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

\+ **Date of Decision: 20.8.2019**

% **W.P.(C.) No. 8985/2019**

SH. GIRISH CHAND AND ORS. ..... Petitioners

Through: Mr. Sunil Bansal, Mr. Amit Anand and Mr. Ramesh Shukla, Advs.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Gigi George, Sr. Panel Counsel with Mr. Anshuman, Adv. (GP)

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

CM No.37069/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 8985/2019 & CM No.37068/2019

1. Issue notice. Counsel for the respondents accepts notice. We have heard learned counsels and proceed to dispose of the writ petition.

2. The petitioners have preferred the present writ petition to assail the order dated 19.7.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 2110/2019 against the orders dated

23.5.2019 and 2.7.2019 passed by the respondents. By the impugned order dated 19.7.2019, the Tribunal has declined to grant any interim relief to the petitioners. The petitioners had preferred the Original Application before Tribunal to assail the orders dated 23.5.2019 and 2.7.2019. The order/ Memorandum dated 23.5.2019 issued by the respondents alleged that the petitioners had availed of LTC to travel to Sri-nagar (J & K) in 2012, and they had booked their tickets in contravention of the LTC Rules inasmuch, as, they had not purchased the tickets from the authorized agent/online/ directly from the airline counter, and that the same had been purchased through a travel agent. It was claimed in the Memorandum that "*it shows that the ticket submitted by the claimant is tempered/manipulated*." The petitioners were directed to deposit Rs.91,140/- the amount of LTC advance/claim taken by them along with penal interest of Rs. 59,624/-. They were called upon to explain their conduct and they were threatened that in case they do not deposit the amount with penal interest, further disciplinary action would be initiated against them. On 2.7.2019, the petitioners were again directed to deposit the LTC advance/claim of Rs.91,140/- along with penal interest of Rs. 61,143/- (upto 30.6.2019) totalling to Rs. 1,52,282/-. The petitioners were asked to explain their conduct for the lapse within fifteen days and were threatened that in case their explanation is not found satisfactory, and they fail to deposit the amount with penal interest, further disciplinary proceedings as deemed fit under the Rules will be initiated against them.

3. The submission of learned counsel for the petitioners is that the allegations against the petitioners are not that they had not availed of the LTC, or that they had not travelled to Sri-nagar, on the tickets that they had purchased. Even if it is assumed that the petitioners had purchased the tickets through travel agents, and not directly from the airline or through the authorized agents, the respondents may be entitled to recover only the difference in the fares which were prevalent on the relevant date i.e the fare offered by the airline directly or by the authorized agents or online, and the fare at which the petitioners bought the tickets through the travel agent if the same was higher.

4. The entire claim could not be rejected. He further submits that there is no misconduct on the part of the petitioners, even if it is assumed that the petitioners had bought the air tickets in contravention of the LTC Rules, since the petitioners did not hide the said fact, and made their claims by submitting all the relevant documents. If the respondents were of the view that the petitioners were not entitled to their claims, it was for them to reject their claims. The respondents however entertained the claims and passed the same, and now after about 7 years, they have sought to initiate recovery proceedings under the threat of disciplinary action against the petitioners when no misconduct has been made out. Counsel for the petitioner further submits that the recovery could not be effectuated by the respondents in view of the decision of the Supreme Court in ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.*** (2015) 4 SCC 334.

5. The submission of learned counsel for the respondents is that despite two opportunities, no reply to the show cause notice has been furnished.

6. The fact that the petitioners availed the LTC by buying tickets through an unauthorized agent, may, at the highest, result in the claim for LTC being declined to the extent that the rates of the tickets at which the claimants may have booked, are found to be higher than the rates at which such tickets were available either directly from airline/or online/ or through the authorized agent. There is no question of any misconduct on the part of the petitioners in such a situation. Under the Service Rules, the booking of the tickets through unauthorized agents, by itself, does not tantamount to an act of indiscipline or misconduct. It was for the respondents to examine the claim at the relevant time, and if the same could not be allowed wholly or partially, it was open to them to pass orders in that respect. The respondents cannot threaten the claimants/employees with disciplinary action merely because they have booked tickets through an unauthorized agent. Pertinently, the allegation is not that the tickets are forged or fabricated, or that the petitioners have not undertaken journey and submitted a false claim. Merely because the tickets have been obtained through an unauthorized travel agent does not render the said tickets to be "tempered/manipulated" as claimed by the respondents.

7. In the aforesaid circumstances, we are of the view that the petitioners should have been granted interim relief against recovery. At the same time,

we make it clear that there is no question of initiating disciplinary proceedings against the petitioners in the aforesaid circumstances. We, therefore, dispose of this petition by directing that there shall be stay of recovery against the petitioners during the pendency of the Original Application.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

AUGUST 20, 2019/ib/jitender