

D.D. Mistry and anr. Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Ahmedabad

Decided On : Jun-07-2001

Judge : A Sanghvi, S A G.C.

Appellant : D.D. Mistry and anr.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The applicants by moving this O. A under the provisions of Section 19 of the Administrative Tribunals Act, 1985 have challenged the memorandum dated 9.2.98 contending that the restriction imposed by this memorandum to claim the LTC by the Central Government employees is unreasonable and has no nexus to achieve the goal of the scheme. They have prayed that the of India. The impugned O.M. No. 31011/4/97-Estt.

(A memo be quashed and set aside as the same is arbitrary, unjust, unreasonable and violative of Articles 14 and 16 of the Constitution) reads as under: "As the Ministry of Finance, etc. are aware Central Government employees . are entitled for home town LTC once in a block of two years and All India LTC once in a block of 4 years. The Leave Travel Concession is not admissible for journey by a private car (owned, borrowed or hired) or a bus, van or other vehicle owned or operated or chartered by private operators. However, travel by private buses operating as regular service from point to point at regular intervals on fixed fare rates with the approval of Regional Transport Authority/State Government concerned is admissible.

Similarly, journeys by chartered buses are admissible for LTC only in those cases, where the tour is wholly operated and conducted by the India Tourism Development Corporation (ITDC)/State Tourism Development Corporations (STDCs) either by their own buses or buses taken on hire from outside. In such cases, it is to be clearly certified by the ITDC/State Tourism Development Corporations concerned that the tour was actually conducted/operated by them and not by any private party/person. Rule 12(2)(iii) of the CCS (LTC) Rules, 1988 provides as under:- "Notwithstanding anything contained in Sub-rule (1) of Clauses (i) and (ii) of Sub-rule 2, where a Government servant travelling by road takes a seat or seats in a bus, van or other vehicle operated by Tourism Development Corporations in the Public Sector. State Transport Corporations and Transport Services run by other Government or local bodies to visit any place in India, the reimbursement shall be either the actual hire charges or the amount reimbursable on the journey to the declared place of visit had the journey been undertaken by entitled class by rail by the shortest direct route, whichever is less. Reimbursement shall not be admissible for journey by a private car (owned, borrowed or hired), or a bus, van or other vehicle owned by private operators." 2. It has come to the notice of this Department that Garhwal Mandal Vikas Nigam Limited, Kumayun Mandal Vikas Nigam Limited, Manipur Tourism and Nagaland Tourism, etc., are conducting LTC tours for the Govt. employees. Though the certificates are issued by the respective organisations but in fact the tours are being conducted by their agents. Certain irregularities committed by Garhwal Mandal Vikas Nigam, Kushnuma Complex, 7 RF-Bhadur Marg, Lucknow-226 001 have also come to the notice of this Department. The matter has been examined in detail in this Department and it is hereby clarified that in future journey on LTC by chartered buses on tour conducted by ITDC/State Tourism Development Corporations or local bodies like Garhwal/Kumayun Mandal Vikas Nigam Limited etc, would be permissible only if the tour is wholly conducted/operated by the above bodies in buses owned by them and registered with the Regional Transport Authorities in the name of the ITDC/STDCs or local bodies, etc. LTC would not be admissible for tours conducted by ITDC/State Tourism Development Corporations. Nagaland Tourism or Manipur Tourism or local bodies like Garhwal Mandal Vikas Nigam or Kumayun Mandal Vikas Nigam if the same is conducted in a bus leased, hired or

chartered from private parties/persons by the ITDC/STDCs/Local bodies.

2. The grievance of the applicants is that this O.M. restricts the rights of the employees to enjoy comfortable journey by availing the LTC. According to the applicants most of the Tourism Departments of the Government or the State Government do not own the buses and generally conduct the tours by chartered or hired buses. If the LTC is not permissible by chartered or hired buses, then, one mode of travel by road would be taken away. The railway bookings are not easily available and if the road travel is also blocked, then, the employees would be deprived of their right to avail the benefit of the LTC. According to them the restriction is not reasonable and has no nexus to achieve the goal of LTC benefits and hence the same is violative of Articles 14 and 16 of the Constitution of India.

