



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

% Date of decision: November 28, 2023

+ W.P.(C) 5621/2023, CM APPL. 22024/2023

(35) THE CHIEF SECRETARY, GOVT. OF NCT OF DELHI & ORS.

..... Petitioners

Through: Mrs. Avnish Ahlawat, SC, GNCTD
(Services) with Mrs. Taniya Ahlawat,
Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat,
Advs.

versus

ANURAG MANOCHA

..... Respondent

Through: Mr. Pardeep Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this writ petition is to an order dated October 13, 2022, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.339/2020 ('OA', for short), whereby the Tribunal has allowed the OA filed by the respondent herein by stating in paragraph 6 as under:

"6. In view of the above, that this O.A deserves to be allowed. The respondents are directed to reimburse the cost of treatment incurred till now and to be incurred in future, to complete the aforesaid treatment, to the



applicant without any interest, on the rates being paid to any of the government hospitals/empanelled hospitals for the said treatment, failing which full amount incurred by him shall be reimbursed.”

2. The submission of Mr. Nitesh Kumar Singh, learned counsel appearing for the petitioners is that the reliance placed by the Tribunal on the judgment of the Supreme Court in the case of ***Shiv Kant Jha v. Union of India, (2018) 16 SCC 187***, is misplaced as the said judgment is confined to the facts of the said case only, as held by the Supreme Court.
3. He also submits that the Tribunal did not take into consideration the OM dated April 07, 1999, wherein the procedure for expensive treatments is clearly laid down. As per the said OM, the permission for highly expensive treatment will be given by the Ministry of Health and Family Welfare on case-to-case basis and the same procedure is being followed by the Delhi Government Employees' Health Scheme (DGEHS), therefore, the case of the respondent was referred to DSCI (Delhi State Cancer Institute) as well as AIIMS Delhi and expert opinion was sought. Both the DSCI as well as AIIMS Delhi opined that the case of the respondent does not require Dendritic Cell Therapy, however despite this the respondent on his own got himself treated with the said therapy by a private hospital, Optimum Therapeutics Pvt. Ltd.
4. According to Mr. Singh, the choice made by the respondent for undergoing the Dendritic Cell Therapy as an emergency situation is



erroneous, as he was being treated through oral chemotherapy at an empanelled hospital. In other words, it is his submission that the Tribunal failed to appreciate that Dendritic Cell Therapy for Renal Cell Carcinoma/Stage IV Cancer is not approved by the experts from two premium institutes, i.e., DSCI & AIIMS Delhi. Hence, the finding of the Tribunal that the case of the respondent is such where the permission for treatment of costly procedures could be given is a perverse finding by overlooking the opinion given by the aforesaid two premier institutions. The case was required to be considered as per OM dated April 07, 1999 and moreso, keeping in view that the respondent did not require Dendritic Cell Therapy. He seeks the setting aside of the impugned order of the Tribunal.

5. On the other hand, Mr. Pradeep Kumar, learned counsel appearing for the respondent, would submit that the denial of permission to the respondent to undergo Dendritic Cell Therapy is in violation of Articles 14 and 21 of the Constitution of India. The petitioners in their reply though stated that DGEHS is a contributory scheme, based on CGHS pattern and in general follow guidelines, rates, circulars, orders etc., issued by CGHS and that, as per CGHS OM dated April 07, 1999, permission for costly and unlisted procedures is granted on case to case basis and the same protocol is being followed by DGEHS and that based upon expert opinion, Dendritic Cell Therapy is not approved as first line agent in Renal Cell Carcinoma, but the same is overlooking the fact that permissions were granted by various authorities including Government of India to various people for the very same Dendritic Cell Therapy.



6. According to him, Dendritic Cell Therapy / Denvax Therapy was prescribed by the treating Specialist as an add-on to Pazopanib, which is a first line agent in Renal Cell Carcinoma and according to expert opinion of AIIMS, the partial response with evidence of necrosis noted in a scan in December is more likely due to Pazopanib. However, Pazopanib was continued all along, even after stopping Dendritic Cell Therapy, but it could not stop a major relapse in February, 2021.

7. He also submits that, by taking Denvax treatment, the condition of the respondent is stable. It is under such situation, much before receipt of AIIMS opinion / denial, the respondent with finances arranged from near and dears, has taken 2 cycles of Dendritic Cell Therapy of six doses each in three months. However, amidst financial constraints, he was forced to leave the same midway. Now, Denvax have advised the respondent hereinafter to continue with the Therapy.

8. He submits that the conclusion drawn by the Tribunal is justified in the facts of this case and the Tribunal has rightly directed the petitioners to reimburse the cost of treatment.

9. Having considered the rival submissions made by the learned counsel for the parties, during the course of submission, our attention has been drawn to communication dated July 31, 2018, in respect of one Smt. Meena working in PMO who had undergone a similar treatment. Similarly, the counsel for the respondent has also drawn our attention to communication dated October 23, 2015, issued by the Central Organisation, ECHS Integrated HQ of MoD (Army), wherein a similar procedure has been approved in the case of one Surg. CMDE JK Gupta. Similar is the communication dated April 25, 2019, in



respect of an employee Ved Bala, in the Department of Revenue, who had undergone a similar Therapy. The said treatment was directed to be reimbursed as per CGHS guidelines / rates prescribed by the Ministry of Health & Family Welfare, Government of India.

10. At this stage, Mr. Singh submitted that there are no rates prescribed for treatments which are not approved. We are not convinced by the said submission in view of the fact that the communication issued by the Central Organisation, ECHS Integrated HQ of MoD (Army) dated October 23, 2015 clearly states that the bills need to be reimbursed as per the CGHS rates.

11. Even the communication dated April 25, 2019, of the Department of Revenue states that the reimbursement shall be as per the CGHS guidelines / rates. Surely, there is a benchmark available with the petitioners based on the aforesaid communications for making reimbursement to the respondent for the treatment of Dendritic Cell Therapy undertaken by him.

12. If that be so, the petition is disposed of by stating that reimbursement as directed by the Tribunal shall be as per the CGHS guidelines / rates as given to the other employees in the communications referred to above, for the past, if not already paid and also for future. To that extent, the order of the Tribunal dated October 13, 2022 stands modified. The reimbursement for the past period shall be made within a period of eight weeks from today but without interest. Any reimbursement for the future treatment shall be made within a period of eight weeks from the date of receipt of the bill.

13. With the aforesaid the writ petition is disposed of.



2023:DHC:8542-DB



CM APPL. 22024/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 28, 2023/aky

Signature Not Verified

Digitally Signed
By: JYOTIRMOY GHOSH
DASTIDAR
Signing Date: 05.12.2023
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