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

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Date of Decision: 24th July, 2024

+ W.P.(C) 8413/2020 and CM APPL. 27259/2020

SH RAM KRISHNA DATTA & ANR.

.....Petitioners

Through: Mr. Aditya Singh Puar and Ms.
Shalini Puar, Advocates

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Ms. Monika Arora, CGSC with Mr.
Subhrodeep Saha, Advocate for R-1 and 2.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India laying a challenge to Charge Memorandums dated 26.08.2020; letters dated 12.04.2019 issued by Respondent No.2/Jawaharlal Nehru University (hereinafter referred to as "JNU") as well as report of the High-Level Committee dated 15.01.2020 and Resolution dated 11.02.2020 passed by Finance Committee and Resolution dated 18.02.2020 passed by Executive Council (EC) to the extent disciplinary action was directed against the Petitioners. Be it noted that during the pendency of the present writ petition, Disciplinary Authority of JNU has passed an order dated 10.08.2023 debarring the Petitioners from availing two block years of LTC, prospectively.



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2. Facts to the extent relevant and as stated by the Petitioners are that Petitioners are both Ex-Servicemen, who after serving a full term of colour service joined JNU. Petitioner No.1 served the Indian Air Force while Petitioner No.2 was serving in the Indian Navy and retired in the ranks of Junior Warrant Officer and Chief Petty Officer and joined JNU on 26.05.2014 and 16.03.2015, respectively. Their entire military service is stated to be unblemished and exemplary.

3. After joining JNU, Petitioners availed the facility of 'Leave Travel Concession' ('LTC') as per their entitlements in order to visit holiday destinations with their families at different points in time. Being new employees, Petitioners sought the advice of their colleagues, who advised them that the best travel agency for providing tickets for travel was M/s Ghumantu ('Travel Agency'). On making further inquiries, Petitioners also learnt that the Travel Agency was well reputed and routinely sponsored official events of JNU. Accordingly, after exercising due diligence, Petitioners purchased air tickets through the Travel Agency and the tickets bore the insignia of Air India and were accompanied by invoices and apparently appeared to be in order.

4. It is averred that Petitioners travelled and completed their respective journeys and on return, submitted the applications, tickets, boarding passes and other proofs of travel to JNU. Petitioner No.1 travelled from 26.05.2017 to 31.05.2017 while Petitioner No.2 travelled from 05.05.2017 to 09.05.2017. Petitioners' documents were found in order and were duly accepted and approved and the accounts were finally settled by the Finance Branch of JNU.



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5. It is further averred that two years later, Petitioners received letters dated 12.04.2019 titled '*Submission of fraudulent LTC claim amount*' *inter alia* asking the Petitioners to refund the entire sum under the LTC claims along with penal interest @ 10%. The unjustified demand was on two counts: (i) tickets for LTC journeys should have been purchased either directly from the Airline or utilizing services of authorized Travel Agents viz. M/s Balmer Lawrie & Co., M/s Ashok Travels & Tours, and IRCTC; and (ii) the audit report pointed out that the bills/air tickets submitted by the Petitioners were fudged/fictitious.

6. The Finance Committee of JNU in its 96th meeting held on 11.02.2020 resolved that the full amounts paid towards LTC should be recovered with interest in maximum 5 installments from the Petitioners with no further notice. *Albeit* Petitioners were not at fault, they repaid the amounts with interest without any protest. Despite the matter being closed by the Finance Committee and the same having been duly ratified by the EC of JNU, Charge Memorandums both dated 26.08.2020 were issued by JNU. During the pendency of the present writ petition, the disciplinary proceedings continued and the Inquiry Officer ('IO') rendered the inquiry report dated 16.11.2021, a copy of which was forwarded to the Petitioners calling upon them to represent against the same. IO rendered a finding that the Petitioners were not to be blamed and the charges were not proved, however, cautioned them to be circumspect and proposed a penalty of debarring the Petitioners from availing two block years of LTC, prospectively. Petitioners filed their response to the inquiry report on 04.01.2022 and 05.01.2022, respectively and pointed out that since the IO had given a finding in their favour that they played no part in generation of



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the tickets and intent to defraud was not established, no penalty could be levied on them. Disciplinary Authority, however, went selectively by the recommendations of the IO that the Petitioners ought to have been more circumspect while procuring the air tickets and thus should be debarred for two block years of LTC prospectively and passed orders dated 10.08.2023, levying the same penalty.

