$~15 to 19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 13.11.2019

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\+ **<u>W.P.(C) 3106/2019 & CM APPL. No. 14227/2019</u>**

JOGINDER AND ORS. ..... Petitioners

Through : Mr. Ankur Chhibber, Mr.Harkesh, Mr.Bhanu Gupta and Mr.Nikunj Arora, Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

Through : Ms. Avnish Ahlawat, Standing Counsel (Services) for GNCTD of Delhi with Mr. N.K. Singh, Advocate.

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\+ **<u>W.P.(C) 3265/2019 & CM APPL. No. 14989/2019</u>**

MOOL CHANDRA ..... Petitioner

Through : Mr. Ankur Chhibber, Mr.Harkesh, Mr.Bhanu Gupta and Mr.Nikunj Arora, Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

Through : Ms. Avnish Ahlawat, Standing Counsel (Services) for GNCTD of Delhi with Mr. N.K. Singh, Advocate.

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\+ **<u>W.P.(C) 4522/2019 & CM APPL. No. 20114/2019</u>**

VANVIR SINGH AND ANR. ..... Petitioners

Through : Mr. Ankur Chhibber, Mr.Harkesh, Mr.Bhanu Gupta and Mr.Nikunj Arora, Advocates.

versus

THE GOVT. OF NCT OF DELHI AND ANR...... Respondents

Through : Ms. Latika Chaudhary, Advocate.

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\+ **<u>W.P.(C) 4595/2019 & CM APPL. Nos. 20428/2019, 38499/2019</u>**

SUMAN RANA, ASI ..... Petitioner

Through : Mr. Ankur Chhibber, Mr.Harkesh, Mr.Bhanu Gupta and Mr.Nikunj Arora, Advocates.

versus

THE GOVT OF NCT OF DELHI & ORS ..... Respondents

Through : Mr. Zoheb Hossain, Additional Standing Counsel for GNCTD with Mr.Vivek Gurnani, Advocate.

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\+ **<u>W.P.(C) 8571/2019 & CM APPL. No. 35428/2019</u>**

RAJESH YADAV ..... Petitioner

Through : Mr. S. Vijay Kanth, Mr. S. Krishna Murthy, Advocates.

versus

THE GOVT. OF NCT OF DELHI & ORS ..... Respondents

Through : Mr. Nitesh Kumar Singh, Advocate for Ms.Avnish Ahlawat, Standing Counsel for GNCTD (Services)

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

<u>J U D G M E N T</u>

G.S.SISTANI, J. (ORAL)

CM APPL. No. 38499/2019 (condonation of delay) in W.P.(C) 4595/2019

For the reasons mentioned in the application, the delay of 63 days in filing the reply/counter affidavit by respondents is condoned.

The application stands disposed of.

W.P.(C) 3106/2019 & CM APPL. No. 14227/2019
W.P.(C) 3265/2019 & CM APPL. No. 14989/2019
W.P.(C) 4522/2019 & CM APPL. No. 20114/2019
W.P.(C) 4595/2019 & CM APPL. No. 20428/2019
W.P.(C) 8571/2019 & CM APPL. No. 35428/2019

With the consent of the parties, these five writ petitions are being disposed of by a common order as a common question of law arises for consideration in these petitions. The facts of all these cases are somewhat similar. Accordingly, the facts of each writ petition are not being noticed separately.

2. In all these cases, the petitioners had taken benefit of the Leave Travel Concession ('LTC') and had travelled to Sri Nagar. All the petitioners did not comply with circular dated 16.09.2010 which we reproduce as under :

"No. 19024/1/2009-E.IV
Government of India
Ministry of Finance
Department of Expenditure

***

New Delhi dated the 16th September, 2010

Office Memorandum

Subject: Guidelines on Air Travel on Tours/LTC.

This Department is receiving repeated references seeking clarifications with regard to purchase of Air tickets through authorized agents and relaxation for travel by Airlines other than Indian Airlines. The following guidelines may be noted for compliance:

1. On Official Tours:

(i) For travel by Airlines other than Air India because of operational or other reasons or on account of non-availability of Air India flights, individual cases for relaxation to be referred to M/o Civil Aviation, as stated in this Ministry's OM No. 19024/1/2009-E.IV dated 13.07.09.
(ii) Air Tickets may be purchased directly from Airlines (at Booking counters/Website of Airlines) or by utilizing the services of Authorized Travel Agents viz. M/s Balmer Lawrie & Company, M/s Ashok Travels & Tours.

2. LTC:

(i) Travel by Air India only.
(ii) In Economy class only, irrespective of entitlement.
(iii)LTC-80 ticket of Air India only to be purchased.

