

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2193 of 1997 decided on 17.4.1998.

Name of Applicant : Shri Rajpal Sherawat

By Advocate : Shri K K Kaul

Versus

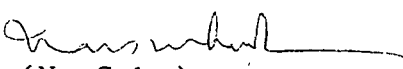
Name of respondent/s N.C.T. of Delhi through Chief
Secretary & others.

By Advocate : Shri Rajindra Pandita

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2193 of 1997

New Delhi, this the 17th day of April, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)

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Sh. Rajpal Sherawat, S/O Sh.
Hukam Chand, R/O 9/94,
Sector-III, Rajinder Nagar,
Sahibabad, Ghaziabad (U.P.)

--APPLICANT.

(By Advocate Sh. K K Kaul)

Versus

1. Govt. of N.C.T. of Delhi
through Chief Secretary, 5-
Shamnath Marg, Delhi - 110
054.
2. Department of Medical &
Public Health through its
Secretary, Govt. of NCT,
Delhi, 5- Shamnath Marg,
Delhi - 110 054.
3. Chief Electoral Officer,
Govt. of NCT, Delhi, Old
St. Stephens College
Building, Delhi - 110 006.
4. Election Officer (Admn.)
Office of the Chief
Electoral Officer, Kashmere
Gate, Delhi - 110 006.

--RESPONDENTS.

(By Advocate -Sh. Rajindra Pandita)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The applicant incurred a total sum of Rs. 1,83,416/- (Rupees one lac eighty three thousand four hundred sixteen only) by way of medical expenses on account of tests, medicines, doctor's charges, room rent, etc. and also the expenses on the donor whose kidney was transplanted to the applicant on 1.3.1997 in Sir Ganga Ram Hospital. He was discharged from the same hospital on 17.3.1997. The applicant had been under treatment in

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one of the designated recognized hospital, namely, Guru Tegh Bahadur Hospital from 12.1.1996. He was medically advised for immediate transplantation of his kidney. He approached the respondents for permission to undertake the operation of kidney transplantation in Sir Ganga Ram Hospital, which is a private hospital by his letter dated 13.1.1997 but there was no response to his request. As the condition of the applicant deteriorated, he sought an admission in Sir Ganga Ram Hospital after another appeal to the respondents by letter dated 4.9.1997 drew no response.

2. The respondents rejected the claim of the applicant for reimbursement of the medical expenses incurred on the ground that the applicant received payment for all his claims in Guru Teg Bahadur Hospital. Even after his retirement, bills submitted by him with reference to this designated hospital were allowed. The respondents pleaded that he was not entitled to get treatment in Sir Ganga Ram Hospital under the medical rules. They stated that there was no written authorisation of referring him to Sir Ganga Ram Hospital by any authorised hospital of the respondents. The learned counsel for the respondents urged by way of preliminary objection, that the OA has not been filed against any order, therefore, the OA is not admissible under Section 19 of the CAT Act. For this purpose they referred to the decision of the Hyderabad Bench of CAT in OA 27/90 appearing in the Full Bench Judgement Vol. II. He has drawn my attention to the observation of the Full Bench at page 250 thereof. The second ground taken by the learned counsel for the respondents is that without

exhausting alternative remedies, the applicant cannot approach the Tribunal. He cited the decision of the Hon'ble Supreme Court in the case 'S S Rathore Vs. State of Madhya Pradesh AIR 1990 SC 10, he drew my attention particularly to the observations of the Hon'ble Supreme Court in paragraphs 19, 20 and 21 of the aforesaid report.

