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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 411 OF 1996
Cuttack, this the 10th day of March, 2000

Sri Surendra Nath Jena Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.3.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 411 OF 1996
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Sri Surendra Nath Jena, aged about 36 years, son of Rama Chandra Jena, resident At/PO-Shradhapur, PS-Bhograi, District-Balasore, at present working as UDC on deputation to the office of Regional Office, Bhubaneswar, Ministry of Non-conventional Sources, 28 Ashok Nagar, Bhubaneswar-9, District-Khurda
Applicant

Advocates for applicant- M/s K.C.Kanungo
B.D.Rout
S.Jena

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1. Union of India, represented through Secretary, Ministry of Non-Conventional Energy Sources, Block No.14, C.G.O.Complex, Lodhi Road, New Delhi-3.
2. Director, Administration, Ministry of Non-Conventional Energy Sources, Block No.14, C.G.O.Complex, Lodhi Road, New Delhi-3.
3. Senior Scientific Officer-I, Ministry of Non-Conventional Energy Sources, Government of India, Regional Office,Bhubaneswar, 28 Ashok Nagar, Bhubaneswar-9, District-Khurda.
4. Director, E.S.I.(Employees State Insurance Scheme), Government of Orissa, Near Kalyan Mandap, Unit-8, Bhubaneswar, District-Khurda
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Respondents

S.C.M.
Advocate for respondents - M/s U.B.Mohapatra,ACGSC
K.C.Mohanty, Govt.Advocate

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 3.6.1996 at Annexure-2 and the order dated 10.6.1996 at Annexure-3 rejecting his representation. The second prayer is for a direction to the respondents to entertain medical bills,if any, preferred by the applicant for treatment of self and his

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family under Employees State Insurance
Hospital/Dispensary.

2. The applicant's case is that he was appointed as LDC in the office of Director, S.C. & S.T., National Commission for SC & ST, Bhubaneswar. He was on deputation to the office of Senior Scientific Officer-I, Ministry of Non-Conventional Energy Sources, Government of India, in the post of UDC with effect from 7.1.1994 and has been continuing in that office. The wife of the applicant is employed in ESI Dispensary, Mancheswar. The office where the applicant's wife is working is a State Government office under the Department of Labour. As required under Rules the applicant and his wife furnished a joint declaration to their respective offices and consequently the applicant preferred medical claims and drew from his parent office and thereafter from the office of respondent no.3 for treatment of self and his family including his wife. From 15.4.1994 to 1.1.1996 the applicant had submitted various bills on different dates in respect of treatment of self and his family members and the same have been reimbursed. The total amount received by the applicant stands at Rs.6355/-. Respondent no.3 without any rhyme or reason did not sanction a medical claim submitted on 8.9.1995 in respect of treatment of self, his father and wife. The applicant submitted a representation on 16.11.1995. Respondent no.3 pointed out certain mistakes in the bill, such as purchase of medicines in excess of the quantum prescribed. The same was corrected but no action was taken for reimbursement of the medical claim. On repeated persuasions the claim was settled and the applicant drew Rs.3488/- on 1.1.1996. The



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applicant learnt that on 17.11.1995 respondent no.3 made a query in letter dated 17.11.1995 relating to medical claims submitted by the applicant for treatment of self, his wife and father and the query was complied with by the office. On further reference to the office of Director, E.S.I., Government of Orissa (respondent no.4) where the wife of the applicant was working, the Insurance Medical Officer issued a clarification in letter dated 27.11.1995 at Annexrue-1. It is stated that respondent no.3 sanctioned the medical claim on 1.1.1996 after getting the clarification at Annexure-1. But thereafter respondent no.3 issued order dated 3.6.1996 (Annexure-2) directing recovery of Rs.6355/- paid to the applicant towards his medical claims on different dates from 15.4.1994 to 1.1.1996. Being aggrieved by the above order, the applicant submitted a representation to respondent no.3 for non-recovery of reimbursement of medical claims paid to the applicant and the representation was rejected in order dated 10.6.1996 (Annexure-3). The applicant has stated that the ground for rejection of the representation of the applicant and the consequent thereupon the order of recovery was that the doctors of ESI Hospital are not Authorised Medical Attendants declared by Central Government Employees Coordination Committee. Further the ESI Hospital is not an authorised Government Hospital as notified by Government of India under Medical Attendance Rules. It is further stated in Annexure-3 that to the above effect a clarification has been received from the Director, E.S.I. (respondent no.4). The applicant has stated that under the Medical Attendance Rules all hospitals recognised by the State Government are to be treated as Government Hospitals in the matter of medical