(iv)Air Tickets may be purchased directly from Airlines (at Booking counters/Website of Airlines) or by utilizing the services of Authorized Travel Agents viz. M/s Balmer Lawrie & Company, M/s Ashok Travels & Tours and IRCTC (to the extent IRCTC is authorized as per DoP&T OM No. 31011/6/2002-Estt.(A) dt. 02.12.09).

3. LTC for J&K:

(i) Relaxation to travel by Private Airlines to visit J&K while availing LTC is available to all the categories of Govt. employees, including those entitled to travel by Air [DoPT OMs No. 31011/2/2003-Estt.(A-IV) dated 18.06.10 and 05.08.10 refer].
(ii) For purchase of Air tickets, however, the procedure as given under para 2 (iv) above should be followed.

4. *All Ministries/Departments of Govt. of India are requested to strictly adhere to these instructions.*

Sd/-

(Karan Singh)
Under Secretary to the Govt. of India

3. Admittedly, none of the petitioners booked the tickets directly from the Airlines (at booking counters/offices/websites of Airlines) or from the three authorized travel agents viz M/s Balmer Lawrie & Company Ltd., M/s Ashok Travels & Tours and IRCTC. After undertaking travel, bills were submitted and amounts were released. Thereafter, a common show cause notice was issued to all the petitioners. A sample show cause notice in W.P.(C) No. 4595/2019 is reproduced below :

"Subject: Regarding recovery of irregular payment of LTC.

During the inspection of Audit of North-East Distt; for the period of 2013-2014 and 2014-2015 conducted by the AGCR party. AGCR party has recommended for making recovery from the following officers.

Sl. No.	*Rank & Name*	*Belt No. & PIS No.*	*Recovery Amount*	*Reason of recovery*	*Posted*
1.	*Ct. Visvender Kumar*	*1403/NE, 28981906*	*73,528/-*	*Pvt. Agent Holiday Planner*	*Krawal Nagar*
2.	*HC Parmod Kumar*	*1087/NE, 28941957*	*1,10,292/-*	*Pvt. Agent Indian Travels*	*Zafrabad*
3.	*HC Vanvir Singh*	*682/NE, 28940023*	*91,910/-*	*Pvt. Agent Arjoo.com*	*Krawal Nagar*
4.	*HC Rajesh*	*1472/NE, 28941592*	*62,360/-*	*Pvt. Agent C.T. Travels*	*PA B1*
5.	*HC Anand*	*609/NE, 28892590*	*18,382/-*	*Third child is not*	*Seemapuri*

	Kumar			*allowed*	
6.	*HC Ram Kumar*	*159/NE, 28931598*	*14,705/-*	*Third child is not allowed*	*Krawal Nagar*
7.	*Ct. Naresh Chand*	*1234/NE, 28930879*			*M.S. Park*
8.	*Ct. Mukesh Kumar*	*3204/NE, 28101826*	*33,000/-*	*LTC advance not adjusted*	*Bhazanpura*
9.	*Ct. Bablesh Kumar*	*3053/NE, 28102515*	*67,000/-*	*LTC advance not adjusted*	*Soniya Vihar*
10.	*Ct. Ajit Singh*	*2669/NE, 28081509*	*57,853/-*	*Pvt. Agent Akbar Travels*	*CPSP*
11.	*ASI Suman Rana*	*2257/NE, 28883074*	*73,528/-*	*Pvt. Agent Delhi Air Movers and travels & tours Pvt. Ltd.*	*CAW Cell*
12.	*ASI Naresh Kumar*	*2153/NE,29890092*	*73,528/-*	*Pvt. Agent Down Town Travel*	*Distt. Line*
13.	*Insp. Narender Singh*	*D-I-623, 16820061*	*20,500/-*	*Pvt. Agent Taj India Tours Delhi*	*ACP/HQ*

The above police personnel directed to deposit whole amount of own recovery in lump sum so that audit Para could be dropped.

ACP/DDO
FOR DY. COMMISSIONER OF POLICE
NORTH-EAST DISTT. DELHI

SHOs/ Krawal Nagar, Zafrabad, M.S. Park, Seemapuri, Bhazanpura, Soniya Vihar,

Insp./ CPSP, Insp./ CAW Cell, RI/ NED,

R-ACP/ HQ, PA/ DCP/ NED

No._________/Acctt./NE Distt. Delhi the Dated 09/06/2016"

4. Thereupon recoveries were sought to be made on the basis of a communication dated 28.02.2018 issued to the Office of Deputy Commissioner of Police, West District, Delhi from ACP Headquarters. A sample communication of 28.02.2018 has also been extracted below :

"OFFICE OF THE DY. COMMISSIONER OF POLICE: WEST DISTT: DELHI
No.ACCTT/LTC/WEST DATED DELHI THE

Diary No.3073
Date 28.02.2018

To,

The Dy. Commissioner of Police
Office Distt. Delhi.