3. Opposing this, the counsel for the applicant cited the decision in the case of Dr. (Smt.) Kshama Kapoor Vs. Union of India decided by the High Court of Karnataka and reported in 1986 (2) Karnataka Law Journal 469. That was a case where representation regarding seniority claim was pending and no orders were passed. The High Court held that Administrative Tribunal has jurisdiction to entertain the applications regarding redressal of grievance of civil servants in respect of service matters even though there is no specific order. The Karnataka High Court held that Administrative Tribunal has jurisdiction to hear the grievance, under Sections 14 and 15 of the Act. Under Section 20 of the Act, there is a provision for admitting an application, if no order was made on an appeal or representation by the civil servant concerned within 6 months by the authorities. When a jurisdiction is conferred under Sections 14 and 15 of the Act on the Tribunal to decide all disputes relating to service matters, it must be held that every power required for the effective exercise of this power was included in the grant. In the case of Assistant Collector of Central Excise Vs. National Tobacco Company of India Ltd. SC AIR 1972 2563, the applicant had reminded six times about his representation

but no orders were passed thereon. It is a case where the complaint is not against any order but it is against inaction of the authority concerned. Section 19 which provides for making an application only against "Orders" and Section 20 which provides for exhaustion of all available remedies, being procedural provisions cannot have the effect of diminishing the jurisdiction of the Tribunal under Sections 14 and 15 of the Act. The High Court of Karnataka held that to such an application against inaction, Section 21, which prescribes limitation, would also not be attracted, for unless the order is made, the period of limitation would not commence.

4. The counsel for the applicant next cited the decision of Abhinesh Chandra Dutta Vs. U.O.I (1987) 2 ATC 889. In this decision, the Cuttack Bench held that the condition of exhaustion of alternative remedies under Section 20 (1) does not deprive the Tribunal to give a direction to the Department to make payment of an amount which is legally due.

5. I am satisfied that although the applicant reminded the respondents several times but did not get the reply, is justified in invoking the jurisdiction of the Tribunal. The applicant retired from service and he spent his retiral benefits for transplantation of the kidney. The respondents have shown utter indifference in not replying to his initial representations for permission to take-up the operation in Sir Ganga Ram Hospital and after the operation they refused to pass any order and communicate the same in respect of his claim

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for medical reimbursement. Medical reimbursement claim is a part of a service matter and the applicant is entitled to invoke the jurisdiction of the Tribunal under Sections 14 and 15 of the CAF Act. The respondents cannot claim that they have a fundamental right not to dispose of a representation for a period of 6 months. The applicant submitted the first claim on 11.4.1997 and reminded thereafter on 21.4.1997, 13.5.1997, 20.5.1997, 26.5.1997, 4.6.1997 and 17.6.1997. He sent a lawyer's notice on 15.7.1997. There was no response to the same. Suffering from penury after retirement, he was forced to seek justice in the portals of this Court. It is not necessary that the applicant should wait for a period of six months before he can file the OA in the Tribunal. If his efforts at redressal are of no avail, and the respondents show no sign of being alive to his appeals and representations, he can move the Tribunal even before the six-month period.

6. It is a case of deprivation of a claim for reimbursement of amounts which are a life time savings spent on medical treatment. There was no reason for the respondents to delay in replying to his repeated reminders. If the reply had been conveyed to the applicant in time, then the applicant would have come to the Tribunal even earlier.

7. The contention of the respondents that that they paid a sum of Rs. 98,801/- while the applicant was admitted in Guru Teg Bahadur Hospital is not disputed but that is not the point in question. The applicant's case is fully covered by the decision of the Hon'ble Supreme

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Court in *Surjit Singh Vs. State of Punjab* AIR 1996 SC 1988. That was a case where the appellant while in England had to encounter with the recurrence of his earlier heart problem and as an emergency case, was admitted in Dudley Road, Hospital Birmingham. He under-went Bye-Pass Surgery. He claimed a sum of Rs. 3.00 lacs spent on his treatment in London, borne by his son. In that case, the State of Punjab had put up an argument "that the case of appellant was not that of an emergency but a planned visit to England to have himself medically treated under the care of his son, without subjecting himself as per policy, for examination before the Medical Board". There was no need to examine the truth of this claim because in the case before the Supreme Court, the appellant did not claim the medical expenses incurred in England but pared down his claim to the rates prevalent in Escorts. The Supreme Court held that it was to be hypothetically assumed that the appellant was in India and had not subjected himself to Medical Board Examination. In that case as well as in this OA before me, there is no dispute that reimbursement to the applicant is conceded if he is treated in AIIMS. The Supreme Court had held that right to preservation of one's life is a necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India and is a fundamental right. Their lordships' observed at para 11 as under:

"11. The appellant, therefore, had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to

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stand in queue in the government hospital of AIIMS and could go elsewhere to an alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay the appellant, the rates admissible as per Escorts."

