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Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 601/2001

New Delhi this the 7th day of November, 2001

Hon'ble Mr. Shanker Raju, Member (J)

L.K. Madan
S/o Shri Jagan Nath Madan
R/o A-2, Pandara Road,
New Delhi-110001

(By Advocate: Shri Nagesh Kapoor)

-Applicant

Versus

1. The Principal Director of Commercial
Audit & Ex-Officio Member, Audit Board-1
3rd Floor, Indraprastha Bhawan, I.P. Estate,
New Delhi-110002.
2. The Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg, New Delhi.
3. Union of India
Through the Secretary to the Ministry of
Health and Family Welfare, Nirman Bhawan,
New Delhi-110001

(By Advocate: Shri M.K. Gupta)

-Respondents

ORDER (Oral)

Heard the parties.

2. The claim of the applicant is for re-imbursement of actual medical expenses incurred on a heart operation. According to the applicant, he has to be accorded 2,30,000/- whereas only 1,69,213/- has been paid by the respondents. Learned counsel of the applicant placing reliance on a decision of Cuttack Bench of this Court in E.N. Panda Vs. Union of India 1999 (1) SLJ 492 stated that medical expenses should not be denied even if private or recognised hospital but by the proper authority. It is also stated that in this judgment the decision of

State of Punjab & Ors Vs. Ram Lubhaya Bagga has been placed reliance. Learned counsel of the applicant has further placed reliance on a decision of Chandigarh Bench in OA-769/96 decided on 19.12.96 in L.D. Arya Vs. Union of India wherein in similar circumstance placing reliance on the decision of OA 94/96, the actual expenses have been directed to be paid to the petitioner, therein, by the respondents. Learned counsel of the applicant further stated by making out differences in the amount paid to him as admissible as per OMs dated 16.9.96 and 22.4.98 where the rates for medical reimbursement have been revised for packages, whatever has been given is not according to the laid down criteria by the Government under the OMs. In this backdrop, it is stated that applicant is entitled for actual expenses and has claimed an amount of Rs. 60,787 with 18% of interest. The applicant has also sought quashing of the order passed by the respondents dated 10.10.2000 whereby his claim for further medical reimbursement has been rejected.

3. On the other hand, learned counsel for the respondents strongly rebutting the contentions of the applicant as at the outset stated by placing reliance on the decision of the Apex Court by three Bench judgment reported in State of Punjab Vs. Ram Lubhaya Bagga JT (1998) SC 136 that as the Apex Court was of the view in the case of medical reimbursement that the country having limited resources to spend on any of the project and the policy decision, the same

would not be interfered and as the principle of fixation of rate and scale under the new policy has been found to be justified, the same would not constitute violation of Article-21 & 47 of the Constitution of India. In this back drop, it is stated that when the Government had decided through its OMs dated 16.9.96 as well as 22.4.98, the rates pertaining to the package deals for various treatment and more particularly CABG, Angiography, the room rent and other miscellaneous expenses and had fixed the ceiling and the amount beyond which no Government servant can be medically reimbursed, the court has no jurisdiction to interfere in the same as the policy decision of the Government is not amenable to challenge unless it is arbitrary or in violation of principles of law. As the applicant has been rightly accorded the medical reimbursement, he is not entitled for the actual expenses and as regards the swan and dye during the treatment as the rates have not been available, the same is inclusive in the package and is included in the CABG and the applicant is not entitled for the same. In nut shell, the respondents have been taken a plea that applicant has been accorded reimbursement as per the Govt. of India's rates. In the rejoinder, the learned counsel of the applicant has demonstrated by placing reliance on revised rates contained in OM 22.4.98 wherein it is shown that the applicant has not been given the rates as the medical reimbursement is admissible to him as per the rates in OM 22.4.98 but this comparative table and his additional claim has not

been put forward to the respondents by the applicant by way of a representation before filing the OA.

4. I have heard the parties and carefully considered the material available on record. As the larger Bench in Ram Lubhaya (supra) while dealing with the question of medical reimbursement has come to a conclusion that by way of policy decision the provision of facilities to the extent permitted by a financial resources, the decision of the Government pertaining to the medical treatment and reimbursement as a policy decision is not violative of Article-21 of the Constitution of India keeping in view the financial resources of the country. As the decision of the Government is by way of a policy decision and has already been affirmed by the Apex Court, the same cannot be gone into or interfered by the court in absence on any material to show that the same is arbitrary or violative of constitutional principles. The contention of learned counsel of the applicant by his resort to the decision of Punjab and Haryana High Court as well as the decision of Cuttack Bench is not justifiable. In Cuttack Bench decision, the issue was that the medical expense should not be denied even to non-recognised hospital would have no application in the facts and circumstances of the present case. The facts are entirely different what has been stated in the present OA as the petitioner had taken the treatment of kidney which is a continuous process and the reimbursement was allowed. With regard to the decision of the Chandigarh Bench,

we find that the same has been delivered by the Court in 1996 when the decision in Ram Lubhaya (supra) was not in-existence. After the decision of the Apex Court, the same would not be a precedent and having pitted against the decision of the Apex Court that too of a larger bench, the same is to be followed where the expenses have been denied and the policy decision has been found justified and not violative of Article 21 or Article 47 of the Constitution. In this view of the matter, claim of the applicant cannot be countenanced and is not justified. However, as the applicant claimed that he has been denied medical reimbursement as per the rates available and prescribed in two OMs dated 18.9.96 as well as 22.4.98, he is at liberty to make detailed representation within one month from today stating out all the details and difference in medical reimbursement which has been paid to him to the respondents who shall consider the same and pass a detailed and speaking order within three months from the date of receipt of a copy of this order.

5. Having regard to the reasons recorded above, I do not find any merit in the OA, the same is dismissed.

S. Raju
(Shanker Raju)
Member (J)

cc.