Subject: Notice regarding recovery of irregular payment of LTC for the period from 2014-15 and 2015-16

<u>Memo</u>

In the Inspector Report on the accounts of the Office of Deputy Commissioner of Police (West Distt.), New Delhi by the office of the Principal Accountant General (Audit), Delhi, for the period from 2014-15 and 2015-16 conducted by the AG (Audit), it has been pointed out, inter alia as under:

In Test check or record pertaining to LTC cases by AG (Audit), during the period 2014-16 it was noticed that certain officials have purchased air tickets from *agents other than authorized, resulting in irregular payments. The payment made is against the provisions of LTC rules and is inadmissible.*

In is reiterated that as per DOP&T OM No.31011/2/2003-Estt. (A-IV) dated 18.06.2010 and Ministry of Finance OM No.19024/1/2009-F-IV dated 16.9.10, air tickets may be purchased directly from Airlines (at booking counters/website of Airlines) or by utilizing the service of authorized Agents Viz. M/s. Balmer Lawrie & Company M/s. Ashok Travels and Tours and IRCTC is authorized as per DOPT OM No 31011/6/2002-Estt.(A) dated 02.12.2009.

In view of the above, we have to recover the total amount reimbursed to such officials (List of official enclosed)

It is therefore, requested to direct all officials under your control/posted now in your office, from whom the inadmissible amount of LTC is to be recovered to deposit the entire amount of reimbursement claimed/paid to them by this office, in lump sum, immediately from the pocket and in case, they fail to deposit/refund the same immediately, the said amount may be recovered in installments of Rs.10,000/- per month w.e.f. March 2018 positively and inform this office under intimation to PHQ.

Compliance/Action Taken Report alongwith schedules may be submitted to this office urgently. Since the information is required by AG (Audit), New Delhi.

Encl as above

(Ram Avtar Yadav)/ACP/HQ
For Dy. Commissioner of Police
West Distt. Delhi.

Mark to ASI Dilawar
No.1131/05.03.2018/ACP/Mundka"

5. Aggrieved by the recoveries sought to be made, all the petitioners approached the Central Administrative Tribunal and filed OAs. All OAs were dismissed, which has led to the filing of the present writ petitions.

6. At the outset Mr. Chhibber, learned counsel for the petitioners, submits that in identical matters, the Tribunal had allowed the OAs

and had directed the applicants/petitioners to reimburse to the respondents or get deducted the 'difference' between the price of tickets offered by the authorized agents and the amounts received by the applicants/petitioners. Reliance is placed on a decision dated 22.08.2019 of the Tribunal in the case of ***Raj Kumar Nirala and Ors. vs. M/O Health and Family Welfare & Another***, operative paras of which read as under :

> *"14. The applicants in the present OA did not purchase tickets from authorised agents and submitted their claims which were duly settled by the respondents. At a later stage, the same was disallowed and the entire amount was recovered. The respondents had mentioned that if the applicants in that OA had purchased the tickets directly from Air India it would have have been at a much lower price. The Tribunal allowed the same and permitted reimbursement only to the extent of cost of ticket if the same had been purchased directly from Air India as per LTC-80. The respondents filed a Writ Petition (C) No. 2072/2019 in the Hon'ble High Court of Delhi challenging the Tribunal's order. The Hon'ble High Court of Delhi vide order dated 13.03.2019 dismissed the Writ Petition upholding the orders of the Tribunal…*
>
> *"15 It is a fact that Government guidelines have been issued through a number of OMs from time to time clarifying position in this respect. It has also been indicated that these guidelines should be brought to the notice of all the employees. However, the clarity about these instructions has come about only through OM*

dated 19.07.2017, clearly stating that henceforth relaxation on account of ignorance/unawareness of these guidelines will not be considered by the department. The responsibility has also been given for non compliance of these guidelines, and the same shall be treated as lapse on part of the concerned Ministry/Department. How the Department/Ministry brings this aspect to the notice of their staff is left to them, whether by way of attaching these guidelines along with sanction order or by obtaining undertaking etc.

"18. It is also obvious that the applicants are not entitled to the entire amount as claimed by and reimbursed to them but only to the extent that the amount is equivalent to the fare of Air India Tickets for these journeys if the same had been purchased from Air India. The respondents are, therefore, directed to work out the amount as per the fares if the tickets had been purchased from Air India directly and reimburse to the applicant only that amount. The balance amount, over and above that if already paid shall however be reimbursed by the applicant or recovered from their salaries by the respondents. Reimbursement would, thus, be the amount payable to the applicant had she/he purchased the tickets directly from Air India or authorized agent. Other entitled amount paid towards LTC and earned leave etc. shall not be recovered from the applicants."

