

V M 24/10/03

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1424/2003

Date of Decision 7/10/2005

Vinay Bhalla

Applicant(s)

Sri R. Verma

Counsel for the
Applicant(s)

V E R S U S

union of India & ors. Respondents(s)

Sri V.V. Misra

Counsel for the
Respondents(s)

CORAM :

Hon'ble Mr. KBS Rajan Member (J)

Hon'ble Mr. / Member ()

1. Whether Reporters of local News Papers may be allowed to seen the Judgment?
2. To be referred to the Reporters or not? ✓
3. Whether their Lordship wish to see the fair copy of the judgment. ✓
4. Whether to be circulated to all the Benches.

[Signature]
SIGNATURE

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD**

Original Application No.1424 of 2003.

Allahabad, this the 07th day of October, 2005.

Hon'ble Mr. K.B.S. Rajan, Member-J

Vinay Bhalla, S/o Sri Devi Chand Bhalla, R/o Q. No. ET-3, Compound, Kanpur.

....Applicant.

(By Advocate : Shri R. Verma.)

Versus

1. The Union of India, through the Secretary, Ministry of Health & Family Welfare, Government of India, New Delhi.
2. The Directorate General of Health Services, Central Government Health Scheme (CGSH Desk 1) Nirman Bhawan, New Delhi.
3. The Addl. Director, Central Govt. Health Scheme, Kendranchal Colony, Gulmohar Vihar, Naubasta, Kanpur.
4. The Principal Controller of Accounts (Fys), 10-A, S.K. Bose Road, Kolkata.
5. The Addl. DGOF, OEF Group Hqrs, G.T. Road, Kanpur.

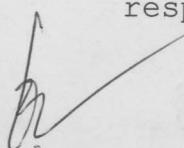
....Respondents.

(By Advocate : Shri V.V. Misra.)

O R D E R

The applicant is aggrieved by the truncation of the reimbursement of medical expenses, incurred in respect of his son who had the treatment at Batra Hospital, New Delhi.

2. The reason for truncation as per the respondents is that the rules provide for



reimbursement at the CGHS prescribed rates for referral treatment and where no such CGHS rates are prescribed, the rates as prevalent at the AIIMS, New Delhi and since the AIIMS rate for the particular treatment which the patient undertook at Batra Hospital was less than the amount incurred by the applicant at Batra Hospital, the claim for medical treatment has been reduced to the rates of AIIMS.

3. The question, therefore, is whether the applicant is entitled to the relief prayed for which is as under:-

- "8(i) To issue writ, order or direction in the nature of certiorari quashing order dated 4.12.2000 passed by the respondent no.2 restricting the amount of reimbursement to AIIMS, New Delhi.
- (ii) To issue a writ, order or direction in the nature of certiorari quashing the order dated 16.3.2001 passed by the respondent no.4 intimating to this effect that the claim of Rs. 30,328.60/- preferred by the petitioner has been passed for Rs. 17,923.60 and Rs. 11,937.00 be recovered from his pay & allowances.
- (iii) To issue a writ, order or direction in the nature of certiorari quashing the order dated 8.10.2003 passed by the respondent no.3 restricting the amount of reimbursement to AIIMS New Delhi Rate.
- (iv) To issue a writ order or direction in the nature of mandamus directing the respondent to allow the petitioner's final reimbursement claim of Rs. 30,328 without any deduction also pay exemplary cost.
- (v) To issue a writ, order or direction imposing upon the respondent no.2 exemplary cost for their heartless non-application of mind and also for their action which has been totally contrary to the letter and spirit of the Govt. order dated 7.3.2000 resulting in prolonged



correspondence and initiation of the instant application and causing financial and mental harassment to the petitioner.

