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

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Date of Judgment: 06.08.2019

+ **LPA 509/2019**

CEMENT CORPORATION OF INDIA LTD

..... Appellant

Through: Mr. Sachin Dutta, Sr. Advocate with
Mr. Vivekanand, Mr. Deepak
Chaudhary, Mr. Sashank and Mr. Alok
Sinha, Advocates.

versus

SAJU S DOMINIC & ORS

..... Respondents

Through: Ms. Lily Thomas, Mr. Saju Jakob, Mr.
Ravinder Kumar Singh, Mr. Sakir
Mamood and Ms. Siny Sara Varghese,
Advocates for R-1.
Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Himanshu Pathak, Advocate
for UOI/R-2.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J (ORAL)

CAV No. 785/2019

1. Since counsel for the caveator has entered appearance, the caveat stands discharged.

C.M. Appl. 35288/2019 (Exemption)

2. Exemption allowed, subject to all just exceptions.
C.M. stand disposed of.

LPA No. 509/2019 & C.M. Appl. No. 35289/2019 (stay)

3. The present appeal has been filed by the Cement Corporation of India against the judgment dated 15.05.2019 whereby the learned Single Judge has allowed the writ petition filed by the respondent no.1 herein and has quashed the order dated 07.08.2015 passed by the Disciplinary Authority imposing a punishment of withholding two increments for a period of two years without cumulative effect and the appellate order dated 24.09.2015.
4. The facts relevant for the adjudication of this appeal are that on 17.05.2014, an employee Sh. Ashok Gautam got admitted in Max Balaji Medical Centre, Patparganj, Delhi, at around 3:00 A.M. due to a cardiac problem and underwent a cardiac surgery in emergency, as it was a life threatening situation. Before admission, the employee had informed the CMD (respondent No. 4 herein) who gave a telephonic approval for admission in the said hospital, for an emergency treatment. It needs to be mentioned that the said hospital is a non-empanelled hospital.
5. On 18.05.2014, the spouse of the employee requested for an advance of Rs.3.25 lakhs, which request was considered and the advance was approved by the CMD on the recommendations of the Director (HR) (respondent No. 3 in the writ petition), the Director (Finance) and GM (HR), who is the petitioner in the writ petition. Director (HR), who was respondent no. 3 in the writ petition, has not been impleaded in the appeal and is therefore being referred to hereinafter as Director (HR). The petitioner in the writ petition is being referred to as

respondent and the Cement Corporation of India is being referred to as the appellant hereinafter.

6. On 19.05.2014, the Director (HR), who is now the CMD since 01.10.2014, recommended the proposal by endorsing “*advance followed by reimbursement will be as per rules of the company*”.
7. On 27.06.2014, the employee who had been discharged from the hospital, submitted his medical bills with the request to sanction the same, mentioning the emergency situation, in which he had been rushed to a non-empanelled hospital. On 30.06.2014, the respondent forwarded the bills to the medical consultant for examination and action. The medical consultant further endorsed it for processing the bill by relaxing the Rules. The Administration Department forwarded the bills to the Finance Department, who bifurcated a sum of Rs.0.41 lakhs, as admissible under CCI Medical Rules and recommended for seeking special approval for Rs.3.75 lakhs and returned the bills back to the Administration Department on 04.07.2014. On 07.07.2014, an inter-departmental note was initiated by the Administration Department to approve the expenses of Rs.3.75 lakhs, on humanitarian grounds. Through proper channel, the note was submitted for approval of Director (HR). The same was also put up to the respondent on 07.07.2014 who endorsed the same and forwarded it to the Medical Consultant, who in turn on 09.07.2014 forwarded it to the CMD as the Director (HR) was on tour. The CMD (respondent No.4 herein) exercised his discretionary powers under Clause 4.3.9 (ii) of CCI Medical Attendance Rules and allowed relaxation of the disallowed amount.

