Though the claim amount was sanctioned, a preliminary inquiry was conducted on 23.08.2008 and the 1st respondent clearly admitted the fact that due to absent-mindedness, depression and confused state of mind on account of his minor son's treatment, he had submitted the claim.

2.2. While so, he was issued a Memorandum of Charge, after a lapse of three years on 04.10.2011, to which he submitted his written explanation on 04.10.2011 highlighting the difficulties faced by him and also expressed his deep regret for the incident and prayed for taking a lenient view. However, an inquiry under Rule 14 was conducted and he submitted a letter to the Inquiring

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Authority to the following effect:

> "... I realized that it is my first mistake on my part and I plead guilty of the charges framed against me heartfully and I will not repeat in future. Further, I am ready to refund the claim amount of LTC as your Authority deems fit. Further, I request to show mercy and kindly give me an opportunity to explain my grievance in person before taking any final decision at your end..."

2.3. Considering the submission of the 1st respondent, the Inquiry Officer concluded the inquiry as follows:

> "... Considering the fact that it is a first mistake committed by the Charged Officer and the submissions made by him pleading guilt, a lenient view may be taken in the matter... "

2.4. Accordingly, a report was submitted to the Disciplinary Authority. However, the Deputy Secretary, UPSC advised to impose the penalty of reduction to a lower stage in the time scale of pay by two stages for a period of two years with further direction that the 1st respondent will not earn any increments during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing the future increments in the pay. In terms of the advise of the UPSC, the impugned order dated 24.02.2014 came to be passed by the Disciplinary Authority.

3. Before the Tribunal, the writ petitioners herein took a stand that though the charged officer expressed his regret for his misconduct and that it so happened as a result of his chaotic mind due to personal grief at that point of time, the submission of TA Bills with the cancelled tickets cannot be taken as a mistake due to oversight as may happen during the course of one's duty.

4. The Disciplinary Authority, after fully agreeing with the observations of the Commission and applying his mind, by an order dated 24.02.2014 came to the conclusion that this is not a fit case to show any leniency and thereby imposed the penalty as advised by the UPSC on the charged officer, i.e. the 1st respondent herein. Aggrieved by the said order of the Disciplinary Authority, the 1st respondent herein approached the Central Administrative Tribunal, Chennai in O.A.No.310/00549/2014. By an order dated 01.05.2015, the Tribunal set aside the punishment imposed by the Disciplinary

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Authority and directed the latter to take a lenient view in that issue. Relevant portion of the said order reads thus:

> "7. ... From the above rule position, we are of the view that the punishment imposed on the applicant is excessive to the gravity of the charges and further we note than an Office Order has been issued on 23.05.2014 to the effect that the disputed LTC claim amount paid to the applicant has also been sought to be recovered from the applicant's pay for the month of May, 2014.
>
> 8. In the background of the facts and circumstances of the case, we are of the view that the penalty imposed on the applicant is excessive to the gravity of the charges levelled against him. Therefore, we deem it appropriate that the ends of justice will be met if a direction is given to the Disciplinary Authority to take a lenient view by taking into consideration of the Inquiry Officer's Report together with the rule position in regard to misuse of LTC referred to above in imposing the punishment on the applicant. Accordingly, the impugned order dated 24.02.2014 is set aside and the Disciplinary Authority is directed to take a lenient view in the issue and pass appropriate order within a period of two months from the date of receipt of a copy of this order."

5. Learned Additional Solicitor General appearing for the writ petitioners contended that the submission of TA bills with cancelled tickets by the 1st respondent cannot be taken as a mistake due to oversight as may happen during the course of one's duty. The Rules preclude the Officer from submission of bills with cancelled tickets, whatsoever his state of mind was at that time. It is his further contention that the Tribunal had failed to discuss in the impugned judgment as to how the punishment imposed on the 1st respondent is excessive to the gravity of the charges.

