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

Date of Decision: 09.12.2019

\+ W.P.(C) 12541/2019

MRS. NIRMAL GUPTA ..... Petitioner

Through: Mr. Yogesh Kumar Mathur, Advocate with Mr. S. D. Sharma and Mr. Harkesh, Advocate.

versus

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

Through: Mrs. Avnish Ahlawat, Standing Counsel for GNCTD with Mr. N.K. Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J. (ORAL)

1. The petitioner is aggrieved by order dated 05.09.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal' for short) in OA No. 3197/2018 whereby the petitioner's challenge to order dated 01.07.2016 passed by the respondents has been rejected. By way of order dated 01.07.2016 the respondents had sought to recover from the petitioner the sum of Rs.59,459/- which had earlier been reimbursed to the petitioner towards LTC availed by the petitioner. The ground for seeking recovery was that the air-

tickets, towards which reimbursement had been made, had not been purchased by the petitioner from an authorised travel agency. By way of the O.A., the petitioner had also impugned order dated 21.07.2018 whereby the respondents had sought recovery of penal interest in the sum of Rs.23,060/- from the petitioner in connection with the said LTC amount.

2. The genesis of the matter is a claim towards Leave Travel Concession ('LTC' for short) availed by the petitioner from the respondent in 2012 for travel to Sikkim in the month of October, 2012 for the Block Year 2010-13. In this regard the petitioner had purchased air-tickets to Bagdogra, with an advance amount of 90% of the LTC, which sum of Rs.53,513/- was received by the petitioner on 28.09.2012 ; whereupon the petitioner travelled on the air-tickets on 02.10.2012 ; and thereafter furnished the air-tickets alongwith boarding passes to the respondents for reimbursement of the balance.

3. It is the petitioner's case that there were no instructions or directions that air-tickets were required to be purchased *only* from authorized travel agents nor was there any reference to any authorized travel agents in the approval/sanction orders for the LTC claimed. The petitioner contends that the claim for LTC was allowed; and it must be presumed that before approving the same, applicable rules and regulations must have been followed and necessary approvals obtained. Be that as it may, upon completion of travel, the petitioner submitted the final bills and out of the total bill amount of Rs.64,694/-, reimbursement was allowed in the sum of Rs.59,459/- that is after

making a deduction of Rs.5,235/-. Thereafter however, after a lapse of three-four years, the respondents issued to the petitioner memorandum dated 01.07.2016, whereby the respondents initiated recovery of the entire amount reimbursed towards the LTC bill.

4. In the meantime, on 31.05.2016, the petitioner had retired and all her retiral dues were also cleared. In fact, the petitioner contends that due to her good conduct and devotion to duty, she was re-employed with the respondents w.e.f. 01.06.2016 for two years. To be sure, memorandum dated 01.07.2016 seeking recovery of the LTC amount was therefore issued to the petitioner after her retirement from service.

5. Although the petitioner engaged in some correspondence with the respondents but finding such correspondence to be of no avail and seeing no other option, on 05.08.2016 the petitioner remitted the sum of Rs.59,459/- to the respondents with a request that no penal interest be imposed on the same. However, by order dated 21.07.2018, the respondents imposed penal interest in the sum of Rs.23,060/- on the amount of LTC that had been refunded by the petitioner ; and such penal interest was now being recovered from the petitioner's salary for the month of May, 2018 which was the last month before the petitioner's re-employment tenure ended on 31.05.2018.

6. Learned counsel for the petitioner contends that the petitioner was not aware that there was any requirement for purchasing air-tickets from any authorised travel agent, and in fact, the petitioner was not even aware of the names of such authorized agents. It is

contended that had the petitioner been aware of such requirement, she would have unhesitatingly purchased tickets from such specified travel agents. Counsel for the petitioner further contends that only a few of the employees have been issued recovery orders in regard to LTC reimbursements, while several other employees who had also purchased air-tickets from non-authorized travel agents have conveniently been overlooked. In the petition, names of some other employees, against whom no recovery has been sought, are mentioned.

7. It is further contended that on 27.07.2018, the petitioner made a representation to the respondents in this regard ; however, the same is yet to be actioned. In this backdrop on 26.08.2018, the petitioner filed the O.A. before the Tribunal ; but the Tribunal has been pleased to dismiss the same by way of impugned order dated 05.09.2019.