8. The CMD retired on 30.09.2014 on superannuation and on 01.10.2014 the Director (HR) took charge as CMD. On 24.11.2014, the CMD instructed the HOD (Finance) to indicate the provisions of CCI Medical Rules regarding reimbursements. On 28.11.2014, the HOD (Finance) provided the Rule position on reimbursements as well as the powers of the CMD to grant relaxation in deserving cases.
9. The CMD directed the HOD (Finance) to examine the case of Sh. Gautam as per the Rule position. The HOD (Finance) examined the entire matter and gave a report on 01.12.2014 observing that the relaxation given in the case of Sh. Gautam by the then CMD was within the relaxation powers of the CMD. On 17.02.2015, the CMD directed to take action as per the Rules and the Director (Finance) concurred with it. However, on 30.04.2015, TSO to CMD instructed the HOD (Finance) to submit the pending medical bills of another employee, namely, Sh. Majumdar for CMD's approval. The HOD gave the case of Sh. Gautam as a reference point on the issue of relaxation powers in deserving cases.
10. Suddenly, on 07.05.2015, the CMD instructed that the case of Sh. Gautam be reviewed by adopting CGHS and AIIMS rates. On 03.06.2015, the HOD (Finance) forwarded the note sheet to the respondent to explore how the direction of the CMD could be implemented.
11. It is the case of the respondent that on 10.06.2015, the Government of India called for selection to the post of Director (HR) in the CCI. Respondent, who was the only eligible internal candidate, submitted his application on 15.06.2015 to the appellant for onward submission

to PESB. On 18.06.2015, the respondent sought information on whether the current CMD could review the decision taken by the previous CMD and also sought legal advice from HOD (Legal). However, the Director (HR) issued a Charged Memo dated 23.06.2015 to the respondent. Soon thereafter, the appellant on 25.06.2015 forwarded the application of the respondent for the post of Director (HR) to the Central Government. On 29.06.2015, the respondent submitted his reply to the Director (HR) mentioning that the sanctioning and reimbursement was done as per Rules and the earlier CMD had exercised the power to relax available to him. On 02.07.2015, a supplementary reply was given pointing out that the entire process was through an interdepartmental team consisting of the Administration and Finance Department and the Medical Officer.

12. On 04.08.2015, the respondent approached this Court by way of W.P.(C) No. 7136/2015 as he apprehended that the Disciplinary proceedings would scuttle his chance of promotion. The writ petition was disposed of directing the Disciplinary Authority to consider the reply and take a decision on or before 08.08.2015 as the interview for the post of Director (HR) was scheduled on 10.08.2015.
13. The Director (HR) vide its order dated 07.08.2015 imposed a penalty of withholding of two increments of the respondent, for a period of two years, without cumulative effect. On 10.08.2015, pursuant to the selection conducted by the PESB, an external candidate was recommended and the respondent was deprived of his promotion. The respondent filed an appeal against the penalty on 04.09.2015, before the Board of Directors of the appellant. On 24.09.2015, the Appellate

Authority passed an order rejecting the appeal and upholding the penalty.

14. It is the case of the respondent in the writ petition that the medical consultant Dr. Subhash Chandra, who was also a part of the decision making in reimbursement of medical expenses, was granted extension in his contract while the General Manager (Vigilance) who was instrumental towards issuance of charge sheet was rewarded and re-designated as General Manager (Vigilance, Corporate Communication and Coordination with sub-delegated powers of the General Manager).
15. The respondent thereafter filed a writ petition bearing no. 1384/2016 with the following prayers:-

“(a) Pass a writ, order or direction in the nature of certiorari to quash and set aside the order dated 24.09.2015 passed by the Appellate Authority of Respondent no. 2 Corporation in appeal in lieu of order bearing no. CCI/VIG/CO/269/15/6034 dated 07.08.2015;

(b) Pass a writ, order or direction in the nature of certiorari to quash and set aside the order bearing no. CCI/VIG/CO/269/15/6034 dated 07.08.2015 issued by the Respondent No. 3;

(c) Pass any other order or direction in favour of the Petitioner which this Hon'ble Court may deem fit to do so in the interest of justice.”

