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

% *Date of Decision: August 23, 2023*

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\+ W.P.(C) 3217/2018, CM APPL. 44533/2021

DELHI TRANSPORT CORPORATION & ORS. ..... Petitioners

Through: Mr. Shlok Chandra, Standing Counsel with Mr. Nimit Saksham Jain, Adv.

versus

RAMESH CHANDER ..... Respondent

Through: Mr. Ravinder Kumar Sharma and Mr. S. K. Gulia, Advocates.

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

V. KAMESWAR RAO (Oral)

1. The challenge in this Writ Petition is to an order dated August 03, 2017, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('*Tribunal*' for short) in O.A. No. 2131/2017, whereby the Tribunal has allowed the O.A. filed by the respondent, who, we have been informed, had since expired.

2. The Legal Representatives ('*LRs*' for short) of the respondent have been brought on record. The amended memo of parties has also been taken on record, in terms of order dated February 01, 2022.

3. The case of the deceased employee before the Tribunal was that he joined the petitioner no. 1 organization i.e. Delhi Transport Corporation in the year 1984 as an Assistant Store Keeper. He retired from the post on attaining the age of superannuation on June 30, 2017. While the deceased employee was employed in the petitioner no. 1, he was suffering from certain chronic diseases. He was also availing treatment for his ailments from Sanjeevan Medical Research Center (P) Ltd., which is an empanelled hospital of the petitioner No. 1, as an OPD patient and buying medicines, as prescribed by the concerned doctor of the said hospital from open market and had been claiming reimbursement of the medical expenses from the petitioners. The deceased employee had placed on record of the Tribunal, the medical bills submitted by him to the petitioner no. 1, which had also been passed by the petitioners and paid to the deceased employee.

4. It was his case that the petitioners after his retirement, had issued an order dated January 11, 2017, directing him to deposit Rs. 3,36,572/- for falsely making medical claims by submitting bogus medical bills. Thereafter, the petitioners started recovering Rs.20,000/- per month from his salary. It was also his case that his retiral dues had not been settled by the petitioners at the time of filing of the O.A.

5. Before the Tribunal, the deceased employee had sought quashing of the order dated January 11, 2017 as well as a direction to the petitioners to release all the recovered amount from his salary.

6. The petitioners' case before the Tribunal was that the reimbursement claim by the deceased employee was on the basis of bogus medical bills.

7. The Tribunal after considering the rival submissions, has in paragraphs 10 & 11, stated as under:

> *"10. Admittedly, the applicant has been suffering with the chronic ailment mentioned hereinabove and probably due to this chronic ailment, he was discharged from IAF on medical grounds in the year 1980. The records would indicate that the applicant has been taking treatment all through his service in DTC as an OPD patient and has been claiming medical reimbursements from the DTC regularly. The impugned Annexure A-I order of the respondents alleges that he has been claiming the medical reimbursements based on bogus medical bills. But the respondents have failed to prove that the medical bills presented by the applicant were indeed bogus. On the contrary, Annexure R-8 letter dated 20.03.2017 of Sanjeevan Medical Research Center (P) Ltd. confirms that the applicant was under treatment of Dr. Bansal as an OPD patient, was required to buy medicines from outside.*
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> *Under these circumstances, I do not find any substance in the allegations made in the impugned Annexure A-I order and seeking reimbursement of Rs.3,36,572/- from the applicant.*
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> *11. In the conspectus of discussions in the pre-paragraphs, the O.A. is allowed. Impugned Annexure A-I order dated 11.01.2017 is quashed and set aside. The respondents are directed to refund the amount recovered from the applicant from his salary to him within two months from the date of receipt of a copy of this order. The respondents are further directed not to effect any deductions towards medical reimbursements from the retiral dues of the applicant. No order as to costs."*

8. Mr. Shlok Chandra, learned counsel appearing for the petitioners, has drawn our attention to pages 117 & 123 of the petition to contend that as per

Sanjeevan Medical Research Center (P) Ltd., except the prescription of the Doctor, the bills which have been submitted by the deceased employee, are bogus. He justifies the action taken by the petitioners seeking refund of the amount already reimbursed to the deceased employee. He also concedes to the fact that the chargesheet issued to the deceased employee, has been dropped.

9. During the course of his submissions, he has drawn our attention to an affidavit filed on behalf of the petitioners, wherein it is stated that a total amount of Rs. 3,32,843/- has been withheld by the petitioners from the dues, which were payable to the deceased employee.

10. On the other hand, Mr. Ravinder Kumar Sharma, learned counsel appearing on behalf of the respondent, would justify the order of the Tribunal by stating that if the chargesheet against the deceased employee has been dropped, it is not reasonable on the part of the petitioners to recover the said amount. He submits that the action of the petitioners, which was impugned before the Tribunal, seeking refund of the amount already reimbursed to the deceased employee, was a malafide action, as according to him, the concerned officer was not clearing the medical bills, the deceased employee had made a complaint to the higher authorities, which resulted in issuance of a chargesheet alleging unauthorized absence, against the deceased employee, which was lateron withdrawn by the petitioners.

