

COURT No.1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

110.

OA 2308/2021

Sgt Rajesh Kumar (Retd) ..... Applicant  
VERSUS  
Union of India & Ors ..... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate  
For Respondents : Mr. K.K. Tyagi, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER  
03.09.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant seeks settlement of his LTC claim for the year 2016 which has been denied to him on the ground that he undertook the journey for the LTC in question and travelled by a private airline instead of travelling and undertaking the journey through the services provided by Air India.

2. Facts in nutshell indicate that the applicant was enrolled in the Indian Air Force on 19<sup>th</sup> November, 1996 as an Airman and was discharged from service on 30<sup>th</sup> November, 2016 after expiry of his period of engagement, i.e., twenty years. While he was in service on 17<sup>th</sup> November, 2016 he travelled to Andaman and Nicobar Islands and returned on 26<sup>th</sup> November, 2016. He

availed the LTC for the said journey along with his family under TR 184(iii). On 28<sup>th</sup> November, 2016, after completion of journey he submitted the LTC claim for the said travel. However, when he had planned to undertake the journey, he applied for LTC advance sometime in July – August 2016 and a sum of Rs.44,500/- was sanctioned and paid to him in advance by the Competent Authority in the month of August 2016, i.e., much before he undertook the journey on 17<sup>th</sup> November, 2016. When his final bill was being settled, the entire LTC claim which was granted to him in advance in August 2016 was recovered from him on 30<sup>th</sup> November, 2016 with interest of Rs.1224/-. It is the case of the applicant that after processing of his claim a sum of Rs.5200/- has been credited to his account against the actual LTC claim of Rs.56,000/- and the remaining amount of Rs.51,360/- has been disallowed on the ground that he had travelled by a private airline instead of an authorized airline, i.e, the Air India. On repeated efforts being made, when the amount was not paid, he has invoked the jurisdiction of this Tribunal. It is the case of the applicant that the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training, Government of India issued an OM No.31011/3/2014-Estt (A-IV) dated 19<sup>th</sup> September, 2016 in the matter of authorizing and granting permission for travelling to North East Region, Jammu and Kashmir and Andaman and Nicobar Islands by air on LTC for

Central Government Employees and this policy was implemented for a period of two years with effect from 26<sup>th</sup> September, 2016. It is the case of the applicant that this facility was extended by the Government for the purpose of boosting tourism in these areas. It is contended on behalf of the applicant that he availed of the LTC facility as per the Travel Regulation 184 (iii) which authorized an Airman to undertake such a journey against hometown LTC during annual leave period. The applicant undertook the journey to Andaman and Nicobar Islands during the annual leave taken by him from 17<sup>th</sup> November to 26<sup>th</sup> November, 2016 but on account of coming into force of the OM dated 19<sup>th</sup> September, 2016 (*Annexure A-2*) the amount already paid to him in advance has been recovered. It is the case of the applicant that he had planned his journey much before the issuance of the OM on 19<sup>th</sup> September, 2016, and had applied for grant of LTC advance which was processed by the HRM to the Accounts Section. He had given option to travel either by Air India or by a private airline for availing LTC and as per the routine practice being followed prior to issuance of the OM dated 19<sup>th</sup> September, 2016, he chose the private airline on account of fare feasibility and the timings of the flight and after the advance of Rs.44,500/-, i.e., eighty per cent of the total fare, was granted to him, he booked his tickets as already planned much before the OM dated 19<sup>th</sup> September, 2016 came into

force. It is the case of the applicant that even after the OM dated 19<sup>th</sup> September, 2016 was issued and when the restrictions came into place, the applicant was never called by the Accounts Office nor any authority informed him about the present rule position and as the advance and other amounts were already sanctioned to him much before the OM in question came into force, he undertook the journey. It is stated in Para 4.5 of the OA that as per Rules the applicant had shown his tickets to the Accounts Section within seven days from the date of receiving LTC advance in August 2016, i.e., much before the OM dated 19<sup>th</sup> September, 2016 was issued. The authorities were aware about the travel plan of the applicant and knowingly the advance was given to the applicant for undertaking the journey by private airline. It is the specific case of the applicant that when the advance of Rs.44,500/- was granted to him, the respondents knew about the tickets being purchased but in spite thereof the applicant was never informed or prevented from travelling or directed to change his travel plan on the basis of the OM. Instead, he was made to understand by the conduct of the respondents that he could undertake the journey. He undertook the journey and it was only after he submitted his claim on 28<sup>th</sup> November, 2016 that the claim had been disallowed and recovery ordered. That apart, in para 4.9 of the OA, based on a RTI reply received from the Headquarters, TC, IAF, vide letter

dated 5<sup>th</sup> March, 2021, the applicant by bringing on record

*Annexure A-4* makes the following averments:

