HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

<u>Writ Petition No.41050 of 2015</u>

<u>ORDER:</u> (oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner is challenging the order dated 10.08.2015 in O.A.No.1100 of 2013 passed by the Central Administrative Tribunal, Hyderabad whereby the said O.A filed by the 1st respondent has been allowed.

2) The case of 1st respondent is that he has joined as a Medical Officer on 30.05.1998. He availed LTC to visit Shillong with his family of 4 members after availing leave from 14.12.2008 to 25.12.2008. He applied for an advance of Rs.1,89,000/- which was sanctioned and drawn. He paid Rs.3,63,032/- by remitting the entire LTC advance of Rs.1,89,000/-, his savings in cash of Rs.62,295/- and the balance through credit card for Rs.1,11,737/-. The Air Lines issued 8 receipts each for Rs.45,379/- totalling to Rs.3,63,032/-. The respondent and his family travelled by Indian Air Lines to the specified destination. He submitted the detailed bill for a gross amount of Rs.3,82,632/- duly supported by receipts issued by the Indian Air Lines, boarding passes for both onward and return journeys, the receipt for payment of tax fare, etc.

3) The further case of the respondent is that the Controlling Officer was required to regulate the claim under S.R.195 read with OM No. F.No.7(1)/E. Coord./2008 dated 04.12.2008 of Ministry of Finance, New

Delhi and pay the admissible amount as is being done in all other cases of LTC in CGHS. However, the said authority have made an enquiry with Indian Air Lines and found that the respondent produced the genuine tickets and the fares for Rs.45,379/- both ways instead of one way. Accordingly, the authorities asked the explanation from the respondent, to which, he submitted that he paid the amount as per the ticket-cum-receipts though the air fare is stated to be half of the receipts. The respondent requested the authority to restrict the payment to the admissible amount under the existing rules in force i.e, in terms of OM dated 04.12.2008. However, he was served with charge sheet dated 05.05.2010 asking his explanation, to which, he submitted his explanation dated 31.07.2010 justifying the excess payment and requesting to pass the bill with restriction and pay him the eligible amount only. Instead, the petitioners appointed Inquiry Officer vide order dated 20.11.2011 along with the Presenting Officer. The respondent submitted his defence statement dated 27.01.2012.

4) The further case of the respondent is that all the prosecution documents were not made available, all the defence documents were denied and finally the lone defence witness was also denied. Thus practically the inquiry was conducted in violation of principles of natural justice. The prosecution brief was submitted on 08.02.2012 and respondent submitted his defence brief on 16.02.2012. Without considering any of the several points raised by the respondent, the Inquiry Officer submitted his report dated 08.03.2012 holding the respondent guilty and the same was communicated to the respondent in Memo dated 08.05.2012 enclosing

CVC advice obtained 2 years earlier dated 05.01.2010 for issuance of charge sheet.

5) The case of the petitioners is that as there was discrepancy in the claim submitted by the respondent after availing LTC, the matter was referred to the Vigilance Officer and on inquiry, it was proved that the respondent has claimed excess amount. Accordingly, the respondent was issued with charge memorandum under Article 14 of CCS (CCA) Rules asking him to give his defence statement, if any, within 10 days. As his written statement was not satisfactory, an inquiry was conducted by the Ministry by appointing Inquiry Officer. The inquiry was conducted as per the norms in a fair manner giving ample opportunity to the respondent to prove his innocence. The witness produced on behalf of the respondent is no way related to the case and neither he worked in CGHS nor in Indian Air Lines at any time and his relevance to the case has not been established by the respondent. The charge was proved in the inquiry and on the report of the Inquiry Officer, the respondent was compulsorily retired on the grounds that he failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant.

6) It is not in dispute that the amount of Rs.3,63,032/- claimed by the respondent has not been disbursed in his favour. At the time of submitting his claims, the petitioners sought his explanation and thereafter inquiry was held and accordingly he was charged with the punishment as mentioned above.

7) The learned Tribunal after considering the rival contentions observed that the act of claiming double the amount for settlement of LTC bills was misconduct or wrongful act, the punishment of compulsory retirement is certainly excessive, disproportionate and also against the principles of natural justice. Accordingly, the learned Tribunal held that the impugned punishment order dated 03.01.2013 by which the respondent was retired compulsory from service is illegal, arbitrary and against the principles of natural justice and accordingly, the same was set aside. Further, the learned Tribunal remitted the matter back to the disciplinary authority to take a decision after considering the grounds taken by the respondent.

8) As stated by the counsel for the respondent that there is a violation of principles of natural justice and the respondent was not given proper chance to defend his case in the departmental enquiry, we find force in his submission and agree with the finding of the Tribunal whereby the matter was remitted back to the disciplinary authority to take a decision after considering the grounds taken by the respondent. Accordingly, we find no grounds in the instant petition to interfere with the order of the Tribunal.

9) In the result, the writ petition is accordingly, dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 04.07.2017

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