11. He disputes the very allegation made by the petitioners that the bills were bogus. According to him, the bills submitted by the deceased employee were proper bills, which were rightly reimbursed. He also states that the medicines were purchased after tendering the proper amounts for the same. He further states that since the deceased employee has expired, the present petition which has been filed by the petitioners should be dismissed and the impugned order of the Tribunal need not be interfered with.

12. Having heard learned counsel for the parties. The issue which falls for consideration is whether the deceased employee had submitted the bogus bills, which had resulted in the issuance of the order dated January 11, 2017 by the petitioners seeking refund of the reimbursement already made to the deceased employee.

13. The deceased employee has contested the case set up by the petitioners that the bills are bogus. His justification is that he was undergoing treatment from Sanjeevan Medical Research Center (P) Ltd., which is an empanelled hospital of the DTC as an OPD patient. He was buying medicines, as prescribed by the concerned doctor of the said hospital from open market and had been claiming reimbursement of the medical expenses from the petitioners herein. According to him, at no point of time, did he submit any false claim for reimbursement.

14. The case of the petitioners is otherwise and primarily based on the documents, which have been annexed at page 117 & 123, which are the communications received from Sanjeevan Medical Research Center (P) Ltd.

15. During the course of his submissions, Mr. Chandra do concede to the fact that the prescription of the doctor is a genuine document. According to him, though the deceased employee was undergoing treatment of the concerned doctor, the medicines were purchased from the open market.

16. Mr. Chandra during the course of hearing has drawn our attention to the report of the investigation carried out by the petitioners' Corporation. The findings of the report, which are at page no. 110 of the petition and forms part of the reply filed by the petitioners herein to the interim prayers sought by the deceased employee before the Tribunal, are reproduced as under:

> *"a) That the reply by the director Sanjeevan Medical research Center (P) Ltd. dated 29-03-2017 is contradictory to the reply dated 14-10-2016 since in the former reply the hospital admits that the prescriptions were written and verified by the consulting doctor but in the latter one, it said that the prescription do not match the record.*
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> *b) That on examination of the prior prescription slips issued by treating doctor during 07-10-2010 to 21-11-2014, it was found that some of the prescription slips were without O.P.D. Number and some slips were found printed with SANJEEVAN instead of SANJEEVAN RESEARCH CENTER (P) LTD, 24, Ansari Road, Daryaganj, New Delhi-110002. This creates a doubt on genuineness of prior prescription slips which shows possibility of connivance of treating doctor, with the applicant.*
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> *c) That it is pertinent to mention here about a representation dated 02-11-2016 made to the CMD, DTC wherein the applicant himself admitted that all the N.A. medicines were purchased by him directly from the consulting doctor against cash payment and the medical bills were also given by the treating doctor creates further doubt that the applicant did not go to the medical stores for purchasing the medicines. This is also against the prescribed procedure where the N.A. medicine are to be purchased from the open*

market."

17. A perusal of para c) above, would reveal that the conclusion arrived at by the petitioners was that the deceased employee himself has admitted that all the non available medicines were purchased by him directly from the consulting doctor against cash payment and medical bills qua the same, were also given by the treating doctor. This according to the petitioners has created a doubt that as to whether the deceased employee had actually gone to medical store for purchasing the medicines.

18. In any case, the stand of the deceased employee was that he was directly purchasing the medicines from the open market. As against this, the case of the petitioners, was that the deceased employee was purchasing medicines from the consulting doctor, meaning thereby that he was not going to the medical store/open market for purchasing medicines and still the reimbursement was claimed.

19. Suffice to state that this aspect is a disputed issue, which could have been addressed by way of a regular departmental enquiry, had it been initiated against the deceased employee by the petitioners.

20. Surely, in the absence of any enquiry involving the deceased employee (also) as well as the doctor concerned, the findings/report of the petitioners in their own investigation, could not have been taken against the deceased employee, resulting in the issuance of the impugned order dated January 11, 2017, seeking refund of the amount already paid as reimbursement to the deceased employee.

21. If that be so, we are of the view that the order of the Tribunal directing the refund of the amount recovered from the salary of the deceased employee, cannot be faulted.

22. Additionally, we find that since the employee has expired, the directions given by the Tribunal, may not be interfered with.

23. In view of the additional affidavit filed by the petitioners, wherein it is stated that an amount of Rs. 3,32,843/- has been withheld by them, appropriate shall be that the said amount is released to the LRs of the deceased employee, who have already been brought on record, within a period of two month from today but without any interest.

24. We accordingly, dismiss the writ petition in the facts of this case. No costs.

CM APPL. 44533/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

August 23, 2023/*akc*