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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2611/2004

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New Delhi this the 26th day of August, 2005.

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

Smt. Vinita, Tyagi
Police Sub-Inspector (W/S 1),
Serving in Delhi Police,Now R/o Q.No.1, Type-IV,
Police Station Krishna Nagar,Delhi-110 051.
-Applicant

(By Advocate Shri V.P.S. Tyagi)

-Versus-

1. Union of India through Secretary,
Ministry of Health and Family Welfare,
(Department of Health), Nirman Bhawan,
New Delhi & Ors. -Respondents

(By Advocate Shri A.K. Singh and Ms. Kanika Vadhera, proxy for Mrs. Avnish Ahlawat, Advocate)

1. To be referred to the reporters or not? Yes/~~No~~ yes

2. To be circulated in the outlying Benches or not? Yes/~~No~~ yes

S. Raju

(Shanker Raju)
Member (J)

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(By Advocate Shri A.K. Singh)

2. The Chief Secretary,
Govt. of NCT Delhi.

3. The Commissioner of Police,
Police Head Quarters,
Vikas Marg, New Delhi.

4. Deleted vide Court's order dated 22.8.2005.

5. The Dy. Commissioner of Police,
Security, Vinay Marg,New Delhi-23.
-Respondents

(By Advocate Ms. Kanika Vadhera, proxy for Mrs. Avnish Ahlawat, Advocate)

O R D E R

By virtue of this OA applicant impugns respondents' order dated 20.1.2004 whereby medical reimbursement has not been accorded fully to her. A direction is sought to reimburse an amount of Rs.13,417/- along with 12% interest and a direction to respondent No.1 to review their OM to incorporate liability for

reimbursement of the expenditure incurred by the employee beyond the package deals in case of post operational and follow up treatment.

2. As per Government of India, Ministry of Health and Family Welfare OM dated 18.9.96 in case of treatment incurred on caesarean section an amount of Rs.7,000/- has been prescribed as the package rate. Applicant, who is a woman Sub Inspector in Delhi Police, had undergone a caesarean operation for delivery in Anand hospital duly recognized by the CGHS. Being a CGHS beneficiary and having no facility for indoor patient facility at CGHS dispensary in Luxmi Nagar, Delhi, to which she was attached, an amount of Rs.19,717/- was incurred, which included Rs.3217/- as cost of medicines. On discharge from the hospital applicant preferred a claim with essentiality certificate, which culminated into medical reimbursement of a sum of Rs.6300/-, disallowing a sum of Rs.13,417/-. A representation to this effect when not paid any heed to led to filing of OA-286/2003, which was disposed of on 27.11.2003, with a direction to respondents to pass a reasoned order.

3. As respondents passed an order on 20.1.2004 stating that package deal rates as per serial No.21.5 LSCS were restricted to Rs.6300/- as admissible to CGHS beneficiaries, the rest of the payment is denied, leading to filing of the present OA.

4. Learned counsel of applicant contends that the package deal rates are defined in clause 5 of the OM dated 18.9.96, which inter alia includes admission charges, accommodation charges, anesthetic charges, cost of drugs and surgical sundries.

As such relying upon the decision of the Division Bench of the Chandigarh Bench of the Tribunal in **R.P. Mehta v. Union of India & Ors.**, 2002 (3) SLJ CAT 198, which has been delivered in the context of treatment under CCS (Medical Attendance) Rules, where it is held that treatment includes actual expenses incurred on treatment and also admissibility for reimbursement has been ruled.

5. Though Shri Tyagi states that CCS (Medical Attendance) Rules are not applicable to CGHS beneficiaries, yet under one Government two different criteria and standards cannot be maintained which would be invidious discrimination violative of Article 14 of the Constitution of India.

6. In the above backdrop it is stated that applicant has been discriminated against as in the case of similarly situated persons claims have been allowed.