8. Ms. Avnish Ahlawat, learned Standing Counsel for the respondents has opposed the petition contending that there is no infirmity in the order made by the Tribunal. Counsel for the respondents contends that irregularities in LTC claims of 11 employees were discovered in the course of an audit conducted by the Directorate of Audit, Government of NCT of Delhi for the period 2012-13 to 2014-15, where it was found that certain employees had purchased air-tickets from private travel agencies in an unauthorized manner. The Auditors had accordingly opined that *inter-alia* the applicant had been incorrectly reimbursed the LTC bill in the sum of Rs.59,459/- ; and it was in this backdrop, that refund of LTC

reimbursed alongwith interest at 2% over and above the prevailing GPF interest rate was claimed. She contends that although the petitioner refunded the sum of Rs.59,459/-, she did not refund the penal interest which was calculated at Rs.23,060/-. Counsel further contends that all sanctions and payments made by Government Departments are subject to scrutiny by the Audit Department ; and accordingly the LTC claim of the petitioner was also reimbursed on the basis of an undertaking that in case any objection is raised due to non-fulfillment of norms, the same would entitle the Government to recover the amount reimbursed from the petitoner's salary. Counsel also states that the petitioner cannot disclaim knowledge of the rules for availing LTC ; and had she not been so aware, the petitioner would not have refunded the entire principal LTC amount ; and that in these circumstances, the petitioner should also be liable to pay penal interest thereupon.

9. As recorded by the Tribunal in the impugned order, since the petitioner has already refunded the entire LTC amount of Rs.59,459/- in response to notice dated 01.07.2016 issued to her, the only issue that now survives is with regard to the levy of penal interest at 2% over and above the prevailing GPF interest rate, amounting to Rs 23,060/- demanded by the respondents from the petitioner. The Tribunal has proceeded on the basis that the refund of the LTC amount is an admission on the part of the petitioner, that she was not entitled to the reimbursement in the first place. Proceeding on this basis, the Tribunal has observed as under:-

"7. In this regard, it is noticed that the applicant has taken LTC advance to the tune of Rs.53,513/- (being 90% of the total claim) on 28.09.2012 for purchasing air tickets and thereafter her LTC claim was settled at Rs.59,459/-. However, when an objection was raised by the Audit Party that the air tickets purchased by the applicant were found to be purchased from unauthorized agent, the applicant had refunded/deposited the said alleged amount on 05.08.2016. Hence, it is clear that the applicant has not utilized/refunded the portion of advance within the stipulated time and this act of the applicant is clearly violative of LTC Rules, relevant part of which reads as under:-

> *"Claim.- 1. When advance is taken, (a) the claim should be submitted within one month from the date of return journey. If not, outstanding advance will be recovered in one lumpsum and the claim will be treated as one where no advance is sanctioned. Further, penal interest at 2% over GPF interest on the entire advance from the date of drawl to the date of recovery will be charged."*

and applying the aforesaid rule, the Tribunal has upheld the levy of penal interest of 2% per annum over the GPF interest rate on the entire advance from the date of receipt to the date of recovery. In doing so the Tribunal has also presumed that

> *".... hence, it is clear that the applicant has not utilized/ refunded the portion of advance within the stipulated time...."*

and treating the amount of LTC advance as not having been utilized but refunded only on 05.08.2016 i.e. nearly four years from the date of receipt, the Tribunal has upheld the levy and quantification of penal interest as being in accordance with the rules. From the pleadings it would appear however, that the petitioner had in fact purchased the air-tickets on 12.09.2012, i.e. even before receiving the advance LTC on 28.09.2012.

10. In the petition before us however, the petitoner has essentially submitted as follows:

(i) that the petitoner has physically travelled to the destination for which air-tickets were purchased; and this fact has not been denied by the respondents, meaning thereby that the presumption made by the Tribunal that the advance LTC received was not utilized is incorrect;

(ii) that the petitioner refunded the LTC amount received, though not the penal interest; but the Tribunal has overlooked the fact that by its own order dated 28.08.2018 the Tribunal had protected the petitioner against recovery of penal interest by way of an interim order;

(iii) that in several other matters relating to similarly situate applicants/ petitioners, the Tribunal has ruled in favour of not recovering the LTC amounts and the High Court has upheld such orders. In this behalf the petitioner cites order dated 01.03.2017 made by the Tribunal in O.A. No. 678/2015 and order dated 28.05.2018 made in O.A.