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claims of Central Government employees. It is further stated that the applicant resides in V.S.S.Nagar where there is no authorised private medical attendant selected by Central Government Employees Co-ordination Committee. There is also no State Government Hospital/Dispensary in that area. The ESI Dispensary, Mancheswar, located at V.S.S.Nagar is the only dispensary available to the applicant for immediate treatment since it is only few metres away from the residence of the applicant. The applicant has further stated that the medical treatment and bills claimed are all genuine and within the prescription of Medical Attendance Rules. The E.S.I. Dispensary under respondent no.4 is authorised to provide medical attendance and treatment to the wife of the applicant and other family members in view of the fact that she is an employee of respondent no.4 working in ESI Dispensary, Mancheswar. It is also stated that under Government of India order dated 28.5.1982 in paragraph 2(2)(a) it is provided that every endeavour should be made to obtain the services of a medical officer under the employment of Central Government or State Government where they exist. It is further stated that the wife of the applicant being a State Government employee comes under jurisdiction of respondent no.4 in the matter of medical treatment. But due to joint declaration as per Medical Attendance Rules the applicant and his wife have duly informed their respective offices that reimbursement of medical claims will be preferred only in the office of the applicant. In view of this, it is stated that payment of the medical bills has been done correctly and the order of recovery and rejection of his representation are not in accordance with the rules and instructions.

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3. Respondent nos. 1 to 3 in their counter have stated that the applicant, who is working under respondent no.3, on deputation since 17.1.1994 is the only ministerial staff posted in the Regional Office of Ministry of Non-Conventional Energy Sources and he looks after the administration as well as accounts matters. He also puts up his own medical bills for pass and payment directly to the Head of Office. As no second man is available in the office for scrutiny of the bills, the applicant not only claimed but also examined and put up before the authority with a note to pass the same. It is stated that the bills submitted by the applicant initially were found to be correct as per the Medical Attendance Rules for the Central Government employees. But the subsequent bills were not in accordance with the rules. His initial bills were according to the treatment availed by the applicant from the doctors/dispensaries authorised to extend treatment to Central Government employees whereas the later bills were in respect of treatment availed in the ESI Hospital which is not authorised to extend medical treatment to Central Government employees. The departmental officer sought for a clarification from the Director, E.S.I.. But due to delay in receiving the clarification and due to non-cooperation of the applicant in official work, respondent no.3 passed the bill for payment intending to recover the same if the authority in the Ministry does not approve the same or the Director, ESI gives his opinion stating that ESI Doctors are not authorised to give Essentiality Certificate for reimbursement of the claims to patients who are Central Government employees. Accordingly, the entire claim of the applicant amounting to Rs.6875/- was passed and payment

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made. Subsequently, Director, E.S.I. in his letter dated 2.5.1996 clarified that Insurance Medical Officer of E.S.I. Dispensary/Hospital is authorised only for ESI Hospital staff and their families and are authorised to sign medical essentiality certificates of the State Government. He is not entitled to sign certificate for reimbursement of claims by Central Government employees. The Director, ESI further clarified that the concerned Medicine Specialist who had signed the bills of the applicant is holding the post which is non-practising in nature and therefore he is not authorised to treat the patients privately. Hence any ESI hospital staff members or their family are entitled to be treated in ESI Hospital and their names are required to be enlisted in the General OPD Register. The Medical officer is only authorised to sign the State Government essentiality certificates for reimbursement in the concerned ESI Hospital/Dispensaries. In view of the above clarification from Director, E.S.I., respondent no.3 had no other option except to re-examine the case further. As the applicant was the only clerical staff of the office, respondent no.3 requisitioned the services of Head Clerk of the Directorate of Census Operations, Orissa, Bhubaneswar, which is also a Central Government organisation under the Ministry of Home Affairs. On examination of the medical bills according to the rules it was found that the same were erroneously paid and accordingly an order of recovery of Rs.6355/- out of total bills of Rs. 6875/- was passed. The applicant thereafter represented to reconsider his case which was rejected in order dated 10.6.1996 (Annexure-3). Respondent nos. 1 to 3 have stated that the order of recovery is neither arbitrary nor violative of the rules