*“4.9 That, RTI reply received from HQ TC IAF vide letter No.TC/9619/1/755/Pt (RTI) dated 05 Mar 21 {Para 2(b)} establishes that that a total 15 LTC claims in under TR 184(iii) were preferred between 01 Jan 2016 to 31 Dec 2016 at the parent unit of applicant wherein journeys involved travel by modes other than by Air India. Out of 15 applicants only one claim was disallowed. It can be said that there are precedence that claims involving travel by other mode were also entertained and their claims were cleared except the claim of the applicant. Copy of HQ TC Letter No.TC/9619/1/755/P1 (RTI) dated 05 Mar 21 is placed as Annexure A4.”*

3. Taking us through the aforesaid facts and various documents available on record, Mr. Manoj Kumar Gupta, learned counsel for the applicant, places reliance on a judgment of the Rajasthan High Court at Jodhpur in the case of Union of India and Ors. Vs. Jawahar Lal decided on 14<sup>th</sup> January, 2013 (WP No.174/2013) wherein identical petitions have been allowed. It is argued by Mr. Gupta that apart from the fact that the applicant undertook the journey with the knowledge of the respondents and the OM which came into force much after the advance was given to the applicant and as he had already planned his journey which was within the knowledge of the authorities, enforcing the OM dated 19<sup>th</sup> September, 2016 on the applicant is unsustainable in law. He further submits that out of 15 claims identical in nature, wherein travel was undertaken by private airlines, 14 claims have been allowed and no recovery has been effected in their cases and it is only in the case of the applicant that the recovery has been effected and his claim was disallowed.

4. Respondents have filed a detailed counter affidavit and the facts are admitted by them. However, it is their contention that the applicant undertook the journey on 17<sup>th</sup> November, 2016 much after the policy and OM dated 19<sup>th</sup> September, 2016 came into force and in accordance to this policy as the applicant was not entitled to avail the benefit of travel by private airline, the respondents have acted in terms of the policy and there is no error in the recovery ordered. As far as the admittance of the claims of 14 other similarly situated persons are concerned, in para 5 of their counter affidavit the respondents make the following averments:

*“5. Out of 15 applicants, only one claim was received by office of the Principal Controller of Accounts (FYS), Kolkata for audit as office deals only with the last LTC claim of Airmen. Accordingly, FYS office audited the claim as per provisions contained in OM No.31011/3/2014 Estt. (A-IV) dated 19<sup>th</sup> September 2016. O i/c AFTC, Jalahai (W) Bangalore was advised to go through the Para 2(v) & (VI) of OM No.31011/3/2014 Estt. (A-IV) dated 19<sup>th</sup> September 2016 (Copy of the letter dated 19 Feb 2019 issued to O i/c AFTC Jalahali (W) Bangalore enclosed as Annexure R-3). Regarding admittance of the rest 14 LTC claims, it is submitted that these claims not being the last LTC claims have been audited and admitted by the concerned Unit authority. As such this office has no comments to offer on amenability or otherwise of the LTC claims.”*

5. From the aforesaid it is seen that it is only because of an audit objection submitted in the case of the applicant that the amount has been recovered. In the case of other 14 persons no recovery has been effected, even though they travelled by private airline. In reply to ground 5 (a) the respondents again submit that at the time of auditing it was found that the applicant

had availed of the LTC claim contrary to the OM dated 19<sup>th</sup> September, 2016 and, therefore, the amount has been recovered. Para 5 (a) reads as under:

*“5 (a) That as the Airman was not an entitled person to travel by air and the date of his journey was 17 Nov 2016, his claim was audited and passed in terms of Para 2(v) of extant DOP & T OM No.31011/3/2014-Estt (A-IV) dated 19<sup>th</sup> September, 2016 (copy of letter dated 19 Sep 16 attached as Annexure R-1) which clearly stipulates that Govt. servant not entitled to travel by air are allowed to travel between Kolkata/Chennai/Bhubaneswar (Now Vishakhapatnam) (Gateway) and Port Blair by Air India only in economic class at LTC fare or less. As the airman had performed his LTC journey in private airlines from Chennai to Port Blair and back, hence the reimbursement or expenditure was fully disallowed.”*

Further in reply to Para 5(d) of the grounds, the respondents make the following averments:

