

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

16

O.A.No. 2059/1997

Date of Decision: 8-3-1999

Shri Ajay Kumar Singh

APPLICANT

(By Advocate Shri S.K. Gupta

versus

Union of India & Ors.

RESPONDENTS

(By Advocate Shri N.S. Mehta & Rajinder Pandita

CORAM:

THE HON'BLE SHRI

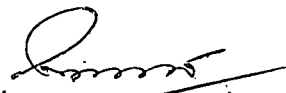
THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

Cases referred

1. Vincent Panikurlangara Vs. UOI 1987 2 SCC 1650
2. Kirloskar Bros. Ltd. V. ESIC 1996(2) SCC 682
3. Paschim Banga Khet Mazdoor Samity Vs. State of West Bengal 1996(4) SCC 36
4. Waryam Singh V. State of Punjab, Vol-114 1996(4) SLR 177
5. D.R. Paul V. State of Punjab 1994(1) SLR 283 (PH)
6. Surjeet Singh V. State of Punjab & Ors. 1996(2) SC 336


(S. P. Biswas)
Member (A)
8.3.1999

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2059/97

New Delhi, this 8th day of March, 1999

Hon ble Shri S.P. Biswas. Member(A)

Ajay Kumar Singh
Commandant General
Home Guards, Delhi Admn.
Nishkam Sewa Bhavan
Raja Garden, New Delhi .. Applicant

(By Shri S.K. Gupta, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Chief Secretary
Govt. of Goa, Panaji
3. Chief Secretary
Govt. of NCT of Delhi
5, Sham Nath Marg, Delhi .. Respondents

(Shri N.S. Mehta, Senior Counsel for R-1 & R-2)
(Shri Rajinder Pandita, Advocate for R-3)

ORDER

The applicant, an IPS Officer (1964 Batch) borne on the cadre of Arunachal, Goa, Mizoram & Union Territory under the control of Government of India through Ministry of Home Affairs, is aggrieved by the alleged arbitrary and abnormal delays in the payment of legitimate dues to him in respect of the following:

- (i) TA bill amounting to Rs.5000 because of having been recalled for duties cutting short the leave he was enjoying at Sultanpur/UP;
- (ii) Salary for the sick period from 14.3.95 to 16.8.95 (149 days) when he was medically unwell;

- (iii) Salary for the period from 17.8.95 to 19.2.96 on account of "waiting for orders of posting";
- (iv) Salary for sick period (medical grounds) from 20.2.96 to 14.10.96; and
- (v) Salary for the period from 15.10.96 to 31.3.97 because of "waiting for orders of posting".

18

2. Since the applicant had to face serious medical problems right from 12.3.95 till 31.3.97 and had also incurred heavy expenditures for purchase of medicines, hospitalisation charges and charges for open-heart surgery etc., he has also claimed reimbursement of the amount spent, the details of which are as hereunder:

- (a) Receipts of amounts paid to the National Heart Institute, 49, Community Centre, East of Kailash, New Delhi for the period from 21.2.96 to 4.3.96 for Rs.30,260/- for treatment of heart problems (A-1A).
- (b) Medicines purchased by him during the period from 5.9.96 to 12.9.96 for Rs.1048/- (A-1B).
- (c) Amounts paid to the Apollo Hospital - Rs.2,71,110/- for open-heart surgery (A-1C).
- (d) Amounts paid for the purchase of medicines during the period from 22.7.96 to 13.8.96 for Rs.1554/-
- (e) Consultation fees paid to experts in National Heart Institute for the period from 11.3.96 to 12.7.96 for Rs.1900/- (A-1D).
- (f) For purchasing medicines in the period from 11.9.96 to 8.1.96 for Rs.3037/- (A-1E).
- (g) Amount paid to National Heart Institute for the period from 16.7.96 to 22.7.96 for Rs.31072/- on different medical items (A-1F).

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3. Applicant's problem in respect of item in para 1(i) regarding TA bill on account of being recalled from leave admittedly now stands resolved. However, fairly a large amount, mostly on account of medical reimbursement claims, still remain unpaid.