16. The learned Single Judge allowed the writ petition and set aside the order of the Disciplinary Authority as well as the Appellate Authority and it is this judgment which is impugned before us by the appellant.
17. The contention of the learned senior counsel for the appellant is that the root cause of taking action against the respondent was a complaint received on 30.12.2014 by the Central Vigilance Commission against the respondent, alleging that he had shown undue favour to Sh.

Gautam in reimbursement of the medical expenses of Rs.3.75 lakhs. It is further contended that the respondent had not acted in accordance with the CCI Medical Rules and by misrepresenting the facts had sought relaxation from the Competent Authority for the sanction of this amount. Mr. Dutta further contends that the Circular dated 09.01.2002 deals with the medical facilities and indoor treatment and in the said circular, it is clearly stipulated that in case of hospitalization in emergency, the CMO may be contacted and in his absence, the employee may seek permission from GM (P&A), Corporate Office. He has further referred and relied on a circular dated 02.04.2012, which provides that if the indoor treatment is in a non-empanelled hospital, with prior approval of the Competent Authority, the reimbursement will be strictly as per AIIMS rates and no relaxation shall be allowed. In most emergent cases, however, if the empanelled hospital is not available in the nearby vicinity, the employee may avail the same from the available sources, but in such an eventuality written permission would have to be taken from the Competent Authority within 24 hours, failing which reimbursement will not be allowed. He submits that Sh. Gautam had not taken the requisite approvals as per the circular and in the note, it is nowhere mentioned that even telephonic approval had been taken by Sh. Gautam within the time prescribed. Mr. Dutta submits that the appellant has no animus with the respondent and have only followed the advice of the CVC which has vide its memo dated 09.06.2015 advised initiation of minor penalty proceedings against the respondent.

18. *Per contra*, learned counsel for the respondent, who appears on a caveat, submits that the appeal is misconceived and is only filed with a view to further harass the respondent. The appellant has already succeeded in depriving the respondent of his promotion to the post of Director (HR) and this appeal is yet another act of victimization. Learned counsel submits that there is a complete violation of Principles of Natural Justice as the then Director (HR) was himself a party to the decision of granting reimbursement and despite this, he subsequently assumed the role of a Disciplinary Authority imposing the penalty and also being the Chairman of the Appellate Board. Learned counsel for the respondent further contends that the various file notings approving the case of reimbursement would show that this was a collective process and decision, as the file was routed through the Administration Department, Medical Consultant, Director (Finance), Director (HR) and the CMD. It is not as if the respondent has individually taken this decision, and therefore, it can hardly be alleged that there was any motive with the respondent to help Sh. Gautam. He further contends that the action was also in compliance with the Rule position and not in violation, inasmuch as, Clause 4.3.9 (ii) of CCI Medical Attendance Rules clearly states that in deserving and exceptional cases the CMD has the power to relax the provisions of the Rule. He submits that in fact the Director (HR) did not appreciate that it was not the responsibility of the respondent to carry out the exercise of finding out the rates at AIIMS and further that the telephonic approval granted by the earlier CMD was perhaps not within his knowledge. The Disciplinary Authority in fact did not even

make any effort to verify the fact of telephonic approval. He submits that the respondent also had no role in preparing the accounts or handing over the advance to Sh. Gautam.