*(d) Out of 15 applicants, only one claim was received by office of the Principal Controller of Accounts (FYS), Kolkata for audit as office deals only with the last LTC claim of Airmen. Accordingly, FYS office audited the claim as per provisions contained in OM No.31011/3/2014 Estt. (A-IV) dated 19<sup>th</sup> September 2016. O i/c AFTC, Jalahai (W) Bangalore was advised to go through the Para 2(v) & (VI) of OM No.31011/3/2014 Estt. (A-IV) dated 19<sup>th</sup> September 2016 (Copy of the letter dated 19 Feb 2019 issued to O i/c AFTC Jalahali (W) Bangalore enclosed as Annexure R-3). Regarding admittance of the rest 14 LTC claims, it is submitted that these claims not being the last LTC claims have been audited and admitted by the concerned Unit authority. As such this office has no comments to offer on amenability or otherwise of the LTC claims.”*

6. Having heard learned counsel for the parties at length, we are of the considered view that even though based on the OM dated 19<sup>th</sup> September, 2016, the respondents may have had a right to take the impugned action, but while doing so they lost sight of various factual aspects which have resulted in an

illegality being committed in the matter of dealing with the claim of the applicant.

7. The applicant admittedly applied for availing of the LTC and submitted his claim for grant of LTC advance to the tune of Rs.44,500/- and as per the rules he purchased the tickets and the advance was sanctioned to him in the month of August 2016, i.e., much before the OM of 19<sup>th</sup> September 2016 came into force. That apart, after purchasing the tickets, as required under the Rules, within seven days of its purchase in August 2016 itself the applicant made the Competent Authority aware of his travel plan and the tickets were also shown to them indicating the travel to be undertaken by a private airline. It is the specific case of the applicant that in spite of the Competent Authority being aware of his travel plan and having knowledge about the same, it did not object and permitted the applicant to avail the LTC and advance was also paid to him much before the OM dated 19<sup>th</sup> September, 2016 came into force. That being so, the conduct of the respondents and their inaction in not warning the applicant about the OM dated 19<sup>th</sup> September, 2016 and his entitlement before undertaking the journey debars the respondents on the principle of estoppels from turning around and changing their stand once they had sanctioned the advance of Rs.44,500/- to the applicant and knowing fully well his travel plan permitted him to go ahead with the journey

on 17<sup>th</sup> November, 2016 more than two months after the OM dated 19<sup>th</sup> September, 2016 was issued. That apart, we find that in the case of about 15 employees similar action was taken. They were permitted to travel by private airlines and according to the respondents' own showing and the reply given to the applicant's application filed under Right to Information Act (Annexure A-4) on 5<sup>th</sup> March, 2021 in para 2 the respondents communicated the followings to the applicant:

*“(b) Para 2 As regards the information sought by you at Para 2 (ii) of your application, it is intimated that a total of 15 LTC claims in terms of TR 184 (iii) were preferred between 01 Jan 16 and 31 Dec 16 at AFTC wherein journeys involved travel by modes other than by Air India. Of these 14 claims were allowed and 01 claim was disallowed.”*

It is clear from the aforesaid that 15 claims in terms of TR 184 (iii) were preferred between 1<sup>st</sup> January 2016 to 31<sup>st</sup> December 2016, i.e., even after the OM dated 19<sup>th</sup> September, 2016 came into force and in 14 of the cases the claims were allowed but it was only in one case, i.e., the case of the applicant that it has been disallowed. This, in our considered view, amounts to an arbitrary and discriminatory decision on the part of the respondents. That apart, in reply to para 5 (a) and (d) of the grounds, the respondents in their counter affidavit submit that 15 applicants' claims were received in the office of Principal Controller of Accounts (FYS) Kolkata for audit of LTC claims of airmen and auditing was permitted at random by taking out one claim and the claim of the applicant

was taken out for audit which was disallowed in terms of OM dated 19<sup>th</sup> September, 2016 and the other 14 claims which were not audited, it seems that no recovery has been effected. This, in our considered view, is another illegality in the matter inasmuch as the applicant has been singled out for a differential treatment in comparison to 14 other employees who were similarly situated but benefits were granted to them.

8. In the facts and circumstances of this case and the detailed reasoning recorded by us hereinabove, we are of the considered view that in the matter of effecting recovery against the applicant and denying him the benefit of the LTC claim is unsustainable in law and, therefore, we have no hesitation in allowing this OA and quashing the impugned order dated 1<sup>st</sup> September, 2021 (Annexure A-1) rejecting the claim of the applicant. We direct the respondents to refund the entire amount recovered from the applicant, i.e., a sum of Rs.51,360/- within three months of the receipt of this order failing which it shall carry interest at the rate of 8% till actual payment is made.

9. OA is thus allowed. No order as to costs.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

(LT GEN C.P. MOHANTY)  
MEMBER (A)

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