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6. On the other hand, learned counsel appearing for the 1st respondent submitted that the Disciplinary Authority, i.e. the 1st writ petitioner had only reproduced the Advice dated 23.12.2013 of the UPSC, New Delhi and had neither assessed the explanation of the 1st respondent herein nor had given any reasons for denial of the explanation submitted by the 1st respondent. Therefore, according to him, the penalty order dated 24.02.2014 is biased, prejudicial, pre-determined and

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disproportionate to the gravity of the charges and hence the Tribunal arrived at a just and reasonable conclusion of setting aside the said penalty order and remitted the matter to the Disciplinary Authority to take a lenient view in this issue and pass appropriate orders within two months. It is his contention that without passing an order within two months as directed by the Tribunal, the act of the writ petitioners in approaching this Court by challenging the said order dated 01.05.2015, clearly exposes that they have got scant respect for the order of this Court.

7. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

8. The issue before this Court is with respect to the LTC claim made by the 1st respondent after cancelling the journey tickets. Though the 1st respondent has admitted his guilt in the preliminary inquiry itself that due to his absent-mindedness and depression on account of his minor's son hospitalisation, he made the claim and he has also expressed his deep regret and pleaded for lenient view, the Disciplinary Authority, on the advice of the UPSC, imposed the penalty in question on the 1st respondent. However, the Tribunal proceeded to observe that the punishment imposed on the 1st respondent is excessive to the gravity of the charges proved and set aside the impugned order dated 24.02.2014 with a direction to the Disciplinary Authority to take a lenient view in the issue.

9. For better appreciation of the case, relevant provisions under the heading "Misuse of LTC" are extracted hereunder:

"Misuse of LTC -

1. Disciplinary action will be taken and during its pendency -

(a) the disputed claim will be withheld; and
(b) further LTC facility will not be allowed

2. When disciplinary proceedings are over ----

(a) if found not guilty ---

(i) the withheld claim will be admitted; and

(ii) any LTC facility fell due but not allowed will be allowed as additional set(s) in the future blocks of years irrespective of the provisions relating to lapsing of

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unavailed LTC. Such additional set(s) also should be availed before the date of superannuation.

(b) if found guilty ---

(i) the withheld claim will be disallowed;

(ii) next two sets - one to Home Town and one to any place in India - will be forfeited; and

(iii) in case of grave misuse, the Competent Authority may disallow even more than two sets.

in addition to any penalty under disciplinary rules."

10. The above provisions clearly show that disciplinary action will be taken, if found guilty and that in case of grave misuse, the Competent Authority may disallow even more than two sets in addition to any penalty under disciplinary rules. Undoubtedly, a Public Prosecutor has to possess absolute integrity at all times and his conduct must be beyond reproach. The 1st respondent's act of booking tickets to avail LTC; cancelling the same within 30 minutes and later submitting photocopies of the tickets for LTC claim of a sum of Rs.10,435/- declaring that the original tickets were surrendered to the Ticket Collector, can, by no stretch of imagination, be called 'absent-mindedness' or 'confused state of mind'. Normally, in a confused state of mind, one may forget to submit claims. In this case, the 1st respondent, who himself has admitted before the Tribunal that after cancelling the tickets, he and his family members travelled in a Car to meet his ailing brother, has also made a clear statement before the Tribunal that the original tickets were surrendered to the Ticket Collector. Though, the writ petitioners have admitted that the 1st respondent, as a Public Prosecutor, has brought laurels to the Organisation and the 1st respondent himself has admitted his guilt and prayed the competent authorities to take a lenient view, this Court is not inclined to uphold the decision of the Tribunal, when his guilt is proved.

11. In view of the above, the order dated 01.05.2015 passed by the 2nd respondent/Tribunal in O.A.No.310/00549/2014 is set aside. However, it is open to the 1st respondent herein to make necessary representation to the competent authority for reduction of punishment, as per rules and it is for the authority competent to consider his representation as to whether such punishment could be modified without any cumulative effect (if the Rules permit), taking note of the fact that the 1st respondent has brought laurels to the Organisation.

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The Writ is allowed with the above direction. No costs. Consequently, connected W.M.P.No.6676 of 2016 is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To:
The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai 600 104.

1 cc to Mr.B.Rabu Manohar, Advocate, sr.18824
1 cc to Mr.L.Swaminathan, Advocate, sr.18786

W.P.No.7459 of 2016

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