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Central Admin. Services (C.A.S.)
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and instructions and is fully justified. They have further stated that the applicant submitted 11 bills pertaining to treatment of self and the members of his family in a bunch. Since there were 11 nos. of bills amounting to rs.3876.79 after scrutiny it was found that the attending doctor has used his personal pad with official seal while issuing prescription for medicines instead of official outdoor tickets. Secondly, the medicines procured by the applicant were double and in some cases three times the quantum of medicines prescribed by the doctor. Thirdly, some of the bills were bearing dates preceding the date of actual prescription by the doctor. Under the circumstances, the genuineness of the above ills was doubted and the bills were withheld for further scrutiny. They have stated that under the rules 5% of the bills in excess of a total amount of Rs.500/- per year of individual officers should be carefully checked before counter-signature. Further all claims in excess of Rs.1000/- should be thoroughly scrutinised. In case of doubtful nature, verification should be undertaken through the vigilance organisation of Departments/Offices. As the amount claimed by the applicant was Rs. 3876.79, a thorough scrutiny was made and a clarification was sought on some points from Director, ESI. The clarification could not be received till 1.1.1996. As the applicant was pressing hard for payment of the bills, the Head of Office passed the bills in the absence of clarification from the Director, ESI, for an amount of Rs. 3488/- with the instruction that an office order may be issued to the employees of the Regional Office, Ministry of Non-Conventional Energy Sources, Bhubaneswar, intimating the list of recognised hospitals/dispensaries for medical

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treatment of themselves and their family members and for issuing a request letter to Chief District Medical Officer to examine the applicant's father and to intimate as to whether he needs prolonged treatment and if the father of the applicant is not in a position to move to any other Hospital than the ESI Dispensary, Mancheswar. The applicant carried out the first instruction but did not carry out the second instruction and submitted a representation to declare E.S.I.Hospital/Dispensary as Authorised Medical Attendant for himself and his family. Respondent nos. 1 to 3 have furtherstated that the clarification was sought for from the Director, E.S.I. and the memo of the letter was sent to th concerned E.S.I. Dispensary. In response, a clarification from E.S.I. Dispensary to the Director, E.S.I., with copy to respondent no.3 was received. Reply from the Director, E.S.I. which was promised over telephone within a couple of days could not be received till date. Respondent nos. 1 to 3 have stated that the applicant's claims that the bills have been passed after receiving the clarification is not correct. It is stated that the applicant submitted a representation to declare the ESI Dispensary where he was taking medical treatment as an Authorised Medical Attendant. But as per CS(MA) Rules, Hospitals/Dispensaries are declared as recognised and authorised medical attendants for treatment of Central Government by the Ministry of Health, Government of India, in consultation with the State Government in the Health Department. Head of Department of a Ministry can also declare private doctor as Authorised Medical Attendant under special circumstances. In the meantime, the applicant put up further bills signed bythe same doctors from E.S.I.

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Dispensary on 28.3.1996 flouting all orders and instructions issued to him from time to time. After careful consideration the Head of Office accepted and passed only two bills signed by Medical Officer, Sahidnagar Zonal Dispensary, a declared notified medical under CS (Ma) Rules and rejected the rest four nos. of bills signed by ESI Doctors of ESI Dispensary, Mancheswar.

Respondent no.3 sought for clarification again from Director, ESI on 26.4.1996 after a detailed discussion with the Director, E.S.I. A reply was received from the Director, E.S.I. in Confidential D.O. letter dated 2.5.1996. In this it was clarified that Insurance Medical Officer of E.S.I. Dispensary/Hospital is authorised only for ESI hospital staff and their families and is authorised to sign medical essentiality certificate of the State Government. He is not entitled to sign such certificate for reimbursement of claims by Central Government employees. It was also clarified that the concerned medicine specialist who has signed the bills is holding the post which is non-practising in nature and therefore he is not authorised to treat the patients privately. The ESI Hospital staff members or their families are entitled to be treated in ESI Hospital and their names are required to be enlisted in the General OPD Register. The Medical Officer is only authorised to sign the State Government essentiality certificate for reimbursement in the concerned ESI Hospital/Dispensary. In view of the above clarification, the bills of the applicant which had already been paid were further examined by requisitioning the services of Head Clerk, Directorate of Census Operations, Orissa, Bhubaneswar and the order of recovery was issued. The applicant issued a threatening letter at Annexure-R/2 to respondent no.3