7. Learned counsel further relies on decision dated 28.05.2018 in ***Surender Kumar (Head Constable) vs. Commissioner of Police and***

Ors. in OA No. 3835/2017 and MA No. 255/2018, relevant para of which is reproduced below :

> *"7.2 It is not the case of the respondents that the applicant did not avail the LTC or that the claim is fraudulent. It is largely the responsibility of the department to ensure that Government Circular and terms of such OMs are effectively communicated to the employees. It is not hard to accept the contention of the learned counsel of the applicant that an employee of the level of the applicant at hand, may not have known about a DoP&T Circular/OM and the intricacies involved. Indeed, ignorance of law cannot come to rescue of the defaulters but this maxim has to be applied after evaluating the facts in their entirety. Schemes like Leave Travel Concession (LTC) and Home Travel Concession (HTC) etc. have been carved out as a kind of a reward/motivation for the work put in by the government officials for long years of dedicated service, (once in 04 years or 02 years as the case may be). The condition of buying the tickets through the authorized agents is to streamline (presumably) and to ensure that the Scheme is not misused by way of fraudulent or inflated claims. The same is not the case here. The applicant unaware of the provisions of LTC and technicalities to be followed, bought the tickets from a genuine travel agent and availed of the concession, which he believed to be legally due to him. The reimbursed amount is neither false, nor inflated. Courts have consistently held (though in different contexts) that individuals should not be punished for overlooking technical formalities*

and be deprived of his claims, which he is otherwise entitled to as per law."

8. Mr. Chhibber submits that surprisingly in the present matters, the Tribunal has taken a contrary view by not deciding the matters on the earlier lines and without referring the matter to a larger Bench.

9. Although initially the petitioners had sought reimbursement of the entire cost of tickets purchased by them from non-authorized agents, Mr. Chhibber submits that the petitioners are willing to accept that the difference of amounts, as in the other matters, may be deducted/adjusted/reimbursed but not the entire amount reimbursed since the factum of travel has not been denied; and the only ground for recovery is that tickets were not purchased from authorized agents.

10. Learned counsel for the respondents have opposed these writ petitions. It is contended that the petitioners were well aware of the circular and there was no reason for them to have purchased the tickets from agents other than the authorized agents. Learned counsel further submits that on account of an auditing objection, it was brought to light that there were various irregularities found as the LTC amount was wrongly reimbursed to the petitioners; and upon the same being pointed-out by the office of the AG (Audit), recovery of the said amounts was ordered to be made by the Competent Authority under whom the petitioners were working at the relevant time. It is submitted that the petitioners had failed to follow the prescribed rules pertaining to the claim of LTC. Learned counsel for the respondents further states that payments/ reimbursement made to the petitioners were held to be

irregular by the office of the AG (Audit) based on LTC rules, since the claim was against prescribed rules.

11. We have heard learned counsel for the parties.

12. We have carefully examined communication dated 28.02.2018 on the basis of which recoveries have been sought to be made. As per communication dated 28.02.2018, it is noticed that the petitioners purchased air tickets from agents other than authorized agents, resulting in irregular payments/reimbursements. As per this communication, payments made were in violation of LTC rules and were therefore inadmissible.

13. Since the factum of travel has not been disputed, which is evident from communication dated 25.02.2018 as also from the sample notice of recovery issued in W.P.(C) No. 4595/2019, the only question which arises for our consideration is whether the entire amount claimed by and paid to the respondents is to be recovered or only the difference between the price of tickets offered by an authorized agent and the amount being claimed by/paid to the petitioners who have travelled.

14. We are of the considered view that the circular is meant to be obeyed and followed scrupulously and that there was no reason for the officers to not have complied with the terms of the circular. While the initial stand of Mr. Chhibber that since the petitioners had already travelled and paid the amount to their travel agents, the full amounts should be reimbursed to them is without any force; in our view,

interests of justice would be served if the respondents reimburse to the petitioners their claims towards LTC as per the amounts payable according to the price of air-tickets charged by authorized travel agents; and recover/adjust/deduct from the petitioners the amounts in excess of such price, that may have been paid to the petitioners.

15. Accordingly, we modify the order of the Tribunal to the extent that the respondents would be entitled to recover the 'difference' of the airfare as per the price offered/charged by authorized agents and the airfare paid to the petitioners.

16. With the above directions, all writ petitions and the accompanying applications are disposed of.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 13, 2019
j