7. On the other hand, learned proxy counsel appearing for respondents vehemently opposed the contentions and stated that in pursuance of directions of this Tribunal the reasoned order passed where medical reimbursement has been made to applicant as per the package deal rates. As CCS (Medical Attendance) Rules are not applicable, the decision cited is distinguishable.

8. Learned counsel has also relied upon the decision of the Apex Court in **State of Punjab v. Mohan Lal Zindal**, (2001) 9 SCC 217 to contend that medical reimbursement is reimbursable only at AIIMS rates.

9. I have carefully considered the rival contentions of the parties and perused the material on record.

10. Unlike CCS (Medical Attendance) Rules, which are not applicable to CGHS beneficiaries where there is a provision under Rule 2 (h) where treatment is defined as use of all medical and surgical facilities available at the Government hospital in which the government servant is treated and includes other method as well. But in the OM which governs grant of medical reimbursement treatment has not been specifically defined. However, clause 2 of OM dated 18.9.96 and clause 5 provide as under:

> "2. It has further been decided that the CGHS beneficiaries taking treatment in the above mentioned hospitals with the prior permission of the CGHS/Offices appointed by the Government will be entitled for reimbursement as per the package deal rates given in the Annexures I and II. The rates for indoor treatment mentioned in Annexure I and II are for Semi Private Category. For Private Ward there will be an increase of 15% and for General Ward there will be a decrease of 10%."
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> "5. The package deal rates include admission charges, accommodation charges, ICU/ICCU charges, monitoring charges, operation charges, anesthetic charges, operation theatre charges, cost of drugs and disposable, surgical sundries, physiotherapy charges. This will not include diet, Telephone charges, TV charges and cost of cosmetics, toiletry, tonics and medicines advertised in mass media, which are not reimbursable."

11. If one has regard to the above, except diet and TV charges, cost of cosmetics, tonics and medicines advertised in mass media, all other charges including admission charges, accommodation, monitoring, operation theatre charges, cost of drugs are included in the package deal. However, under clause 21.5 caesarean section in obstetric case is confined to Rs.7,000/-

as package rates. This Tribunal in a Division Bench while dealing with provisions of CCS (Medical Attendance) Rules in **R.P. Mehta** (supra) after reproducing the definition of treatment observed as under:

> "Reading of these provisions leads this Bench to the only possible conclusion that stand taken by respondents is infact opposed to the provisions of these rules itself. Infact various orders issued under these rules would go to show that all items covered under the definition of Medical Attendance and 'treatment' shall have to be reimbursed by the Government to the extent of full amount paid by the Central Government employee who may have incurred the said amounts for the purposes falling under these two terms. All the amounts spent by such employee on pathological, bacteriological, radiological or other methods of examination for the purpose of treatment as are available in Government Hospitals or consulting room or any other nearest Government Hospital which reconsidered necessary by the Authorised Medical Attendance and even amounts spent on consultation with a specialist or other medical officer in Government Service as the Authorized Medical Attendant certifies shall have to be reimbursed. Considering definition of 'treatment' read with provisions of Rule 6, all the expenses incurred by Government employees which amounts spent on medical and surgical facilities available at the Government Hospitals, in which the Government servant is treated shall have to be reimbursed in full as such employee is entitled to free of charge medical attendance and treatment. The views expressed, if any, earlier by this Bench to the contrary shall have to be treated to be per-enquirium as provisions of these rules were specifically never taken into consideration and onoy general law particularly based on some judgments given based on different set of rules particularly, Punjab Civil Services (Medical Attendance) Rules, 1944, were considered. Though, prior to Ram Lubhaya Bagga's case, this Bench had consistently ordered reimbursement of full amounts spent on treatment."

