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

% *Date of Decision: 24th December, 2024*

\+ W.P.(C) 10840/2016

SHIV KUMAR SHARMA .....Petitioner

Through: Mr. Uday Gupta, Senior Advocate with Ms. Shivani Lal, Mr. Hiren Dasan and Mr.Unmukt Gera, Advocates.

versus

UNION OF INDIA & ANR .....Respondents

Through: Mr. Jaswinder Singh, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition was preferred on behalf of the Petitioner, who was a retired Judge of the Rajasthan High Court and was subsequently appointed as Full Time Member of 19th Law Commission of India/Respondent No.2. In this petition, challenge is laid to Office Order dated 27.10.2014 and consequential order dated 15.09.2016 rejecting 03 LTC claims of the Petitioner. Direction is sought to the Respondents to release the salary of the Petitioner for the month of August, 2012, withheld as part adjustment of the amounts allegedly due to Respondent No.2. Be it noted, at the outset that during the pendency of this writ petition, Petitioner expired and his legal heirs were brought on record, however, for the ease of reference in the present judgment, reference to the Petitioner is to the original Petitioner.

2. Factual matrix to the extent necessary and relevant for adjudication of this writ petition is that Petitioner was elevated as Permanent Judge of the Rajasthan High Court on 06.04.1996 and post his retirement, Petitioner was appointed as Full Time Member of the 19th Law Commission of India vide appointment letter dated 10.11.2009. Being Full Time Member of the 19th Law Commission of India and as per terms of appointment letter, Petitioner was entitled to Leave Travel Concession ('LTC') as admissible to serving Judges of the High Courts under Central Civil Services (Leave Travel Concession) Rules, 1988 ('LTC Rules').

3. Petitioner avers that at the time when he availed LTC, Office Memorandum ('O.M.') dated 16.09.2010 was in force, which provided that air tickets may be purchased directly from airlines or by utilising services of authorized travel agents mentioned therein but there was no bar in booking tickets through other travel agents/private tour operators. Petitioner availed three LTCs in December, 2010, November, 2011 and December, 2011, which are the subject matter of these writ petitions and the details are as follows:-

A. <u>Air Travel from Jaipur to Mumbai (return) in December, 2010</u>

LTC advance drawn of Rs.63,950/- which included taxi fare of Rs.5,900/- for visit to Mumbai in December, 2010.

B. <u>Delhi to Jabalpur, Madhya Pradesh, subsequently changed to Jaipur to Panchmari, Madhya Pradesh in November, 2011</u>

LTC advance of Rs.62,532/- taken for Petitioner and his wife's air travel from Delhi to Jabalpur in the month of November, 2011. Petitioner's wife was to join him at Delhi from Jaipur, however, due to sudden illness of their daughter, Petitioner had to rush to Jaipur because of which he undertook Train Journey from Jaipur to Jabalpur in Second A.C. and from Jabalpur, Petitioner travelled to Panchmari and back by taxi.

And

C. Air Travel from Delhi to Hyderabad (return) December, 2011

LTC advance was Rs.1,29,887/- for visit to Hyderabad in December, 2011.

4. It is stated in the petition that claims of the Petitioner for LTC on account of travel from Jaipur to Mumbai and Delhi to Hyderabad were not allowed on the ground that air tickets were purchased through private tour operators and the taxi fare of Rs.5,900/- was not allowed on the ground that it was not permissible as a part of LTC. Insofar as travel from Jaipur to Jabalpur is concerned, train fare was reimbursed but the claim for taxi fare was not allowed. Therefore, as per the Respondents, Petitioner was liable to pay back a total of Rs.2,10,273/- and in order to recover this amount, Petitioner's salary for the month of August, 2012 being Rs.1,15,724/- was adjusted and recovery of the remaining amount of Rs.94,549/- was sought.

5. Petitioner avers that his tenure as Full Time Member came to an end on 31.08.2012 but the LTC claims were not settled and pending salary was not released. By letter dated 01.11.2012, Respondents called upon the Petitioner to furnish clarification for not booking the tickets through authorized travel agents to which the Petitioner responded by reply dated 15.11.2012 and stated that tickets for Mumbai and Hyderabad were booked through the Deputy Registrar (Protocol) of Rajasthan High Court, Jaipur Bench and the Protocol Department in turn contacted M/s Group and Individual Services Pvt. Ltd. for the tickets, as this was the agent through

which all sitting Judges were purchasing their tickets. Petitioner also pointed out that even assuming the said agency was not the authorized travel agent, this was a *bona fide* act of the Petitioner under a belief that Protocol Department would have booked the tickets from an authorized agent. Petitioner also furnished documents to show that this agency was recognized by the Government of India, Department of Tourism as an authorized travel agent. Through letter dated 31.05.2013, Petitioner sought release of salary for August, 2012 but was informed vide communication dated 01.07.2013 that salary had been withheld subject to settlement of 3 LTC claims.