3. The respondents in their reply have contended that the petition is premature and that the applicants have no locus standi to challenge the statutory rules framed by the President of India. They have further contended that none of the rights of the employees is abrogated by the impugned O.M. and the said O.M. is issued only by way of interpretation and clarification of Rule 12(2) (iii) of the LTC Rules, 1988. The same had been issued with a view to safe guard the public interest to avoid misuse of LTC and fraudulent claim of LTC. They have denied that any modification in the rules has been made and have contended that the circular is only a clarification of the existing position and this cannot be considered to be an administrative instructions also. It is also contended that under Rule 17 of the CCS (LTC) Rules, 1988, the powers of clarification are vested with the Govt. and in exercise of these powers the impugned O.M, was issued. They have denied that the impugned notification is in any way arbitrary or violative of the provisions of Articles 14 and 16 of the Constitution. It is also denied that the impugned clarification restricts the availability of the LTC by road travel and have contended that generally a Central Govt.

employee who propose to avail LTC for All India i.e, any desired destination in India, has to plan in advance and has also to apply in advance. It is not difficult to make such a planning well in time and obtain reservation from the railways. According to the respondents, Rule 12(2)(iii) itself prohibits travel by a private bus

or the private car and this restriction is in existence from 21st May, 1988. The applicant therefore cannot make any grievance regarding the clarification issued. The same according to the respondents is issued only with an intention to prevent the mal-practice and misuse of the benefit of the LTC. According to them the petitioners have no locus standi to file such an O.A. as none of their rights are abrogated and it is within the competence of the respondents to interpret and clarify the rule position to prevent misuse of the benefit flowing from the rules. The respondents have prayed that the O.A be dismissed with costs.

4. We have heard the learned Advocates of both the parties at length and with the consent of both the parties we are disposing of this O.A.at the admission stage.

5. Mr. Pathak, learned Advocate appearing for the applicant has submitted that impugned O.M. purporting to be clarification or instructions, in fact works as an instrument to take away the right of enjoyment of LTC benefit. According to Mr. Pathak, as per the scheme of the LTC, the employees can avail benefit of the LTC only if he has traveled by Railway or traveled by a public transport. The travel by road is also permissible only if he uses a vehicle operated by Tourism Development Corporation in Public Sector or State Transport Corporation and Transport service run by either Government or local bodies.

According to him this mode of transport by road was more preferable and generally opted by the employees in view of non-availability of the reservations in railways. However it is found that most of the State Transport Corporation and Transport services run by the Govt., or local bodies do not own the buses and were running the buses by hiring the same from private owners. If the employee is to be refrained from travelling by such buses then one mode of travel i.e. travel by road would be completely taken away from the employee and this would clearly prejudice the rights of the employees. He has gone to the extent of saying that by restricting such travels by road, the Govt. is effectively preventing the employees from availing of the benefits of the LTC scheme. According to him, the rule is self contained rule and no administrative instructions can be issued unless there is a lacuna in the rule. When there is no lacuna in the rule, there is no need for explanation or clarification and hence there is no need for issuance of such O.M.

According to Mr. Pathak the clarification is issued in the midst of LTC block and therefore it discriminates between the employees who have already availed of the LTC prior to the issuance of this O.M. and those who are prevented from availing of the LTC. He has further submitted that the aim of the O.M. is said to prevent the mal practice but, the mal practice cannot be prevented by issuing such O.M. and if mal, practice is there, then it is always open to the Govt. to take necessary action to prevent the mal practice. The Govt. however cannot restrict the enjoyment of the LTC by putting curbs on its availability.

