

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: THE 11TH DAY OF DECEMBER 1998

CORAM : HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO. 681 OF 1997

Kartar Singh aged about 59 years
S/o Late Shri Jetha Singh
R/o 61/2, Labour Coloni Govind Nagar,
Kanpur.

.... Applicant

C/A Shri Rakesh Verma, Adv.

Versus

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.
2. The General Manager, Ordnance
Factory, Kalpi Road, Kanpur.
3. Senior Accounts Officer (FYS),
Office of the Chief Controller
of accounts (FYS). 10-A, Auckland
Road, Calcutta.

.... Respondents

C/R Shri Ashok Mohiley, Advocate.

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the
Administrative Tribunal Act 1985 for a writ/order/direction
in the nature of certiorari quashing orders dated 21.11.95

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and 3.1.1996 passed by the respondents restricting the medical claim of the applicant from Rs.1,65,000/- to Rs.1,20,000 and making recovery of Rs.8,000/- from the retiral benefit along with mandamus for full reimbursement of medical claim amounting to Rs.1,65,000/- after adjusting the amount which has already been paid, i.e. Rs.1,24,000/- and to direct the respondents to pay Rs.41,000/- along with interest @ 18% per month from 30.4.96 till the date of payment.

2. There is no dispute between the parties in respect of the facts that the applicant while in the employment in the year 1994 developed heart problem, admitted in the hospital run by the respondents, he was referred for medical treatment to the Escort Heart Institute and Research Centre, New Delhi after seeking permission for treatment outside the State, The Escort Heart Institute and Research Centre, New Delhi issued an estimated package deal amounting to Rs.1,65,000, against the aforesaid estimated package deal the applicant was sanctioned Rs.1,32,000/- as advance for medical treatment being 80% of the package deal by respondent no.2 and paid directly to the Escort Heart Institute and Research Centre, New Delhi. The applicant paid Rs.18,000/- as part payment of the balance amount of Rs.33,000/- in cash on 23rd March 1995, the applicant ^{has} undergone open heart ^lsurgery on 4.4.95 at the aforesaid hospital and was discharged on 13.4.95, against the package deal of Rs.1,65,000/- the balance amount of Rs.15,000 was also paid in cash by the applicant on 13.4.95 at the time of discharge, remaining amount of Rs.30,000/- was to be reimbursed but reimbursement is sanctioned only to the tune of Rs.1,24,000/- and Rs.8,000/- is ordered to be recovered from the retiral benefits.

3. The applicant's case, in brief, is that he is entitled to be reimbursed to the tune of Rs.1,65,000/-. The amount

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sanctioned is arbitrary, illegal, hence this O.A. for the above said relief.

4. The respondents denied the allegations levelled against them and stated that the permissible amount has been sanctioned. O.A. is barred by time, hence prayed for dismissal of the O.A. with costs.

5. On perusal of the O.A. we find that it was filed on 30.6.97, vide Annexure-A1 order dated 21.11.95, Rs.8,000/- is ordered to be recovered from the applicant but the said order is to the General Manager, Ordnance Factory, Kanpur and vide Annexure-A2, order dated 3.1.96 the applicant was informed in this respect. Thus the applicant who has challenged the said orders was informed vide order dated 3.1.96. The applicant was having any grievance, he must have challenged the same within one year of receipt of the said order. He failed to challenge within the prescribed period, hence O.A. is barred by limitation.

6. Even if this Tribunal has taken a different view regarding limitation, the applicant is not entitled to any relief for the reasons mentioned below:

7. Applicant's counsel relied on 1997 SCC (& S) 294 State of Punjab and others v. Mahindra Singh Chawla and others decided on 17.12.96. On perusal of the said authority I find that the ratio of the said case is in case of reimbursement of medical expenses, room rent paid to hospital authorities is reimburseable.

8. The applicant's counsel relied on 1997 ATJ 384 Shri Yash Pal Gupta v. Union of India and others decided by Central Administrative Tribunal, Chandigarh on 24.10.97.

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Placing reliance on 1997(1) ATJ 69 Smt. Kamal Sabharwal v. Union of India and others. On perusal of the said authorities I find that in case of emergency in absence of requisite permission if the ^{patient} ~~person~~ is treated in one of the recognised hospital by the respondents' government servant is entitled to reimbursement of the amount of actual amount on treatment. The applicant's counsel further relied on 1998(3) ATJ/Shri Rajpal Sherawat v. Government of N.C.T. of Delhi and others decided on 7.4.98 by Central Administrative Tribunal, Principal Bench, New Delhi. On perusal of the authority I find that non authorisation by one of the recognised or ^{designated} ~~discriminated~~ hospitals cannot be a ground or depriving the claim of government employee for medical expenses. It is further held that the applicant is entitled to expenditure which he would have incurred if he had been operated in recognised or designated hospital.

9. 1998 SCC (L&S) 1021 State of Punjab and others v. Ram Lubhaya Baga and others, The Apex court of Land has held that right to healthy life is an obligation of the State Govt. which is justified in limiting the facilities to the extent permitted by it's financial resources, hence the decision of the appellant State to restrict the financial assistant to its employees for medical treatment within the resources of the State held not violative of article 21. It has further been held in the said authority that the individual's right has to give way to the right of the public at large, right of one is an obligation of another. Thus, principle laid down in State of Punjab & others v. Mohinder Pal Singh Chawla and others decided on 17.12.96 is subject to the restriction by a Full Bench decision pronounced in State of Punjab & others v. Ram Lubhaya Bagga & Ors. decided on 26.2.98 in which the decision of Mohinder Pal Singh Chawla & Surjeet Singh referred to above is considered.

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10. Thus the applicant is only entitled to medical reimbursement to the extent permissible by government orders. The applicant has been reimbursed accordingly. Hence applicant is not entitled to any relief.

11. In the result, the O.A. is barred by time and the applicant is not entitled to any relief even on merits. Hence O.A. is liable to be dismissed and is dismissed accordingly. Looking to the facts and circumstances of the case when the applicant has retired and could not be reimbursed for a huge amount in respect of the medical expenses incurred by him, it is ordered that the parties shall bear their own costs.

MEMBER (A)

J. C. Guin
MEMBER (J)

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