6. On 27.10.2014, Respondent No. 1 passed an order conveying that: (a) after restricting the claim upto Jabalpur from Jaipur only a sum of Rs.3,144/- stood settled against the outstanding amount of Rs.19,580/- and the balance of Rs.16,436/- will have to be recovered; (b) amount of Rs.63,950/- will have to be recovered in view of rejection of claim due to booking of air tickets through unauthorized travel agent; and (c) amount of Rs.1,29,887/- will have to be recovered in view of rejection of claim due to booking of air tickets through unauthorized travel agent. It was further informed that an amount of Rs.94,549/- was still outstanding after recovering Rs.1,15,724/- by way of one month salary.

7. Aggrieved by order dated 27.10.2014, Petitioner wrote a letter dated 06.11.2014 to the Chairman of the 20th Law Commission pointing out that despite the ex-post facto approval by Chairman, 19th Law Commission, an erroneous order had been passed on 27.10.2014. While this issue was pending, O.M. dated 01.04.2015 was issued by DoPT specifying that air tickets will have to be booked through M/s. Balmer Lawrie & Company/M/s Ashok Travels & Tours/IRCTC and booking through any other agency was

not permitted. The O.M. provided relaxation of Rules if it was established that deviation was due to reasons beyond the control of the Government servant and there was no laxity on the part of Administrative Authorities concerned. By a separate OM dated 23.09.2015, DoPT advised all Ministries/Departments to ensure wide circulation of Guidelines pertaining to LTC bookings that air tickets shall be booked either through the air lines directly or through authorized travel agents and at the time when advance is sought or intention to avail LTC is conveyed.

8. Petitioner sent a legal notice dated 20.02.2016 seeking his outstanding dues but instead of releasing the money, a further Office Order dated 15.09.2016 was issued by Respondent No.1, demanding penal interest of Rs.1,45,548/- upto August, 2016. It was further stated that if Petitioner deposited the principal amount with interest, his salary for August, 2012 would be released. Getting no relief from the Respondents, Petitioner approached this Court.

9. Learned Senior Counsel for the Petitioner argues that Respondents have unlawfully withheld the salary of the Petitioner and are not entitled to recover any amount from the Petitioner, towards the LTC claims. It is urged that LTC Rules do not lay down any condition restricting booking of air tickets through specified agents. In fact, Rule 12 provides that employees having pay range of Rs.18,400/- and above would be entitled to travel by economy class by National Carriers or AC First Class. At the time when Petitioner availed the three LTCs, O.M. dated 16.09.2010 was in force and it provides that air tickets 'may' be purchased directly from airlines or utilizing the services of authorized agents specified therein. Bare reading of the O.M. shows that consciously the word 'may' and not 'shall' has been

used and therefore, discretion vests with the Government servant to purchase the air ticket from the specified agent or an outside agent. There is no specific embargo or bar in the O.M. that tickets cannot be booked through other travel agents/private tour operators. In fact, there was a state of confusion after this O.M. was issued and in this backdrop, DoPT issued an O.M. dated 01.04.2015, clarifying that Government servants travelling by air under LTC are required to book their tickets either directly through airlines or approved agencies as mentioned and placing an embargo that booking through any other agency was not permissible. However, Petitioner had purchased tickets and travelled in 2010 and 2011, which was prior to issuance of O.M. dated 01.04.2015.

10. It is contended that Respondents have overlooked the fact that when Petitioner sought the advance from the Law Commission for availing LTC for proposed travels, the fact that he could not procure tickets from an outside agency was never brought to his notice and moreover, tickets were booked by the Protocol Section of the Rajasthan High Court, through an agency from which tickets are bought for all serving Judges and this agency is recognized by the Department of Tourism, Government of India. It is urged that even till date, the same travel agent is booking LTC air tickets for all Judges *albeit* its name has changed to 'Individual and Group Tour Services'. It is strenuously argued that the factum of travel by the Petitioner is not in dispute and it is nobody's case that the claims were false and/or fraudulent and thus there was no reason to reject the claims. Learned Senior counsel also submits that even Respondents owed an obligation to point out if the LTC claim was not in consonance with the rule position when Petitioner submitted the first final bill for the travel in December, 2010. Had

