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

% **Date of Decision: 4th December, 2020**

\+ **W.P.(C) 5635/2020**

SHIV KUMAR PANDEY **.....Petitioner**

Through: Mr.Rajiv Ranjan Mishra, Mr. Saurabh and Mr. R.N. Mishra, Advocates

versus

UNION OF INDIA & ORS. **....Respondents**

Through: Mr.Anil Dabas, Advocate for respondents No.1 to 4

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

W.P.(C) 5635/2020, CM APPL.20406/2020 (for ad-interim stay)

1. On 26th August, 2020, when this petition first came up for admission, *inter alia* the following order was passed: -

> *"3. The petitioner, a Deputy Commandant in the respondents Central Industrial Security Force (CISF), has filed this petition impugning the decision of the respondents CISF of deduction, in 20 installments, from the salary of the petitioner, of Leave Travel Concession (LTC) of about Rs.2.15 lakhs claimed by the respondents CISF to have been wrongfully disbursed to the petitioner, in contravention of the Rules.*

4. Deduction w.e.f. December, 2019 has already commenced from the salary of the petitioner and the representation of the petitioner forwarded to the Ministry of Home Affairs also stands rejected.

5. The petitioner, in the grounds pleaded in the petition, has only urged the ground of the respondents CISF, after having disbursed the LTC, being not entitled to claim refund of the same. However there is no merit in the said ground inasmuch as disbursement of LTC is governed by the statutory rules and there is no estoppel against the Statute.

6. However what intrigues us is, the reason given for the claim for refund and in the rejection of the representation. It is stated that the petitioner was not entitled to the LTC in the relevant year i.e., 2016, in which it was claimed and disbursed.

7. It is not in dispute that the LTC entitlement is for a block of four years. The counsel for the petitioner, on enquiry states that the relevant block of four years was 2014 to 2017. From the communications aforesaid of the respondents CISF, it appears that according to the respondents CISF, LTC was due to the petitioner in the year 2017 and not in the year 2016. The counsel for the petitioner has contended that though the petitioner applied for LTC in 2017 also, but the same was not disbursed.

8. Unless there is an express provision to the contrary, we are of the prima facie opinion that once LTC is available in a block of four years, it matters not whether it is claimed in the 1st, 2nd, 3rd or 4th year, as long as there is no over-withdrawal in the block of four years.

9. The counsel for the petitioner has not filed before this

Court the relevant Rules/O.M. wherefrom the controversy could have been adjudicated.

10. The counsel for the respondents CISF also, though appearing on advance notice, states that he will have to obtain instructions."

and notice of the petition issued and till further orders, further deductions being made from the salary of the petitioner were stayed.

2. The respondents Central Industrial Security Force (CISF) have filed a counter affidavit and in which the respondents CISF, in paragraphs 1 to 6 of the 'Brief background of the case', have stated as under: -

"1. That Shri Shiv Kumar Pandey, Deputy Commandant, was appointed as Assistant Commandant in Central Industrial Security Force on 18.04.2009. Shri Shiv Kumar Pandey, Deputy Commandant joined CISF Unit, NSCBI Airport Kolkata on 01.06.2015 from CISF Unit, NHPCL Subansiri. The Officer had applied & availed All India Leave Travel Concession for the year 2016 for self, wife, son & daughter from ASG Kolkata to Alleppy, Kerala & back and his parents (father & mother) availed from ASG Kolkata to Kanyakumari & back on the 7th occasion vide CISF Unit NSCBI Airport Kolkata, Service Order Part.II No.426/2016 dated 17.12.2016 ***(Annexure–R-1/2)*** *& Part.II No.298/2016 dated 14.09.2016* ***(Annexure–R-1/3)****.*

2. That the audit team of Internal Audit Wing (Ministry of Home Affairs) raised an observation that Shri Shiv Kumar Pandey, Deputy Commandant was not entitled to avail All India Leave Travel Concession in the year 2016 and the expenditure incurred for avail LTC during the year 2016 should be recovered from Shri Shiv Kumar Pandey, Deputy Commandant and deposited in Government accounts through challan.

