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

% ***Date of decision: 6th August, 2024***

\+ W.P.(C) 10816/2024 and CM APPL. 44544/2024, CM APPL.44543/2024

EMPLOYEES STATE INSURANCE CORPORATION, THROUGH ITS DIRECTOR GENERAL .....Petitioner

Through: Mr. Shlok Chandra, Standing Counsel for ESIC with Mr. Sankalp Sharma, Advocate.

Versus

ESIC MEDICAL OFFICERS ASSOCIATION (REGD.) THROUGH ITS SECRETARY DR MD MOZAFFAR UDDIN & ORS. .....Respondents

Through: Mr. V.K. Singh, Mr. Sourav Kumar and Mr.Yaksh Rawal, Advocates.
Mr. Shekhar Vyas and Ms. Neha Warrier, Advocates for R-5.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T ***(oral)***

1. The present petition has been filed under Article 226 of the Constitution of India by petitioner-Employees' State Insurance Corporation ('ESIC') seeking issuance of a writ of mandamus/order/direction or declaration for setting aside judgment dated 18.09.2023 passed by the learned Central Administrative Tribunal ('Tribunal') in O.A. No. 688/2022, whereby circular No. D-27/15//P/2002-Genl.(Part) dated 28.05.2021 issued

by the respondents is quashed and a direction has been issued to reimburse the residential telephone facilities to all the medical officers equivalent to Dy. Secretary and Director and below the rank of Dy. Secretary and equivalent as per the circular dated 26.03.2018. The respondents are further directed to identify 25% of the posts for its staff equivalent to the rank below the rank of Deputy Secretary and equivalent so that there will be no confusion regarding reimbursement of residential telephone facilities to 25% of sanctioned strength of equivalent group 'A' officers in the Corporation as per circular dated 26.03.2018 by the Department of Expenditure.

2. Notice issued.

3. Mr. V.K. Singh, Advocate appearing on behalf of respondents accepts notice.

4. With the consent of learned counsel for the parties, the present petition is taken up today for final disposal.

5. Learned counsel appearing for the petitioner submits that the relief sought in the present petition is confined to ground 1 to 3, which is as under:-

> (i) *Quashing and setting aside of ESIC Circular No. F. No. D-27/15/P/2002-Gen(Part) dated 28.05.2021.*
>
> (ii) *Direction(s) to ESIC to follow the office memorandum dated 26.03.2018 issued by the Ministry of Finance, Department of Expenditure **("MoF")** and provide facilities relating to reimbursement of telephonic expenses in consonance with office memorandum dated 26.03.2018 issued by the MoF.*
>
> (iii) *Direct ESIC to reimburse the Respondents for amount of telephone expenditure retrospectively*

from 26.03.2018 till date of payment alongwith interest at the rate of 18%.

6. The petitioners vide Circular No. D-27/15//P/2002-Genl.(Part) dated 28.05.2021 amended the practice of issuance of reimbursement of telephone charges as under:

SI No.	*Designation/Pay Level*	*Corresponding Designation in ESIC*	*Ceiling Amount (In Rs.)*
3.	*Director/Deputy Secretary to the Government of India and equivalent level*	*CE/AC/RD/Director/SE/JD/DMC/MS/DMS/SMO/Dean/Principal/DMD/DMN/Store Manager and other Medical Officer, if any, working in administrative posts in the equivalent pay level & above.*	*Rs.2250/- per month + taxes as applicable*
4.	*Below the rank of Deputy Secretary and equivalent to the Government (restricted to 25% of the sanctioned strength of Group 'A' officers in a Ministry/Department/Attached/Subordinate office)*	*DD / EE / Medical Officers working in administrative posts below the rank/pay level of Dy. Secretary to the Govt. Of India (all restricted to 25% of the sanctioned strength of Group-A officers in ESIC).*	*Rs.1200/- per month + taxes as applicable*

7. The respondents, being aggrieved by the aforesaid circular dated 28.05.2021 preferred O.A. No.688/2022 before the learned Tribunal seeking quashing thereof with a further direction to the petitioner to follow the O.M. dated 26.03.2018 issued by the Ministry of Finance, Department of Expenditure in respect of reimbursement of telephonic expenses. A direction was also sought to the petitioner to reimburse the amount of telephone expenditure retrospectively from 26.03.2018 till the date of payment alongwith interest @ 18%.

