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

% *Date of Decision: May 29, 2023*

\+ **W.P.(C) 3311/2019**

MAHESH CHAND BHATELEY AND ORS. ..... Petitioners

Through: Mr. D. K. Sharma, Mr. Mohit Gemini, Mr. Himanshu Kaushik, Mr. Harish Kaushik and Mr. Dovy Bhati, Advs.

versus

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

Through: Mr. S. M. Arif, Ms. Shabnam Perween and Mr. S. M. Aatif, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

CM APPL. 2537/2023

1. This is an application seeking early hearing of the writ petition on the ground that petitioner No. 4 namely Naresh Kumar Gemini is retiring on May 31, 2023 and petitioner Nos. 1, 3 and 6 have already retired from service and their gratuity, which is payable post retirement, has been withheld.

2. For the reasons stated in the application, the same is allowed and writ petition is taken up for hearing.

3. Application stands disposed of.

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4. The challenge in this petition is to an order dated February 05, 2019 passed by the Central Administrative Tribunal ('Tribunal', in short) in R.A.

No. 39/2019 in O.A. No. 884/2018. Concedingly, the order dated December 03, 2018, by which the O.A. No. 884/2018 was dismissed, has not been challenged.

5. The submission of learned counsel for the petitioners is that order dated December 03, 2018 has merged in the order of review dated February 5, 2019. Though, we do not agree with the submission of the learned counsel for the petitioners in that regard, as we have been informed that three petitioners have already retired and petitioner No. 4 is also retiring on May 31, 2023, we without going into the technicalities, have decided to hear the counsel for the parties and decide this writ petition.

6. The claim of the petitioners before the Tribunal was with regard to order dated November 29, 2017 and notices dated January 31, 2018 and February 01, 2018 issued by the respondents forfeiting the LTC claim; directing the petitioners herein to refund the LTC advance and ten days leave encashment within fifteen days from the receipt of the notices.

7. The Tribunal in the original application has in paragraph No. 11 stated as under:

> "*11. In the result, in the peculiar facts and circumstances of the case, the applicants were found to have followed the LTC rules so far as train and ferry ship journeys are concerned and the same have been accordingly made. Hence, the applicants are allowed fares of these journeys, except air tickets. The applicants are also entitled for 10 days earned leave encashment as they have claimed the same by virtue of availing of LTC. However, this Court makes it clear that as there has been misdemeanor committed by falsely claiming the cost of Air Tickets, it is open to the respondents to take departmental action after serving notice to the applicants. Accordingly, the impugned orders dated*

29.12.2017 as also notices dated 31.1.2018 and 1.2.2018 are quashed to the extent as observed above."

8. The Review Petition was dismissed by the Tribunal by holding that there is no error apparent on the face of record, for the review application to be maintainable.

9. On perusal of the order passed by the Tribunal on December 03, 2018, it is clear that Tribunal has set aside the order dated November 29, 2017 and notices dated January 31, 2018 and February 01, 2018, by holding that the petitioners shall be entitled to the fares of train and ferry ship journey and also the ten days leave encashment, but they shall not be entitled to air fare for the journey undertaken from Kolkata to Port Blair and back.

10. Our attention has been drawn to page No. 153 of the paperbook to contend that the petitioners, while applying for advance, though referred to a different ticket numbers as given by the ticketing agent but the tickets produced at the time of making the LTC claims were genuine with right ticket number.

11. It is stated by the counsel for the respondents, Mr. Arif that excess amount has been claimed by all the petitioners with regard to the LTC, which was undertaken along with the family members.

12. It is the submission of learned counsel for the petitioners that stand of the respondents that the petitioners have made excess claim(s), is not borne from the record. In other words, the claim(s) has been made on the basis of the amounts spent on the tickets as submitted at the time of LTC claim(s). He states, the respondents after adjusting the advance have made the final payment against the claim of the petitioners.

13. This statement is controverted by Mr. S. M. Arif to contend that the

claims are in excess of the amount spent on air fare.

14. In any case, the submission of the counsel for the petitioners is that the respondents have sought the refund by claiming compound interest. According to him, the petitioners are ready to refund any excess amount, which has been paid with simple interest @ 7% per annum from the date of payment of advance till the date of refund.

15. Noting the aforesaid submission and the fact that three petitioners have already retired and one petitioner is on the verge of retirement, to put quitus to the issue, we allow the writ petition by holding that petitioners shall refund any excess amount received by the them with simple interest @ 7% per annum from the date the advance was given to them till the date of refund. This is on the respondents informing each of the petitioners, the amount with interest to be refunded by the petitioners within three weeks from today. On receipt of the details, the petitioners shall refund the same within four weeks thereafter. This shall mean, the finding of the Tribunal that the petitioners have committed misdemeanor shall not survive for any action.

16. With the above, petition is disposed of.

17. The next date of hearing, i.e. July 25, 2023 stands cancelled.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 29, 2023/*R*