

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application No. 747/97
Transfer Application no.

Date of Decision 6th October 1998

Shri L. N. Tiwari

Applicant(s)

Shri S.S. Tripathi
Counsel for the Applicant

Counsel for the
Applicant(s)

VERSUS

Union of India & ors

Respondent(s)

Shri A. Mohiley

Counsel for the
Respondent(s)

CORAM

Hon'ble Mr. S.L. Jain, Member (J)

Hon'ble Mr. _____

1. Whether Reporters of local papers may be allowed to yes see the judgment ?
2. To be referred to the Reporters or not ? yes
3. Whether their Lordship wish to see the fair copy of no the judgment ?
6. Whether to be circulated to all Benches ? No

PIYUSH —
(SIGNATURE)

PIYUSH/

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABADDATED : ALLD. ON THIS 6th DAY OF OCTOBER, 1998CORAM : HON'BLE SHRI S.L. JAIN, MEMBER(JUDICIAL)ORIGINAL APPLICATION NO. 747 OF 1997Sri L.N.Tiwari S/o Late Shri Ram Agyan Tiwari R/o
838, Baghambari Road, Allahpur, Allahabad.

.... Applicant

C / A : Shri S S Tripathi, Advocate

Versus

1. Commissioner of Income Tax, Allahabad
2. Asstt. Commissioner of Income Tax, 38, M.G. Marg, Allahabad.
3. Dy. Director of Central Govt. Health Scheme, Liddle Road, Allahabad
4. Union of India through the Secretary, Revenue Deptt., North Block, New Delhi

.... Respondents

C / R :- Shri A. Mohiley, Advocate

ORDER(By Hon'ble Shri S.L. Jain, Member (Judicial))

This is an application filed under section 19 of the Administrative Tribunals Act, 1985 for a direction commanding the respondents to reimburse the balance amount of Rs.55,310/- actually incurred in medical treatment and oepn Heart Surgery case in the Escorts Heart Institute, New Delhi.

1. The brief facts which give rise to this O.A. are that the Asstt. Commissioner of Income Tax (Administration), Allahabad already committed and directed to make the reimbursement of the entire amount of expenditure actually incurred in the by pass

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surgery vide letter dated 03.10.1996. The respondents have paid entire amount of expenditure of by pass surgery done in Madras and Bangalore, hence refusal to the applicant amounts to discrimination under article 14 and 16 of Constitution of India. The Apex Court of the land has held that the entire expenses towards medical treatment alongwith fooding and lodging extra incurred is under the constitutional obligation to provide health care to its employees including retired personnel and pay entire expenditure of heart surgery and hospitalsation or total expenditure incurred by its ailing staff. The applicant submitted the bills but the bills to the above extent for which relief is sought, are disallowed, hence this O.A.

2. About facts, there is no controversy between the parties and the question raised only on interpretation of the letter issued by the Commissioner of Income Tax(Administration), Allahabad, Anneuxre -8. The said letter is worth mentioning which is as under:-
"Please find enclosed herewith a draft no.116101 dtd.5 Oct.1996 for Rs.65,680/-related with the subject mentioned above.

2. The amount of this draft is 80% of the admissible amount to Shri L.N.Tiwari. His basic pay is less than Rs.2500/-(Rs.2480/-) and, therefore, he is entitled only for general ward as mentioned in Govt.of India, Ministry of Health & Family Welfare Deptt.of Health, New Delhi 's G.O.No.D-12015/3/91-CGHS(P) dtd.20.07.1994.

3. This is to bring to your kind notice that the rates for this treatment including operation etc. should be charged as per approved rate of Govt. If any extra amount including the cost of valves is required in connection with these, permissible under Govt.rules, expenditure should be incurred and suitable bill should be sent to the undersigned for immediate reimbursement since the patient is a CGHS beneficiary."

3. Para 2 of the said letter clearly mentions with the status of the applicant and entitlement therefor.

4. Para 3 is to the effect that for treatment including operation etc. should be charged as per the approved rate of Govt. but further mentions that if any extra amount including the cost of the Valves is required in connection with these, permissible under the Govt.rules, expenditure should be incurred and suitable bill be sent for reimbursement. The qualifying clause is " permissible under the Govt.rules". Thus, even the Commissioner of Income Tax has not given a blank cheque in favour of the applicant in every expenditure to be reimbursed.

5. Regarding charges as per approved rates of Govt., only a direction was issued but this direction canot be said to be of any assistance or value as Escorts Heart Institute & Research Centre has

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not sent any reply in this respect. It was only a proposal for charging as per approved rates of Govt. The said proposal has never seen the light of the day, hence it cannot be termed as an agreement in this respect.

6. Prior to it, even on 06.08.94 Escorts Heart Institute & Research Centre has clearly informed the Govt. as under:-

"We wish to advise you that condition at sl.no.2(ii) of your above memorandum viz."the hospitals will not charge over and above the package deal rates from the CGHS beneficiaries" is not justified and also is not in accordance with our agreement.

