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

\+ W.P.(C) 4933/2017 and C.M. No.21334/2017

EMPLOYEE STATE INSURANCE CORPORATION..... Petitioner

Through: Mr. Saurabh Chadda, Advocate along with Mr. Sunil Kumar, Assistant Legal.

versus

SUNITA RATHI & ORS ..... Respondents

Through: Mr. Yogesh Kumar Mahur, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% **27.09.2017**

1. The petitioner has preferred the present writ petition to assail the order dated 01.03.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.678/2015.

2. By the impugned order, the Tribunal has allowed the Original Application preferred by the respondents – holding that the air tickets purchased by the respondents while availing the LTC facility would be entitled for reimbursement. The petitioner was, therefore, directed to reimburse the claim of the respondents within two weeks.

3. The respondents were, at the relevant time, employees of the ESIC Hospital, Rohini, Delhi. They availed the LTC to visit Srinagar during

April, 2013. They procured their air tickets from the portal of Indigo Airlines. Their claim for reimbursement of the cost of their air tickets was not considered by the ESIC Hospital on the ground that they had not procured the tickets from an authorised agency. In this regard, reliance was placed on circulars/ OMs of the ESIC and the DoP&T. The circulars/ OMs, in effect, provide that the employees, while availing of LTC, are required to purchase the air tickets directly from the airlines, or from one of the two authorised agencies, namely M/s Balmer & Lawrie & Company and M/s Ashok Travels & Tours and the IRCTC.

4. The Tribunal allowed the Original Application by observing that, on records, it appeared that the air tickets were purchased from web portal of Indigo Airlines and not from the authorised agency of the Government of India, or from the office of the Indigo Airlines. The Tribunal also observed that the petitioner overlooked the fact on account of being unaware of the position, that Indigo Airlines does not offer its air tickets for sale from its office. The tickets are sold through the web portal, or through the web portals of travel agencies. The air tickets are also sold at the outlets of the airlines at the airports. The Tribunal, therefore, held that the air tickets purchased by the respondents were entitled to reimbursement.

5. The submission of learned counsel for the petitioner is that the air tickets were purchased through a travel agent. In this regard, reference is made to the air tickets purchased by the family of Sanjit Kumar/ respondent No.8 as an example. The same mentions the contact information of "Nomads Holidays". The mobile numbers of the said travel agency and the e-mail address are also mentioned in the air ticket.

6. Learned counsel for the petitioner submits that the respondents had taken package tours and not paid only for the air tickets. Thus, the fare shown in the air tickets was inclusive of lodging & boarding as well, and it did not relate merely to the air fare.

7. On the other hand, the submission of learned counsel for the respondents is that the petitioner has resorted to pick and choose method for rejecting the LTC claims of some of the employees. Learned counsel points out that there are others whose claims have been processed though they had also purchased the air tickets similarly. Reference in this regard is made to paragraph 5.9 in the grounds taken in the Original Application where the names of the employees found mentioned are: Ms. Kirit Kumari, Mr. Yash Kumar and Ms. Indrani, who travelled on the same flight as the applicant Sanjit Kumar. Similarly, the claims of other employees Mr. Ashok Nagar, Ms. Sakshi Nagar, Ms. Anjali Nagar and Mr. Suresh Nagar were also cleared, who were similarly situated.

8. The further submission of learned counsel for the respondents is that the petitioner did not properly circulate its circulars/ OMs strictly enforcing the requirement that the air tickets be purchased either directly from the airlines concerned, or only through the two named agencies, M/s Balmer & Lawrie & Company and M/s Ashok Travels & Tours and the IRCTC.

9. Pertinently, in response to the grounds taken by the respondents in the Original Application, in their reply, the petitioner did not give any reply. All that was stated in the reply, in response to the grounds, was "*Para 5.1 to 5.10 of the grounds mentioned there under are wrong and denied. The*

respondent reserves its right to respond to the same at the time of arguments". Thus, the factual position stated by the respondents in their Original Application went unrebutted.

10. The petitioner cannot discriminate between its employees in the matter of clearance of the LTC claims. Clearly, the petitioner has treated the respondents with discrimination, as compared to those whose LTC claims were cleared – even though some of them were travelling on the same flight and who had similarly purchased air tickets like the respondents. The petitioner has also not disclosed as to in what manner the circulars were communicated to all the employees.

11. So far as the submission of learned counsel for the petitioner that the tickets purchased by the respondents included not just the airfare, but also the element of lodging and boarding, is concerned, in our view, the said aspect can always be examined by the petitioner. The petitioner can even now ascertain the prevalent airfare on the relevant dates of travel of the airlines concerned, and grant reimbursement in that respect. Other employees – whose claims have been cleared also travelled on the same flight. Their air ticket fares would also be available for comparison. It is not even the respondent's case that they are entitled to claim LTC in respect of lodging and boarding.

12. In these circumstances, we are inclined to dismiss the writ petition. The same is, accordingly, dismissed. The petitioner shall reimburse the amounts recovered from the respondents along with the element of interest recovered from them within two months from today. The petitioner shall

also undertake effective communication of its circulars/ OMs with regard to availment of LTC facility so that in future the employees strictly abide by the terms of the claim. In view of the aforesaid, this decision shall not be cited as a precedent in future.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 27, 2017

B.S. Rohella