19

4. Applicant claims that his case for reimbursement on medical account, as per details aforementioned, is legally based on provisions under All India Service (Medical Attendance) Rules, 1954. Provisions under sub-para 3 of the said Rules, as available in All India Services Manual Vol.I 5th Edition of 1994, indicate the following:

"(2) Where a member of the Service is entitled under sub-rule (1), free of charge to medical attendance, any amount paid by him on account of such medical attendance shall, on production of a certificate in writing by the authorised medical attendant in this behalf, be reimbursed to the member of the service by the Government:

"Provided that the Government shall reject any claim if it is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the Government shall communicate to him the reasons, in brief, rejecting the claim; and the claimant may submit an appeal to the Central Government within a period fortyfive days of the date of communication of the order rejecting this claim".

Respondents have not denied applicability of All India Service (Medical Attendance) Rules, 1954 so far as the applicant's case is concerned.

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5. Before we examine the legality of objections raised by the respondents, particularly with reference to medical reimbursement amounts, we consider it appropriate to mention a few important principles/judicial pronouncements by the Hon'ble Supreme Court covering important and connected issues on the question of medical reimbursements.

6. The Apex Court has held that Article 21 of the Constitution of India provides one of the most sacred fundamental rights given to its citizen. Since right to life is protected under this Article, refusal to pay the amount spent to save one's life amounts to curtailment of such right, hence violative of Article 21. The Apex Court in its earlier decisions in **Vincent Panikurlangara Vs. U.O.I.** (1987) 2 SCC 1650 has held that the right to live does not mean mere survival of animal existence but includes the right to live with human dignity. In other words, man's life should be meaningful, worth living. Fith and substance of life is the health, which is the nucleus of all activities of life including that of an employee or other viz. the physical, social, spiritual or any conceivable human activities. If this is denied, it is said everything crumbles.

7. In Vincent Panikurlangara case (supra), their Lordships also held that:-

"maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the

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"betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority-perhaps the one at the top."

21

8. In **Kirloskar Brothers Ltd. Vs. Employees State Insurance Corporation** (1996(2) SCC 682, it was held that:-

Para 9 - "The Constitution envisages the establishment of a welfare State at the federal level as well as at the State levels. In a Welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance."

9. In **Paschim Banga Khet Mazdoor Samity Vs. State of West Bengal** 1996(4) SCC 36, the Apex Court expressed that:-

Para 16 - "It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. The said observation would apply with equal, if not greater, force in the manner of discharge of constitutional obligation of the State has to be kept in view."

22

10. In a recent case in **Waryam Singh Vs. State of Punjab**, Vol. 114, 1996(4) SLR P.177 decided on 12.4.96, the Division Bench of the Punjab & Haryana High Court held the following:-

22

"It is the duty of the State to provide adequate assistance to the people in cases of sickness. Various finer aspects of life would be rendered meaningless if one cannot get adequate medical attention. In fact, providing of medical assistance to sick and disabled is an integral part of the obligations of the State to improve public health. Therefore, every provision made by the State legislature or executive for providing medical assistance will be deemed to have their source in Articles 21, 41 and 47 of the Constitution and in appropriate case the citizen will be entitled to enforce such provisions and it will be no answer to such a claim that the provisions of Articles 41 and 47 are not enforceable by virtue of Article 37."

11. In the aforesaid case, the Hon'ble High Court referred to as many as 38 case laws adjudicated on the subject of "Medical Reimbursement" at the forum of Hon'ble Supreme Court and High Courts all over India between 1950 to 1966 and came to a conclusion that:-

"In our considered opinion, there is no reason or justification for the Government to withhold the reimbursement actually incurred by the petitioners in the recognised hospital. Having recognised the private institute and hospitals for treatment, the Government has no legal justification to say that the expenses would be limited to the rates prescribed by the All India Institute of Medical Sciences. This back tracking by the Government from its own policy of recognising the private hospitals and institutes for treatment of its employees is wholly unjustified."
(emphasis ours)

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12. In the said case, the Hon'ble High Court has also decided 6 individual CWPs pending before it. Out of 6, petitioners in as many as 4 CWPs, all belonging to Punjab, had taken heart treatment at different points of time at EHIRC, New Delhi. The amount claimed varied from Rs.1,33,000 to Rs.1,66,000 (round figures). For the detailed reasons recorded as aforequoted, the State Government was directed to make payments within a period of 3 months.

