* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: May 9, 2023*

\+ W.P.(C) 6070/2023, CM APPLs. 23760/2023, 23761/2023 & 23762/2023

EMPLOYEES STATE INSURANCE CORPORATION & ANR.
..... Petitioners

Through: Mr. Yakesh Anand, Ms. Sonam Anand & Mr. Akshay Thakur, Advs.

versus

AJAY KUMAR & ORS.
..... Respondents

Through: Mr. Anil Kumar Saxena, SPC with Ms. Geetanjali Tyagi, Adv. for R-18

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 23762/2023 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 23761/2023 (for permission)

This is an application filed by the petitioners seeking permission to file additional documents.

For the reasons stated in the application, the same is allowed and the additional documents are taken on record. Application is disposed of.

W.P.(C) 6070/2023, CM APPL. 23760/2023

1. The challenge in this writ petition is to an order dated September 15,

2022, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', in short) in Original Application No.809/2021 whereby the Tribunal has allowed the OA filed by the respondents herein by stating as under:

> *"7. It is evident that the applicants admittedly did not purchase the tickets from the aforesaid authorized agents. However, various decisions of the Hon'ble High Court of Delhi has turned down such plea of the departments and allowed the payment of the amount spent by the employees in purchasing the tickets.*
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> *8. In view of the above, as well as keeping in view catena of judgments of this Tribunal and of Hon'ble High Court of Delhi, this Tribunal feels that the OA deserves to be allowed, the same is accordingly allowed and all the impugned orders including the impugned order dated 13.03.2021 is set aside. Consequently, the respondents are directed to refund the amount so claimed by the applicants, subject to the applicants producing all the requisite proof of their travel such as Boarding Pass etc., to the respondents. This exercise shall be completed by the respondents within a period of six weeks from the date of receipt of a certified copy of this order."*

2. The challenge made by the respondents before the Tribunal was with regard to recovery of the LTC amount availed by them. The respondents, who are working as Para Medics with the petitioners / Corporation have availed all India LTC for the block year 2018-2021 by taking advance. They travelled with family from New Delhi to Port Blair / Gangtok and back by Air. They booked their tickets through the Web Portal of the Airline Spice Jet. Vide impugned order dated March 13, 2021, recovery has been initiated

from the respondents, which they had not deposited.

3. Feeling aggrieved with the recovery order, the respondents have approached the Tribunal. The case of the petitioners before the Tribunal was that respondents were supposed to book tickets from the authorized agents only namely from M/s. Balmer Lawrie and M/s. Ashok Tours and Travels, which they failed to do. As such they are not entitled to get LTC claim.

4. The Tribunal while allowing OA has relied upon the judgment of this Court in the case of ***Joginder and Ors. v. Govt. of NCT of Delhi, W.P. (C) 3106/2019,*** decided on November 13, 2019, and its own judgment in ***Surender Kumar v. Commmissioner off Police & Ors., O.A. No.3835/2017,*** decided on May 28, 2018.

5. Reliance is also placed on the judgment in the case of ***Ajay Kumar & Ors. v. Union of India & Ors., O.A. No.257/2021.***

6. We have seen the judgment, in the case of ***Joginder and Ors. (supra)***. This Court while considering a similar issue, inasmuch as whether the petitioners therein who had not booked their tickets directly from three authorised travel agencies namely M/s Balmer Lawrie & Company Ltd., M/s Ashok Travels & Tours and IRCTC, etc. are entitled to the claim of LTC and the recovery was as sought to be made on the basis of the communication dated February 28, 2018, is justified.

7. Suffice to state, the petitioners therein had approached the Tribunal which dismissed all the Original Application. This Court while considering the challenge to the order of the Tribunal has in paragraphs 14 to 16 stated as under:

> *"14. We are of the considered view that the circular is meant to be obeyed and followed scrupulously and that there was no*

reason for the officers to not have complied with the terms of the circular. While the initial stand of Mr. Chhibber that since the petitioners had already travelled and paid the amount to their travel agents, the full amounts should be reimbursed to them is without any force; in our view, interests of justice would be served if the respondents reimburse to the petitioners their claims towards LTC as per the amounts payable according to the price of air-tickets charged by authorized travel agents; and recover/adjust/deduct from the petitioners the amounts in excess of such price, that may have been paid to the petitioners.

15. Accordingly, we modify the order of the Tribunal to the extent that the respondents would be entitled to recover the 'difference' of the airfare as per the price offered/charged by authorized agents and the airfare paid to the petitioners.

16. With the above directions, all writ petitions and the accompanying applications are disposed of."

8. That apart, it must be noted here that this Court on a similar issue in the case of ***Delhi Jal Board & Anr. v. Sachinder Kumar, W.P. (C) 3977/2023,*** decided on March 28, 2023, has upheld the order of the Tribunal by stating in paragraphs 6 to 9 as under:

"6. The submission of the learned counsel for the petitioners is that the said judgment is distinguishable on facts, inasmuch as the employee therein had retired and it was in those peculiar circumstances, the Tribunal has allowed the Original Application and directed the respondents therein to pay the amount of ₹68,325/- to the employee therein and as such the judgment is not applicable to the facts.

> *7. On a specific query to the learned counsel for the petitioners as to whether a higher amount was paid by the respondent to the agent, who was not authorised, as was payable to the authorised agent, the Counsel for the petitioners has sought some time to take instructions. We are not inclined to adjourn the matter on that ground as we find that it is not the case of the petitioners in the show cause notice that a higher amount was paid by the respondent to the agent, who was not authorised. In other words, the respondent has not paid any extra amount to the agent (not authorised), through whom he had booked the tickets for the journey.*
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> *8. That apart, the fact that the respondent is working as Beldar and the amount being ₹1,62,124/-, it shall be inequitable if he is denied the claim of LTC.*
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> *9. In the facts of this case more so, in exercise of our power under Article 226 of the Constitution of India, we are not inclined to interfere with the impugned order. The writ petition and connected application are dismissed."*

9. The learned counsel for the petitioners would distinguish the above Judgments by stating that the circular dated July 29, 2013 also stipulate that the respondents could not have booked their tickets from private agents / associate website, i.e., Yatra.com and MakeMytrip.com. In other words, when there is a specific bar, the respondents could not have booked the Tickets from private website as was done by them.

10. In the case in hand, the respondents are working as Para Medics which is a Group-C post. It is not the case of the petitioners herein that the respondents have made a claim for LTC of a higher amount than they would have paid to the authorised travel agent. So in that sense, by booking from a

website, the respondents have made a claim of equivalent amount which they would have made, had they booked their tickets from authorised agents. In that view of the matter, the order of the Tribunal need no interference except in the eventuality, the petitioners / Corporation is of the view that the claim of the respondents towards LTC is not as per the amount payable according to the price of air tickets that would have been charged by the authorised travel agent, recover / adjust / deduct from the respondents the amount excess of such price. To that extent, the order of the Tribunal stands modified. This exercise shall be carried out within a period of four weeks from today and the balance amount of LTC, in the eventuality payable, be paid to the respondents within a period of four weeks thereafter.

11. With the above, the writ petition and connected applications are dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

MAY 09, 2023/*aky*