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stating that rules have been deliberately misinterpreted and any damage and deterioration done to his father due to want of proper treatment would be entirely at the risk and cost of respondent no.3. Respondent nos. 1 to 3 have enclosed at Annexure-R/1, the circular issued by the Regional Office indicating the list of Authorised Medical Attendants. This is based on the same list as has been fixed by Government of Orissa and circulated by Ministry of Health, Government of India in their circular dated 29.12.1979 and has been printed in Swamy's Compilation of Medical Attendance Rules xerox copy of which has also been given at Annexure-R/1. Respondent nos. 1 to 3 have stated that a Central Government employee is required to consult normally an Authorised Medical Attendant nearest to his residence . Besides, the Chairman, Central Government Employees Welfare Coordination Committee has also drawn up a list of private doctors declared as Authorised Medical Attendants. Respondent nos. 1 to 3 have enclosed a circular dated 12.10.1995 issued by Central Government Employees Coordination Committee in which 29 private doctors stationed at different areas of Bhubaneswar have been declared as Authorised Medical Attendants. Respondent nos. 1 to 3 have stated that the doctors from whom the applicant has received medical treatment are neither declared as Authorised Medical Attendants by the Central Government Employees Co-ordination Committee nor does the ESI Hospital/Dispensary figure in the list circulated by State Government and Government of India as Central Government Authorised Medical Attendants list. Respondent nos. 1 to 3 have further stated that the applicant's wife is an employee of ESI Dispensary, Mancheswar and Insurance

Medical Officer of ESI Dispensary can be authorised medical attendant for her and her family members so long as they take treatment or reimbursement from the hospital where the applicant's wife is serving. As the applicant is claiming reimbursement from Central Government offices, his case of reimbursement has to be considered in accordance with the Central Government Rules. Respondent nos. 1 to 3 have further stated that according to Central Services (Medical Attendance) Rules, 1944, if an authorised medical attendant is not available within a radius of 5 K.Ms. where the patient lives then the a private doctor can be declared as Authorised Medical attendant by the Head of Department. But the Zonal Dispensary, Sahidnagar is within 5 K.Ms from where the applicant lives and therefore the statement of the applicant that no approved or notified medical facility is available in the area where he lives is not correct. On the above grounds, respondent nos. 1 to 3 have opposed the prayers of the applicant.

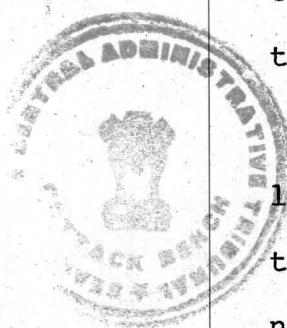
4. Director, E.S.I., Government of Orissa (respondent no.4) has filed a separate counter in which respondent no.4 has mentioned that the applicant has submitted reimbursement claims to his employer, i.e., respondent no.3 in the form prescribed by the Central Government. It is further stated that the form in which claim certificate is issued in respect of an ESI employee is a form prescribed by the State Government and is signed by the doctors of ESI Scheme after which the claim is entertained by ESI Department for payment. So far as a Central Government employee like the petitioner is concerned, the Medical Officer of ESI Scheme is not authorised to sign the claim for medical reimbursement of

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the Central Government employee. It is further stated that the applicant's wife is working as a Female Attendant in E.S.I. Dispensary, Mancheswar. She is entitled to claim reimbursement of medical expenses from the ESI Scheme. But she had never claimed reimbursement under the ESI Scheme though she was undergoing treatment under Medical Officer, E.S.I. Respondent no.4 has further stated that on a reference made by respondent no.3, the position was clarified by him to respondent no.3 in Confidential D.O. letter dated 2.5.1996 at Annexure-R/1. On the above grounds respondent no. 4 has stated that he is no way concerned with the prayer of the application and therefore the application should be dismissed.

5. I have heard Shri K.C.Kanungo, the learned counsel for the petitioner; Shri U.B.Mohapatra, the learned Additional Standing Counsel for respondent nos. 1 to 3; and Shri K.C.Mohanty, the learned Government Advocate appearing for Director, ESI, and have also perused the records. The learned counsel for the petitioner has filed written note of submissions which has also been taken note of.