19. The next contention of learned counsel for the respondent is that the penalty imposed is disproportionate and also that only he has been singled out and inflicted with the penalty. The officers who recommended for relaxation, who bifurcated the amount, disbursed the amount as well as the then CMD who had relaxed the condition and sanctioned the amount have not even been proceeded against in any disciplinary proceedings. It is also contended that the present CMD could not have revisited the order passed by the earlier CMD, more particularly, when neither the then Director (HR) nor the Director (Finance) raised any objections against the disbursement and no recovery proceedings have been initiated against any employee.
20. We have examined the contentions of the respective parties after hearing them at length.
21. The learned Single Judge has primarily allowed the writ petition on the ground that the then CMD had exercised his powers of relaxation which were available to him under the CCI Medical Attendance Rules after the CMD had examined the emergency situation, the ground reality of there being no empanelled hospital in the vicinity and thus the respondent could not be blamed for the reimbursement.
22. Memorandum of Charge was issued against the respondent on 23.06.2015. The gist of allegations against the respondent were that the respondent while recommending the proposal for payment of advance of Rs.3.25 lakhs did not raise any objection for taking

treatment from a non-empanelled hospital. He did not mention anything about the CCI Medical Attendance Rules and the facts that the treatment was being availed from a non-empanelled hospital. He intentionally did not seek any clarification as to whether the MAX hospital was charging the AIIMS rates. He has bypassed all procedures on the ground that the treatment was in emergency. He has overlooked the noting of the superior officers who had approved the amount subject to a condition that the release will be as per the CCI Medical Attendance Rules.

23. On a careful analysis we find that Clause 4.3.9 (ii) enables the CMD to exercise his power of relaxation of any provision of the Rule, in deserving and exceptional cases. The relevant portion of the said Rule is extracted herein under:-

“in deserving and exceptional case, the chairman and managing director has the power of relax the provision of any of the rules to the extent considered necessary”.

24. We also find that the then CMD in his counter-affidavit to the writ petition had deposed that at around 3:00 am on 17.05.2014 he had been informed by Sh. Gautam over the phone about the medical emergency and the CMD had instructed him to take the requisite treatment from any adjoining hospital immediately. He has also averred that the spouse of Sh. Gautam had thereafter requested him for an advance payment of Rs.3.25 lakhs to be released to the hospital. The request letter was accompanied by a letter by the Senior Consultant, Cardiologist, from MAX hospital. The CMD has categorically deposed that since the amount was huge and there was no empanelled hospital nearby, he had given a go ahead for the

treatment, being the Competent Authority. Significantly, the CMD has also stated in the affidavit that though the respondent had not specifically mentioned about the Medical Rules in his note dated 18.05.2014, but he had intimated that the MAX Centre was not an empanelled hospital and so no credit facility had been made available. The CMD has further mentioned that whilst it is true that Sh. Gautam had got admitted only after his oral approval but the ultimate decision of relaxation was taken only after he had carefully considered the notings of the Administration and Finance Department as well as the Medical Consultant and not in a haste.

25. Having perused the contents of the affidavit filed by the erstwhile CMD, we have no doubts in our mind that the then CMD had taken a conscious decision to exercise his powers of relaxation and approved the medical reimbursement claim of Sh. Gautam. Clause 4.3.9(ii) of CCI Medical Attendance Rules clearly enables and empowers the CMD to exercise such a power of relaxation in a deserving case, being the Competent Authority. It is also not disputed on facts by the appellant that the admission of Sh. Gautam in the non-empanelled hospital was in an emergency situation and it is also not disputed that in the near vicinity of the residence of Sh. Gautam there was actually no empanelled hospital. The case of Sh. Gautam thus squarely fell in the “deserving case” and is covered in the concerned Rule. It is also to be noticed that the CMD has clearly deposed before the learned Single Judge in his affidavit that his decision was not merely based on the initial approval that he had telephonically given, but was after a careful perusal of the various notings put up by the different

Departments concerned, including the Medical Consultant. In view of this stand taken by the then CMD, we see no reason why the respondent has been blamed and a penalty has been imposed on him.

