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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.947 OF 2003
Cuttack, this the 05th day of April, 2005

SOMANATH SAW.

.....

APPLICANT.

VERSUS

UNION OF INDIA & ORS.

.....

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 CAT or not?

— yes —


(B.N.SOM)
VICE-CHAIRMAN


(G.SHANTHAPPA)
MEMBER (JUDICIAL)

1/4/05

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

**Original Application No. 947 OF 2003
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C O R A M:-

**THE HON'BLE MR. B. N. SOM, VICE-CHAIRMAN
And
THE HON'BLE MR. G.SHANTHAPPA, MEMBER(JUDL.)**

SOMANATH SAW.

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APPLICANT.

VERSUS

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.....

RESPONDENTS.

For the Applicant. -

M/s. S.C.Samanatray, T.K.Mohanta, Advocate.

For the Respondents -

Mr. U.B.Mohapatra, SR.ST.Counsel.

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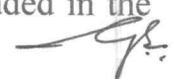
O R D E R

MR. G.SHANTHAPPA, MEMBER (JUDICIAL):-

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant seeks the following reliefs:-

“THE APPLICANT THEREFORE, PRAYS THAT THE ORDER DATED 06.12.2001 TO THE EXTENT DIRECTING RECOVERY OF RS. 16,000/- BE QUASHED”.

2. The brief facts of the case, according to the Applicant are that the wife of the Applicant, Smt. Jemamani Saw was admitted in Apollo Hospital, Madras for her treatment.. The said Hospital gave an estimated cost of f Rs.1,40,000/- to Rs.1.50,000/-to meet the medical expenditure. The Respondents-Department sanctioned 80% of the estimated cost i.e. Rs. 1,20,000/-and accordingly a draft was sent to the said Hospital. Smt. Saw was admitted as an indoor patient on 07.11.1996 and discharged on 20.11.1996.The Applicant submitted medical bills/Cash receipts along with other expenditures incurred by him for sanction and reimbursement . Since there was no response from the Respondents, the applicant had submitted six reminders from 23.12.1997 to 15.9.1998. Res.3 has raised objection as to whether the operation requiring replacement of valves was included in the



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package deal. The hospital has clarified that the patient had undergone valve replacement. The Respondents have issued order dated 19.2.1999 directing recovery of Rs. 56,000/ from the applicant, against which it is stated that the applicant has made a representation, but to no effect. The applicant filed O.A.No.236/99 which was disposed of on 25.5.2000 directing the Respondents to reconsider the claim of the applicant within 3 months. The Controller of Defence (Accounts) Patna has sanctioned Rs. 1,04,000 and adjusted against the medical advance of Rs.1,20,000, Rs.3354.00 was sanctioned and Rs.12,646.00 was ordered to be recovered vide order dated 6.12.2001. Applicant submitted a representation for the settlement of the entire amount that had been paid to the hospital authorities. The Chief Engineer, Secunderabad ^{ep.} rejected the said representation of the applicant holding that the said amount is recoverable. Despite all the representations the Res.3 has been deducting Rs.500.00 towards recovery from the salary of the applicant. This action of the Respondent in not sanctioning the full amount is claimed to be illegal , arbitrary and against the constitutional mandate enshrined under Article 21 of the Constitution. It is the case of the applicant that when he has incurred Rs.1,44,000/- for treatment and Rs.1,20,000/- was directed to be paid to the hospital towards valve

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replacement by open heart surgery, the order dated 6.12.2001 directing recovery of Rs/16,000/- is illegal.

3. Per contra, the Respondents have filed their counter denying the averments made in the O.A. The specific ground urged by the applicant is that he had applied for an advance of Rs.1,50,000/- for the treatment of his wife on 22.7.1996 as per the advice of H.O.D., Cardiology, S.C.B. Medical Hospital. The application was forwarded to the Chief Engineer, Secunderabad against which an amount of Rs.1,20,000/-(80% of approximate cost) was released in advance and was paid to the Apollo Hospital on behalf of the applicant. Applicant submitted his claim for final settlement/adjustment, i.e., (i) package deal (Open Heart Surgery Rs.70,950.00) (ii) Cost of Valve Rs.40,000/-) and (iii) other expenditure Rs.9100.00, which comes to Rs.1,20,050.00 in total. The C.D.A. Patna admitted his claim for Rs.64,000 plus Rs.40,000/- plus Rs.3350.00, which comes to Rs.1,07,354.00 as per the Rules approved by the Government to the private hospital. As per his entitlement, Rs.64,000.00 for package deal was accepted and passed by the Audit. The sanctioned amount of Rs.1,04,000.00 was for including the heart valve, i.e., Rs.64,000 for operation charges and Rs.40,000 for heart valve. The excess amount has been ordered for recovery. It has been claimed that there has been no

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illegality or irregularity while passing the impugned order of recovery and Rs.10,800.00 has already been recovered from the salary of the applicant. It is the case of the Respondents that there is no justification for asking the full amount that was spent by the applicant towards medical expenses. As per the package deal, the amount was sanctioned and the excess amount was ordered to be recovered from the applicant and as such the applicant has no grievance to ventilate and therefore, this O.A. being devoid of merit is liable to be dismissed.

