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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2959 of 1997 decided on 10.9.1998.

Name of Applicant : Shri J.P. Goyal

By Advocate : Shri George Paracken

Versus

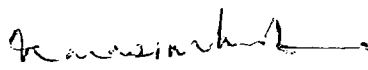
Name of respondent/s Union of India & others

By Advocate : Shri M.K. Gupta

Coram:

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.2959 of 1997

New Delhi, this the 10th day of September, 1998

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

Shri J.P.Goyal, 18/318, Lodhi Colony,
New Delhi.

-APPLICANT

(By Advocate Shri George Paracken)

Versus

1. Union of India through Secretary,
Ministry of Petroleum & Natural Gas,
Shastri Bhavan, New Delhi.
2. Secretary, Ministry of Health &
Family Welfare, Nirman Bhavan, New
Delhi.
3. The Medical Superintendent, National
Heart Institute, 49, Community
Centre, East of Kailash, New Delhi. -RESPONDENTS

(By Advocate Shri M.K.Gupta)


O R D E R (Oral)

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

The relief claimed in this O.A. is for a direction to the respondents to pay a balance of Rs.28,000/- with interest at 18% , and direct respondent no.2 to pay Rs.25,000/- to the applicant as exemplary damages/ compensation for the mental agony caused to him.

2. As laid down by the Hon'ble Supreme Court in the case of Dr. H. Mukherjee Vs S.K.Bhargava, (1996) 4 SCC 542 this Court is not competent to award damages or compensation. Relief no.2 is rejected.

3. As the facts laid down herein will show the applicant is not entitled to any interest , the claim for interest at 18% is also rejected.



4. With regard to the claim of Rs.28,000/- the facts leading to the dispute are as follows -The applicant had got an angiography test done on 22.7.1996 at Ram Manohar Lohia Hospital. He was advised a by-pass surgery at the National Heart Institute (in short "NHI") on 7.8.1996. The Ministry of Health by their circular dated 20.7.1994 approved the package at Rs. 72,000/-. It is stipulated in their circular dated 20.7.1994 that "the above rate would remain in force for a period of two years and no request for revision of rates will be entertained during this period". Till 31.7.1996 the National Heart Institute was only charging Rs.72,000/-. As the applicant's operation was done on 7.8.1996, the NHI in the meanwhile having revised and enhanced its package rate from Rs.72,000/- to Rs.1,00,000/- the applicant was demanded the revised package rate of Rs. 1 lakh. The applicant suffering by way of a heart ailment cannot afford to wait and play with his life. He accordingly paid the amount cash down and underwent his operation. He was only reimbursed Rs.72,000/-. The respondents have refused the additional claim on the ground that the revised rates have come into force by memo no.S-11011/ 16/94- CGHS Desk-II/ CMO (D)/ CGHS (P) Government of India, Department of Health letter dated 18.9.1996. The respondents state that this OM is prospective in operation and would not entitle the applicant to claim the enhanced package retrospectively. They state that the OM dated 20.7.94 was in force when the applicant underwent the operation. The applicant

[Signature]

states that during the period between 20.7.96 and 18.9.96 the revised Government package should be understood to be in force.

5. The learned counsel for the respondents have drawn my attention to the latest decision of the Hon'ble Supreme Court in State of Punjab and others Vs. Ram Lubhaya Bagga etc.etc., JT 1998 (2) SC 136. It is the submission of the learned counsel that the decision of the Hon'ble Supreme Court in Surjit Singh Vs. State of Punjab, JT 1996 (2) SC 28 should be read harmoniously with the latest decision of three judges of the Hon'ble Supreme Court. In this decision the question decided was whether the amount payable on account of medical reimbursement can be put within permissible limit considering the scarce resources of the State. While the Hon'ble Supreme Court held it is the obligation of the State to provide facilities for improving health to make the life meaningful within Article 21 of the Constitution, yet the amount payable can be put under permissible limit. In that case medical reimbursement for treatment at Escorts was claimed. Escorts was not one of the recognised hospitals. Under the new policy of 1995 private hospitals were excluded and restraints put are that in such eligible cases, the rates of AIIMS would be re-imbursable. The Hon'ble Supreme Court also clearly laid down that on the facts of the case wherein the Escorts rates were paid in the cases of operation done in London, cannot be treated as precedents.