7. Learned counsel for the Petitioners argues that Petitioners joined JNU after a long, unblemished and exemplary service from the Armed Forces. They had procured the air tickets in good faith from the Travel Agency which was well-known in JNU and routinely sponsored several official events in JNU. The tickets bore the insignia of Air India and were duly accompanied by invoices and to a layman, apparently nothing was wrong in the tickets. There was no ill intent in either purchasing the tickets from the Travel Agency or claiming the amounts under the LTC bills in terms of the entitlements of the Petitioners to claim LTC.

8. It is argued that the claim forms do not make any reference to a requirement of purchasing tickets through a specific Travel Agent and nor was there any reference to any O.Ms. or Circulars on the subject and therefore, Petitioners were under a *bona fide* impression that there was no restriction for purchase of tickets in terms of choice of vendor. It is for this reason that in its 96th meeting, Finance Committee of JNU closed the case by asking the Petitioners to refund the amounts towards LTC with interest, in maximum 5 installments and this decision was ratified by the EC of JNU. Despite the closure at the highest level of JNU, charge sheets were issued to the Petitioners maliciously but the IO rendered a finding that there was no ill intent or delinquency and concluded that Petitioners were not responsible for



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generation of the air tickets and had merely received them from the Travel Agency and thus, the intent to defraud was not established. With this finding of the IO, based on appreciation of evidence in a full-fledged inquiry, it was neither the jurisdiction of the IO nor open to him to have recommended any penalty. Without applying its mind to the findings of the IO that the charges were not proved and no ill-intent of the Petitioners existed in making the LTC claims, the Disciplinary Authority simply accepted the recommendation of the penalty and imposed the penalty recommended. There was no disagreement on the finding that the charges were not established.

9. Learned counsel for JNU, on the other hand, submits that the Charge Memorandums were rightly issued against the Petitioners and basis the evidence on record produced during inquiry, no infirmity can be found with the orders debarring the Petitioners prospectively for two block years of LTC. It is argued that DoPT O.M. dated 23.09.2015 provides that air tickets for LTC journey should be purchased directly from the Airline at booking counters/website of Airline or utilizing the services of authorized Travel Agents provided therein and booking through any other Travel Agent is impermissible. Office Memorandum dated 19.09.2016 issued by DoPT regarding relaxation to travellers by air to visit North-Eastern Region, J&K and Andaman & Nicobar Islands, stipulates that all eligible Government servants may avail LTC to visit any place in NER, J&K and A&N against conversion of their one home town LTC in a four year block in Economy Class at LTC-80 fare or less. The O.M. further stipulates that the employees be advised that any misuse of LTC would be viewed seriously and liable to action. In order to keep a check on misuse of LTC, Ministries/Departments



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have been advised to randomly get some air tickets submitted by officials verified from Airlines concerned with regard to actual cost of air travel vis-à-vis the cost indicated on the air tickets submitted. Rule 16 of Central Civil Services (Leave Travel Concession) Rules, 1988 ('LTC Rules') enables disciplinary action against a Government servant for preferring a fraudulent LTC claim and Rule 11 of CCS(CCA) Rules, 1965 provides for a penalty of debarring an official for next two sets of LTC, if found guilty.

10. It is argued that both Petitioners were eligible for LTC for self and family as per rules, however, Petitioner No.1 purchased the tickets from M/s Ghumantu while Petitioner No.2 purchased them from Cox & Kings India, which were not authorized agents in terms of DoPT O.M. dated 23.09.2015. Petitioners cannot take a stand that they were ignorant of this position as ignorance of law is no excuse. It is for every employee to know and be aware of the Service Rules/O.Ms/Circulars applicable. The action of initiating disciplinary proceedings was based on an audit report rendered while auditing the JNU records and the LTC claims of the employees pertaining to years 2017-18, 2018-19 and for the period 03.01.2019 to 12.02.2019, reflected fudging of claims by 34 employees who performed air journeys by Air India. The fares claimed were higher than the amounts actually paid by the employees to the Airline.