Further, the following observations have been made:

> "6. With the prior consent of Director, Health Services, even the amounts spent having been paid to Private practitioners/institutions, on the advice of

the Medical Officers on non-availability of these particular facilities in Government Hospitals are required to be reimbursed. Government of India has issued number of orders and later on guiding principles of regulating medical claims which are reproduced in Swamy's Compilation of 'Medical Attendance Rules' where the meaning of Medical Attendance and Medical Treatment have been explained by drawing a distinction between them. Rule 5 provides for consultation with specialist if the Authorised Medical Attendant is of the opinion that such consultation is required. Not only the Government employee would be entitled to reimbursement of expenses so incurred but is entitled to even traveling allowances for the journeys to and from the Headquarters of the Specialist or other medical officers. Similarly guidelines have been issued under Rule 6. We need not reproduce all these in detail. Suffice it to say that reading of these provisions leads to only on conclusion that a Central Government employee is entitled to full reimbursement of the expenses incurred by him on 'medical attendance' as well as 'medical treatment'.

7. Coming to power to limit the reimbursement of expenses incurred by a Central Government employee, we find that such provisions exist only under Rule 8 in addition to limiting the reimbursement less than total amounts which may be incurred on repeated consultations from hospital or medical attendants. Rule 8 provides that charges for services rendered in connection with but not included in Medical Attendance on, or treatment of a patient entitled to free of charge medical attendant or treatment shall be determined by the various Medical Attendant which had been paid by the patient. On a question as to whether any service is included in the medical attendance or treatment, it has to be referred to Government and decision of the Government is to be final. Certain orders have been issued under this rule as well. It would thus become clear that certain medical facilities which are not covered under either the terms 'medical attendance' or 'medical treatment' Government can limit the expenditure on treatment, which is reimbursable. Cost of denture, cost of various artificial appliances, cost to purchase of such appliances, their replacements, their repair, hearing aid, hip joint etc. etc. May fall within the meaning of medical facilities other than items falling under medical attendance and medical treatment. Government has been issuing various OMs. From time to time listing such artificial appliances some of

which are, dating 30th January, 1984, 20th November, 1987, 26th September, 1994. They have issued orders regarding charges being reimbursable on number of treatments to be taken by Government employees including C.T. scan. Charges for surgery, post operative care of donor of Kidney. The OM issued by the respondents, which has been mentioned in the present case is Annexure A-5, apparently an OM issued under Rule 8. All that it provides is that Government has conveyed approval for reimbursement of medical expenses for specialized treatment like heart, kidney, coronary, at par with CGHS beneficiaries and only package deal arrangement with Private Hospitals for CGHS beneficiaries are allowed. We find force in the contention of learned Counsel for applicant that this order, if it falls under the provisions of Rules 3 and 6 read with definition of medical attendance and medical treatment shall have to be reimbursed. We declare the application of the OM, Annexure A-5 to that extent only which shall have to be read subject to Rules 3 and 6. To the extent it contravenes provisions of these rules, that part shall have to be ignored.

8. Coming to the applicability of the ratio of judgment in the case of Ram Lubhaya Bagga (supra), we agree with the learned counsel for applicant that this judgment deals with Punjab Medical Attendance Rules applicable to employees of State of Punjab or persons covered under those Rules. Hon'ble Supreme Court considering the provisions of those set of rules have upheld the policy decision of the State of limiting/restricting the expenditure of Government liability for reimbursement. The set of rules applicable to Central Government employees is distinct and separate from Punjab Rules. We find the above view mentioned by us, in the judgment of Hon'ble High Court of P and H in the case of Madhu Sharma v. The Principal, Kendriya Vidyalaya, Sector 31, Chandigarh, 1998 (4) SCT 30.The Hon'ble High Court considered the application of 1944 rules on a claim of petitioner for reimbursement of total amount spent by him on medical attendance. Court noticed the ratio as laid down by the Hon'ble Supreme Court in the case of Ram Lubhaya Bagga (supra). It held that in this case petitioner had challenged the policy of Government of Punjab with regard to fixation of allowance. In those set of rules, there was no recommendation made by the CGHS for getting treatment from a private hospital. In the present set of rules, the Court noticed that a number of hospitals had been recognized and