4. A vignette of the facts of the case:

- (a) Applicant is working as Joint General Manager in Ordnance Equipment Factory, Kanpur and he and his family is entitled to CGHS medical facilities.
- (b) Provision exists for reimbursement of medical expenses in respect of certain referral treatments, subject to due recommendation by the CGHS/CGHS sponsored Hospitals in any other Government recognized hospitals.
- (c) The son of the applicant was diagnosed as a case of WPW syndrome with PSVT and the LPS Institute of Cardiology, Kanpur recommended, - "He needs Radio Frequency Ablation of the Amamelon Pathway. Since this procedure is not done at our hospital and he is a CGHS Beneficiary and it is a highly specialized technique, hence it should be done at a centre where it is being done regularly. So he is referred to centres like G.B. Pant Hospital, New Delhi/AIIMS New Delhi/Batra Hospital, New Delhi, where reimbursement is permissible. One attendant may also attend."
- (d) Permission was granted on 19th May, 2000 by the Head of Department of OEF GP HQ, Kanpur, for availing of treatment at Batra Hospital, New Delhi as a referral case at an estimated cost of Rs 33,400/- (Annexure A-VII refers). This

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✓

sanction was later modified to the extent of Rs 30,328.60 by order dated 21-06-2000. Accordingly the applicant applied for and received an advance of 30,328/-.

- (e) The necessary treatment was undertaken by the applicant's son at the Batra Hospital and the bill raised by them was fully paid by the applicant and later, the applicant had raised the medical reimbursement claim, in which he had adjusted the amount of advance drawn by him.
- (f) The authorities required certification of the CGHS for the amount claimed and it was at that time known that there is no rate prescribed for the specific treatment by the CGHS and since the AIIMS rates were available, as per one of the guidelines of the Government, the rates of AIIMS were made applicable to the applicant and the same was passed, and this had resulted in a recovery of Rs 12,405/- from the applicant.
- (g) The applicant has challenged the decision of the respondent in truncating his medical reimbursement claim.

5. The following are the main grounds of the applicant:

- (a) Because the petitioner's son underwent treatment at the Batra Hospital & Medical Research Centre, New Delhi (being CGHS beneficiary) only after referred by Laxmipat Singhania Institute of Cardiology, Kanpur an institution recognized under CGHS inasmuch as the



competent authority granted sanction on receipt of estimates from them.

- (c) Because right to health is integral to the right to life. Government has constitutional obligation to provide health facilities if the government servant/his ward has suffered an ailment which requires treatment at specialized approved hospital on reference where at government servant/his ward has undergone such treatment therein, it is duty of the State to bear the expenditure incurred by the Government Servant.
- (f) Because in similar circumstances this Hon'ble Tribunal has allowed the claim of treatment taken at Escorts Heart Institute & Research Centre, New Delhi by the wife of the petitioner in O.A. no. 141 of 2001 G.S. Sood Vs. Union of India & Others decided on 27.5.2003.
- (h) Because by arbitrary action of the respondent no.4 imposing restriction on payment of actual medical expenses and directing recovery of Rs. 11937/- is illegal, arbitrary, unjustified and unwarranted.

6. The respondents have contested the OA. According to them, the rules are specific that where the CGHS rates are not available, the rates of AIIMS would apply. They have further relied upon the decision of the Apex Court in the case of *State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117, wherein the Apex Court has held as under:-

29. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.



7. Arguments were heard and the documents perused.

The admitted facts include the following:-

- (a) The medical authority had recommended the treatment of applicant's son at one of the three Hospitals, which include the Batra Hospital, New Delhi.
- (b) Permission was granted by the authorities to have the treatment conducted in the said Hospital.
- (c) Estimated cost was approved by the Government and accordingly, sanction for the same and advance had also been made available to the applicant.

8. When the applicant had been permitted not only to the treatment being had at Batra Hospital and in addition, when the estimated expense was duly sanctioned and advance drawn, and when there had been no inkling either in the sanction or when the advance was paid to the applicant that the rates of AIIMS alone would be permitted, the applicant could not but presume that the entire expenses would be reimbursed.