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6. I have heard the submissions of the learned counsel for the parties.

7. I am of the view that the claim of the applicant for reimbursement of an additional amount of Rs.27,000/- is entitled to prevail. The Hon'ble Supreme Court has held that all circulars beneficial to the subject should be read in favour of the subject. Benevolent circulars issued by the Central Board of Direct Taxes even if they deviate from the legal position are required to be followed by the Income-tax authorities since such circulars would go to the assistance of assessee. [Rajan Ramkrishna Vs. CWT, (1981) 127 ITR1, 7 (Guj); Laxmichand Hirjibhai Vs. CIT, (1981)128 ITR 747,752-3 (Guj), relying on Navnit Lal C. Javeri Vs. K.K.Sen. (1965)56 ITR 198 (SC); Ellerman Lines Ltd. Vs. CIL. (1971)82 ITR 913(SC).

8. The facts in this case are that by the circular dated 20.7.1994 a package was fixed. It is clearly stipulated in that circular that this package will be operative for a period of two years. Therefore, either I should read that there was a vacuum after 20.7.96 till the new circular came into force or I should read that the circular should continue, or the new instructions would take its place. The whole object of issuing this circular is not primarily to impose a limit. It is primarily to assist a citizen in securing medical relief. This is a case where the applicant was treated in a recognised hospital. It is nobody's case that the

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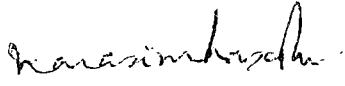
recognition was declared void or the enhanced package of the NHI was declared void. For the period between 20.7.1996 and 18.9.1996 I cannot read a vacuum. I cannot also impute to either the Government or the NHI that during the interregnum, they should always read the restrictive or constructive state of affairs rather than enlarged or beneficial interpretation. This revised circular in my opinion must be read as continuous to the expiry of old circular. For this purpose, there are precedents. In a case where the incentive benefit expired on a particular date and the revised incentive benefit has started from a subsequent date, the Madras Bench of the Tribunal has held that the revised incentive benefit will commence from the date from which the earlier incentive benefit ceased to operate. This Tribunal has an occasion to examine this aspect in the case of Shri S.K.Prasad Vs. Union of India & others, O.A. No.942 of 1996 decided on 25.11.1997, an extract of which is reproduced below -

"By a letter dated 4.9.1990 the Railway Board clarified that the scheme issued on 29.5.1989 would be prospective in its application and the cases occurring between 30.6.1988 and 29.5.1989 would be governed by the earlier 1966 incentive scheme. When this letter dated 4.9.1990 was challenged before the Madras Bench of the Tribunal in the case of P.M.Babu Vs. Union of India and others, O.A. No.1013 of 1990 decided on 28.1.1992, the Madras Bench quashed the letter dated 4.9.1990 and held that the Railway Board's letter dated 29.5.1989 came into force with retrospective effect from the last day of the extension of earlier scheme, namely, 30.6.1988. The Tribunal laid emphasis on the word 'continue' in the 1989 scheme."

Harasimha

9. As long as the incentive and the benefit are primarily for the purpose of ensuring the health and well being of the subject and the primary purpose was not to ensure or enforce a particular monetary limit, the Courts must always lean in favour of such an interpretation which would be beneficial to the subject. Let us take for instance that after two years the package is enhanced to Rs.2 lakhs and if there is a gap of 7 days. Would that mean that during that gap the patient will not be in a position to claim reimbursement, other things remaining the same? I think not, as we have to always look into the prime purpose for which the administrative instructions are issued. I am of the view that the decision in the case of Ram Lubhaya Bagga (supra) is applicable to instances where the subject enters into for treatment in a non-recognised hospital where the cost of treatment is high. Where the treatment is done at recognised medical institution with which the Government has entered into an agreement for package rate, a mere gap in an unforeseen new rate would not be read to the disadvantage of the subject.

10. For the above reasons I direct respondent no.1 to pay to the applicant Rs.27,000/- by way of additional claim within a period of 8 weeks from the date of receipt of a copy of this order. As stated above the claim for interest as well as claim for compensation and damages are rejected. The O.A. is partly allowed. No costs.


(N. Sahu)
Member (Admnv)

rkv.