26. We find that the learned Single Judge has taken note of the Annexure which was placed at page 476 of the petition and has found that the proposal was put up by the Deputy (O) Administration, duly endorsed by DM (Admin), S.M. (Admin), GM (HR) and Medical (Consultant), directly to the CMD who had approved the same. Since the proposal had the approval of the CMD, the claim was passed and the Finance Department had released the payment. The proposal was thus routed through proper channel and approved by the Competent Authority and the respondent thus cannot be singled out and blamed.
27. The learned Single Judge has also in his judgment noted a very significant fact and which is that the then Director (HR) had initially recommended the proposal, but later when he became the CMD, he not only initiated the disciplinary proceedings against the respondent but also participated as an Appellate Authority as a part of the Board of Directors. This, in our view, was completely illegal and as rightly observed by the learned Single Judge against all norms of service jurisprudence. We may only hasten to add that this exercise also shows the malice against the respondent to somehow make him a scapegoat.
28. We also find merit in the contention of the respondent that the proposal had passed through various channels and approved by the CMD, yet only he has been singled out and penalized. During the hearing we had pointedly asked the learned senior counsel if any other

officer has been penalized and the answer was in the negative. We thus find that there is a clear violation of Article 14 of the Constitution of India by relying on the judgement of the Apex Court in the case of ***Man Singh vs. State of Haryana & Ors. reported at (2008) 12 SCC 331***. It has been held by the Apex Court that any act of repository of power, whether legislative or administrative or quasi-judicial is open to challenge, if it is so arbitrary or unreasonable that no fair-minded authority could even have made it. The concept of equality as enshrined in Article 14 of the Constitution, embraces the entire realm of State action. It would extend to an individual as well, not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. The doctrine of equality is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a Government action. In the case of ***Man Singh (supra)***, the question involved was regarding the punishment meted out to the appellant therein while a similarly situated Head Constable was let off. The Apex Court while examining the matter on the touchstone of Article 14 of the Constitution of India held that the order of the Disciplinary Authority imposing punishment upon the appellant was unfair, arbitrary and against the doctrine of equality. The appellant deserved to be treated equally in the matter of Departmental action qua his commorade. We quote the relevant portion of the judgment in the said case hereinunder:

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or

administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness."

29. Learned senior counsel for the appellant is, no doubt, right in his submission that the Circulars of medical reimbursements have to be followed. However, even assuming that Sh. Gautam was only entitled to AIIMS rates, what we cannot fathom, is how the respondent can be blamed in the entire scenario, more particularly, in view of the fact that this was an emergency situation and there was a prior approval of the CMD as well as a post approval for reimbursement based on relaxation under Clause 4.3.9(ii) of CCI Medical Attendance Rules. Though we are not entering into the issue as to whether Shri Gautam was entitled to the AIIMS rates or the reimbursements on the actual expenses, we may, however, take note that several judgments of the Apex Court and this Court have now settled the law that right to health is a fundamental right and also that when an employee gets a treatment in an emergency situation in a non-empanelled hospital, he would be

entitled to reimbursement of the actual expenses incurred and the Government cannot insist on CGHS/AIIMS rates. In this context, we rely on the judgment of the Apex Court in the case of *Shivakant Jha vs. Union of India (2018) 16 SCC 187*.

30. The contention that the action was pursuant to a CVC advice also has no merit. The CVC had apparently received a complaint and had forwarded the same to the appellant for further action. This certainly cannot imply that without any basis or fault, the respondent would be penalized, only because of CVC advice.
31. In view of the above, we find no infirmity in the impugned judgment and the present appeal is accordingly dismissed being devoid of merits.
32. The respondent had a chance of consideration for promotion to the post of Director (HR) in June 2015, when interview was held by PESB. However, owing to the charge memo issued a few days prior to the interview, he could not succeed in the selection process. While we cannot undo the prejudice that has been caused to the respondent, we dismiss the present appeal with a cost of Rs.25,000/- to be paid by the appellant to the respondent.

JYOTI SINGH, J

G.S.SISTANI, J.

AUGUST 06, 2018

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