11. It is further argued that based on the audit report, Ministry of Education vide its letter dated 11.06.2020 instructed JNU to investigate the matter and in this light, the Competent Authority again placed the matter before the EC and the Council in its 286th meeting held on 23.07.2020 vide Resolution No.6.13 decided to initiate major penalty proceedings against the Petitioners. It is true that the IO has rendered findings in favour of the



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Petitioners to some extent, however, the penalty is justified for the reason that the IO himself recommended that Petitioners ought to have been more circumspect and recommended the penalty and secondly, it is always open to the Disciplinary Authority to disagree with the findings of the IO in totality.

12. Heard learned counsels for the parties and examined their rival submissions.

13. Indisputably, Petitioners joined JNU as Senior Assistants after completion of their tenure in the Armed Forces. After joining JNU, Petitioners were selected on direct recruitment basis in other organizations and on the date of filing of this writ petition, Petitioner No.1 was working as Section Officer at Nehru Science Centre, Mumbai while Petitioner No.2 was working as Assistant Registrar, Shri Lal Bahadur Shastri National Sanskrit University, New Delhi and both had lien on the posts they held in JNU. Petitioner No.1 travelled to Port Blair from 26.05.2017 to 31.05.2017 with three family members with an advance of Rs.1,34,000/- and claimed Rs.1,48,044/-, while Petitioner No.2 travelled to Port Blair from 05.05.2017 to 09.05.2017 with advance of Rs.1,00,000/- and claimed Rs.1,11,603/-. On return, both submitted their LTC claims along with bills, tickets, boarding passes and other requisite documents. The LTC claims were scrutinized, approved and settled. The Finance Committee in its 96th Meeting held on 11.02.2020 resolved that the full amount under the LTC claims be recovered with interest in maximum five instalments from the concerned employees, without any further notice and the Petitioners refunded the entire amounts with interest. Later, on the directions of the Ministry of Education, pursuant to an audit report, the matter was again placed before the Finance



Committee and in its 286th Meeting held on 23.07.2020, it was resolved that disciplinary action be taken against the allegedly erring employees and this triggered the issuance of the impugned Charge Memorandums culminating into a penalty of debarring the Petitioners from two block years of LTC prospectively.

14. There can be no two opinions that every employee must maintain absolute integrity and do nothing, which is unbecoming of an employee of the University, which is the essence of Rule 34 of the '*Rules Governing the Terms and Conditions of Service of the Non-Teaching Staff of a Central University (other than Registrars)*'. There is also no quarrel with the contention of JNU that under Rule 13 of CCS(CCA) Rules, the President or any other authority empowered by him by general or special order may institute disciplinary proceedings against any Government servant. Rule 16 of CCS (LTC) Rules, 1988 deals with fraudulent claims of LTCs. For ready reference, these Rules are extracted hereunder:

"Rule 34 of the 'Rules Governing the Terms and Conditions of Service of the Non-Teaching Staff of a Central University (other than Registrars)'"

34. General :

(1) Every employee shall at all times :

(a) maintain absolute integrity:

(b) show devotion to duty; &

(c) do nothing which is unbecoming of an employee of the University.

(2) (i) Every employee holding supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all employees for the time being under his control and authority;

(ii) No employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the



direction in writing wherever practicable and, where it is not practicable to obtain the direction as soon thereafter as is possible.

Explanation : Nothing in Clause, (ii) and sub-rule (2) shall be construed as empowering an employee to evade his responsibilities, by seeking instructions from or approval of, a superior officer or authority when such instructions are not necessary under the scheme of delegation of power and responsibilities.”

Rule 13 of CCS(CCA) Rules

“13. Authority to institute proceedings

(1) The President or any other authority empowered by him by general or special order may -

(a) institute disciplinary proceedings against any Government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.”

Rule 16 of CCS (LTC) Rules, 1988

“16. Fraudulent claim of leave travel concession.-

(1) If a decision is taken by the Disciplinary Authority to initiate disciplinary proceedings against a Government servant on the charge of preferring a fraudulent claim of leave travel concession, such Government servant shall not be allowed the leave travel concession till the finalisation of such disciplinary proceedings.

(2) If the disciplinary proceedings result in imposition of any of the penalties specified in Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Government servant shall not be allowed the next two sets of the leave travel concession in addition to the sets already withheld during the pendency of the disciplinary proceedings. For reasons to be recorded in writing, the controlling authority can also disallow more than two sets of leave travel concession.