13. We shall now proceed to examine the legalities of objections raised by the respondents in denying applicant's claim on transfer TA bills and delaying reimbursement of medical expenses.

14. Transfer TA bills

Applicant had submitted his transfer TA bill from Port-Blair to Goa amounting to Rs.42,004.60 vide his letter dated 14.12.94. He was asked to obtain relevant receipts in support of the expenditure incurred for transporting personal effects as well as providing justification for undertaking trip via longer routes. Respondents' objections in settling the transfer TA bill related to applicant's having overdrawn the advance amount and resorting to journey by alleged impermissible route. While we may not go into protracted correspondences that took place between the respondents and the applicant in respect of several issues covering this claim, suffice it to say that

applicant's bill in this respect was returned by the Director of Accounts asking him to deposit Rs.15,034 with the Government Treasury. This concerns overdrawn amount. The Director of Accounts stated that the bill submitted by the applicant may be resubmitted only after the applicant credited the outstanding amount to Government Treasury. It is seen that the applicant has deposited the said amount on 16.1.98 vide Annexure A-5 receipt. This transfer TA bill has to be settled by Government of Goa/Panaji (R-2). Records made available to us reveal that this amount is still outstanding and no ground, much less convincing ones, has been advanced explaining the delay in settlement of residual dues, if any, to the applicant. If the applicant had undertaken the journey by a longer route, it was for the Government to limit the TA amount permissible by shorter route and make payment accordingly. Respondent No.2 has thus faulted in this respect.

15. Salary for commuted/medical leave during
14.3.95 to 16.8.95.

We now come to applicant's claim for payment of salary against commuted leave for the above period of 149 days. Respondents have objected settlement of this item on the ground that applicant left Goa without proper permission of competent authority. As per the respondents, (Respondent No.1 in particular) applicant should have applied to the competent authority for

regularisation of the period of absence in the first instance to enable him to draw leave salary, if any, admissible to him under the Rules.

16. We find that the applicant was granted leave by order dated 13.3.95 and was asked to hand over charge next date. Applicant left Goa and reached Delhi on 16.3.95. If the objection was that the applicant had left Goa without permission, it was only appropriate for the respondents to seek applicant's explanation in this respect and initiate disciplinary action as per rule, if the explanation was not satisfactory. We do not find any evidence as regards either the Government of Goa or the Government of India having asked the applicant to explain his conduct in leaving Goa without permission. Evidently applicant appeared before the Medical Board and handed over the charge thereafter. Government of Goa had ordered the applicant to hand over charge to Shri Prabhudesai and the applicant vide his letter dated 14.3.95 had already indicated his intention to the Chief Secretary/Goa and that was sufficient enough as permission for applicant's leaving Goa as he was already ill and requiring an early treatment. Applicant's communication dated 14.3.95 was received by Chief Secretary's office early in the morning while he was spared from duties only in the afternoon of the same date. Records also reveal as at Annexure A-8 dated 25.4.95 (the date has been wrongly typed as 25.4.94) that the Medical Board met subsequently on 7.4.95 to decide the matter

regarding nature of leave that could be recommended for the applicant. It is also evident that the said Board decided that the applicant's medical condition required immediate surgery and treatment at the Government recognised Cardiothoracic Centre for further investigation and management. The Board also felt that the period of leave that could be granted would depend on the advice from Cardiothoracic Surgeon. Perusal of records indicate that the applicant had applied for 120 days leave to Government of Goa and before the expiry of leave period Shri R.S. Gupta was promoted and posted as IGP/Goa on 21.6.95. For the remaining period, Government of India was required to issue necessary sanction.