6. Mr. Doctor, learned Advocate for the respondents on the other hand has submitted that the O.A is not maintainable in view of the fact that the same purports to challenge a clarification issued by way of O.M. and not the rule. According to him such a clarification had to be issued because of certain interpretation placed on the provisions of Rules 12(2)(iii) for perpetuating dishonest claims. Pointing out from the O.M., he has submitted that the O.M itself gives the example of the Garhwal Mandal Vikas Nigam, wherein the certificates were issued by the respective organisations but the tour was in fact conducted by the agents. Referring to the submissions of Mr. Pathak that the Railway bookings are not easily available, Mr. Doctor has submitted that for availment of the LTC benefit, an employee is required to make planning in advance, he has to decide the place of the destination and inform the concerned authorities about his proposed journey in advance. When he is already planning in advance he can always get the railway reservation by applying for the same in advance. Pointing out that the restriction is placed only on the mode of travel by privately operated buses, Mr. Doctor has submitted that this has been done to curb the mal practices as in the name of the Tourism Department the private operators were conducting the tours and were indulging into profiteering. Refuting the allegation that the O.M. effectively takes away the right of the employee to travel by road. Mr. Doctor has submitted that the employee can travel by road in the state transport buses. According to him at most of the places ITDC/State Tourism Development Corporation are conducting the tours in their own buses and only at few places such facility is not available. According to him more inconvenience cannot be aground for setting aside or striking down a particular O.M. as the same has been issued in the larger public interest. Pointing out Rule 12(2)(iii) of the CCS (LTC)

Rules, Mr.

Doctor has further submitted that the reimbursement is not admissible for journey by a private car or by vehicle owned by the private operators. According to him, when the rule itself provides that the reimbursement will not be admissible for a journey by private car or by vehicle owned by the private owners, the O.M does not add any thing more then clarifying that the journey by the bus taken on hire by the public body or the Tourism Department will not be recognised. According to Mr. Doctor even if the bus is hired by the State Tourism Department or such other public body, the ownership of the vehicle remains with the private party and therefore the O.M. cannot be said to be adding anything new to the rule when it clarifies that the journey of LTC by hired buses of ITDC/STDC or Boards like Garhwal or Kumayou Mandal Vikas Nigam Ltd., etc. would be permissible only if the tour is only conducted/operated by the above buses owned and registered with the Regional Transport in the name of ITDC/STDS or local bodies etc. He has also submitted that the rule is not challenged by the applicants and therefore the O.M. which only clarifies the rule cannot be set aside or struck down.

7. It is an undisputed position that what the applicants are actually challenging is the O.M. No. 31011/4/97- Estt.(A) dated 9.2.98 and not the Rule 12(2)(iii) of the CCS (LTC) Rules, 1988. As pointed out by Mr.

Doctor, O.M. is issued only by way of clarification to the rule and when the rule itself is not challenged O.M. which clarifies the rule cannot be set aside or struck down. Significantly Rule 17 of the CCS (LTC) Rules, 1988 clearly provide that if there is any doubt regarding any of the provisions in this rules the matter shall be referred to the Govt. of India in the Department of Personnel and Training, who shall decide the same. Hence the rule itself gives power to the Govt. to clarify any doubt arising while giving effect to these rules. Now Rule 12(2)(iii) which is relevant for our purpose reads as under :- (iii) Notwithstanding anything contained in Sub-rule (1) or Clauses (i) and (ii) of Sub-rule (2), where the Govt. servant travelling by road takes a seat or seats in abus, van or other vehicle operated by Tourism Development Corporations in the Public Sector, State Transport Corporations and Transport services run by other Govt., or local bodies to visit any

place in India, the reimbursement shall be either the actual hire charges or the amount reimbursable on the journey to the declared place of visit had the journey been undertaken by entitled class by rail by the shortest direct route, whichever is less. Reimbursement shall not be admissible for journey by a private car (owned, borrowed or hired), or a bus, van or other vehicle owned by private operators.