(3) If the Government servant is fully exonerated of the charge of fraudulent claim of leave travel concession, he shall be allowed to avail of the concession withheld earlier as additional set (s) in future block years but before the normal date of his superannuation.



EXPLANATION.- For the purpose of this rule, leave travel concession to hometown and leave travel concession to any place in India as specified in clauses (a) and (b) of Rule 8 shall constitute two sets of the leave travel concession.”

15. Before proceeding further, it is pertinent to allude to the Memorandum of Charges issued to the Petitioners. As the Charge Memorandums are in essence the same, save and except, the details of the LTC claims, Charge Memorandum issued to Petitioner No.1 is extracted hereunder for ready reference:

“MEMORANDUM

1. The undersigned proposes to hold an inquiry against Sh. Ram Krishna Datta, Senior Assistant (on lien w.e.f 04.09.2019) presently working as Section Officer, in Nehru Science Centre, Mumbai (Employee ID No.2624) S/o Sh. Binode Behari Datta under Rule 55 of the Rules governing the terms and conditions of the non-teaching staff of the Jawaharlal Nehru University (JNU). The substance of the imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct in support of each article of charge is enclosed (Annexure-II). A list of documents by which the articles of charge are proposed to be sustained are enclosed (Annexure-III).

2. Sh. Ram Krishna Datta is directed to submit within 10 days of the receipt of this memorandum a Written statement of his defence and also to state whether he desires to be heard in person.

3. Sh. Ram Krishna Datta is hereby informed that an inquiry will be held only in respect of those articles of charge that are not admitted by him. He should, therefore, specifically admit or deny each article of charge.

4. Sh. Ram Krishna Datta is further informed that if he fails to submit his written statement of defence on or before the date specified in Para 2., or does not appear in person before the inquiring authority within 10 days from the date of receipt of the articles of charge and the statement of imputations of misconduct or misbehavior or otherwise fails or refuses to comply with the provisions of Rule 55 of the Rules governing the terms and conditions of the nonteaching staff of the university or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex-parte.

5. Attention of Sh. Ram Krishna Datta is invited to Rule 44 of the



rules governing the terms and conditions of the non-teaching staff of the university, under which no university employee shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the university. If any representation is received on his behalf from another person in respect of any matter dealt with in those proceedings, it will be presumed that Sh. Ram Krishna Datta is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rule.

6. *During the course of proceedings, Sh. Ram Krishna Datta may take the assistance of any other employee to present his case on his behalf, provided that the said employee should not have three or more pending disciplinary case on hand in which he has to give assistance. Sh. Ram Krishna Datta, however, may not engage a legal practitioner for the said purpose.*

7. *The receipt of the Memorandum may be acknowledged.”*

“ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SH. RAM KRISHNA DATTA, SENIOR ASSISTANT (Presently as on lien w.e.f. 04.09.2019 as a Section Officer in Nehru Science Centre, Mumbai)

ARTICLE-I

While functioning as Senior Assistant, Sh. Ram Krishna Datta has submitted the fraudulent LTC claim ((forged air tickets to claim excessive air fares) during the Year 2017 for visiting Portblair from 26.05.2017 to 31.05.2017 alongwith 03 family member and has availed the leave (EL) encashment of 10 day. While auditing the University records/test check of LTC records during the year 2017-18, it was observed/pointed out by the External Audit Party (Addl. Dy. Comptroller & Auditor General, Central Expenditure) vide part II A (Para I) of the Audit findings that as per details made available by the Air India, as against the total amount of Rs. 148044/claimed by him for air tickets, the actual amount paid to the Air India is only Rs. 76772/-by submitting fictitious/forged bills/air tickets, a fraudulent claim amounting to Rs. 148044/- has been made by him which attracts appropriate action against him.

In pursuance of the above observation made by the Audit Party, the Finance & Accounts Department of the University vide letter/ notice/ note dated 12.04.2019 informed every individual regarding their fraudulent claim and directed them to refund the entire amount of LTC alongwith penal interest @ 10% per annum from the date of withdrawal to the date of refund. The matter as discussed at high level meeting held on



15.01.2020, thereafter the matter was placed before the Finance Committee (FC) in its 96th meeting held on 11.02.2020 and the FC resolved to recover the full amount alongwith the interest in maximum 05 installments from the concerned employees without issuing any further notice in this regard.

