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

+ **W.P.(C) 10353/2016 & CM APPL.No. 40704/2016 (stay)**

UNION OF INDIA & ANR Petitioners
Through Mr. Satpal Singh with Dr. S.K.Nagar,
Advocates
versus

RADHEY SHYAM Respondent
Through Ms. Meenu Mainee, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **27.11.2019**

1. The Union of India through the Northern Railway and the Chief Medical Director have filed this petition challenging an order dated 6th September, 2016 passed by the Central Administrative Tribunal, Principal Bench in OA No. 2613/2012.

2. It must be noticed at the outset that on 4th November, 2016 while directing notice to issue in the matter, the impugned order was stayed.

3. The issue arises in a narrow compass. The Respondent is a clerk-cum-typist in the office of the Deputy Chief Material Manager, General Stores, Sakurpur Basti, Delhi. His son met with a major accident in which he

sustained head injuries. In an unconscious state, he was taken to the Lal Bahadur Shastri Hospital, Kalyanpuri, which was a Government Hospital. Since the said hospital did not have the facility to treat patients with serious injuries, he was shifted to a private hospital nearby, namely Kailash Hospital and Heart Institute. He received treatment for a long time and survived.

4. The Respondent then presented a bill of Rs. 9,37,235.78 to the Petitioners. The said bill was settled at the Central Government Health Scheme ('CGHS') rates and a sum of Rs.4,96,065/- was sanctioned.

5. Before the CAT the Respondent placed reliance on the Railway Board policy/circular dated 31st January, 2007, the relevant portion of which reads as under:-

"...In exceptional situations, CMDs of Zonal Railways can obtain special permission from Railway Board for treatment in any Private Hospital on case to case basis. Hence, there is no scope available for any railway beneficiary to go to any private hospital himself/herself or their dependents on their own volition, except in case of real emergency situation."

6. The Respondent also relied on certain decisions, including, *Surjit Singh v. State of Punjab (1996) 2) 336*, *State of Punjab v. Mohinder Singh Chawla AIR 1997 SC 1225* and *Wariam Singh v.UOI 1996(4) SLR 177*.

7. In its cryptic impugned order the CAT ruled that this was a case of emergency and that "rules allow reimbursement". The application was accordingly allowed and the Petitioner was directed to make the balance payment of Rs. 4,62,113/-.

8. This Court has heard the submissions of Mr. Satpal Singh, counsel for the Petitioners and Ms. Meenu Mainee, counsel for the Respondent.

9. The Petitioners do not dispute that this was a case of emergency. The only issue was whether reimbursement at full rates was to be allowed.

10. Learned counsel for the Respondent placed reliance on a judgment dated 30th October, 2015 in W.P.(C) No.10157/2015 (*Union of India v. Yogesh Nirala*). The facts of that case were that the son of the Respondent therein was diagnosed with a serious disease of Duchene Muscular Dystrophy (DMD). He was referred to the All India Institute of Medical Sciences (AIIMS), where the treatment was not satisfactory and then received treatment at private hospitals in Ghaziabad and Bombay. Ultimately, he received treatment for about 12 days at a private hospital in Pune, where he was administered Stem Cell doses for treatment and spent Rs.7 lakhs on the same. The Respondent's son in that case did not survive and this Court observed that what prevailed with the Tribunal was that "no parent could have left his child to die and he wanted to avail every possible treatment for his child."

11. The facts in the present case are definitely different. Here, there is a specific Railway Board circular which permits special treatment in the case of emergency from private hospital. The only question was the rate at which the reimbursement should take place. Here the CAT appears to have been in error in holding that the Respondent was entitled to a full reimbursement.

The procedure for reimbursement of medical expenses is contained in the said circular dated 31st January, 2007, where it is made clear as under:-

“a) Treatment taken in Govt. Hospital- Full admissible amount should be recommended for sanction.

b) Treatment taken in Recognized private Hospital for an ailment for which it is recognized Rate as approved by Railway should be processed for sanction.

c) Treatment taken in a Recognized private Hospital but for ailments for which it is not recognized or treatment taken in a non recognized private hospital:-

Reimbursement should be made at the CGHS rates of that city or nearest city CGHS (Central Govt. Health Scheme) approved rates are to be recommended/processed as an upper limit for sanction.”

12. The CAT erred in not even referring to the above conditions of reimbursement which were certainly binding on the Respondent. Clearly, therefore, the CAT was in error in directing a full reimbursement and requiring the Petitioners to pay the difference to the Respondent.

13. For the aforementioned reasons, the impugned order of the CAT is hereby set aside. The petition is allowed in the above terms, but in the circumstances with no order as to costs. The application for stay is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 27, 2019/mw