

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 346 of 1997

Allahabad this the 04th day of April, 2001

Hon'ble Mr.S.K.I. Naqvi, Member (J)

Shri J.K. Bajpai, aged about 60 years, S/o Late
Shri Basant Kumar Bajpai, R/o 107/181, Nehru Nagar,
Kanpur-208012, Retired Chargeman, Grade II(NT), R&E
Small Arms Factory, Kanpur(Indian Ordnance Factories)

Applicant

By Advocate Shri Rakesh Verma

versus

1. Union of India through the Secretary, Defence Production & Supplies, Ministry of Defence, Sena Bhawan, New Delhi.
2. The Secretary, Ordnance Factory Board(A/NC), 10-A, Auckland Road, Calcutta-700001.
- 3: Chief Controller Defence Accounts(FYS), 10-A, Auckland Road, Calcutta-700001.
4. General Manager, Small Arms Factory, Kalpi Road, Kanpur.

Respondents

Shri A. Sthalekar,

By Advocate Shri Ashok Mohiley

O_R_D_E_R (Oral)

BY Hon'ble Mr.S.K.I. Naqvi, Member (J)

Shri J.K. Bajpai while posted as Chargeman Grade II in the respondents establishment had to undergo cardial treatment. First he was admitted in the Central Command Hospital, Kanpur, but for wants of proper facilities there, he had to shift to Escorts Heart Institute and Research Centre, New Delhi. Before proceeding as such, he sought for permission and on the

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recommendation of General Manager vide annexure-44IV dated 19.1.1995, Additional Director granted the permission as per annexure-5. The applicant reported at Escorts Heart Institute and Research Centre, where a package estimate was prepared and handed over to the applicant which was for a sum of Rs.1,85,000/- in respect of the applicant's treatment. With this estimate, the applicant moved for payment of advance money, which was sanctioned to the extent of 80% calculated at Rs.1,48,000/-. This amount was remitted to Escorts Heart Centre vide ^{cheque} dated 24.3.95 and receipt was issued on 09.4.95, copy of which has been annexed as annexure-9. On being back from Escorts, the applicant submitted his medical reimbursement bill, but on scrutiny, in accordance with rules in this regard, it was found that the applicant was entitled for Rs.77,631/- only in ^{view of} accordance with his cadre in service and was required for refund of Rs.70,369/-, which was recovered from his D.C.R.G. The applicant preferred an appeal against this recovery and finding on his entitlement, but the appeal has been rejected vide order dated 21.11.1995 (annexure A-2) on the ground that Clause V of the Rules in this regard restrict the claim as mentioned in the letter dated 20/7/94, which is a direction in this regard. The applicant has come up impugning annexure A-1 dated 11.8.1995 through which his claim has been allowed only to the extent of Rs.77,631/- and the balance of Rs.70,369/- was to be recovered making a total claim of Rs.1,48,000/-, which was advance to the applicant for his treatment. Annexure A-2 is the copy of order on appeal.

2. The respondents have contested the case,

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filed counter-reply with the specific mention that the claim of the applicant has been settled in accordance with rules in this regard in respect of cadre of service of the applicant.

3. Heard learned counsel for the parties and perused the record.

4. Learned counsel for the applicant does not dispute the position as emerging from the rules in this regard but disputes and contests its implementation. In support of his claim, he has referred (1996) 2 S.C.C. 336 Surjit Singh Vs. State of Punjab, in which their Lordships at Apex Court observed in para-11 as under:-

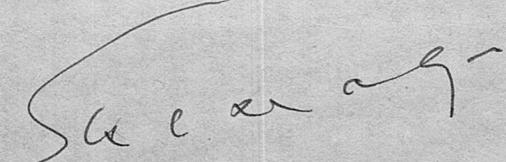
"The appellant therefore had the right to make steps in self preservation. He did not have to stand in queue before the Medical Board the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospitals of AIMS 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 had done it 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 to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question

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posed at the outset is answered in the affirmative. Of course the sum of Rs.40,000 already paid to the appellant would have to be adjusted in computation. Since the appellant ~~did~~ not have his claim dealt with in the High Court in the manner it has been projected now in this court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs."

5. Application of this principle as handed down by the Hon'ble Supreme Court, has been ^{Synthesised} ~~sententia~~ in N.N. Rokade vs. U.O.I. (O.N.No.455/95), decided on March 25th, 1996, and allowed the claim of the applicant therein almost in the similar circumstances as per the case of the applicant in the present O.A. I find in the present matter the applicant has followed the rule in better way and took every steps in respect of his treatment under information and with approval of the competent authority.

6. For the above, the O.A. is allowed and the order dated 11.8.95 is quashed to the extent to which the claim of the applicant for a sum of Rs.70,369/- has been rejected and recovery ordered. The appellate order dated 21.11.95 is also quashed for the reasons as above. The respondents are directed to refund the recovered sum of Rs.70,369/- to the applicant within 3 months from the date of communication of this order without any interest thereon. No order as to costs.


Member (J)

M.M./