Further, the above Resolution of the Finance Committee was placed before the Executive Council (EC) in its 284th Meeting held on 18.02.2020 and the EC has resolved to approve the recommendation of FC to recover the amount of LTC claim as resolved by the Finance Committee in its 96th meeting on 11.02.2020 Furthermore, besides the recovery of LTC amount alongwith penal interest, Executive Council in its 286th meeting vide resolution No. 6.13 dated 23.07.2020 has decided to initiate disciplinary proceedings/major penalties against him.

Sh. Ram Krishan Datta has knowingly concealed the facts about his fraudulent LTC claim from the University. Thus, violated the rules governing the terms and conditions of service of the non-teaching staff of the JNU.

The aforesaid act of Sh. Ram Krishan Datta also amounts to gross violation of Constitutional provisions, misconduct and violation of Rule 3 of the Central Civil Service [CCS] (Conduct) Rules, 1964, Rule 16 of CCS (Leave Travel Concession) Rules, 1988 and various Rules of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as he had submitted fraudulent Air ticket, concealed genuine facts and behaved in a manner of unbecoming of an employee of the University and thereby, violated Rule 34(1) (a),(c) of the Rules Governing the terms and conditions of service of the non-teaching staff of the University.”

“ANNEXURE-II

STATEMENT OF IMPUTATION OF THE ARTICLES OF CHARGE FRAMED AGAINST SH. RAM KRISHAN DATTA, SENIOR ASSISTANT (Presently as on lien w.e.f 04.09.2019 as a Section Officer in Nehru Science Centre, Mumbai)

ARTICLE-I

While functioning as Senior Assistant, Sh. Ram Krishan Datta has submit the fraudulent LTC claim (forged air tickets to claim excessive air fares) during the Block Year 2017 for visiting Portblair from 26.05.2017 to 31.05.2017 alongwith 03 family member and has availed the leave (EL) encashment of 10 day. While auditing the University records/test check of LTC records during the year 2017-18 it was observed/pointed out by the External Audit Party (Addl. Dy. Comptroller & Auditor General, Central Expenditure) vide part II A (Para I) of the Audit findings that as per details made available by the Air India, as against the total amount of Rs. 148044/- claimed by him for air tickets, the actual amount paid to the Air



India is only Rs. 76772/- by submitting fictitious/forged bills/air tickets, a fraudulent claim amounting to Rs. 148044/- has been made by him. Further, it was observed that the Rule 16 of CCS (LTC) Rules, 1988 which is admissible/applicable in the University got also violated which attracts appropriate action against him.

ARTICLE-II

Besides the recovery of LTC amount alongwith penal interest as per rules, a disciplinary proceedings/major penalties has also been initiated against Sh. Ram Krishan Datta under Rule 55 of the Rules governing the terms and conditions of service of non-teaching staff of the JNU and as per Rule 13 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for violating the service rules.

ARTICLE-III

Sh. Ram Krishan Datta has violated the Rule 34(1) (a), (c) of the Rules governing the terms and conditions of service of the non-teaching staff of the University, which provides that:-

(a) Maintain absolute integrity;

(c) do nothing which is unbecoming of an employee of the University.

ARTICLE-IV

Sh. Ram Krishan Datta has violated the CCS (Conduct) Rules, 1964 which states that: Rule 3;-

(i) maintain absolute integrity;

(iii) do nothing which is unbecoming of a Government servant

(vi) maintain high ethical standards and honesty:

(xviii) refrain from doing anything which is or may be contrary to any law, rules, regulations and established practices;"

16. Read in entirety, the allegations against the Petitioners are that they submitted fraudulent LTC claims with forged air tickets to claim excessive air fares and during the audit inspection based on the details made available by Air India, it was revealed that as against total amount of Rs.1,48,044/- claimed by Petitioner No.1, the actual amount paid to Air India was Rs.76,772/- and in case of Petitioner No.2, as against a total claim of Rs.1,11,603/-, the actual amount paid to Air India was Rs.69,813/- and thus



the Petitioners knowingly concealed the facts, which amounts to misconduct under Rule 3 of CCS (Conduct) Rules, 1964 ('Conduct Rules') as well as Rule 16 of LTC Rules.