6. The admitted position between the parties is that the applicant in this case is a Central Government employee and his wife is a State Government employee serving in ESI Dispensary, Mancheswar. The applicant has mentioned in paragraph 4.2 of the OA that as required under Medical Rules, he and his wife furnished a joint declaration to their respective offices and consequently the applicant preferred medical claims in the office of respondent no.3 on his own behalf and also on behalf of his family including his wife. Before proceeding further a point has to be noted about the joint declaration. Under



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the instructions issued by Government of India from time to time, the gist of which has been summarised at page 92 of **Swamy's Compilation of Medical Attendance Rules (23rd Edition)**, question of submitting a joint declaration arises only when both husband and wife are Central Government servants. In such cases medical concessions can be availed by the wife and the children according to the status of the husband and such joint declaration shall remain in force till such time as it is revised on the express request in writing by both the husband and the wife, e.g., in the event of promotion, transfer, resignation, etc., of either of the two. In the cases where the spouse is employed under the State Government, the instructions provide that if the spouse is employed in State Government or any other organisation which provide medical services, then the spouse would be entitled to choose either the facilities under the Central Services (Medical Attendance) Rules, or the medical facilities provided by the organisation in which the spouse is employed. In this case from the averments of the applicant it appears that the wife has chosen to get reimbursement of claims under the Central Services (Medical Attendance) Rules, 1944. From the above it automatically follows that the claims preferred by the applicant for reimbursement of claims for medical treatment of self, his wife and other family members have to be preferred, considered and settled strictly in accordance with the Central Services (Medical Attendance) Rules, 1944. These rules provide for treatment in the Hospitals and Dispensaries which have been declared by the State Government and Government of India as Authorised Medical Attendants for Central Government employees stationed at



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different places. Respondent nos. 1 to 3 have enclosed along with the counter the extract of the gist of the circular dated 22.12.1979 of Government of Orissa, Health & Family Welfare Department which was circulated by Government of India, Ministry of Health, in their O.M. dated 29.12.1979. This circular and the list of Authorised Medical Attendants for Central Government employees stationed at important towns in Orissa have been printed at pages 133 and 134 of **Swamy's Compilation of Medical Attendance Rules(supra)**. From this it appears that in Bhubaneswar there are nine Authorised Medical Attendants and the ESI Dispensary at Mancheswar is not one of them. Besides, respondent nos. 1 to 3 have enclosed an order dated 12.10.1995 in which 29 private doctors stationed at different locations in Bhubaneswar have been declared as Authorised Medical Attendants. The applicant has got treatment neither from the Hospitals and Dispensaries notified by the State Government and Government of India as referred to earlier nor from any of the private doctors who have been notified as Authorised Medical Attendants. It has been submitted by the learned counsel for the petitioner that ESI Dispensary, Mancheswar, comes within the definition of "Government Hospital" as provided under Rule 2(d) of Central Services (Medical Attendance) Rules, 1944. Under this provision, "Government Hospital" inter alia includes a departmental dispensary whether full time or part-time established and run by a department of the Government for the medical attendance and treatment of a class or classes of Government servants and members of their families. Under sub-rule (c) of Rule 2 the term "Government" has been defined as State Government. In view of this, it is submitted by the learned counsel for

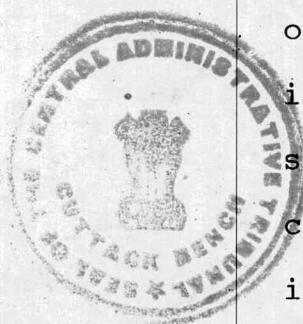
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the petitioner that ESI Dispensary must be taken to be a Government Hospital within the meaning of definition under the Central Services (Medical Attendance) Rules, 1944. It has been further submitted that under the circular of Ministry of Health, Government of India, dated 20.1.1953, the gist of which has been printed at page 25 of **Swamy's Compilation of Medical Attendance Rules (23rd Edition)** it has been provided that all hospitals recognised by the State Governments for medical attendance and for treatment of their employees and/or members of their families should automatically be regarded as included in the term "Government Hospital" as defined in the relevant Medical Attendance Rules. But when a Central Government servant or a member of his family receives treatment in a medical institution in State he should be required to submit, in support of his claim for reimbursement of expenditure, a certificate from the Medical Superintendent of the institution concerned to the effect that the institution is recognised by the State Government for the purpose of medical treatment of State Government employees and/or their families. From the above definition and the circular it is clear that ESI Dispensary at Mancheswar comes within the definition of "Government Hospital" under Central Services (Medical Attendance) Rules, 1944. This contention of the learned counsel for the petitioner is accordingly upheld.