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8. The learned counsel for the applicant cited two other decisions of the Punjab and Haryana High Court, seriatim:

1. Tralok Chander Vs. The State of Punjab and Others Vol. C-XI (1995-III) The Punjab Law Reporter 529; and
2. K L Kohli Vs. The State of Punjab and Others Vol. C-XI (1995-III) The Punjab Law Reporter 88.

In the first case, the petitioner had undertaken the treatment at Escorts Heart Institute and Research Centre which is recognised as one of the hospitals for the treatment in which full reimbursement is allowed. In the second case, the petitioner had obtained a post-facto permission. It was held that he was entitled to get the expenses reimbursed. Thus, the non-authorisation by one

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of the recognised or designated hospitals cannot be a ground for depriving the applicant's claim. The admitted position in this case is that the facilities for kidney transplantation are also available at AIIMS. The genuineness of the claim and the need for kidney transplantation are not disputed by the respondents. The respondents themselves have allowed the claim of the applicant to the extent of nearly Rs. 1.00 lac for kidney failure treatment in Guru Teg Bahadur Hospital during 1996. The respondents have no reply to the applicant's representation for kidney transplantation at Sir Ganga Ram Hospital. The reason as to why the applicant preferred Sir Ganga Ram is mentioned at para 3 of Annexure P-V i.e. letter dated 11.4.1997 addressed to Respondent No. 3.

" In AIIMS kidney transplantation is carried out only with those who have blood relations. In my blood relation no one is having the same blood group as mine. Secondly there is a long queue for such operations in AIIMS."

9. The following orders of CAT on the subject of reimbursement of medical expenses in similar situations may be referred:-

1. Yash Pal Gupta Vs. Union of India and Others 1997 (1) ATJ 340.
2. Kamal Sabharwal Vs. Union of India and Others 1997 (1) ATJ 68.
3. Dr. G P Srivastava Vs. Union of India and Others 1997 (2) ATJ 200.
4. R S Sharma Vs. Union of India and Others 1997 (2) ATJ 205

10. The head-note (9) in the case of Smt. Kamal Sabharwal is as under:-

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"Medical Expenses - Reimbursement of-In case of emergencies, if the treatment is obtained in hospitals recognised under CGHS or under the CS (MA) Rules -Incumbent entitled to reimbursement in full in accordance with the rules- Not necessary that a person under such circumstances to be referred by the authorised medical attendant."

The learned Judge cited, at length, the instructions of the Govt. in the Swamy's Book of Medical Attendance Rules. In Appendix VIII, while referring to OM No. F 26 (10)-E. V(B)/74, dated 16th July 1974, it has been mentioned that in emergent cases,serious nature of disease etc., the persons on the spot may use their discretion for taking the patient for treatment in a private hospital, in case no Govt. or recognised hospital is available nearer than the private hospital, and subsequent to such treatment in a private hospital, the patient can be transferred from the private hospital to a Govt./ recognised hospital after the emergency is over for further treatment. It has been stressed that the patient while he is in a private hospital should act according to the advice of the hospital authorities. The patient or the Govt. official entitled to medical

