

Delhi Jal Board & Anr vs Sachinder Kumar on 28 March, 2023

Author: V. Kameswar Rao

Bench: V. Kameswar Rao, Anoop Kumar Mendiratta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3977/2023

DELHI JAL BOARD & ANR.

Through: Mr. Bihu Sharma and
Mr. Akshay C. Shrivast

versus

SACHINDER KUMAR

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% 28.03.2023 CM APPL. 15472/2023 (for exemption) Exemption allowed subject to all just exceptions. Application stands disposed of.

W.P.(C) 3977/2023, CM APPL. 15473/2023

1. The challenge in this writ petition is to an order dated September 15, 2022 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.1639/2020 ('OA', for short) whereby the Tribunal has allowed the OA and directed the petitioners herein to refund the amount so claimed by the respondent, subject to the respondent producing all the requisite proof of his travel such as Boarding Pass etc. to the petitioners herein.

2. The respondent herein who is working as a Beldar with the petitioners has availed all India LTC for the block year 2014-17 by taking 90% advance along with 10 days' leave encashment amounting to 8632/-. He travelled from New Delhi to Port Blair via Kolkata and back, by train as well as by Air. He booked the tickets from M/s. Anatel Ventures Pvt. Ltd. which according to the petitioners was not an authorised agent. Vide impugned order dated July 14, 2020, recovery has been ordered upon the respondent herein to the tune of 1,62,124/-, which the respondent did not deposit. Feeling aggrieved with the recovery order, the respondent had approached the Tribunal.

3. It is the case of the petitioners before the Tribunal that the respondent was supposed to book tickets from the authorized agents only, namely M/s. Balmer Lawrie and M/s. Ashok Tours and Travels, which the respondent did not do. Thus, according to the Rules, the respondent was not entitled to get the LTC claim and hence the claim was rejected by the petitioners and recovery was effected.

4. The Tribunal by relying upon its own order in the case of Raj Kumar Nirala & Ors. v. Ministry of Health and Family Welfare & Anr., O.A. No.947/2018, decided on August 22, 2019 allowed the Original Application. The Tribunal while allowing the Original Application, has in the impugned order stated as under:-

"6. To support his claim, learned counsel for the applicant has handed over a bunch of relied upon decisions delivered by the Hon'ble Delhi High Court as well as by this Tribunal. The same are quoted below:-

(1) In W.P. (C) No. 2072/2019, titled as Government of NCT of Delhi & Ors. Vs. Shakuntala Devi decided on 13.03.2019 ; (2) In the case of Mrs. Nirmal Gupta Vs. GNCT of Delhi & Ors. in W.P. (C) No. 12541/2019 decided on 09.12.2019 ; (3) In OA No. 3835/2017 titled as Surender Kumar Vs. Commissioner of Police & Ors. decided on 28.05.2018.

In all these above quoted judgments, the applicants/respondents (in Writ Petition) therein, got relief on the ground that they have travelled to North Eastern States as there are special rules/guidelines framed by the Government for travel to North East on LTC. However, in the present OA the applicant neither purchased the tickets from authorized agents notified by the Government nor travelled to North East.

To support his argument, learned counsel for the applicant has relied upon a judgment passed by this Tribunal in OA 947/2018 titled as Raj Kumar Nirala & Ors. Vs. M/o. Health & Family Welfare & Anr. decided on 22.08.2019 wherein the applicants therein have travelled to Andaman and Nicobar Island (Port Blair) under LTC 80 scheme. The excerpt of the said order reads as under:-

"13. The subject matter of another OA No. 2537/2016 is similar to the present OA. Vide order dated 26.09.2018, the Tribunal directed as under:-

The matter was heard at length. It was admitted by the applicant that they had travelled to Andaman under LTC-80 Scheme even though the tickets were not purchased from authorised agencies as was prescribed under the provisions of LTC-80 Scheme (para 4 supra). However, the advance drawn and the claim was already settled in 2012 itself with total amount of three tickets being Rs.1,60,494. However, since the tickets were not drawn from the authorised agencies, the respondents have subsequently disallowed the same and recovered the entire amount from gratuity. However, it is not the case of the respondents that the applicant has not travelled at all.

It is seen from the reply submitted by the respondents that Air India charge was Rs.22,775 per person and since three persons had travelled, an amount of Rs.68,325 would have been spent by applicant had she purchased the ticket as per LTC-

80. Thus certain overcharging is apparent.

However, be that as it may, it is taken that an amount of Rs.68,325/-for the three tickets, is due to be reimbursed to the applicant.

9. This is a case of a retired employee now and hence under the peculiar circumstances of the case (advance was drawn, journey was performed, expenditures were settled in the year 2012, complaints received subsequently and found to be correct, full recoveries were subsequently made in the year 2015), respondents are now directed to pay Rs.68,325/-to the applicant within a period of eight weeks for journey performed in 2012. However, no interest shall be payable on this amount.

Accordingly, OA is partially allowed with these directions. No order as to costs."

7. In view of the above, this Tribunal feels that the OA deserves to be allowed, the same is accordingly allowed and the impugned order dated 14.07.2020 is set aside. Consequently, the respondents are directed to refund the amount so claimed by the applicant, subject to the applicant producing all the requisite proof of his travel such as Boarding Pass etc., to the respondents. This exercise shall be completed by the respondents within a period of six weeks from the date of receipt of a certified copy of this order."

5. Even before us the learned counsel for the petitioners has made similar submissions as were advanced before the Tribunal i.e. the respondent had not booked the tickets from an authorised agent. On a specific query from the Court as to whether it is the case of the petitioners that the respondent has not availed the LTC, the answer is in the negative. If that be so, the only ground which has been taken by the petitioners is that the respondent has not booked the tickets from an authorised agent. There is no denial to the fact that the respondent has travelled on an Air India Flight.

That apart, the show cause notice was only to the extent that he has booked the tickets from an agent who was not authorised. The Tribunal which had relied upon the judgment in the case of Raj Kumar Nirala & Ors. (supra), more specifically paragraph 13 thereof which we have already reproduced above, it is revealed that the employee had also booked the tickets from an agent who was not authorised and had retired. It was in that context, the Tribunal in that case has granted the relief in favour of the employee.

6. The submission of the learned counsel for the petitioners is that the said judgment is distinguishable on facts, inasmuch as the employee therein had retired and it was in those peculiar circumstances, the Tribunal has allowed the Original Application and directed the respondents therein to pay the amount of 68,325/- to the employee therein and as such the judgment is not applicable to the facts.

7. On a specific query to the learned counsel for the petitioners as to whether a higher amount was paid by the respondent to the agent, who was not authorised, as was payable to the authorised agent, the Counsel for the petitioners has sought some time to take instructions. We are not inclined to adjourn the matter on that ground as we find that it is not the case of the petitioners in the show cause notice that a higher amount was paid by the respondent to the agent, who was not authorised. In other words, the respondent has not paid any extra amount to the agent (not authorised), through whom he had booked the tickets for the journey.

8. That apart, the fact that the respondent is working as Beldar and the amount being 1,62,124/-, it shall be inequitable if he is denied the claim of LTC.

9. In the facts of this case more so, in exercise of our power under Article 226 of the Constitution of India, we are not inclined to interfere with the impugned order. The writ petition and connected application are dismissed.

V. KAMESWAR RAO, J ANOOP KUMAR MENDIRATTA, J MARCH 28, 2023/aky