No. 3835/2017, which orders have been upheld by this Court vide order dated 27.09.2017 in WP(C) No. 4933/2017. The petitioner has also given reference of other O.As and writ petitions in this regard;

(iv) that the petitioner, though alongwith some other employees, has been targeted whereas no recovery has been demanded from several other employees who are similarly situate who had also availed LTC in the same way as the petitioner. In this regard the petitioner has also named some employees in the petition, who, she claims, are similarly situate ;

(v) that the recovery has been sought to be made after a gap of some four years after LTC reimbursement was made to the petitioner, which is an action that smacks of *mala-fides,* arbitrariness and illegality;

(vi) that there have been no instructions or directions to the effect that air-tickets are to be purchased *only* from authorized travel agents nor have the respondents indicated any names of such authorized agents in the LTC approval granted to the petitioner;

(vii) that since the petitioner's LTC claim had been approved and the permissible amount reimbursed after making certain deduction, it is evident that the respondents themselves were not aware about the purported rule that air-tickets are to be booked only through certain authorized travel agents ; and they appear to have been wisened only after the audit objection, implying thereby that the petitioner could not have been expected to know about such rule;

(viii) that also, the petitioner had in fact purchased the air-tickets from her own funds on 12.09.2012 before receiving the advance LTC on 28.09.2012.

11. This court has had the occasion to deal with a similar issue in a batch of writ petitions which were disposed of by judgment dated 13.11.2019 made in WP(C) No. 3106/2019 titled ***Joginder and Ors. vs. Government of NCT of Delhi and Ors***. (and connected matters) in which the issue of recovery of LTC reimbursement had been considered by this court. In the said matters, the issue was that the employees of the Delhi Police had availed LTC but had not booked air-tickets directly from the airlines nor from the three authorized travel agents, namely, M/s Balmer Lawrie & Company Ltd., M/s Ashok Travels & Tours and IRCTC. Consequent upon audit of their accounts for the years 2013-14 and 2014-15, the Government had sought recovery of the *entire* LTC reimbursement from several Delhi Police personnel on the strength of a Circular/Office Memorandum dated 16.09.2010, which mandated *inter-alia* as follows:

"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. <u>LTC for J&K:</u>

(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."*

12. In the said matters, the attention of this court was drawn to a decision dated 22.08.2019 made by the Tribunal in the case of ***Raj Kumar Nirala and Ors. vs. M/O Health and Family Welfare & Anr.*** being O.A. 947/2018 and to decision dated 28.05.2018 in O.A. No. 3835/2017 titled ***Surender Kumar (Head Constable) vs. Commissioner of Police and Ors.***, in which the Tribunal itself had taken the view that in the circumstance where air-tickets were purchased from non-authorized travel agencies, the employee, though not entitled to the entire amount as claimed and reimbursed, would yet be entitled to the air-fare charged by Air India on the rationale that had

the employee purchased the air-ticket directly from Air India or through an authorized travel agent, such amount have been reimbursed. In ***Joginder and Ors.*** (supra), we have finally taken the following view in relation to Circular/Office Memorandum dated 16.09.2010 :

> *"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."*

13. In our view, the essential dispute in the present matter is the same as decided by us in ***Joginder and Ors*** (supra) since the question of what was recoverable from the petitioner would depend upon what the petitioner was entitled to receive towards LTC reimbursement. In our view, the mere fact that in response to notice dated 01.07.2016, the petitioner refunded the entire sum of Rs.59,459/- i.e. amount demanded except the penal interest, cannot be taken to be an admission on the petitioner's part that she was aware that she was wrongfully claiming LTC by buying air-tickets from a non-authorized

travel agency.

14. In the circumstances, impugned order dated 05.09.2019 is set-aside ; and it is directed that the respondent shall be entitled to recover from the petitioner only the difference, if any, of the price of air-tickets as per the authorized travel agencies and the price of air-tickets reimbursed to the petitioner. Furthermore, since the claim for penal interest has been made on the basis that the *entire* LTC reimbursement was liable to be refunded and that the petitioner had willfully omitted to refund the entire sum, we are of the view that no penal interest be levied provided the petitioner refunds the amount, if any found payable, within four weeks of the respondents raising a written demand in that behalf upon the petitioner. We say so for the reason that the amount refundable, if any, will only now be quantified pursuant to this order once the respondents raise the written demand. If however the petitioner does not pay-up within four weeks as aforesaid, she would be liable for interest at 2% above the prevailing GPF interest rate, for the period of delay.

15. The writ petition and pending applications, if any, are disposed of in the above terms ; without however, any order as to costs.

ANUP JAIRAM BHAMBHANI, J.

G.S.SISTANI, J.

DECEMBER 09, 2019/SR