We give a concession of Rs.2,500/- in Angiography cases and Rs.10,000/- in surgery cases over the published schedule of charges to the CGHS beneficiaries.

We would like to point out here that as long back as 1990 it has been agreed to by CGHS that in view of the inability of Escorts Heart Institute and Research Centre to further reduce the charges for angiography and by-pass surgery, CGHS would reimburse to Escorts Heart Institute the same amount as is admissible for treatment at other recognised Institutions, like Apolo, Batra and National Heart and the difference between the rates of Escorts Heart Institutes and the reimbursable portion by the CGHS would be paid by the patient.

In continuation to above, we further draw your attention to your circular S.11011/41/88-CGHS.D.II/CGHS(P) dtd.3rd May, 1990. Para 4 of the said circular specifies that charges over and above the rates prescribed in para 1 would be borne by the beneficiary himself."

7. Thus, Escorts Heart Institute & Research Centre has agreed only for a concession of Rs.2,500/- in Angiography cases and Rs.10,000/- in surgery cases. They have specifically mentioned that "the hospital will not charge over and above the package deal rates from the CGHS beneficiaries" is not justified and also is not in accordance with our agreement. Thus, Escorts Heart Institute & Research Centre, New Delhi was entitled to charge the rates as per their memo dated 06.08.94. Hence, a request from Commissioner of Income Tax vide annexure A-8 which has not seen the light of the day as an agreement is of no assistance to the applicant.

8. Vide annexure A-8 there being a qualifying clause, ^{of view} hence from this point ~~also~~ the applicant is not entitled to any relief whatsoever may be.

9. The applicant has relied on JT 1997(1) SCC 416 State of Punjab & Others V/s Mohinder Singh Chawla & Others. On perusal of the said authority, I find that only the point which is decided is expenditure incurred towards room rent for stay in the hospital are an integral part for treatment to the Govt. servants. Policy decision of the state Governments, refusing reimbursement of diet, stay of

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attendant or stay of patient in hospital/hotel is not approved. I do agree with the said proposition of law but the same authority is of no assistance to the applicant for the reason that what expenditure/expenses are disallowed to the applicant, is not specifically alleged by the applicant or the respondents, hence the expenses /expenditure which are disallowed cannot be said to be the expenditure/expenses incurred on diet, stay of attendant or stay of patient in hospital/hotel.

10. The learned counsel for the applicant relied on AIR (1996) SCC 2710 Ratan Kumar Tandon & Others V/s State of Uttar Pradesh for the proposition that administrative instructions do not have over-riding effect on the operation of the Act & Law laid down by the Hon'ble Supreme Court. The said proposition is laid down in Land Acquisition Act and for medical reimbursement, there is no such Act against which Govt. has issued any administrative instruction. Regarding law laid down by the Hon'ble Supreme Court, it is suffice to say that it doest not contravene even any law laid down by the Hon'ble Supreme Court.

11. The learned counsel for the applicant relied on (1996) 2 SCC 336 Surjeet Singh V/s State of Punjab & Others. The said authority only lays down that in view of the claimant's fundamental rights to self preservation and the delay in process involved in the meeting of the Medical Board and in getting the admission to the A.I.I.M.S., his claim to be paid at Escort's rates held fair and just.

12. The present case entirely differs on the facts for the reason that he was sick since 27.08.96 and on investigation on 03.10.96, case of heart disease was found, the applicant was having ample time and there was no urgency in the matter. Hence, the question of self preservation and the delay in process involved in the meeting of Medical Board and in getting admission to the A.I.I.M.S. does not arise.

13. It has been mentioned in JT (1997) (1) SCC 416 State of Punjab & Others V/s Mohinder Pal Singh Chawla & Others as under:-

"Right to health is integral to right to life and Govt. has constitutional obligation to provide the health facilities to its servants or retired servants - where employee requiring specia-

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lised treatment in an approved hospital, duty of Govt. is to bear or reimburse expenses."

14. 1998 SCC (L&S) 1021 state of Punjab & Others V/s Ram Lubhaya Baga & 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 it's 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/s Mohinder Pal Singh Chawla & Others decided on 17.12.96 is subject to the restriction by a Full Bench decision pronounced in State of Punjab & Others V/s Ram Lubhaya Bagga & Ors. decided on 26.02.98 in which the decision of Mohinder Pal Singh Chawla & Surjeet Singh referred to above is considered.

15. The applicant has not specifically alleged the cases in which he was discriminated from other employees going for Heart's surgery and reimbursement thereof.

16. After the pronouncement of the order by the Hon'ble Supreme Court of India in case of State of Punjab & Ors. V/s Ram Lubhaya Bagga & Ors., it cannot be said that the instruction has over-riding effect on the law laid down by the Hon'ble Supreme Court

17. The applicant has failed to establish any commitment vide Annexure A-8 as absolute right of reimbursement of medical expenses/expenditure without any restriction and discrimination to him.

18. In the result, the O.A. is liable to be dismissed and is dismissed accordingly. Looking to the facts and circumstances of the case, it is ordered that both the parties shall bear their own costs.

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MEMBER (J)