Now that the applicant has already submitted all the necessary bills covering the entire treatment, the delay in communicating appropriate sanction of leave covering this period of 149 days from 14.3.95 to 16.8.95 is not explained. We would also make it clear that the submission of Respondent No.1 that "during the period from June, 1994 till 30th December, 1996, the applicant was posted with the Government of Goa" is only true partially.

To bring a quitus on the issue, it would be only appropriate that Government of Goa issues the sanction order for commuted/medical leave from

15.3.95 to 21.6.95. Similar action shall be taken by Government of India for the remaining period from 21.6.95 to 16.8.95.

27

17. Salaries during periods spent on "waiting for orders of posting" from 17.8.95 to 19.2.96 and 15.10.96 to 31.3.97 as well as salary for the sick period on medical grounds sandwiched between the two periods of waiting for orders:

The applicant submits that he reported for duty to the Home Secretary Government of India on 16.8.95 after having submitted "fitness certificate". He also had met Joint Secretary (Union Territory) requesting for posting at Delhi because he required certain urgent medical attention which could not be provided to him at Goa. The applicant was told that the orders posting him at Delhi were under consideration and that he should wait for those orders. The entire period from 17.8.95 to 31.3.97 has a component (20.2.96 to 14.10.96) when the applicant was medically unfit. The question is how this period will get regularised and who is the competent authority for that purpose?

18. The respondents have taken a stand that when the applicant was fit to resume duties, he should have immediately reported to the Government of Goa with whom he was posted. In fact, it has been averred that during the period from June 1994 till 30.12.96 the applicant was posted with the

28

Government of Goa. The respondents have also resisted the applicant's claim by saying that the applicant was required to approach the competent authority for regularisation of his period of absence in the first instance before he could draw leave salary. The respondents have also denied that the applicant was told that there is a proposal for posting him in Delhi.

The averments made by the respondents cannot be accepted in the background of the counter affidavit filed by Government of India in reply to OA-2047/97 wherein it has been mentioned that Shri R.S. Gupta was posted as IGP on 21.6.95. The Government of Goa could not have posted two officers as IGP since there is only one post of that rank and that there is no order telling the applicant that he has been put under compulsory waiting. That apart, the final order of posting dated 30.12.96, as at Annexure A-11 shows the applicant's status as "waiting posting" alongwith others. Therefore, for the entire period from 17.8.95 to 30.12.96, Respondent No.1, i.e. Secretary/Ministry of Home will have to issue necessary orders regularising the period. Whereas, for the period from 1.1.97 or from the actual date he joined the Government of NCT of Delhi, the latter has to take action to regularise the period.

19. Medical claims against items (a) to (d) as in para 2:

It is seen that the applicant initially reported to Mohinder Hospital, Green Park, Delhi for diagnosis immediately after reaching Delhi. He had also taken ayurvedic treatment before reporting to Mool Chand Hospital Delhi. The specialist had advised the applicant not to join duties till a final decision was taken by the competent cardiologist regarding the possibility of heart surgery for the applicant. Such a step taken by the applicant is likely to invoke objections by the respondents when provisions under Rule 3 of Medical Attendance Rules 1953 stipulate treatment by authorised medical attendant. In answer to this, it may be mentioned that some of the severe diseases do not knock at the door or give warning bells in advance. Emergency cases require immediate treatment and if with a view to comply with the procedure, one has to wait then it could be really fatal. One may not in such cases live. if such a procedure is to be strictly followed. Keeping this in view the Government of India has modified its earlier stand by including National Heart Institute and Research Centre (49, Community Centre, East of Kailash, New Delhi) as designated hospital for treatment of heart diseases. The applicant also took treatment from this Institute. The respondents' contention that the applicant could have taken treatment in recognised hospital loses its strength in the light of the orders of Government of India vide its O.M. No.12015/93/91-CGHS dated 27.1.92 wherein it has been mentioned that "the choice of the recognised