17. The IO deliberated and assessed the case set up by JNU to support the allegations as well as the defence set up by the Petitioners as follows:

"AN ASSESSMENT OF THE DEFENCE:

- It is evident from the written submissions of the COs that the LTC journey was actually performed by Air India flight.*
- It is clear from the depositions and written submissions that the Cos did not have any role in generation of air tickets.*
- It is also clear that the LTC claim was admitted and settled by the concerned branches of the University at the time of submission of LTC claims after journey was performed.*
- The COS on being communicated by the University that the tickets are forged, immediately deposited the money along with penal interest in the University accounts and no pecuniary loss is stated to have been caused to the University.*
- From the deposition and written submissions, it is clear that the tickets were purchased in good faith but the Cos appear to have become victims."*

18. The IO then rendered a reasoned finding on the Articles of Charge as under:

"REASONED FINDING ON EACH ARTICLE OF CHARGE INQUIRED INTO:

- The COs played no part in generation of air tickets.*
- Intention to defraud is not established and merely booking air tickets through private agent, mainly due to ignorance of rules and in absence of expressive instructions on LTC advance form and/or Sanction Orders, cannot tantamount to individual or group conspiracy.*
- The COs merely received the tickets as given to them by the travel agent. Therefore, their role in production of alleged fictitious tickets in not established.*
- Therefore, no charge of fraudulent Claim and/or violation of Rule 3 of CCS (Conduct) Rules, 1964, Rule 16 of CCS (LTC) Rules, 1988 and*



- various Rules of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 34(1) (1) or (c) of JNU Rules governing the terms and conditions of services of non-teaching staff of the University, is established.*
- *The Finance Committee (FC) in its meeting held on 11.02.2020, and as approved by EC in its meeting held on 18.02.2020, resolved to recover the entire amount of LTC along with penal interest @ 10% per annum from the date of withdrawal to the date of refund from the concerned employees without issuing any further notice in this regard. Thus, the University recovered the amount in full with penal interest.*
 - *Thus, based on the records made available to the undersigned by the administration, facts and circumstances of the cases and evidence as available on records and the depositions/submissions made by the COs as above and taking a view in totality, I have come to the conclusion that the charges made out in the charge sheets are not proved.*
 - *However, as responsible employee of the university the COs should have been more circumspect while procuring air ticket. Therefore, in view of the fact that University has recovered in full the amount of LTC along with penal interest, I recommend that the COs may be debarred for two block years of LTC prospectively.”*

19. As the case of JNU hinges on violation of Rule 3 of the Conduct Rules, it would be apposite to refer to the judgment of the Supreme Court in ***Union of India and Others v. J. Ahmed, (1979) 2 SCC 286***, with respect to what generally constitutes ‘misconduct’ in the context of disciplinary proceedings entailing penalty. Relevant paragraphs are as follows:

“11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster [17 QB 536, 542]). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers [(1959) 1 WLR 698])]. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur [61 Bom LR 1596] , and Satubha K. Vaghela v. Moosa Raza [10 Guj LR 23] . The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:



“Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.”

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik [AIR 1966 SC 1051 : (1966) 2 SCR 434 : (1966) 1 LLJ 398 : 28 FJR 131] in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon v. Union of India [(1967) 2 SCR 566 : AIR 1967 SC 1274 : (1967) 2 LLJ 249] the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta [AIR 1963 SC 1756 : (1964) 2 SCR 104 : (1963) 1 LLJ 679 : 24 FJR 464] wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Coop. Department Stores Ltd. [(1978) 19 Guj LR 108, 120]). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of



devotion to duty.

12. The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.”

20. From a reading of the observations of the Supreme Court, it is palpably clear that ‘misconduct’ means, misconduct arising from ill-motive and mere acts of negligence, errors of judgment, or innocent mistakes, do not constitute misconduct. It is in this light that the alleged delinquency of the Petitioners would have to be examined. The IO on an in-depth analysis has rendered certain findings which are significant: (a) Petitioners had merely receive the air tickets and played no role in their generation; (b) intention to defraud is not established; and (c) merely booking air tickets through private agent due to ignorance of Rules and in the absence of expressive instructions on LTC advance form and/or sanction orders cannot amount to conspiracy. In view of these findings, it was concluded that charge of preferring fraudulent claims and/or violation of Rule 3 of Conduct Rules, Rule 16 of LTC Rules and Rule 34 of JNU Rules was not established. Disciplinary Authority did not disagree with these findings or the findings of the IO that the charges made out in the charge sheets are ‘not proved’. Therefore, once it was found by the IO after a full-fledged inquiry that Petitioners played no role in the generation of the air tickets and intent to defraud was not established, Petitioners cannot be held guilty for violation of Rule 3 of the Conduct Rules and/or any other Rules, as alleged.

