

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 141 of 2001

Allahabad, this the 27th day of May, 2003

QUORUM : HON'BLE MRS. MEERA CHHIBBER, MEMBER J

G.S.Sood

Son of late Karam Singh Sood

Resident of Q.No. 8/8, Defence Colony,

Shanti Nagar Cantt. KANPUR.

.. .. Applicant.

By Advocate : Shri R.K.Shukla

Versus

1. Union of India, Through
The Secretary,
Ministry of Defence,
Department of Defence Production,
Govt. Of India, NEW DELHI - 11.
 2. The Secretary,
Ordnance Factory Board,
10-A, Shaheed Khudi Ram Bose Road,
CALCUTTA - 1.
 3. The Chief Controller of Accounts(Fys),
10-A, Shaheed Khudi Ram Bose Road,
CALCUTTA-1.
 4. The General Manager,
Ordnance Equipment Factory, KANPUR.
-Respondents.
- By Advocate : Shri R.C.Joshi

BY HON'BLE MRS. MEERA CHHIBBER, MEMBER J

By this O.A. applicant has sought the following relief(s):

- i) "To issue a writ, order or direction in the nature of Certiorari quashing order dated 02.6.2000 passed by the respondent No.4 restricting the amount of reimbursement as per prescribed rates only and deducting the amount of Rs. 50,377/- in 12 equal instalment of Rs. 4,198/- commenced from June,2000.
- ii) To issue a writ, order or direction in the nature of certiorary quashing the order dated 30.3.99 passed by respondent No. 3 intimating to this effect that the claim of Rs.2,01,938/- preferred by the applicant has been passed for Rs.1,16,123/- only and Rs. 50,377/- be recovered from his pay & allowances.
- iii) To issue a writ, order or direction in the nature of Mandamus directing the respondents to allow the petitioner's initial reimbursement claim of Rs.2,01,939/- and subsequent claims without any deduction and also refund the amount already recovered from his pay w.e.f. June, 2000.
- iv) To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Tribunal may deem fit and proper."

2. Brief facts as submitted by applicant are that applicant was working as Chargeman Grade I. non-mechanical at Kanpur in basic pay of Rs.7425/- when his wife got an attack of Angina. She was admitted in D.E.&P Hospital, Kanpur where all her tests were conducted and she was given treatment as per his entitlement. However, since specialised treatment for heart was not available at Kanpur Hospital, he was advised vide letter dated 23.4.98 to take up treatment at Laxmipat Singhania Institute of cardiology at Kanpur. Accordingly she was transferred from D.E. & P. Fy. Combind Hospital to L.P.S. Institute of Cardiology Kanpur on 23.4.98 at about 1 pm.



(Annexure III). There she was diagnosed to be a case of CABG and the surgeon advised open heart surgery at a more specialised centre like Escorts Heart Centre. vide their O.P.D. slip no. 8526 dated 28.10.98 (Annexure IV). Applicant sought approval of to and fro TA/DA for the patient as well as attendant, on which the Chief Medical Officer (S.G.) and Medical Officer Incharge of combined Hospital endorse as under.

In view of the opinion of Cardiologist she has to attend Escort Heart Centre for further management (Annexure V).

Since Escorts was outside of U.P. at Delhi the General Manager Ordnance Equipment Factory, Kanpur sought permission from the Mahanideshak, Chikitsa and Swasthyaya, Uttar Pradesh Lucknow which was duly permitted for taking treatment at Escorts with one attendant. Permission is filed as (Annexure VI).

3. Thereafter an estimate was asked from Escorts Heart Centre who gave estimate of Rs.2 lac. on 19.11.98 (Annexure VII). The General Manager accordingly sanctioned advance of Rs. 1,66,500/- only by remitting the cheque directly to Escorts. Applicant's wife was admitted in Escorts Heart Institute on 18.11.98 where various pathology tests were conducted and on 20.11.98 she was operated for C.A.B.G.

4. After discharge applicant submitted his claim for Rs.2,01,938/- only which was actually incurred in the hospital so that after adjustment balance may be given to him. It was duly certified ^{by} the General Manager O.E. & P. Kanpur because Escorts was recognised hospital.

5. The Chief Controller of Accounts (FYS) however passed the claim for only 1,16,123/- and directed the

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General Manager to recover an amount of Rs.50,377/- from applicant vide his letter dated 30.3.99 (Annexure A VIII) by stating that Angiography and C.A.B.G. are restricted to Rs.10,800/- and 89,100/- respectively as General ward as per Government of India M of H F & W O.M. dated 18.9.96 as package includes admission charges, operation charges, cost of drugs, and disposable surgical sundries and physiotherapy charges, therefore, excess of Rs. 4337/- on account of angiography and 81,478/- on account of C.A.B.G. is disallowed. In view of Chief Controller's letter, General Manager issued letter dt. 27.10.99 to recover an amount of Rs.50,377/- in 12 instalment of Rs.4198/- from November, 1999 from applicant (Annexure A IX).

