

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK**

ORIGINAL APPLICATION NO. 236 OF 1999
Cuttack this the 25th day of May 2000

Somanath Saw

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

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

Somanath Saw
(SOMNATH SOM)
VICE-CHAIRMAN

25.5.2000

J.S.D
(J.S. DHALIWAL)
MEMBER (JUDICIAL)

8

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK**

**ORIGINAL APPLICATION NO. 236 OF 1999
Cuttack this the 25th day May, 2000**

CORAM:

**THE HON'BLE SHRT SOMNATH SOM VICE-CHAIRMAN
AND
THE HON'BLE SHRT J.S.DHALIWAL MEMBER(JUDICIAL)**

• • •

**Somanath Saw
Carpenter H.C. I.
A.G.E. B/R Balasore
Proof Gate 1 O.T. Road
Balasore - 765 001**

• • • **Applicant**

By the Advocates : Mr. S.C. Samantray

-Versus-

- 1. Union of India represented by
Chief Engineer R & D (Picket)
Sikandarabad**
- 2. Controller of Defence Accounts
At/PO/Dist: Patna Bihar**
- 3. Garrison Engineer(T) R & D
At/Po: Chandipur
Dist: Balasore - 756 001**

• • • **Respondents**

**By the Advocates : Mr. A.K. Bose
Sr. Standing Counsel
(Central)**

• • •

ORDER

MR.J.S.DHALIWAL MEMBER(JUDICIAL): Applicant Somanath Saw is an employee under the Respondents working in the Office of Res.3. His wife was suffering from heart ailment and was referred by S.C.B.Medical College & Hospital Cuttack to Appollo Hospital Madras. On 18.7.1996 necessary permission was accorded by the Director Medical Education & Training for her check up. The Appollo Hospital gave an estimate of Rs.1,40000/- to Rs.1 5000/- and the respondents sanctioned the advance of Rs.1,20000/- by the orders of Chief Engineer R & D Secunderabad under the relevant Government guidelines and sent the amount through a Draft to the Appollo Hospital directly (Annexures-2 and 2/1). His wife was admitted in the Hospital as Indoor patient on 7.11.1996 and during open heart surgery her valves of the heart were replaced. The applicant submitted his Hospital bills along with cash receipts showing his expenses along with necessary form and certificates for reimbursement of the same. He sent a number of representations from December, 1997 to September 1998 for sanction of the bills. Queries were made from the Hospital which sent reply and the certificates(Annexure-4) indicating the operation conducted. The applicant received letter dated 19.2.1999 passed by Res.3 directing recovery from the petitioner with effect from March 1999 with a covering letter (Annexures - 5 and 5/1). He claims that his wife died of shock due to this order of recovery on 23.4.1999. He had incurred expenses of Rs. 1,44 000/- in addition to the earlier expenses and submitted ~~fol~~ bills out of which

10

only four have been sanctioned. Claiming that non sanction of the claim of reimbursement of the total cost amounts to violation of Article 21 of the Constitution of India and the order of recovery of non-sanction of the remaining amount is causing undue harrassment to the applicant, He further claims that due to an agreement between the private approved Hospital the Appollo Hospital and the C.G.H.S. for treatment of the patient, it is not open to the Government to restrict the reimbursement of the actual charges recovered by the private hospital from the C.G.H.S. He claims that cost of replacement of valves is not within the pacakage deal under the instructions of the Government. He has prayed for quashing the order dated 19.2.1999 by which recovery has been ordered with the further direction to respondents to reimburse the actual medical expenses.

2. Respondents do not dispute the facts as pleaded by the applicant and plead that the C.E.R. & D. Secunderabad had accorded sanction for payment of advance of Rs. 1,20,000/- and the same was sent directly to the Appollo Hospital. They however plead that in the sanction order it was specifically mentioned that in case subsequently it is revealed that the advance paid/deposited being made is more than the amount admissible under the C.S.(M.A.) Rules the balance should be refunded forthwith to the Government. They do not dispute the bill submitted by the applicant amounting to Rs.1,20,050/-. These bills were however returned by the C.D.A. Patna 3/4 times with the observation that the maximum amount admissible for reimbursement is Rs. 64,000/- and therefore the case is required to be referred to E-in-C's Branch Army HQ as an

J

advance of Rs.1,20,000 had been sanctioned. The case for obtaining sanction of Government of India was thus sent to cover the whole expenditure incurred by the applicant in the treatment of his wife. The case has however not been accepted by the Government of India Ministry of Defence through their letter dated 15.7.1998. It was thus orders for recovering of amount of Rs.56 000/- were passed on 16.11.1998 and 19.2.1999 as per directions of C.E.R. & D. dated 11.8.1998. It is further pleaded that under the relevant rules the amount for treatment authorised was Rs.64 000/- at that time the same has now been increased to Rs.99000/- under the Package deal.