9. It is to be noted that the ceiling as contended by the respondents prescribed in the Ministry of Health and Family Welfare OM dated 7th April, 1999 is in regard to the "delegation of powers". It has not been made clear in the said order that by no authority can an amount in excess of the AIIMS rates shall be sanctioned.

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10. It is worth to take the guidance from the decisions of the Apex Court in respect of medical reimbursement. As to right to life under Art. 21 and its link with the health of an individual, the Apex Court in the case of *Surjit Singh v. State of Punjab*, (1996) 2 SCC 336 held as under:-

11. It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of the *Garuda Purana* (A dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:

17 Vinaa dehena kasyaapi
canpurushaartha na vidyate Tasmaaddeham
dhanam rakshetpunyakarmaani saadhayet

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18 Rakshayetsarvadaatmaanamaatmaa
sarvasya bhaajanam Rakshane
yatnamaatishthejje vanbhaadraani
pashyati

One should protect his body which is responsible for everything. He, who protects himself by all efforts, will see many auspicious occasions in life.

20 Sharirarakshanopaayaah kriyante
sarvadaa budhaih Necchanti cha
punastyagamapi kushtaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body. *

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22 Aatmaiva yadi naatmaanamahitebhyo
 nivaarayet Konsyo
 hitakarastasmaadaatmaanam taarayishyati

If one does not prevent what is
 unpleasant to himself, who else will do
 it? Therefore one should do what is
 good to himself.

11. As regards pragmatic view to be taken in
 contrast with the rigid rules of having treatment
 only at a particular hospital or the rates
 applicable to a particular hospital alone would be
 available, the Apex Court in the said case of Surjit
 Singh has held as under:-

9. The policy, providing recognition
 for treatment of open heart surgery in
 the Escorts, specifically came to be
 examined by a Division Bench of the
 Punjab and Haryana High Court at
 Chandigarh titled as Sadhu R. Pall v.
 State of Punjab, wherein the claim of
 the then writ petitioner to medical
 reimbursement was accepted when in
 order to save his life he had got
 himself operated upon in the Escorts,
 and the plea of the State that he could
 be paid rates as prevalent in the AIIMS
 was rejected

*The Division Bench in Sadhu R. Pall case¹ observed
 as follows:*

*"The respondents appear to have patently used
 excusals in refusing full reimbursement, when the
 factum of treatment and the urgency for the same has
 been accepted by the respondents by reimbursing the
 petitioner the expenses incurred by him, which he would
 have incurred in the AIIMS, New Delhi.*

.....
*We cannot lose sight of factual situation in the
 AIIMS, New Delhi, i.e., with respect to the number of
 patients received there for heart problems. In such an
 urgency, one cannot sit at home and think in a cool and
 calm atmosphere for getting medical treatment at a
 particular hospital or wait for admission in some
 government medical institute. In such a situation,
 decision has to be taken forthwith by the person or his
 attendants if precious life has to be saved."*

We share the views afore-expressed.



12. In the end, the Apex Court had in that case held:

12. *The appellant therefore had the right to take 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 hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought Escorts on the recognized list, it is futile for it to contend that the appellant could in no event have gone to 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 Escorts like many others did, to save his life. But instead he has done that 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 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.*

13. While dealing with the rights and responsibility of the Government as well as the Government servant, with particular reference to the State's obligation on ensuring the health of the citizens, the Apex Court in the case of *State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117, at page 129 held as under:-

"26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its



citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority."

14. Next is in the other cases when the Government was restricting the claims at the rates applicable to AIIMS, and the individuals had undergone the treatment in Escorts Hospital, invariably they were reimbursed the amount as per the bill of Escorts Hospital. In this regard, even in the case of Ram Lubhaya Bagga referred to above, his review application was considered by the Apex Court and the Apex Court had ordered as under:-



" However, his contention is that he was paid the full amount of medical reimbursement charges even under the new policy and in the common order sought to be reviewed, we have taken the view that if any amount on the medical reimbursement bill is already paid to the person concerned after the new policy came into operation, then the amount already paid should not be recovered. Consequently, if the petitioner's case falls within this exceptional category permitted by us in the common judgment, appropriate orders will be required to be passed in his case also by giving him a fresh opportunity to prove his case. Hence, notice is directed to be issued to the respondents limited to the consideration whether the petitioner was paid the full amount of medical reimbursement charges after the new policy had already come into force, and if yes, whether any recovery can be effected from him."

