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

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+ **W.P.(C) 11501/2018 & CM APPLs. 44470/2018 and 2044/2019**

BHARAT SANCHAR NIGAM LIMITED

..... Petitioner

Through: Ms. Sangita Rai, Advocates.

versus

SHRI J.P. MEENA

..... Respondent

Through: Mr. Mobin Akhtar, Advocate along
with Respondent in person.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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12.12.2019

1. Bharat Sanchar Nigam Limited ('BSNL') has filed this petition, challenging an order dated 4th July, 2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT'), allowing OA No.4553/2017, filed by the Respondent herein and directing that the Petitioner herein should pay the medical reimbursement of Rs.93,198/- within three months, and also include the name of the 'disputed child', in the medical card.

2. The facts in the present case are in a narrow compass. The Respondent herein is a retired Additional General Manager ('AGM') of the BSNL. Six children were born to the Respondent and his wife prior to 6th March, 2017, when his wife gave birth to a male child, through the IVF procedure. The first six children were five daughters and a son. The son unfortunately died

unmarried on 27th April, 2015. By the time the birth of the male child on 6th March, 2017, the five daughters were married and well-settled in their matrimonial life. Therefore, as of that date, none of the children of the Respondent were dependent on him, except his wife.

3. The Respondent, in fact, retired from BSNL on 30th September, 2012. The Respondent states that he incurred an expenditure of Rs.93,198/- on the medical treatment of his wife and new born child, between 6th March and 9th March, 2017. He accordingly filed a medical reimbursement claim for the said sum on 10th April, 2017. By a letter dated 29th May, 2017, his claim was rejected on the ground that it was inadmissible in terms of the BSNL Medical Reimbursement ('MRS') Policy. By a further letter dated 17th October, 2017, BSNL rejected the medical reimbursement claim, as well as the prayer for inclusion of the name of the newly born child in his medical card.

4. Thereafter, the Respondent approached the CAT with OA No. 4553/2017, challenging the rejection of his claim. It was contended by BSNL before the CAT that in terms of its rules, the reimbursement of IVF procedure was available only where a woman is between 21 to 39 years. The Respondent's wife had already attained the age of 64 years at the relevant time and such claim would have to be rejected. Further, since the reimbursement was claimed in respect of the expenses pertaining to the pregnancy of the Respondent's wife as a result of IVF procedure, it fell outside the BSNL's rules. BSNL pointed out that the Respondent had availed medical reimbursement facility in respect of his six children during his service period

and that he was not entitled to reimbursement for a child born in 2017. In terms of the BSNL (MRS) Rules, such reimbursement could be availed only in respect of two dependent children, and not in respect of a seventh child.

5. The BSNL relied on Clause 1.4 (iii) of Order No. BSNL/Admn./1 dated 28th February, 2003, which was modified and replaced by an Office Memorandum ('OM') dated 16th April, 2010, as under:

"2. No. of dependents under BSNLMRS

The dependant as defined under clause 1.4 (iii) of orders No. BSNL/ADMN/1 dated 28.2.03 is modified and replaced as under:

For serving and retired employees, dependent means and includes self, spouse, two dependent children and dependent parents. Criteria of dependency shall be as defined under CGHS and CS (MA) Rules and as amended by the Central Government from time to time."

6. According to the CAT, the above paragraph 2 made it clear that the Respondent was entitled to medical reimbursement, with respect to two dependent children and since, as on the date of the newly born child, the Respondent had only one dependent child, he was entitled to medical reimbursement.

7. This Court has heard the submissions of Ms. Sangita Rai, learned counsel appearing for the BSNL and Mr. Mobin Akhtar, learned counsel appearing for the Respondent.

8. The MRS Policy of BSNL, as expressed in the OM dated 16th April, 2010, intends that an employee could avail medical reimbursement only in respect

of two dependent children. In the case of the Respondent, by the time of his retirement, five of his children i.e. his daughters, were all married and settled. Till then, he did get reimbursement for medical expenses incurred on their behalf as dependent children. While the OM dated 16th April, 2010, clarified that the word ‘dependent’ mean “self spouse and two dependent children”, clearly it is not meant to extend to a seventh child, born after 16th April, 2010. The policy is clear that a maximum of two dependent children are entitled to be included for the purposes of medical reimbursement benefits. With the new born child of the Respondent being seventh child, the question of his availing any medical reimbursement, by treating that child as a ‘dependent child’, would not arise.

9. The Court accordingly sets aside the impugned order of the CAT. The petition is accordingly allowed. Pending applications are also disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 12, 2019

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