4. We have carefully considered the rival submissions advanced at the Bar. It is the admitted fact of the case that the applicant has spent an amount of Rs.40,000.00, but he has not submitted the reimbursement bill. According to the bills under Annexure-A/3, a sum of Rs.1,26,087/-, and in another bill Rs.3714.00 have been claimed which covers room charges etc. As per the claim of the applicant, the Respondents have sanctioned the amount in accordance with the medical attendance rules. When the applicant has spent the money for the treatment of his wife, as per the agreement between hospital and the Respondents, the amount which was spent towards the medical treatment has to be payable by the Respondents directly to the hospital. The contention of the Respondents is that as per his claim, they have sanctioned the amount which was paid in excess and therefore, the said

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excess amount was ordered to be recovered. According to the calculation made by the Respondents, they had not calculated the amount properly. The Respondents have not given the other expenses of Rs. 9100/- incurred by the applicant. If this amount is included, the total amount will come to Rs.1,20,050.00. The said amount has already been sanctioned by the Respondents and paid to the hospital. At this stage, the Respondents are not justified in recovering the excess amount.

5. The question for consideration in this O.A. is as to whether the Respondents are duty bound to pay the entire amount which was incurred ~~by them~~ for the treatment of the wife of the applicant. On this aspect, the Hon'ble Apex Court, the Hon'ble High Court of Delhi and the Principal Bench of the Tribunal have decided that the employer has to pay the entire cost of treatment. Learned counsel for the Applicant has relied on the judgment of the Hon'ble Apex Court rendered in the case of STATE OF PUNJAB AND; OTHERS vs. RAM LUBHAYA BAGGA etc.etc., reported in JT 1998 (2) SC 136 in which the Hon'ble Apex Court have held that the policy of Punjab Government promulgated on 13.2.1995 where the decision was to reimburse as per the AIIMS rates. Para 29 of the said judgment is extracted below:-

"29. No state of any country can have unlimited resources to spend on any of its projects. That is

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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."

In a recent judgment of the Hon'ble High Court of Delhi, reported in 2005 (2) SLR page 75- MILAP SINGH vrs. UNION OF INDIA it was held that Medical reimbursement – Petitioner underwent By-pass Surgery from a hospital recognized under Central Government Health Scheme-petitioner entitled to full medical reimbursement. Paragraphs 14,15 and 16 are extracted below:-

"14. The undisputed position that emerges is that a patient is entitled to reimbursement ;of the full amount of medical expenses and not only at the rates specified in the circular of 1996 and in case respondent No.2 has charged a higher rate, than could have been charged, it is for respondent No.1 to settle the matter with respondent No.2.The petitioner cannot be deprived ;of the reimbursement. The observations in para 26 of Prithvi Nath Chopra's case (supra) are useful in this behalf, which are as under:



"26. It can also not be disputed that the Indraprastha Apollo Hospital has been made available land at token amount and it was for the respondents to have settled the amounts of reimbursement at the Hospital. If the respondents have any grievance about the quantification of the amounts charged, it is for the respondents to take up the matter in issue with the Apollo Hospital. But that cannot deprive the petitioner to full reimbursement of the amount as charged by the recognized Indraprastha Apollo Hospital. In fact the petitioner has been compelled to pay the charges first and thereafter reimbursement is taking place while the respondents are directly billed by the approved hospitals which policy is salutary since the patient may not at a time have the funds available to first pay the amount and then claim the reimbursement."

15. A writ of mandamus, is thus, issued directing respondent No.1 to reimburse the petitioner to the full extent of the bills raised by respondent No.2 Hospital and the balance amount of Rs. 1,05,000/- be remitted to the petitioner within a maximum period of one month from today.

16. In view of the conduct of respondent No.1 in not following the judgments of this Court, I consider it appropriate to impose cost; of Rs.20,000/-. It is further directed that in future it shall be ensured that the judgments passed by this Court are implemented in letter and spirit while processing such medical claims".



6. Recently, the Principal Bench in the case of Pramod Kumar Vrs. Union of India and others (O.A.No. 966 of 2004 decided on 21.02.2005) taking into consideration various judgments of the Hon'ble Supreme Court decided that the Respondents are obliged to pay the entire amount claimed by the Hospital in that case. In the instant case, the Applicant has spent Rs.1,44,000/- but he has preferred the bill of Rs. 1,20,050/-. The Respondents have taken the decision that the amount paid by them was in excess and, therefore, Rs. 16,000/- was ordered to be recovered. In view of the judgments referred to above, the decision taken by the Respondents for not sanctioning the amount is unjustified. Therefore, the impugned order of recovery dated 6.12.2001 is held to be illegal. Since the Respondents have already recovered the amount of Rs.10,000/- from the salary of the applicant, the same is also held to be highly illegal and unjustified.


7. For the foregoing reasons and on the basis of the various judge made laws, we are of the considered opinion that the Applicant is entitled to receive the full amount which was spent for treatment of his wife. Since he has claimed less amount and the same has already been sanctioned, the direction thereafter issued by the respondents to refund the excess

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amount is held to be illegal. In the circumstances, the Applicant is entitled for the amount claimed by him. Accordingly we quash the impugned order of recovery and direct the Respondents to refund the amount already recovered within a period of thirty (30) days from the date of receipt of this order.

8. In the result, this Original Application succeeds. There shall be no order as to costs.


(B.N.SOM)
VICE-CHAIRMAN


(G.SHANTHAPPA)
MEMBER(JUDICIAL)