any objection been taken, Petitioner would have booked the air tickets through the authorized agent for visit to Hyderabad in 2011. In fact, the case of the Petitioner is not an isolated one and this is evident from the fact that DoPT had to issue a clarificatory O.M. on 01.04.2015 in the wake of confusion on the exact import of earlier O.M. dated 16.09.2010. Learned senior counsel places reliance on the judgment of the Division Bench of this Court in ***Mrs. Nirmal Gupta v. Govt. of NCT of Delhi and Ors., W.P. (C) No. 12541/2019,*** decided on 09.12.2019, where an identical issue had arisen inasmuch as Petitioner had not purchased the air tickets from authorized travel agency and contended that there was no specific direction by the Government that air tickets cannot be purchased from an outside travel agent as also that in wake of the actual travel of the Petitioner, his claim was genuine. Relying on earlier judgment of this Court in ***Joginder and Others. v. Govt. of NCT of Delhi and Others, 2019 SCC OnLine Del 11344,*** the Division Bench directed that Petitioner shall be entitled to recover 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. The interest component was also waived, subject to the Petitioner refunding the amount, if any, found payable, within the stipulated time. Reliance is also placed on the judgment of this Court in ***Ram Krishna Datta and Another v. Union of India and Another, 2024 SCC OnLine Del 5786,*** wherein following the Division Benches of this Court, it was held that if the O.Ms/Circulars directing complete proscription in purchasing tickets from private agents or operators are not widely circulated and/or there is ambiguity, at best the employer can recover the difference in the amount claimed by the employee and the price of the air tickets as per the authorized travel agent.

11. Mr. Jaswinder Singh, learned counsel for the Respondents, *per contra,* argues that Petitioner had taken an advance of Rs.63,950/- for visiting Mumbai in December, 2010 but booked his tickets through a private tour operator which was not permissible under LTC Rules. Similarly, even for his visit to Hyderabad in December, 2011, he took an advance of Rs.1,29,887/- but the tickets were booked through a private tour operator. Hence, the claims are not in consonance with the LTC Rules. Insofar as travel to Jabalpur is concerned, Petitioner informed about his planned visit to Jabalpur from Delhi, but subsequently, instead of travelling by air from Delhi to Jabalpur, he travelled by train from Jaipur to Jabalpur in Second AC. He further travelled to Panchmarhi by taxi and returned back also by a taxi. His claim for train travel was found to be valid but Petitioner is not entitled to the taxi fare and this action of the Respondents is in conformity with Rule 6 of LTC Rules, which stipulates that intended place of visit is to be declared by the Government servant in advance and while the declared place of visit may be changed before commencement of journey with the approval of Competent Authority, but it may not be changed after commencement, except in exceptional circumstances, where it is established that the request could not be made before the journey commenced owing to circumstances beyond the control of the Government servant. In the present case, Petitioner never informed of the change of destination before commencement of the journey. The then Chairman only recommended the case for reference to the Department of Expenditure for approval of the change of destination but when Note was sent to the Ministry of Finance, relaxation was granted only for travel from Jaipur to Jabalpur and claim of Rs.3,144/- was allowed. Taxi fare for travel to Panchmarhi and back to

Jabalpur was not allowed since facility of taxi can be availed even by serving Judges only between two connecting stations and not for keeping the same during complete stay or for local visits at the destination city. Since change of destination was not allowed upto Panchmarhi and Petitioner had retained the taxi unlawfully, he cannot claim the taxi fare. There is thus no illegality or infirmity in the order dated 27.10.2014.

12. It is further argued that Petitioner is not correct in arguing that O.M. dated 23.09.2015 has no application to the case of the Petitioner since the tickets were purchased in 2010 and 2011 i.e. prior to the issue of the O.M. inasmuch as this O.M. was only clarificatory, wherein it was reiterated and restated that air tickets will be purchased either from the airlines directly or through authorized travel agents and it is a settled law that clarification goes back to the initial order and cannot be treated as a new direction with prospective effect. If Petitioner failed to understand the import of the said O.M., he cannot be given premium for his misconception. Every Government servant is required to know the terms and conditions of his service and the applicable Rules. In any case, Office of Law Commission of India cannot be blamed for rejection of the claim for taxi fare as the claim was rejected by the Competent Authority in the Ministry of Finance. It is submitted that it is true that Judges of the High Courts are entitled to travel by taxi while availing LTC but there are several conditions regulating the claims. Since the LTC claim was restricted to the travel upto Jabalpur, the declared destination, no taxi fare can be reimbursed for a new destination i.e. Panchmarhi.

13. Heard learned Senior Counsel for the Petitioner and learned counsel for the Respondent and examined their rival contentions.

