

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.315/2000

New Delhi, this 20th day of April, 2001

(17)

Hon'ble Shri M.P. Singh, Member(A)

Shri P.K. Kartha  
Flat No.119, Sahyog Apartments  
Mayur Vihar Phase I, Delhi-91 .. Applicant

(By Shri Hari Shankar, Advocate)

versus

Union of India, through

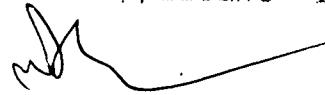
1. Secretary  
Ministry of Health & Family Welfare  
Nirman Bhavan, New Delhi
2. Chief Medical Officer(R&H Section)  
CGHS, Nirman Bhavan, New Delhi .. Respondents

(By Shri V.S.R.Krishna, Advocate)

ORDER

The applicant has challenged the order dated 11.2.99 passed by R-2 rejecting his claim for reimbursement of medical expenses to the tune of Rs.13,069.60.

2. The facts of the case are that the applicant was Law Secretary to the government of India and also served as Vice-Chairman in the Principal Bench of the Tribunal. After demitting the office, he went to his home town at Vaniankuklam, Kerala which is his permanent address. The applicant is also a subscriber to the CGHS which has issued him a card for life. In March, 1998, the applicant has an accidental fall while on morning stroll and suffered bone injury on his left forearm. The forearm had to be operated at two places with metal and screw etc. and with steel rod. As there was no CGHS facility or Government Hospital, the applicant was hospitalised and operated at the Seventh-Day Adventist Hospital, Ottapalam, Kerala. The applicant incurred



medical expenses to the tune of Rs.13,069.60. He made a representation to the Chief Medical Officer, R&H Section, CGHS requesting for reimbursement of the above mentioned medical expenses, who by letter dated 19.8.98 rejected the claim of the applicant on the ground that the treatment was taken from a private unrecognised hospital in a non-CGHS area.

(18)

3. Respondents in their reply have stated that medical reimbursement of CGHS beneficiaries are covered by CS(MA) Rules, if the beneficiary is a serving government employee and the treatment is taken in a non-CGHS area. Though the Ministry of Health & FW vide order dated 30.9.99 has made pensioners eligible for reimbursement of medical expenses in case where treatment is taken in a non-CGHS area, under certain circumstances, the effect of the said order is only from the date of issue i.e. 30.9.99. In this case the treatment was taken prior to this and hence the applicant's claim is not covered within this order and hence had to be rejected.

4. Heard the rival contentions of the contesting parties and perused the records.

5. During the course of the arguments, learned counsel for the applicant stated that as there was no Government Hospital in or around Vaniankulam, the treatment was taken in a private hospital and the same was in emergent condition. The charges are very moderate and therefore be reimbursed to the applicant. However the counsel for the respondents stated that since the applicant is not covered under CS(MA) Rules, medical reimbursement cannot be made to him.



(19)

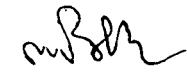
6. The question for consideration is whether medical reimbursement could be made to the applicant who is a CGHS beneficiary. Before looking into this matter, it is also to be examined whether the OA filed by a retired VC/Member is maintainable before this Tribunal or not. In UOI Vs. K.B. Khare & Ors. 1994 Supp.(3) SC 302 it was held that "service in the CAT was held to be judicial nature, and therefore in our considered view the High Court has gone wrong in considering the service in the CAT as re-employment in connection with the affairs of the Union". It has been further held that "In view of the conclusion that the first respondent is not a person re-employed on a post in connection with the affairs of the Union Government, we see no scope whatever for applying CCS(Fixation of Pay of Re-employed Pensioners) Order, 1986. In L. Chandra Kumar Vs. UOI 1997 3 SCC 261 it has been held that "The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional". In this case, Chairman, VC/Members shall be entitled for medical treatment etc., as per Rule 14 of CAT (Salaries and Allowances and conditions of service of Chairman, Vice-Chairman and Members) Rules, 1985. These Rules have been framed in exercise of powers conferred by clause (c) of sub-section (2) of Section 35 of the AT Act, 1985.



(20)

7. In any case Constitution Bench of the Supreme Court has specifically excluded the jurisdiction of the Tribunal to entertain and examine any question regarding the vires of its parent statutes. This Tribunal has, therefore, no jurisdiction to entertain and try the present OA as the applicant was an ex-VC of the Tribunal and he was not an employee of the Central Government. Moreover, it will also be impermissible for the Tribunal to entertain and examine the vires of a statute under which it is constituted. The Tribunal is constituted under AT Act and Rules framed thereunder. It will, therefore, not be open to <sup>1</sup>me to question the very law under which it owes its exstence.

8. The present OA, in the circumstances, is returned to the applicant for presentation to the proper forum.

  
(M.P. Singh)  
Member(A)

/gtv/