6. It is against these orders that applicant has filed the present G.A. seeking the relief(s) as mentioned above. It is submitted by applicant's counsel that as per Annexure XIV Factory order dated 02.5.94 families are also entitled for free medical treatment in the Factory's hospitals and on reference to the Government Hospitals or recognised hospitals, the treatment is reimbursable under CS(MA) Rules.

Since employee's wife was referred to Escorts Hospital by a Government Hospital because that facility was not available at Escorts and Escorts is a recognised hospital and he had proceeded to Escorts for open heart surgery with due permission, respondents are liable to give him full reimbursement which was actually incurred by him and no recovery can be made from him nor can the amount be restricted. as he is entitled to free treatment. He has submitted that the wife is still taking treatment but the claims are not being allowed by respondents.

7. Applicant has relied on the judgment passed by



Hon'ble Supreme Court in civil appeal no. 11541-11542 of 1996 in case of Uma Shashi Takur Vs. Union of India & Others, wherein it is held as under :-

" We have read, from the judgment under appeal, some of the rates that are prescribed, and are charged. They are totally unrealistic having regard to medical expenses that are required to be incurred these days. There is very urgent need to update the prescribed rates.

The appeal is allowed. The order of the Tribunal under appeal is set aside. The orders of recovery dated 20th July and 17th August, 1994, are quashed. If any amount has already been recovered, the same shall be returned to the applicant. No orders as to costs."

He has also relied on two judgments given by Jabalpur Bench in O.A.No. 781/99 and 790/99 which were also allowed in view of Uma Shashi Thakur. He has also relied on latest judgment given by Delhi High Court and reported in 2003(96) JLR. 181.

8. I have heard both the counsel and perused the pleadings as well as judgments referred to above. The only ground taken by respondents for disallowing the full amount is that the amount is more than the package deal with recognised hospital. It is not disputed by the respondents that the total amount of Rs.2,01,938/- was indeed spent by applicant for the open heart surgery of Smt.Rajinder Kaur at Escorts Heart Institute where she was referred by the Kanpur hospital because cardiologist was of the opinion that she needs to be operated in more advanced Heart Institute. Thereafter applicant had taken permission from the D.G.Chikitsa & Swasthya, U.P., Lucknow . Not only this the office had called for an estimate from Escorts which was given as Rs. 2 lacs giving the break up and it was thereafter that an advance cheque of Rs.1,66,500/- was issued to Escorts Institute directly by the office. At no stage the office informed applicant that he would get only package deal and rest of the amount would have to be borne by him. Moreover by referring his case to Escorts no option was left open to him etherwise had they informed him of actual position, he could have tried in All India

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Institute of Medical Sciences but since she was referred to Escorts and due permission was also given, I do not think now the authorities can turn around and tell him to refund the amount already paid to him or to curtail the amount by allowing only the package deal amount.

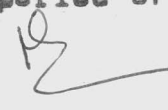
9. At this stage it would be relevant to refer to the judgment given by Hon'ble Supreme Court and Hon'ble High Court of Delhi. In somewhat similar circumstances it was held by Hon'ble Supreme Court in the case of Uma Shashi Thakur as under : -

" We have read, from the judgment under appeal, some of the rates that are prescribed, and are charged. They are totally unrealistic having regard to medical expenses that are required to be incurred these days. There is very urgent need to update the prescribed rates.

The appeal is allowed. The order of the Tribunal under appeal is set aside. The orders of recovery dated 20th July and 17th August, 1994, are quashed. If any amount has already been recovered, the same shall be returned to the applicant. No orders as to costs."

10. Similarly in 2001(3) ATJ 470 Hon'ble High Court in identical case as in hand held as under : -

"I have given careful considerations to the arguments advanced by learned Counsel for both the parties. There cannot be any dispute with regard to the ratio laid down by the Supreme Court in State of Punjab v. Ram Lubhaya Bagga's case (supra). In that case the petitioner challenged the policy of the Government with regard to fixation of allowances. In that case no recommendation was made by the CGHS for getting the treatment from a private hospital. As far as the case in hand is concerned, it is the Government hospital, namely RML Hospital which has recommended the case of the petitioner for a specialised treatment by a speciality hospital, which is on the approved list of CGHS. When the respondents themselves have recommended the case of the petitioner for getting treatment at a speciality hospital, to deny the benefit of giving full reimbursement would be contrary to the grant of medical facilities to a retired Government servant, if he cannot actually avail of the same. If the Government hospital did not have the facility for giving treatment like the one which was required to be given to the petitioner then it was an obligation on the part of the respondents to have reimbursed the total amount paid to the said hospital. Following the ratio laid down in the State of Punjab and others v. Mohinder Singh Chawla (supra) I direct the respondents to reimburse the amount of Rs. 80,620/- to the petitioner within a period of four weeks."