29

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hospital where the CGHS beneficiary would like to avail of the treatment is left to the beneficiary himself subject to the condition that no travel expenses will be reimbursible." As per Government of India Orders No.S14025/58/75-MC dated 18.8.78, reimbursement of artificial appliances including that of heart pace maker etc. have been permitted "only when these are certified as essential by a specialist in the concerned speciality in the hospital". There could be a possible objection of the applicant having taken treatment from Apollo Hospital which is not in the list of recognised one by the Government of India. Surely, the respondents would not have objected if the applicant would have gone to AIIMS for such heart treatment. If that be so, reimbursement at AIIMS rate could not be denied. This was done in the case of S.R. Paul Vs. State of Punjab (1994(1) SLR 283(P.H.)). There are instances where reimbursement has been allowed at Escorts rate even when the treatment was been taken at London. (see para 12 in the judgement of Surjeet Singh Vs. State of Punjab & Ors. (1996(2) SC 336), decided by the Hon'ble Supreme Court. We also bring out specific order which caters for special sanction in such matters. The Government of India's O.M. No. S140125/4/90-MS dated 26.7.90 provides the following:-

"only such cases which require clarification of doubts on specific points or need special sanction in relaxation of rules should be referred to this Ministry and only through Directorate General alongwith the

30

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comments/recommendation of the concerned Ministry/Department at the level/approval of an officer not below the rank of Joint Secretary."

31

In case the respondents find difficulties in relaxing any amount over and above the ceiling, they would be free to take advantage of the provisions/facilities under the aforesaid OM dated 26.7.90. Problems arising out by package deal rates, as reported by Respondent No.3, can be taken care of under provisions in this OM. Since major portion of the treatment took place between 20.2.96 to 14.10.96, it would be for Respondent No.1, particularly Joint Secretary/Union Territory, to initiate appropriate actions towards settlement of all these medical bills as entologued in para 2(a) to (g). Necessary adjustments/debits could be raised against appropriate respondents, if needed. We consider it appropriate to have all the medical bills processed by Respondent No.1 since special sanctions, if required, could only be given by Secretary (Home), Government of India as the Head of the Department.

20. In the background of the detailed reasons aforementioned, the OA is allowed with the following directions:-

- (1) The applicant shall be eligible for an interest @ 12% against the residual amount of transfer TA bill due to him with effect from 1.3.98 (45 days after

23/

Rs.15,034 was deposited with the Government Treasury) till the amount is paid by Respondent No.2.

(ii) Respondent No.2 shall also issue necessary orders for regularisation of the period from 14.3.95 to 20.6.95 on medical grounds. Since the type of leave to be granted was considered dependent on the nature of treatment the applicant received, the details shall be sent by the applicant for perusal of the Medical Board under Respondent No.2.

(iii) Respondent No.1 shall issue appropriate orders covering the period "waiting for orders of posting of two spells from 17.8.95 to 19.2.96 and from 15.10.96 to 30.12.96 respectively. The intervening period from 20.2.96 to 14.10.96 shall be treated as sick/medical leave admissible under the rules. The period between 30.12.96 and 31.3.97 is to be regularised by R-3, whereas the period from 21.6.95 to 16.8.95 is to be regularised by R-1.

(iv) Payments due to the applicant as regards medical reimbursements against all the 7 items as listed in para 2 of this order shall be made by Respondent No.1. The said payment shall, however, be made through Respondent No.3 where the applicant is working presently.

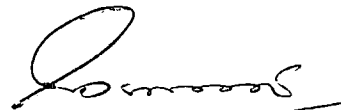
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Applicant shall cooperate by providing necessary essentiality certificates/ documents if needed in such cases.

(v) Our orders in respect of items (i) to (iv) of para 20 shall be complied with within a period of three months from the receipt of a certified copy of this order.

21. There shall be no order as to costs.


(S. P. Biswas)
Member (A)

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