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

Date of decision: 19/09/2019

+ **W.P.(C) No.9755/2019**

MAHANAGAR TELEPHONE NIGAM LIMITED AND ANR.

..... Petitioners

Through: Mr. Saket Sikri, Advocate with Mr.
Jasbir Bidhuri, Advocate.

versus

SH. DEVI DAYAL

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

C.M. No.40327/2019 (exemption)

Exemption is allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) No.9755/2019

The present petition is directed against order dated 11.01.2019 passed by the Central Administrative Tribunal (for short 'Tribunal').

2. The facts which have given rise to filing of the O.A. are that the respondent, who is an employee of Mahanagar Telephone Nigam

Limited (for short 'MTNL'), suffered kidney failure in the year 1997. Kidney was donated by his mother, which led to kidney transplant, the operation was unsuccessful; and since 2007-08 the respondent is on regular dialysis.

3. Admittedly till 31.03.2009 all expenses in relation to dialysis were paid by MTNL; however, relying upon a new policy brought-out on 14.05.2009, full reimbursement was not granted to the respondent.

4. Mr. Saket Sikri, learned counsel for MTNL has relied on paras 4 and 5 of the policy, including modified para 5, which are reproduced as under:-

“4. The maximum limit for reimbursement of OPD expenses shall be 2 months Basic Pay + DA per year in above cases subject to conditions laid down in our office order No. MTNL/CO/Pers/Medical Rule/2008/206 dated 27.01.2009.

5. Treatment for chronic diseases such a Chemotherapy for cancer and dialysis for renal failure to be taken as 'Day Care treatment' and expenditure for the same shall be approved by EDs in both Units and Director (HR) in Co after obtaining the opinion of the Medical Boards of Government. Hospitals or super specialty institutions as detailed above in Para 2(A) & 2(B).

Modified para 5

5. Treatment for chronic diseases such as Chemotherapy for cancer, dialysis for renal failure, radiation therapy for cancer, blood transfusion for Thalasamia and Life long medication + testing for post kidney transplant cases is to be taken as 'Day Care Treatment' and expenditure for the same shall be approved by EDs in both Units and Director (HR) in CO after obtaining the opinion of the Medical Boards of Government. Hospitals or super specialty institutions as

detailed in Para 2(A) & 2(B) of our office order dated 14.05.2009.”

5. The respondent had sought a direction to MTNL in the O.A. that full reimbursement for dialysis which had been denied to him for the period 2009-10 and 2010-11 be released; however, MTNL had opposed the O.A. placing reliance on the policy and had paid only a reduced amount. Learned Tribunal has allowed the O.A. Para 5 of the impugned order reads as under:-

“5. Matter has been heard at length. It is very strange that when the entire procedure of dialysis includes the injections, the process of dialysis and the process of testing thereafter, still the entire process is being seen as a disjointed process. Applying one limit for dialysis and applying a different limit for associated injection and testing, is beyond any logical thinking. The respondents have relied on the relevant circulars of MTNL while opposing the OA. This cannot be acceded to, and especially so since all these payments for injections, dialysis and testing were being reimbursed to him earlier upto 31.03.2009 as well as are being reimbursed for 2011-12 and onwards.”

6. We have examined the order passed by the learned Tribunal and we find no infirmity in the same. In any case, the ailment of the respondent relates back to the year 2007-08 and such policy has been brought-out only in the year 2009. The respondent cannot be allowed to suffer and be left without treatment on account of paucity of funds. We accordingly find no infirmity in the view taken by the Tribunal.

7. We however, make it clear that this order has been passed by the Tribunal in the facts of this case and the legal objection of MTNL

is kept open. The balance reimbursement due to the respondent be made positively within three weeks from today.

8. Petition is disposed of in the aforesaid terms.

C.M. No.40326/2019 (stay)

9. Since the main petition is disposed of, this application also stands disposed of.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 19, 2019

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