reimbursement can get reimbursement for charges in such private hospital under the rules. It has been clarified that under these rules, it is not envisaged that there is any overall total ceiling on the amount of medical reimbursement, but rules put a ceiling on individual items, subject to the admissibility of the ceiling prescribed by those to whom powers have been delegated in respect of treatment obtained in private hospitals not recognised under C.S. (MA) Rules, in emergencies. In case of treatment for coronary by pass surgery in this appendix, it has been clarified that on the basis of advice of a cardiologist of a Govt. Hospital, a referral letter is to be issued for some hospital for treatment and the choice of the recognised hospital where the govt. servant would like to avail of the treatment is left to the beneficiary himself subject to the condition that no travel expenses will be reimbursible, if Coronary Artery By-pass Graft facilities are existing in that particular city. For this purpose, all recognised private hospitals are required to maintain proper documentation and records in respect of beneficiaries admitted. Annexure to this further shows that Batra Hospital and medical centre is one of the private hospitals recognised by the Govt. for Coronary By-pass Surgery. As to whether a person is entitled to reimbursement of medical bills if he has not been formally referred by the authorised medical attendant, Govt. of India has issued OM No. 14012/9/75-MC(MS), dated 18.6.1982, which clarifies that even though a person has not been formally referred by the authorised medical attendant, in case of emergencies, if the treatment is obtained in hospitals recognised

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under the CGHS or under the CS (MA) Rules 1944, and even though the procedure prescribed therefor had not been followed, the reimbursement may be allowed to full in accordance with the rates as approved under the CS (MA) Rules, 1944 or under the CGHS as may be applicable subject to the extent admissible under the 1944 Rules, and that the beneficiary will not be entitled to travelling and daily allowances for such treatment. The present case has to be examined in such a situation.

11. In State of Punjab & Others Vs. Mohinder Singh Chawla etc. 1997 (1) SCSLJ 204 : JT 1997 (1) SC 416.

The head note of the same reads as below:-

"Medical reimbursement to Govt. servants or retired Govt. servants-Held that policy decision of 1991 of State Govt. refusing re-imbursment of diet, stay of attendant or stay of patient in hospital/hostel is not approved. - Expenses incurred towards room rent for stay in hospital are in integral part of treatment to Govt. servant - High Court held to be right to re-imbursing expenses towards room as in-patient-Contention of State Govt. refusing inpatient charges for heart treatment in Escorts, Hospital and/or AIMS rejected-Govt's constitutional obligation to reimburse the expenses. Right to health is integral to right to life and Govt. has constitutional obligation to provide the health facilities to its servants or retired servants - Where employee requiring specialised treatment in an approved hospital, duty of Govt. is to bear or re-imburse expenses."

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12. Under these circumstances, on the mere ground, that the applicant had not availed of the facilities at AIIMS should not deprive him of the entire reimbursement claim altogether. The Hon'ble Supreme Court decisions in Surjit Singh's (Supra) case squarely applies to the facts of this case. The respondents should restrict the claim of the applicant to the extent of the expenditures which he would have incurred, if he had been operated for kidney transplantation in AIIMS. I also direct that the payments made to the kidney donor has to be fully allowed and cannot be restricted. The restriction of expenses to AIIMS rates is limited only to the operation and other expenses of the applicant's kidney transplantation at Sir Ganga Ram Hospital.

13. For this purpose, I would direct the Secretary, Department of Medical & Public Health, Govt. of NCT, Delhi who is impleaded in this OA as respondent No. 2 to decide the question as to what would be the expenditure under such circumstances, if the operation was conducted in AIIMS. If he is so advised, he may send the complete details of certificates, receipts, bills and background history (Annexures P-III, P-IV & P-IV) to the Director of AIIMS to determine what would be the expenditure for a similar kidney transplantation in AIIMS and elicit his opinion on this. The amount so determined shall be paid to the applicant in the place of the amount claimed.

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14. The respondent No. 2, Secretary, Deptt. of Medical & Public Health, Govt. of NCT, Delhi shall obtain, from the applicant, any further clarification or material data as required by him or by the Director, AIIMS, in this regard, and the applicant shall cooperate and furnish such material to respondent No. 2 without any delay. Respondent No. 2 shall decide the claim and make the payment within a period of 12 weeks from the date of receipt of a copy of this order.

N. Sahu
(N SAHU)
MEMBER (ADMN)

17.4.98

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