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7. Before proceeding further it would be necessary to note the provisions of Rule 3 of Central Services (Medical Attendance)Rules, 1944 which provide that a Government servant shall be entitled, free of charge, to medical attendance by the authorised medical attendant. It is further provided that where a Government



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servant is entitled to medical attendance free of charge any amount paid by him on account of such medical attendance shall, on production of a certificate in writing by the authorised medical attendant in this behalf, be reimbursed to him by the Central Government. This is called essentiality certificate which is to be enclosed along with the application for reimbursement of medical claims. The proviso under this Rule lays down that the controlling officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case after giving an opportunity to the claimant of being heard in the matter. The controlling officer should also communicate to the applicant the reasons for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of forty-five days of the date of receipt of the order rejecting the claim.

8. The petitioner's prayer in this OA is for quashing Annexure-2 in which an order of recovery of Rs.6355/- from the applicant said to have been paid to him erroneously by way of medical reimbursement, has been made. The second prayer is for quashing the order dated 10.6.1996 at Annexure-3 rejecting his representation for reconsideration of the medical claims dated 3.6.1996. Respondent nos. 1 to 3 in their counter have stated that some of the medical claims were found to be *prima facie* inadmissible in so far as the medicines procured by the applicant were double or sometimes, three times the quantum of medicines actually prescribed by the doctors and some of the bills bear dates preceding the date of actual prescription by the doctor. Obviously, if the applicant has purchased medicines without prescription of the doctor he cannot cover up the same later on by getting

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an essentiality certificate and prefer a claim. Similarly, if the applicant has purchased more medicines than what has been prescribed by doctor, he obviously cannot claim reimbursement of the excess medicines purchased by him. Thus, rejection of his claim of reimbursement on these two grounds is therefore held to be perfectly valid. Respondent nos. 1 to 3 have however not indicated in their counter as to what is the amount which is covered by these two categories. But in any case the amounts relatable to above two categories of purchase of medicines in excess of what has been prescribed by the doctor and purchase of medicines before getting the prescription of the doctor cannot be got reimbursed and therefore, if any payment has been made in respect of such claims, then such amounts should be recoverable. The contention of the learned counsel for the petitioner that the order of recovery should be quashed is rejected in so far as it relates to the amounts connected with these two items.

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9. The second ground on which the amounts reimbursed have been found inadmissible and recovery has been ordered is that the applicant has obtained treatment of his wife and other family members from the ESI Dispensary at Mancheswar and it has been held by respondent no.3 that ESI Dispensary is not an authorised institution for providing medical attendance to Central Government employees. I have already held that ESI Dispensary comes within the definition of "Government Hospital". The learned counsel for the petitioner has urged that in case of emergency a Government servant is entitled to obtain medical attendance from nearest hospital and therefore the contention that ESI Dispensary is not a hospital authorised to provide medical attendance

to Central Government employees is without any merit. In support of his contention the learned counsel for the petitioner has relied on the following decisions:

(i) Paschim Banga Khet Mazdoor Samity v. State of West Bengal, AIR 1996 SC 2426;

(ii) Consumer Education & Research Centre v. Union of India, AIR 1995 SC 922;

(iii) Pandit Paramananda Katara v. Union of India, AIR 1989 SC 2039;

(iv) S.D.Bakare v. Secretary, Ministry of Defence, 1996/1 Swamy's Case-law Digest No. 543 at page 810; and

(v) N.B.Rao v. Union of India, 1995/2 Swamy's Case-Law Digest No.543 at page 833.

The first two cases referred to above deal with the right of a Government servant or for that matter any individual to get medical treatment as it is directly connected to right to life. In Pandit Paramananda's case(supra) which has been followed in S.D.Bakare's case (supra) and N.B.Rao's case (supra) it has been held that in case of emergency a Government servant can approach and obtain treatment even from an institution which is not notified as a recognised institution to provide medical attendance to Central Government employees. It is not necessary to go into the facts of these cases in view of my finding that ESI Dispensary is a Government Hospital within the definition of Central Services(Medical Attendance) Rules,1944.