21. The main plank of the arguments of JNU hinges on the allegation that Petitioners did not purchase the tickets from the authorized travel agents. A similar issue arose before a Division Bench of this Court in W.P.(C.)



No.12541/2019 titled ***Mrs. Nirmal Gupta v. Govt. of NCT of Delhi and Ors.***, decided on 09.12.2019, where the Government of NCT of Delhi had sought to recover from the Petitioner therein the amount earlier reimbursed to her towards LTC claim on the ground that the air tickets were not purchased from an authorized Travel Agent. It was the case of the Petitioner that there were no instructions or directions that air tickets were to be purchased only from authorized Travel Agents on the claim forms nor was there any reference to any authorized Travel Agent (s) in the approval/sanction orders for LTC claim. Government had contended that on an audit being conducted, irregularities in LTC claims were found and the reimbursed amounts were, therefore, correctly recovered. The Division Bench relied on an earlier judgment of the Division Bench of this Court in ***W.P.(C) No. 3106/2019*** titled ***Joginder and Ors. v. Govt. of NCT of Delhi Ors.*** decided on 13.11.2019 with a batch of petitions, wherein the Court was apprised of a decision of the Central Administrative Tribunal (Tribunal) in ***Raj Kumar Nirala and Ors. v. M/O Health and Family Welfare & Anr.***, decided on 22.08.2019, wherein the Tribunal held as follows:

“14. The applicants in the present OA did not purchase tickets from authorised agents and submitted their claims which were duly settled by the respondents. At a later stage, the same was disallowed and the entire amount was recovered. The respondents had mentioned that if the applicants in that OA had purchased the tickets directly from Air India it would have been at a much lower price. The Tribunal allowed the same and permitted reimbursement only to the extent of cost of ticket if the same had been purchased directly from Air India as per LTC-80. The respondents filed a Writ Petition (C) No. 2072/2019 in the Hon’ble High Court of Delhi challenging the Tribunal’s order. The Hon’ble High Court of Delhi vide order dated 13.03.2019 dismissed the Writ Petition upholding the orders of the Tribunal...”

“15. It is a fact that Government guidelines have been issued through a number of OM’s from time to time clarifying position in this respect. It has also been indicated that these guidelines should be brought to the notice of



all the employees. However, the clarity about these instructions has come about only through OM dated 19.07.2017, clearly stating that henceforth relaxation on account of ignorance/unawareness of these guidelines will not be considered by the department. The responsibility has also been given for non compliance of these guidelines, and the same shall be treated as lapse on part of the concerned Ministry/Department. How the Department/Ministry brings this aspect to the notice of their staff is left to them, whether by way of attaching these guidelines along with sanction order or by obtaining undertaking etc.”

22. Reference was also made by the petitioners to another decision of the Tribunal in ***Surinder Kumar (Head Constable) v. Commissioner of Police and Ors., in OA No. 3835/2017*** decided on 28.05.2018, wherein the Tribunal held as follows:

“7.2 It is not the case of the respondents that the applicant did not avail the LTC or that the claim is fraudulent. It is largely the responsibility of the department to ensure that Government Circular and terms of such OMs are effectively communicated to the employees. It is not hard to accept the contention of the learned counsel of the applicant that an employee of the level of the applicant at hand, may not have known about a DoP&T Circular/OM and the intricacies involved. Indeed, ignorance of law cannot come to rescue of the defaulters but this maxim has to be applied after evaluating the facts in their entirety. Schemes like Leave Travel Concession (LTC) and Home Travel Concession (HTC) etc. have been carved out as a kind of a reward/motivation for the work put in by the government officials for long years of dedicated service, (once in 04 years or 02 years as the case may be). The condition of buying the tickets through the authorized agents is to streamline (presumably) and to ensure that the Scheme is not misused by way of fraudulent or inflated claims. The same is not the case here. The applicant unaware of the provisions of LTC and technicalities to be followed, bought the tickets from a genuine travel agent and availed of the concession, which he believed to be legally due to him. The reimbursed amount is neither false, nor inflated. Courts have consistently held (though in different contexts) that individuals should not be punished for overlooking technical formalities and be deprived of his claims, which he is otherwise entitled to as per law.”