treatment from RML Hospital had been recommended for specialized treatment which was in the approved list. Once the case was recommended by the respondents themselves for getting treatment, it was held that 'to deny the benefit of giving full reimbursement would be contrary to the grant of medical facilities'. We find that the Hon'ble High Court considered the decision of the Government of India limiting the amount of medical attendance for different type of treatment and surgeries. In that case also the stand of official respondents was that they could limit the expenditure of their liability for reimbursement under the Government of India circulars to the extent provided in that. Hon'ble High Court after considering the provisions of the rules, held that the Government servant was entitled to reimbursement of the full amounts incurred by her for medical treatment/attendance in that case.

9. No administrative orders can be issued contrary to the statutory rules and if such orders are issued and it is found that those are opposed to the specific provisions of the rules, which in the present case are Rules 3 and 6 contrary to which Annexures A-5 and A-6 have been issued, it cannot be sustained in the eyes of law and has to be quashed."

12. The Apex Court in **State of Punjab v. Mohinder Singh Chawla**, AIR 1997 SC 1225, regarding admissibility of reimbursement of room rent beyond package rates for medical reimbursement made the following observations:

"11. We are unable to agree with the stand taken by the Government. It is seen that the Government had decided in the proceedings dated October 8, 1991 to reimburse the medical expenditure incurred by the Punjab Government employees/pensioners and dependents on treatment taken abroad in private hospital. It is stated in paragraphs 2 and 3 that the Government has prepared a list of those diseases for which the specialized treatment is not available in Punjab Government Hospitals but it is available in certain identified private hospitals, both within and outside the States. It was, therefore, decided to recognize these hospitals for treatment of the diseases mentioned against their names in the enclosed list for the Punjab Government employees/pensioners and their dependents. The terms and conditions contained in the letter under

reference would remain applicable. The Government can, however, revise the list in future. The name of the disease for which the treatment is not available in Punjab Government hospitals is shown as Open Heart Surgery and the name of the private hospital is shown as Escorts Heart Institute, New Delhi as one of the approved hospital/institution. Thus, Heart Institute is authorized and recognized institution by the Government of Punjab. Consequently, when the patient was admitted and had taken the treatment in the hospital and had incurred the expenditure towards room charges, inevitably the consequential rent paid for the room during his stay is integral part of his expenditure incurred for the treatment. Consequently, the Government is required to reimburse the expenditure incurred for the period during which the patient stayed in the approved hospital for treatment. It is incongruous that while the patient is admitted to undergo treatment and he is refused the reimbursement of the actual expenditure incurred towards room rent and is given the expenditure of the room rent chargeable in another institute whereat he had not actually undergone treatment. Under these circumstances, the contention of the State Government is obviously untenable and incongruous. We hold that the High Court was right in giving the direction for reimbursement of a sum of Rs.20,000/- incurred by the respondent towards the room rent for his stay while undergoing treatment in Escorts Heart Institute, New Delhi."

13. Differential treatment and discrimination to the similarly circumstanced in the matter of medical reimbursement by the Government cannot pass the test of reasonableness enshrined under Article 14 of the Constitution of India. If a Government servant who is covered under CCS (Medical Attendance) Rules by way of treatment and post operative charges, including cost of medicines etc. when indoor facilities are not applicable can be reimbursed, denying the same to the CGHS beneficiaries who are also Government servants is not an intelligible differentia and I do not find any reasonableness with the objects sought to be achieved. The aforesaid discrimination in a welfare State by

the Government is an anti thesis to law of equality enshrined under Article 14 and reiterated and laid down by a Constitution Bench of the Apex Court in **D.S. Nakara v. Union of India**, 1983 SCC (L&S) 145.

