$~9

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

\+ **W.P.(C) 8520/2016 and CM APPL. 35114/2016 (stay)**

DINESH KUMAR SHARMA ..... Petitioner

Through: Mr. Modhanshu Tripathi, Mr. Rajeev Dubey and Mr. Ashiwan Mishra, Advocates.

versus

GP. COMMANDER (CRO) & ORS ..... Respondent

Through: Ms. Shiha Laxmi, CGSC with Mr.Siddharth Singh and Ms. Pragya Wal, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **03.09.2019**

1. The prayers in the Writ Petition read as under:

> "(a) Issue a Writ of certiorari for quashing the order no. 81012/6/2016-CRO (Adm.) Headquarters NSG dated 05.07.2016 and the Order No. P1-14/2016-17 PBC-GC dated 20.07.2016 ordering for cancelling of LTC and leave encashment amount sanctioned earlier and ordering that a total amount of Rs.1,32,576/- be recovered from the Petitioner's pay in 10 equal instalments @ 13258/- from the month of August 2016 respectively.
>
> (b) Pass any other order or direction as this Hon'ble Court may deem fit and proper to do so in the facts and circumstances of the case in favour of the Petitioner."

2. The background facts as mentioned in the petition are that the Petitioner was recruited as ASI/M in the Central Reserved Police Force (CRPF) on 29th June, 1991. From 16th April, 2010, he was posted on a deputation basis at the Headquarter of NSG, New Delhi. The Petitioner applied and he was sanctioned LTC for the block yeas 2012-13 on 02.09.2013 to visit Srinagar (Jammu and Kashmir) alongwith ten days leave encashment. Petitioner availed the LTC facility. Petitioner was repatriated to CRPF. An enquiry was being conducted against Mr. Kashmiri Lal of the Communication Department for committing offence under Section 34 (e) of NSG Act in which Petitioner was also examined as a prosecution witness on 16.03.2015.

3. As per Petitioner, vide order dated 5th July, 2016 the Gp. Commander (CRO, NSG, New Delhi) cancelled the office order granting him permission to avail LTC to visit Srinagar (Jammu and Kashmir) alongwith ten days leave encashment. On that basis, DIGP (Group Centre) CRPF, Agartala, Tripura vide his order dated 20th July, 2016 (impugned order) had directed for recovery of LTC and leave encashment amount totalling to Rs.1,32,576/- from the Petitioner in ten equal instalments from August, 2016. Hence, the present Writ Petition has been filed on the grounds that the Petitioner had only appeared as a witness in an enquiry being conducted against his colleague, Kashmiri Lal on 16th March, 2015; no independent enquiry was made against the Petitioner regarding his availment of LTC/leave encashment; even no explanation was sought from the Petitioner before passing the order for recovery of Rs.1,32,576/-; the Petitioner had duly utilised the sanctioned amount for availing the facility of LTC; principle of natural justice has not been followed and even Hon'ble Supreme Court has

held in catena of judgements that before passing adverse observations/structures, an opportunity of being heard is to be provided.

4. Relevant facts in detail have not been mentioned in the petition but by perusing the annexures filed along with the Writ Petition, it can be made out from order of Gp Commander (CRO) NSG dated 05.07.2016 (Annexure P-2) that the office order dated 2nd September, 2013 granting him LTC was cancelled as the said LTC claim was found to be a fraudulent claim and as a consequence thereto an order was passed to direct the Petitioner to deposit Rs.1,32,576/- being the total LTC claim along with penal interest.

5. In the counter affidavit filed on behalf of the Respondents, it is mentioned that the Petitioner had not exhausted efficacious departmental remedy before approaching this Court. In response to the application for LTC and leave encashment made by the Petitioner, an advance of Rs.82,000/- was sanctioned on 2nd September, 2013 and thereafter, the Petitioner submitted a claim for LTC of Rs.91,140/- as total expenditure on air tickets from Delhi to Srinagar and back and this claim was certified by him to be true to the best of his knowledge and belief. Copies of tickets were also attached with the said claim. A Court of Enquiry was instituted to investigate into the circumstances under which one other employee, namely, Mr. Kashmiri Lal had made fraudulent LTC claim for the block years 2012-13 for himself and his family members and for helping others in making enhanced LTC claims. When statement of the Petitioner was recorded during enquiry on 16.03.2015, he deposed that he had also purchased air tickets through Kashmiri Lal for his visit to Srinagar on LTC. An e-mail was sent to Go

Airlines with a request to verify the air tickets submitted by the Petitioner. Senior Manager (Legal) of Go Airlines deposed on 19.05.2015 in the Court of Enquiry that the tickets produced by the Petitioner were not genuine and he also produced the genuine tickets which were generated for the same dates in the names of Petitioner and his family members. The genuine tickets were totalling to Rs.43,642/- whereas the Petitioner had submitted forged tickets amounting to Rs.91,140/- for the same booking reference No. S1YM12 and for the same journey.