23. The crux of the decisions was that the Government issues guidelines from time to time through OMs and therefore it is largely the responsibility of the Department to ensure that Government circulars and OMs are



effectively communicated to the employees. The Tribunal observed that it was not hard to accept the contention of the applicants that an employee may not have known a particular circular/OM and the intricacies involved. No doubt, ignorance of law cannot come to the rescue of the defaulters but this maxim has to be applied after evaluating the facts in entirety. Schemes such as LTC etc. have been curved out as a reward/motivation for the work put in by the Government officials for long years of dedicated service and the condition of buying the tickets through authorized agents is to streamline the process and ensure that schemes are not misused by way of fraudulent or inflated claims. Holding that the applicants were unaware of the provisions of LTC and technicalities to be followed, the Tribunal held in their favour on the ground that the tickets were bought from a genuine travel agent and the claim was not false. Taking note these decisions, the Division Bench was of the view that since the factum of travel was not disputed, the reimbursement should be made as per the amounts actually paid for the air tickets and the respondents were held entitled to recover the 'difference' of the airfare. Following this judgment, the same view was taken by the Division Bench in *Nirmal Gupta (supra)*, and the Government was held entitled to recover only the difference, if any, of the price of air tickets as per the authorized travel agencies and price of air tickets reimbursed to the Petitioner.

24. Petitioners in the present case have also taken a defence that there was no stipulation on the claim forms restricting the choice of vendors for buying the air tickets nor was there any reference to Circulars or O.Ms. on the subject and this position is uncontroverted. Therefore, case of the Petitioners is squarely covered by the aforementioned judgments of the



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Division Bench. The relevance of referring to these judgments is that Courts have recognized that in the absence of any fraud or ill-intent in a given case, *bona fide* actions of purchasing tickets from genuine Travel Agents may not necessarily amount to delinquency and more so in a case where the employee actually travels. At best the employer can recover the difference as was directed by the Division Bench *albeit* in the present case the Petitioners have refunded the entire amount and have laid no claim for refund of the difference. It is also an undisputed fact that the Petitioners actually travelled to Port Blair and their LTC claims were not fictitious. In light of the finding of the IO, accepted by the Disciplinary Authority, that intention to defraud was not established and that Petitioners played no role in generation of the air tickets and JNU was unable to establish the charge of fraudulent claims, the penalty awarded to the Petitioners cannot be sustained in law.

25. It needs to be noted that the IO after rendering a finding that the Articles of Charge were not proved, has strangely proceeded to recommend debarring the Petitioners from availing two block years of LTC, prospectively. It is neither the domain nor the power of the IO to recommend penalty and after rendering a finding on the charges, IO becomes *functus officio*. Even in a case where an IO holds the charges to be proved, he cannot recommend penalty, which is the jurisdiction and prerogative of the Disciplinary Authority. To compound the error, the Disciplinary Authority in a sketchy order adopted the recommendation of the IO verbatim and without even looking into the detailed Inquiry Report and the finding that charges were not proved, imposed the same penalty. In law, Disciplinary Authority is entitled to disagree with the findings of the IO



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and come to its own conclusion based on facts and evidence, after issuing a Disagreement Memo. However, having accepted the findings of the IO that: Petitioners played no role in generation of air tickets; intent to defraud was not established; merely booking tickets through private agent in ignorance of Rules and in absence of express instructions on LTC advance forms or sanction orders, cannot amount to conspiracy; Petitioners role in production of alleged fictitious tickets was not established; and charge of fraudulent claim and/or violation of any Rule was not established, it was not open to the Disciplinary Authority to debar the Petitioners from availing the LTC in the next two block years.

26. For all the aforesaid reasons, Writ Petition is allowed. Charge Memorandums dated 26.08.2020, Inquiry Report dated 16.11.2021 to the extent the IO recommended debarring the Petitioners from availing two block years of LTC, prospectively, Resolution dated 18.02.2020 by the EC and the order dated 10.08.2023 passed by the Competent Authority, debarring the Petitioners from availing two block years of LTC, are quashed and set aside with consequential benefits, if any.

27. Writ petition stands disposed of along with the pending application.

JYOTI SINGH, J

JULY 24, 2024/kks