14. As regards reimbursement, a Bench of this Tribunal in OA-966/2004 in **Pramod Kumar v. Union of India & Ors.**, decided on 21.2.2005, relying upon the decision of the High Court Delhi, held as follows:

> "31. Recently the High Court of Delhi in **J.K. Saxena** (supra) while referring to the decision of Division Bench observed as under:
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> "4. Reference may be invited to the decision of this Bench in V.K. Gupta v. Union of Inia reported at 97 (2002) Delhi Law Times 337 and a decision of the Division Bench in Sqn. Commander Randeep Kumar Rana Vs. Union of India (WP(C) No.2464/2003). The Division Bench in the above cited case had, while dealing with the amount charged in excess than the package rate, held as under:-
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> 'Now we come to the plea which has been taken by the respondent in the counter affidavit. It has been contended in para 11 of counter affidavit that it is the duty of the citizens to see and ensure that such recognized hospital do not charge excess of the package rates. How a citizen can ensure that a hospital does not charge over and above the package rate? The power to lay down guidelines is with the respondent. A citizen is a mere spectator to what State authority do and decide. If the hospital has charged over and above the package rate, the respondent is under an obligation to pay such charges as the petitioner has incurred over package rates at the first instance and if in law State can recover from the hospital concerned, they may do so but they cannot deny their liability to pay the Government employee, who is entitled for medical reimbursement.'
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> In view of the foregoing dictum, as laid down by the Division Bench, petitioner is entitled to reimbursement of the full amount. A writ of mandamus shall issue to the respondent to pay the balance amount of Rs.36,000/- to the petitioner

within six weeks from today. In case, payment is not made, petitioner would also be entitled to interest @ 9% per annum on the aforesaid amount in future."

32. If one has regard to the above the Division Bench decision of the High Court of Delhi is binding on me and as per it if the hospital has charged more than the package rate it is for the State to recover it from the hospital but does not deny the right of the government servant to get the actual expenses reimbursed.

33. Recently the Principle Bench of this Tribunal in OA-131/2002 (supra) decided on 22.12.2004 made the following observations:

"20. Counsel for respondents has also relied upon M.L. Kamra v. Lt. Governor & others III-2003 AISLJ 304 where reimbursement claim of a State Government employee, for taking treatment at Apollo hospital, was declined by the Court. However, it is not the case of the applicant because it was the case of the employee who has gone to the hospital of his own choice and Hon'ble Supreme Court had allowed the reimbursement of the claim made by the employee. Counsel of the respondents also cited Nirupam Pahwa vs. Union of India and others in OA-2516/2002 decided on 14.7.2003 where the Railways had restricted the reimbursement of the medical claim to the Railway employee to the rates prescribed at the Government hospital for such treatment. The OA was dismissed by the Tribunal. It was held that the applicant had chosen the private hospital for treatment of his wife since he wanted her to be treated by certain doctors who are working for the private hospital chosen by the applicant. It is not a case of emergency treatment. In Northern Railway Section Officer/Assistant Audit Officers Association versus Union of India and others OA-3309/2001 decided by the Principal Bench on 31.03.2004 wherein the facility of Class-A Pass availed by them as Gazetted Officers had been withdrawn since the grade in which the applicant was working was a non-Gazetted grade in the Railway and in view of the judgment of the Hon'ble Supreme court dated 20.04.1993. It was observed that the issuing passes/PTO was within the prerogative of Ministry of Railway/Railway Board and he facilities provided to the Railway employees would be subject to the policy guidelines laid down by the department. The judgment does not throw light on the question which requires determination

in the present case. Counsel for respondent next cited H.C. Bhandari vs Union of India OA-1023/2003 decided on 20/07/2004. It was a case where the respondents were directed to consider the case of the reimbursement of medical expenses of Railway employee taken at Escorts Hospital at the rate prescribed at AIIM in light of the judgment of the Hon'ble Supreme Court referred to. The judgment also come to the rescue of the respondent in this case because of its own distinguishing features. Firstly, in the present case reference has already been made to the AIIMS for treatment of the patient, secondly, the treatment was taken at a recognized hospital, thirdly, the treatment was taken at an emergency. Counsel for respondents had himself suggested that the reimbursement of the claim may be restricted to the rates prescribed at AIIMS. The Apollo Hospital was a recognized hospital and expenses for treatment undertaken there could have been reimbursed as per rule had the patient been referred to that hospital. The Central Railway Hospital had, in fact, referred the patient to the AIIMS where on account of non-availability of bed she could not be given emergency treatment. To save her life the patient was admitted in the Apollo Hospital which was nearest to the place where the need of emergency treatment arose. It was also a recognized hospital.