6. It is further mentioned by the Respondents that as per OM dated 15th June, 2012 of DoPT, the air tickets can be purchased either directly from the airlines or through Government approved travel agents but the Petitioner had admitted that he had purchased the tickets through Kashmiri Lal, which is an unauthorised source. The DIG, NSG (Communication Branch) passed an order dated 24th September, 2015 to the effect that the Petitioner had made a fraudulent claim of LTC by submitting air tickets at inflated rates and had purchased tickets from unauthorised agents/source. Hence, the LTC as well as leave encashment claim of the Petitioner for the block years 2012-13 was cancelled and CRPF was requested to initiate appropriate action against the Petitioner and to recover the amount with penal interest. As a follow up action, the Petitioner was called upon to pay the said amount to CRPF Headquarter. Under these circumstances, as per the CCS (CCA) rules, 1965, the delinquent Government servants is not to be allowed to avail next two sets of LTC in addition to the one already withheld. The penal interest is to be charged as the conditions for grant of LTC were violated.

7. We have heard the arguments. Even at this stage, the learned counsel for Petitioner has no explanation to offer as to how he had submitted an LTC claim of Rs.91,140/- for air tickets when the witness from Go Air had produced the copies of the original tickets which were costing only Rs.43,642/-. The lame excuse submitted by the learned counsel for the Petitioner is that the Petitioner was not knowing that he had to purchase the tickets directly from the office or the website of the airlines or through Government authorised agents and he had paid Rs.91,140/- to his colleague Mr. Kashmiri Lal and it is Mr. Kashmiri Lal who had made unlawful gain on the said transaction. This explanation submitted on behalf of the Petitioner is not tenable.

8. We have also gone through the statement of the Petitioner dated 16th March, 2015 recorded before the Enquiry Officer in connection of enquiry being conducted against Mr. Kashmiri Lal. The said statement itself is not very convincing as the Petitioner has mentioned that after sanction of advance, he met Mr. Kashmiri Lal and on enquiry he told Kashmiri Lal that he was going to airport to arrange the air tickets but Mr. Kashmiri Lal told him that he need not worry for the said purpose and he will arrange the tickets for Petitioner for going to Srinagar. He further stated that Mr. Kashmiri Lal gave him the tickets of Go Air in a closed envelope and on the basis of the said tickets, he procured boarding passes from the ticket counter, and therefore, went to Srinagar by Go Air flight and similarly, he performed the returned journey and submitted those tickets with LTC claim, which was passed and final payment was made. It is to be noted here that when the Manager (Legal) of Go Air appeared before the Court of Enquiry, he had

produced computer generated printout of the original air tickets. After going through the tickets submitted by the Petitioner for claiming the LTC, the said Manager (Legal) had mentioned that the same were manipulated air tickets which were not issued by Go Air. The layout and the format of the tickets was changed and contents of the original tickets were modified and the air tickets submitted by the Petitioner did not match with the system generated air tickets. From the evidence of the Manager (Legal) of Go Air, it is clear that the present Petitioner had not produced the forged tickets at airlines counter at airport to obtain boarding passes as he would have been exposed there and then. Hence, the tickets produced before airlines staff to obtain boarding passes and the tickets deposited to claim LTC are different.

9. Another interesting fact to be noticed is that during his evidence in the Court of Enquiry, the Petitioner had mentioned that he had handed over a cheque of Rs.80,140/- to Mr. Kashmiri Lal on 17th October, 2013 but name of the payee was not mentioned on the said cheque and he had also paid Rs.11,000/- in cash in October, 2013. The cheque was encashed on 18th October, 2013. On the other hand, the forged and fabricated tickets submitted by the Petitioner are showing the date of booking as 3rd September, 2013.

10. On the basis of the above, it is quite clear that the Petitioner had intentionally submitted inflated LTC claims on the basis of forged and fabricated air tickets. The show cause notice was also issued to the Petitioner on 29th August, 2016 by CRPF to which the Petitioner has submitted his reply. Vide order dated 20th September, 2016 the Competent Authority was

quite considerate and it was observed that since direct involvement of the Petitioner could not be found in this case and entire amount with penal interest was being recovered from him, therefore, considering his future career and taking lenient view, a warning was issued to Petitioner to restrain himself from such wrongful activities, failing which strong disciplinary action will be taken against him.

11. In view of the above, the Petitioner is hereby held to be not entitled to the relief claimed in the writ petition and the same is dismissed. The pending application also stands disposed of.

S. MURALIDHAR, J

TALWANT SINGH, J

SEPTEMBER 03, 2019
pa