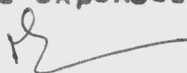
11. A perusal of the judgment would show that the present case in hand is squarely covered by this judgment, therefore, applicant would be entitled to reimbursement of full amount.

12. It would also be relevant to quote another judgment given by Hon'ble High Court of Delhi reported in 2003 (96) FLR 181 wherein it was held as under :-

"1) The cost of medical treatment has been rising ever a period of time and respondents cannot deny the actual reimbursement from a hospital recognised by them for treatment on the basis of applying the rates as per the previous memorandum which were intended for a period of two years and were subject to revision. Reference is also invited to a decision of a Co-ordinate Bench of this Court in Civil Writ No. 5317 of 1999 titled M.G. Mahindru v. Union of India and another, decided on 18 December 2002, wherein the learned Single Bench relying on the decisions of Narendra Pal Singh v. Union of India and others, as well as State of Punjab and others v. Mohinder Singh Chawla, directed reimbursement of the full expenses incurred. In the instant case, it is not in dispute that the said facility or treatment was not available at C.G.H.S. or RML hospital and the petitioner was referred after due permission to a speciality hospital duly recognised by the respondents. The cannot, therefore, deny full reimbursement to the petitioner by placing reliance on an earlier memorandum of 1996 wherein the rates given were applicable and intended for a period of two years on the ground that the said rates have not been revised.

ii) Reference may also be usefully invited to the last office memorandum bearing F.O. Rec-24/2001/JD(M)/CGHS/DELHI/CGHS(P), Government of India, Ministry of Health and Family Welfare, dated 7 September 2001. The said circular reconsidered the question of recognition of private hospitals, diagnostic centres under CGHS scheme for specialized treatment as well as fixing of package ceiling rates. The salient term as per this memorandum is that the recognised hospital is obliged not to charge more than the package rates from the beneficiary.

iii) The only submission by learned counsel for respondent Ms. Pinky Anand was that the respondents had reimbursed the rates as per the circular of 1996 and in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory state of affairs. Respondents are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement, especially on account of their own failure in not revising the rates. In view of the foregoing discussion and the judicial pronouncements as noted above, the petitioner is entitled to full reimbursement of the expenses incurred at the



Escorts Heart Institute and Research Centre New Delhi where he was duly referred for specialized treatment by the respondents after according permission. Escorts Heart Institute and Research Centre being a recognised hospital for this purpose, the petitioner is entitled to be reimbursed the actual expenses, as incurred. A writ of mandamus shall issue to the respondents who shall pay Rs.70,115.85 to the petitioner within four weeks from today, together with costs assessed at Rs.1,500."

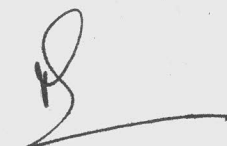
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13. In view of the above there is no further adjudication *as I fully agree with the views expressed in above judgments. Accordingly* required, ~~the~~ orders dt. 20-6-2000 and 30-3-99 are quashed

and set aside. Respondents are directed to reimburse the full amount of Rs.2,01,939/- to the applicant as incurred for the open heart surgery of Smt Rajinder Kaur in Escorts Heart Institute. I am informed respondents had made recovery and only 2 instalments were left. Respondents are directed to refund the amount recovered from applicant on this account. As far as the subsequent bills are concerned, they should be decided keeping in view the recommendations of Kanpur Hospital as to whether follow up treatment can be given at Kanpur or that is also to be taken at Escorts only where open heart surgery had taken place.

14. Since these follow up bills will have to be verified *therefore* this may take ~~little~~ more time ~~but~~ orders should be passed on them within a reasonable period but the orders to pass actual amount incurred for open heart surgery i.e. Rs.2,01,939/- shall be passed within 6 weeks from the date of receipt of a copy of this order. Respondents are directed to pay the balance amount due to the applicant and also refund the amount already recovered from applicant within the same period.

15. With above direction, this O.A. is allowed. No order as to costs.



Member J

Brijesh/-