

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No. 192 of 1993

Date of decision: May 26, 1993.

Shri Sripaty Mohan Biswas ... Applicant

-Versus-

Union of India and others ... Respondents

For the Applicant ... M/s. P.C. Kar,
J. Gupta,
Advocates.

For the Respondents ... Mr. Ashok Misra,
Senior Standing Counsel
(Central)

....

CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

&

THE HONOURABLE MR. H. REJENDRA PRASAD, MEMBER (ADM.)

....

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? *ND*
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

....

J U D G M E N T

K.P.ACHARYA, V.C.

This case came up for admission and hearing today.

2. In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash Annexure 12 being arbitrary and illegal and further more it is prayed that directions be given to the Opposite Parties for payment of Medical claim including the expenses incurred for the attendant for treatment of his daughter late Aparna Biswas and his son Anurag Biswas.

3. Shortly stated, the case of the petitioner is that he is a clerk Grade-I serving in All India Radio, Jeypore. Petitioner's daughter Aparna Biswas suffered from severe Precapillary Pulmonary Hypertension. His son Anurat Biswas is said to have been suffered from Hammerage of the brain resulting from an accident. Petitioner had taken Aparna to the Vellor hospital for treatment which ultimately did not yield any fruitful result and ultimately Aparna expired. Anurag is living but treatment is still continuing at Seven Hills Hospital Visakhapatnam. Expenses incurred for treatment of daughter and son have been claimed by the petitioner which has been turned down on the ground that the petitioner did not comply with the rules by obtaining approval from

the Competent Authority giving a declaration that the petitioner's son and daughter need treatment in a Hospital out-side the State. Hence this application has been filed with the aforesaid prayer.

4. In their counter, the Opposite Parties maintained that it was incumbent upon the Petitioner to obtain approval from the Director of Health Services for under-going treatment in Hospitals out side the State. Rules not having been complied, the authority had no other option, but to reject the claim of the petitioner. It is further maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

5. We have heard Mr. P. C. Kar learned counsel appearing for the petitioner and Mr. Ashok Mishra learned Senior Standing Counsel (Central) appearing for the Opposite Parties. Illness of the Petitioner's daughter and son and their treatment at Vellor and Visakhapatnam respectively has not been disputed. There is also no dispute presented before us regarding the genuineness of the certificates granted by the concerned authority of the Vellor Hospital and the Visakhapatnam Hospital. Of course on a perusal of the pleadings of the parties, we are of view that the Hospital at Visakhapatnam is a private one. Further

the undisputed position is that Aparna is since dead. We cannot disagree with Mr. Ashok Misra learned Senior Standing Counsel (Central) appearing for the opposite Parties that under the rules, approval of the Director of Health should have been obtained. But here is a case, where the father having the knowledge that her daughter is suffering from serious heart trouble must have lost all his mental equilibrium and could not have foreseen the rules on the subject, for compliance. To fulfil the duty of the father, one has to rush for expert medical treatment and Vellor is one of those places where Cardiological experts function and many patients rush to the Hospital at Vellor.

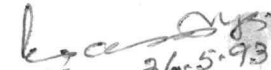
6. Mr. Kar learned counsel appearing for the Petitioner invited our attention to the contents of Annexure-1 which contains the recommendation of the Professor and Head of the Department of the Medicine, M.K.C.G. Medical College Hospital and that of Dr. Behera, Assistant Professor of the Department of Cardiology, M.K.C.G. Medical Hospital, Berhampur recommending that Aparna is advised to go to Vellor for further investigation and treatment as proper facilities for her treatment is not available within the State. This recommendation we approved by the Director, Medical Education and Training, Orissa. This is not the end of all. So far as, we know, final order has to be passed by the Secretary of

the Government in Health Department. Admittedly that has not been obtained by the Petitioner.

7. So far as the Son of the petitioner is concerned, brain hammergeage resulting from an accident is admitted. Equally the father must have anxious and suffering from mental tension to give immediate treatment to the son at a place where treatment of high order is available. Therefore, with that anxiety, the petitioner must have rushed to Visakhapatnam for his son's treatment. We are not aware whether the Government is in a position to sanction/grant Ex-post-facto approval of the expenses incurred by the Petitioner in Visakhapatnam for treatment of his son. Taking into consideration the above fact and circumstances of the case and the compelling circumstances, under which the petitioner rushed to Vellor and Visakhapatnam, we would commend to the authority to have a rethinking of the matter and reconsider the same and in case discretion vests with the concerned authority to relax the technicalities of the rules and accord Ex-post-facto approval then this is a fit case where the discretion should be used in favour of the petitioner. We hope and trust the re-examination process would be soon completed and the concerned authority would pass necessary orders as early as possible.

8. With these observations, the application is disposed of leaving the parties to bear their own cost.


MEMBER (ADMINISTRATIVE)


VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
26.5.93.