3. That the Department of Personnel & Training Office Memorandum dated 23.09.2008 ***(Annexure-R-1/4)*** *envisages that the* ***Fresh recruits to Central Government are allowed to travel to their home town along with their families on three occasions in a block of four years and to any place in India on the fourth occasion.*** *This facility shall be available to the Government officers only for the first two blocks of four years applicable after joining the Government for the first time. The blocks of 4 years shall apply with reference to the initial date of joining the Government even though the employee changes the job within Government subsequently. The existing blocks will remain the same but the entitlements of the new recruit will be different in the first eight years of service. All other provisions concerning frequency of travel under LTC (Leave Travel Concession) are retained.*

4. That as per above guidelines, the entitlement of Shri Shiv Kumar Pandey, Deputy Commandant for Home Town/All India Leave Travel Concession would be as under:-

From	TO	Year of LTC	Type of LTC	Block of LTC
18.04.09	17.04.10	One year service	NIL	
18.04.10	31.12.10	1st Year	Home Town	1st Block
01.01.11	31.12.11	2nd Year	Home Town	
01.01.12	31.12.12	3rd Year	Home Town	
01.01.13	31.12.13	4th Year	Anywhere	
01.01.14	31.12.14	5th Year	Home Town	2nd Block
01.01.15	31.12.15	6th Year	Home Town	
01.01.16	31.12.16	7th Year	Home Town	
01.01.17	31.12.17	8th Year	Anywhere	
01.01.18	31.12.21	**Normal Block Year 2018-21 is entitled**		

5. That The Department of Personnel & Training have further clarified as Frequently Asked Questions with illustration No. 1,2,3 & 4 vide letter No.31011/7/2013-

Estt(A-IV) dated 26.09.2014 ***(Annexure-R-1/5)*** *and as per Department of Personnel & Training (Establishment A-IV) Frequently Asked Questions* ***(Annexure-R1/-6), it is clarified that a fresh recruit Govt. Servant can avail All India Leave Travel Concession only on 4th occasion of the block and not at random.*** *In the instant case, Shri Shiv Kumar Pandey, Deputy Commandant has availed Leave Travel Concession to any place in India in the year 2016 which was his 3rd occasion. Thus, the officer was entitled to avail Home Town LTC in the year 2016 whereas the officer availed All India LTC.*

6. That on the basis of audit observation raised by the Internal Audit Wing(MHA), CISF Unit ASG NSCBIA Kolkata requested to CISF Unit IOC, Haldia vide Letter No.F-12016/CISF/NSCBIA(K)/TA-DA/Accts/ 2018/ 4093 dated 30.05.2018 ***(Annexure-R-1/7)*** *and letter of even No.F-12016/CISF/ NSCBIA(K)/TA-DA/Accts/2018/6114 dated 07.08.2018* ***(Annexure-R-1/8)*** *that a sum of Rs.2,15,218/- incurred towards claim and paid to Shri Shiv Kumar Pandey, Deputy Commandant may be recovered from the officer and deposited to Government Account through challan."*

Else, in the affidavit neither it has been stated that the petitioner, in the block of four years claimed All India Leave Travel Concession (LTC) twice nor any explanation for the insistence on availing of the All India LTC only after availing the three LTCs to the Home-town, is pleaded.

3. We otherwise are unable to fathom any reason or logic in the insistence on availing of the "All India LTC" or "anywhere LTC" only in the 4th and the 8th year of the first block of eight years of service and not in any of the other years of each block of the first four years of service.

4. On enquiry being made from the counsel for the respondents CISF, the counsel for the respondents CISF states that the respondents CISF

have acted in accordance with the Rule and the petitioner has not challenged the Rule and thus the validity of the Rule cannot be gone into.

5. Undoubtedly so; however, in the facts of the present case, the respondents CISF also sanctioned the All India LTC to the petitioner in the 3rd year of the first block of four years and disbursed the amount and allowed the petitioner to avail of the same and it thus cannot be said that the error is only on the part of the petitioner. The error is equally on the part of the respondents CISF also and the respondents CISF also realized the mistake only on an audit objection being raised.

6. We thus dispose of this petition, by directing the respondents CISF, to re-consider the Rule aforesaid; and, by otherwise quashing the demand impugned in this petition against the petitioner and enforcement thereof by recovery from the emoluments of the petitioner and direct the respondents CISF to, within 60 days of today, refund to the petitioner whatever has already been deducted on the said account from his emoluments, failing which, after 60 days, the petitioner shall also be entitled to interest thereon @ 8% *per annum.*

7. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 04, 2020/s