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10. Even accepting that ESI Dispensary at Mancheswar is a Government Hospital for the purpose of Central Services (Medical Attendance) Rules, 1944, it does not necessarily follow that for treatment obtained in the ESI Dispensary, reimbursement will necessarily be available under the Central Services (Medical Attendance) Rules, 1944. The Director, ESI, has pointed out that for getting treatment in ESI Dispensary a person's name has to be included in the Register of Out Patient Department. Under Rule 3 referred to by me earlier, after getting treatment and after purchasing medicines the Government servant has also to submit an essentiality certificate. In the instant case, some bills preferred by the applicant are based on the treatment given by an ESI doctor where the prescription has been written out on his private pad. Obviously treatment in such a case has not been obtained from the ESI Dispensary. The concerned doctor is holding a non-practising post and he cannot treat patients privately. In view of this, the only way the concerned doctor could have treated the family members of the applicant is in the ESI Hospital after getting their names included in the OPD Register. As this has not been done, the claims based on prescriptions given by an ESI doctor in his private capacity are not entertainable for the purpose of reimbursement and the order of recovery with regard to such claims which again have not been quantified by either side is held to be valid and the contention of the learned counsel for the petitioner for quashing the order of recovery in respect of such claim is rejected.

11. There remains some other claims in respect of which the applicant has enclosed the OPD



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Tickets. It is necessary to note in this connection that in course of hearing the xerox copies of the bills have been submitted by the respondents and from this I find that in some cases OPD Tickets of ESI Dispensary at Mancheswar are there. In these cases obviously the family members of the applicant have obtained treatment from ESI Dispensary at Mancheswar which, I have already held, comes under the definition of Government Hospital under Central Services (Medical Attendance) Rules, 1944. But even in these cases the applicant has to submit an essentiality certificate as per sub-rule (2) of Rule 3 of C.S.(M.A.) Rules, 1944. Such essentiality certificate has to be furnished by an Authorised Medical Attendant. The Director, ESI in his letter referred to by me earlier has specifically mentioned that the ESI Doctors are not authorised to sign essentiality certificates for treatment of Central Government employees and their family members. In this case the applicant's wife is no doubt a State Government employee, but the reimbursement for her treatment as also the treatment of her children by the applicant is claimed from the Central Government and such claims have to be considered strictly in accordance with the CS (MA) Rules, 1944. This presupposes that an essentiality certificate has to be enclosed to the medical reimbursement claim, which has to be signed by an Authorised Medical Attendant. As ESI doctors are not authorised to sign essentiality certificate for Central Government employees and their family members, the essentiality certificate signed by ESI doctors cannot obviously be accepted for the purpose of considering reimbursement of the claims made by the applicant. It is



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also to be noted at this stage that along with xerox copies of the bills, the essentiality certificates have not been given and it has not been possible for me to see the essentiality certificates. But the position is very clear that in view of the clarification of Director, ESI that essentiality certificate cannot be given by the doctors in the ESI Dispensary for Central Government employees and their family members, such essentiality certificates cannot be considered. It is necessary also here to note that the applicant is claiming reimbursement for treatment of his wife and other family members not on the ground that his wife is an employee of the State Government but for being a member of the family of a Central Government employee. In view of this, the action of respondent no.3 in disallowing the essentiality certificates and claims relatable to such certificates issued by ESI doctors is also unexceptionable. In view of this, I hold that the action of respondent no.3 in rejecting such essentiality certificates and order of recovery of the amounts paid on the basis of such essentiality certificates are valid. The prayer of the applicant for quashing the order of recovery is therefore held to be without any merit and is rejected.

S. S. S.

12. The second prayer of the applicant is for a direction to the respondents to entertain all medical bills for treatment of self and his family members under ESI Hospital/Dispensary. In view of my finding that ESI Dispensary is a Government Hospital, the applicant is entitled to prefer claims, but the claims have to be allowed strictly in terms of the Central Services (Medical Attendance) Rules, 1944. The applicant has to furnish



essentiality certificate from an Authorised Medical Attendant in support of his claim. As regards the pending claims, if any, the applicant is permitted to submit proper essentiality certificates within a period of 60 days from the date of receipt of copy of this order. Respondent no.3 should consider the claims on the basis of such essentiality certificates issued by an Authorised Medical Attendant for Central Government employees and take suitable action under the rules.

13. In the result, therefore, the Original Application is disposed of in terms of the observation and direction above. No costs.

Somnath Som.
(SOMNATH SOM)
10.3.2000
VICE-CHAIRMAN



AN/P/S