15. In the case of *State of Punjab v. Mohan Lal Jindal*, (2001) 9 SCC 217 while allowing the appeal preferred by the Government, the Apex Court has observed as under:-

It is further submitted by learned counsel for the respondent that the appellants may consider his grievance. He may submit such a representation on compassionate grounds. We have no doubt that such a representation will be sympathetically considered by the appellant authorities on its own merits.

16. In a writ petition filed by one Shri K.P. Singh, (vide *K.P. Singh v. Union of India*, (2001) 10 SCC 167) the Apex Court had held as under:-

"1. This writ petition by a retired government servant impugns, to put it in general terms, the manner in which the Central Government Health Scheme (CGHS) treats ailing pensioners.

.....
6. The last grievance, and it is of some note, is that a beneficiary of the Scheme will receive reimbursement only at the rate approved by the CGHS, regardless of the fact that in his particular town or city there are only private hospitals and no government hospital; there is, therefore, no option for him but to enter a private hospital for such treatment. It is also submitted that the approved rates are not updated by the CGHS from time to time so that what the beneficiary receives by way of reimbursement can be substantially less than the cost that has actually been incurred upon his hospitalisation. While there is, we think, merit in the submission, it is not for us to dictate what should be done. We

direct that the Union of India shall immediately consider this aspect and give appropriate directions thereon. It would clearly be appropriate for it to update its approved rates on an annual or, at least, biennial basis" (Emphasis supplied)

17. In addition, the applicant has relied upon the case of one G.S. Sood vide order dated 27th May, 2003 in OA 141 of 2001, wherein referring to a decision of the Hon'ble Delhi High Court, this Tribunal held as under:-

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 those 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 Vs. 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 specialized treatment by a specialty 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 specialty 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 these judgments 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: -

"(i) The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a hospital recognized 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 another, 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 specialty hospital duly recognized 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

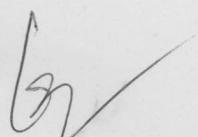
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intended for a period of two years or the ground that the said rates have not been revised.

(ii) Reference may also be usefully invited to the last office memorandum bearing F.D. 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 centers under CGHS scheme for specialized treatment as well as fixing of package ceiling rates. The salient term as per this memorandum is that the recognized hospital is obliged not to charge more than the package rates from the beneficiary.

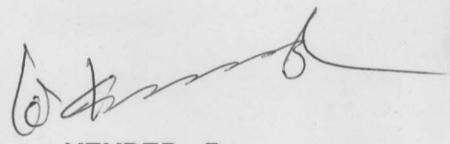
(iii) The only submission by learned counsel for respondent Ms. Pinky Anand was that the respondents had reimbursed the rates as per the circular of 1996 and in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory State of Affairs. Respondents are 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 Center New Delhi where he was duly referred for specialized treatment by the respondents after according permission. Escorts Heart Institute and Research Center being a recognized 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."

18. Considering the pregnant principles of the Apex Court as contained above and the firm views of the



High Court, coupled with the fact that the applicant was permitted to have the treatment at Batra and the estimated amount of Rs 30,000/- already having been sanctioned by the Government vide order dated 21-06-2000, ~~the~~ it is held that the applicant is entitled to the full reimbursement of the medical expenses incurred by him in respect of his son's treatment at the Batra Hospital. The order dated 04-12-2000 and 16-3-2001 (Annexure I and II respectively) are hereby quashed. The applicant's bill for Rs 30,328/- be settled as claimed by him. No recovery shall be made from the applicant on this score.

19. Under these circumstances, there shall be no order as to cost.



MEMBER-J

GIRISH/-