21. For the reasons stated above, the rejection of the claim of the applicant for treatment by the order impugned in this case is not sustainable. It is, accordingly, set aside. It is directed that the respondents shall give reimbursement to all the expenditure incurred by the applicant on the emergency treatment of his mother Smt. Bilquis Fatima taken at Apollo Hospital at the same rate at which it would have reimbursed the medical claim had the treatment been taken by the patient on referral to the said Apollo Hospital by the Central Hospital of the Railways. In the circumstance, the parties are left to bear their own costs."

34. The Courts are not precluded from taking a pragmatic view of the situation being a Welfare State the Medical Attendance Rules and re-imbursement of medical expenses is a beneficial legislation to protect the life of a government servant and it is the duty of the Government to provide necessary infrastructure. It is very unfortunate that except AIIMS no other hospital of the Government is well equipped to meet the exigencies and to facilitate the object of Article 21 in protecting the life of the government servants and

their families. It is high time for the Government to think over it and to provide such an infrastructure to these hospitals by upgrading them to bring at par with other private specialized hospitals. The basic object for recognition of private hospitals was the same. The government servant or his family members when taken seriously ill with all logic and rational and as a normal human tendency seeks the best of the treatment which is available at private hospitals recognized by the Government. On approaching these Institutions it is expected by the government servant that the medical treatment tendered and expenses incurred would be reimbursable within the package rate as specified by the Government. If the hospital charges more there is no attribution to it by the concerned government servant who is helpless and constrained in order to save himself and the members of his family from the verge of death. Bargain arrived at by the private recognized hospitals is not only inhuman but also victimization of government servant as the very condition of their recognition in case a government servant approaches them for treatment is to charge from the Government directly the medical expenses at the package rate. Exceeding the aforesaid amount is neither justifiable nor reasonable. With the limited sources and monthly contribution to the medical scheme even if the state limit finances to the project of health, yet it does not absolve them from strict adherence to the package rates and directives from time to time to the concerned hospitals. I earnestly hope that the Ministry of Health and Family Welfare would ponder over this and take appropriate measures, yet any fault of the government servant on equitable principles and legitimate expectation he cannot be deprived of the actual reimbursement of the amount incurred on the treatment in an emergency, though charged wrongly by the hospital. There are ways and means and resources with the Government to recover the aforesaid amount or to take appropriate measures against the erring Institutions. In that event, law shall take its own course."

15. In the above view of the matter, denial of medical reimbursement in full to applicant when post operative charges and cost of medicines are an integral part of the treatment, as indoor patient facilities are not available in CGHS dispensary applicant cannot be denied remaining amount of Rs.13,417/-.

Accordingly, the reasons assigned by respondents do not stand scrutiny of law.

16. In the result, for the foregoing reasons, OA is partly allowed. Impugned order is set aside. Respondents are directed to reimburse applicant an amount of Rs.13,417/-, within a period of two months from the date of receipt of a copy of this order. However, interest is disallowed.

17. Before parting with I recommend to the Government to have parity in their action in consonance with Article 14 of the Constitution of India. Similar provision like CCS (Medical Attendance) Rules may be incorporated in the OM issued under CGHS Scheme to define treatment and also to include actual charges borne or else to follow the dictate in OA-966/2004 (supra). No costs.

S. Raju

(Shanker Raju)
Member (J)
26/8/2005

'San.'