8. The last two lines of this sub-rule leave no room for doubt that reimbursement is not admissible for journey by a private car (owned, borrowed or hired), or a bus, van or other vehicles owned by private operators. The impugned O.M. issued by the Ministry of Personnel and Training is issued under the provisions of this rule. The relevant portion of this O.M. reads as under:- The matter has been examined in detail in this Department and it is hereby clarified that in future journey on LTC by chartered buses on tour conducted by ITDC/State Tourism Development Corporations or local bodies like Garhwal/Kumayun Mandal Vikas Nigam Limited, etc., would be permissible only if the tour is wholly conducted/operated by the above bodies in buses owned by them and registered with the Regional Transport Authorities in the name of the ITDC/STDCs or local bodies, etc.

This clarification clearly reiterates what is stated in the rule itself and does not travel beyond the provisions of the rule. The rule itself makes it clear that reimbursement shall not be admissible for journey by a private car (owned, borrowed or hired), or a bus, van or other vehicle owned by private operators. If the tour had been conducted in the bus owned by the private party, then as per the rule, the reimbursement will not be admissible. Except naming Garhwal/Kumayun Mandal Vikas Nigam Ltd. or ITDC/STDC etc., the O.M. does not introduce any new contingency or event which would deprive the employees from availing of the benefit of the LTC. We have no doubt that the O.M. is only clarification to the existing rule and nothing more. Since the rule itself is not challenged, the challenge to the O.M. is clearly mis-conceived and untenable. In fact, by this clarification, the employees are not affected at all. The prohibition in undertaking journey by a bus or van or any vehicle operated by a private owner was already there since 1988 and this rule is not found to have adversely affected the rights of the employees to avail the benefit of the LTC.9. In fact, the scheme of the LTC is a benevolent legislation and the Govt. can withdraw or suspend, the concession

given at any time. If the concession can be withdrawn or suspended, the fetters can also be imposed in the enjoyment of the benefit of the scheme by the Govt.

10. Mr. Doctor has also submitted that the persons who could be said to be aggrieved by this O.M. would be the private operators and not the employees. He has also submitted that the private operators had already moved the Delhi High Court by filing special C.A. No. 228/98 challenging this O.M. and ultimately when it was found that the O.M. being only a clarification of the rules, the rule was challenged. The Delhi High Court has by its judgment dated 19.5.98 rejected the contentions of the petitioner therein and held that petitioner has no locus standi to challenge the rules.

11. So far the question of discrimination is concerned, we find that there is no substance in the submission that the impugned O.M. discriminates between two classes of employees. It is applicable uniformly to all and therefore the question of discrimination does not arise. It was tried to be submitted that prior to the issuance of this O.M. many employees have already availed of the LTC benefit for the same block and in view of this O.M., now, the employees who did not avail of the LTC benefit earlier would be deprived of the same as they cannot undertake the journey by road. We are unable to agree with the submissions. The O.M. is issued on dated 9.2.98 which is immediately on the start of the new block of 1998-2001. The question of some employees availing of the LTC benefits and others not being entitled to avail of the benefit of LTC after the issuance of this O.M. does not arise at all as the block of 1994-97 LTC ended on Dec'97 and the new block had started from 1998. In any case, when the vires of the rules are not challenged, the clarification issued by way of the O.M. of Rule 12(2)(iii) of the CCS (LTC) Rules, 1988 also cannot be challenged. The challenge to the O.M. is clearly misconceived and therefore we are of the opinion that this O.A. is devoid of any merit. We also do not find that the O.M. is issued in arbitrary or unjust or unreasonable manner.

No question of the same being violative of Articles 14 and 16 of the Constitution of India arises. Under the circumstances and for the reasons discussed above, we hold that the O.A. is devoid of any merit and in the conclusion the O.A. is dismissed.

with no order as to costs.

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