14. Three LTC claims are the subject matter of disputes between the rival parties to the writ petition. Insofar as claims for travel to Mumbai in December, 2010 and visit to Hyderabad in December, 2011 are concerned, the rejection is on the ground that the air tickets were not purchased as per LTC Rules and DoPT O.M. dated 16.09.2010. The heart of this dispute lies in the interpretation of the said O.M. While Petitioner contends that use of the expression 'may' gives a discretion to the Government servant to purchase the tickets from the airline or the authorized operators or to procure from outside operators, Respondents contend otherwise. There is substance in the argument of the Petitioner that the word 'may' does create an ambiguity on whether there is a complete proscription in procuring tickets from outside travel agents and tour operators. This is in fact fortified by the fact that DoPT itself issued an O.M. dated 01.04.2015 clarifying that air tickets could not be purchased from other than the airlines directly or the agents authorized and mentioned in the O.M. This possibly was in the backdrop of the fact that many Government servants were purchasing tickets from outside agents in light of there being no clarity in the O.M. dated 16.09.2010 and in my view, Petitioner cannot be entirely blamed for his understanding that there was no categorical bar. This very issue came up before the Division Bench of this Court in ***Mrs. Nirmal Gupta (supra),*** wherein Government of NCT of Delhi had sought to recover the amount reimbursed towards LTC claim on the ground that air tickets were not purchased from an authorized travel agent. Petitioner urged that there were no clear instructions that air tickets could only be purchased from authorized travel agent on the claim forms or in the approval/sanction orders for LTC claim. Division Bench relied on an earlier judgment of the Division Bench

of this Court in ***Joginder (supra),*** wherein the Court was apprised of a decision of the Central Administrative 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 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…*
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> *"15. It is a fact that Government guidelines have been issued through a number of OMs 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."*

15. Reference was also made 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."

16. Crux of these decisions relied upon by the Division Bench was that it is largely the onus and responsibility of the concerned Department to ensure that Government Circulars and O.Ms are communicated to the employees and given wide publicity and in a given circumstance it may not be hard to accept and believe that an employee may be unaware of a particular Circular or OM and/or its intricacies and nuances. Taking note of these decisions, the Division Bench in ***Mrs. Nirmal Gupta (supra),*** held that since the factum of travel was not in dispute, reimbursement should be made as per amounts actually paid for the air tickets and Respondents were entitled to recover the difference of the air fare i.e. difference, if any, between the price of air tickets as per the authorized travel agent and price of air ticket reimbursed to the employee. In the facts of this case and in light of the aforementioned judgements, Petitioner is entitled to claim LTC for his visits to Mumbai and Hyderabad by air, *albeit* reimbursement will be only to the extent of cost of tickets if the same had been purchased directly from the authorized agents as per LTC Rules.

17. There is another factor that goes in favour of the Petitioner and which is that like in the case of ***Mrs. Nirmal Gupta (supra),*** factum of travel by air, both to Mumbai and Hyderabad (return) is not disputed. It is not the case of the Respondents that LTC claims are fraudulent or false. In fact, Petitioner has averred that the tickets were booked through the Protocol Department of the Rajasthan High Court, which facilitated in procuring the tickets from an agent which till date continues to be the travel agent from whom tickets are bought by the sitting Judges of the said Court and is also the authorized agent of the Department of Tourism, Government of India. This fact is uncontroverted in the counter affidavit. The purpose of mentioning this fact is only to highlight that the action of the Petitioner was *bona fide.* Insofar as travel from Jaipur to Jabalpur by train is concerned, relaxation was granted by the Competent Authority and the fare was reimbursed. However, Petitioner cannot be held entitled to the taxi fare of Rs.16,436/- for travel from Jabalpur to Panchmarhi and back. No doubt, Judges of the High Courts are entitled to travel by taxi while availing LTC and Full Time Members of the Law Commission of India are entitled to same benefits of LTC as sitting High Court Judges, however, in the present case, the declared destination as per Rule 6 of LTC Rules was Jabalpur and he was not authorised to retain the taxi for travel to Panchmarhi and back.

18. For all the aforesaid reasons, this writ petition is partially allowed. Impugned orders dated 27.10.2014 and 15.09.2016 are set aside to the extent that Petitioner will be entitled to reimbursement of air fares for visits to Mumbai and Hyderabad as per cost of the tickets had they been booked through the authorised agent. Respondents are entitled to recover from the Petitioner only the difference, if any, of the prices of air tickets as per the

authorized travel agents, in consonance with DoPT OM dated 16.09.2010 and price of air tickets reimbursed to the Petitioner. Respondents shall calculate the difference, if any, as also deduct the taxi fare of Rs.16,436/- and depending on the final computation, if the amount due to the Respondents is less than Rs.1,15,724/- the balance amount will be released to the legal heirs of the Petitioner as the salary of the Petitioner amounting to Rs.1,15,724/- has been withheld by the Respondents.

19. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 24, 2024
B.S. Rohella/shivam