8. The case of the respondents before the learned Tribunal was that vide O.M. dated 26.03.2018, the Department of Expenditure has laid down provisions for reimbursement of the telephone facilities equivalent to the Government officers. The relevant Para of O.M. dated 26.03.2018 reads as under:-

"4.Reimbursement of telephone call charges

4.1 Reimbursement of telephone call charges of residential telephone/mobile phone/broadband/mobile data card shall be as per entitlement given below:

"SI No.	*Level/Designation*	*Limit on reimbursement*
1.	*Secretary to the Government of India and equivalent level*	*Rs.4200/- per month + taxes as applicable*
2.	*Additional Secretary to the Government of India and equivalent level*	*Rs.3000/- per month + taxes as applicable*
3.	*Joint Secretary to the Government of India and equivalent level*	*Rs.2700/- per month + taxes as applicable*
4.	*Director/Deputy Secretary to the Government of India and equivalent level*	*Rs. 2250/- per month + taxes as applicable*
5.	*Below the rank of Deputy Secretary and equivalent to the Government (restricted to 25% of the sanctioned strength of Group 'A' officers in a Ministry/Department/Attached /Subordinate office*	*Rs.1200/- per month + taxes as applicable*

9. Further the stand of the respondents was that in terms of Section 17(2) of the ESIC Act, the salary and allowances of the staff of the Corporation shall be specified in accordance with the rules and order applicable to the

officers and employees of the Central Government drawing corresponding scales of pay. Section 17(2) of the ESIC Act reads as under :-

> *"17(2)(a) The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulation made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay.*
>
> *Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.*
>
> *Provided further that this sub-section shall not apply to appointment of consultants and specialists in various fields appointed on contract basis.*
>
> *2(b) In determining the corresponding scales of pay of the members of the staff under clause (a), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decision thereon shall be final."*

10. Relevantly, at serial No. 4 of Circular dated 28.05.2021, it is mentioned that DD/EE/Medical officers working in administrative posts below the rank/pay level of Dy. Secretary to the Govt. of India (all restricted to 25% of the sanctioned strength of Group-A officers in ESIC) shall be

eligible for reimbursement of telephone bills whereas O.M. dated 26.03.2018 noted that all officers of the level of Deputy Secretary equivalent and above are entitled for office telephone with STD facility. For officers of the level below Deputy Secretary, Ministry/Departments may decide in consultation with the Financial Advisers on providing STD facility depending on their functional requirements. It is also noted that residential telephone can be allowed to officials below the rank of Deputy Secretary equivalent on functional basis subject to the condition that this facility shall be restricted to 25% of the sanctioned strength of Group 'A' officers in a Ministry/Department. This limit will equally apply to Attached and Subordinate offices.

11. It is not in dispute that vide Circular No. D-27/15//P/2002-Genl.(Part) dated 28.05.2021 issued by the Deputy Director General, ESIC, the facility of telephone (landline and/or mobile connection) on the basis of the relevant corresponding Ministry of Finance, Department of Expenditure office memorandum vide which the facility of reimbursement of telephone bills was extended to all officials of ESIC, including medical staff.

12. In the aforesaid facts of the matter, the petitioner neither before the learned Tribunal nor before this Court has been able to produce any documentary evidence to substantiate that prior approval of Government of India, as has been prescribed under Section 17(2) of the Act, was obtained while deviating the entitlement of reimbursement of telephone facility for the respondents.

13. In our considered opinion, learned Tribunal while passing the impugned judgment has rightly observed that the action taken by the petitioners by making deviations from the Circular dated 26.03.2018 issued

by the Department of Expenditure is not tenable under the law. The Tribunal is correct in holding that the Circular dated 26.03.2018 does not make a distinction between the medical and non medical officers during the administrative or medical duties to get the benefit of residential telephone facilities.

14. Finding no error in the impugned order dated 18.09.2023 passed by the learned Tribunal, the present petition is dismissed with direction to the petitioner to comply with the directions enumerated in Para-13 thereof. The petitioner is directed to reimburse the amount of telephone call charges with interest @ 6% per annum from 26.03.2018 till the date of payment to all the ESIC medical officers within four weeks.

15. Pending applications are disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 06, 2024
uk/r