Applicant has filed a rejoinder pleading that the charges were for additional materials used, consultation medical records, miscellaneous package deal and the cost of valves. The package deal is mentioned to Rs.70,950 and the cost of valve is Rs.40000/-. Claims that this much amount is permissible for reimbursement. The valves were replaced at the prescription of the Specialist in the Appollo Hospital.

3. We have heard learned counsel for the parties and examined the materials on the file.

4. The basis of order of recovery to be made from the applicant is said to be the limit of Rs.64000/- as provided under CS(MA) Rules. In the present case it is the opinion of the C.D.A. which formed the basis for forming an opinion and sending the case to the Ministry of Defence New Delhi to be dealt by the appropriate Directorate. Despite the pendency of this case since May 1999 and the opinion taken by the Government of India we have not been shown the orders

19

under which such limit was fixed. We are aware of the fact that various items are notified or circulated giving the gist which are reimbursable for different items including Coronary Bye Pass Surgery Open Heart Surgery N.G.O. Plastering etc. When a point is raised before the Court of Law, adjudication is possible if a party to the ~~dis~~ has produced the relevant document for supporting their pleas. In the present case the respondents have withheld the very basis of the orders passed by them as to whether in the year 1996 Rs.64, 000/- was the fixed limit for Open Heart Surgery as a Package Deal has not been either placed on record or shown to us even at the time of final arguments. The mention has been made that the rates have been enhanced to Rs.99000/-. Our attention was drawn to a judgment of Mumbai Bench of the C.A.T. wherein a Judgment of the Hon'ble Supreme Court in Mahendra Singh Chadda case was relied on which says that a Government servant is entitled to reimbursement of the entire amount of expenses incurred by him. We are aware of a subsequent judgment of the Supreme Court in the case of State of Punjab vs. Ram Lubhaya Bagga reported in J.T. 1998(2) SC 138 in which the Hon'ble Supreme Court considered the earlier judgments on this point and came to the conclusion that the Government is within its powers to restrict the claim of reimbursement of medical expenses to a particular limit. Even the Right to Health is recognised to be a right guaranteed under the Constitution of India, the Government can still fix the limit of expenses to be borne by the Government for different kinds of treatments to ailments. This being the judgment recent in time we are bound by the law laid down

J

13

by the Hon'ble Supreme Court in this judgment. Claim of the applicant that he is entitled to the entire cost of treatment has to be rejected. However one shall be required to examine as to what are the items covered under the Package Deal mentioned by the respondents in their written reply. Possibly it may not include the expenses incurred on treatment before admission to the hospital for the said operation and expenses on follow up treatment or subsequent treatment after discharged from the hospital. We have ^{been} kept in dark regarding the actual Package Deal enforced by the respondents. We have been shown O.M. issued by Government of India on 18.6.1976 18.9.1978 24.11.1983 and 24.10.1986 as given in Swamy's Compilation on Medical Attendance Rules under CS(MA) Rules mentioning that reimbursement of the cost of various artificial appliances including the cost of **replacement** of ~~deceased~~ heart valves are within the purview of delegated powers. Apparently the case of the applicant has not been considered under these decisions of the Government of India for his claim of remimbursement of Rs. 40,000/- which was the cost of heart valves. This also requires to be reconsidered by the respondents at the appropriate level.

For the reasons discussed above we ^{are} left with no option, in the given circumstances where the relevant documents have been withheld from us except to quash the order impugned in this case resulting in recovery from the pay and allowances of the applicant. Ordered accordingly. Respondents are directed to consider the case of the applicant taking into consider the observations recorded above particularly with regard to the cost of heart valve and as to

7

W

what items are covered under that package deal. Order of recovery if any be made only after reconsidering the claim of the applicant as mentioned above. They are directed to take a decision within a period of three months from the date of receipt of this order.

Original Application is disposed of as above, leaving the parties to bear their own costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
25.5.2000
B.K.SAHOO

J.S. Dhaliwal
(J.S. DHALIWAL)
MEMBER (JUDICIAL)
25.5.2000