

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.441 OF 2004
Cuttack this the 18th day of Nov' 2005

Nageshwar Prasad Singh ... APPLICANT(s)

-VERSUS-

UNION OF INDIA & Ors ... RESPONDENT(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION NO.441 OF 2004

Cuttack this the 18th day of November, 2005

CORAM:

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

...

Nageshwar Prasad Singh, aged about 59 years, Son of late Raj Narayan Singh, Permanent inhabitant of - M.I.G. B/52, Housing Colony, At/PO/PS-Dhanbad-826001, Jharkhanda - at present working as Post Graduate Teacher (PGT-Hist.) Kendriya Vidyalaya, I.N.S. Chilika, District-Khurda-752037 (Orissa)

...Applicant

By the Advocates :

M/s.Y.Mohanty
S.N.Sayak
B.P.Das,
B.R.Bhera
S.R.Pani
Ms.M.Jena

-VERSUS-

1. Kendriya Vidyalaya Sangatha, represented through the Commissioner, KVS, 18, Institutional Area, Sajid Jeet Marg, New Delhi-16
2. Assistant Commissioner, Kendraya Vidyalaya Sangathan, Regional Office, At-Pragati Vihar, Mancheswar, Bhubaneswar-17, Dist-Khurda
3. Principal, Kendriya Vidyalaya, Maithan, PO: Maithan Dam, District-Dhanbad (Jharkhand)
4. Principal, Kendriya Vidyalaya, I.N.S. Chilika, District-Khurda, Orissa-752037

...Respondents

By the Advocates :

Mr.Ashok Mohanty
Mr.S.P.Nayak

ORDER

MR.B.N.SOM, VICE-CHAIRMAN:

This Original Application has been filed by Shri Nageshwar Prasad Singh, being aggrieved by the letter bearing No.FA-17(Audit)

KVN/9798/94 dated 13.5.2004 (Annexure-A/1) issued by the Principal, K.V. Maithan, Dhanbad, Bihar requesting the Principal, Kendriya Vidyalaya, INS, Chilika to recover an amount of Rs. 17,266.00/- from his salary on account of medical claims for the year 1994-97 and TA/DA and T.A. claim for Medical Attendance for the years 1997-2000. He has prayed for the following relief:

- i) the Original Application be allowed;
- ii) the order of recovery under Annexure-A/1 be quashed;
- iii) the Respondents be directed to return back the amount to the applicant, which is already deducted/recovered from the applicant's monthly salary in the mean time, within a stipulated time as fixed by this Hon'ble Tribunal;
- iv) And such other order/orders be passed in giving complete relief to the applicant, in the interest of justice and equity.

2. It is the case of the applicant that an amount of Rs.5750/- has since been recovered by Respondent No.4 from his salary in an arbitrary and illegal manner without giving him any intimation/notice. His further allegation is that recovery from salary constitutes imposition of statutory penalty under Article 83(a)(iii) of K.V. Education Code and also under Rule 11(iii) of CCA Rules, 1965 and as no such recovery can be made without affording opportunity to the official to explain his case, the recovery so effected by the Respondent No.4 being violative of the principles of natural justice is liable to be set aside. He has further alleged that he had never taken any over payment relating to medical claims, TA/DA etc. as alleged and therefore, the decision of the Respondents to make recovery from his salary is wholly unjustified and arbitrary.

3. The Respondents, on the other hand have vehemently denied the allegation in their counter. They have submitted that the applicant had availed

TA/DA/Medical Claims from the Respondents-organization without giving required certificate and by submitting incorrect TA Bills showing excess mileage, wrong DA rate and claiming halting allowance beyond the permissible limit. They have further submitted that it was as a result of internal audit conducted in the year 1997, objections were raised vide its Memo dated 9.8.1997, observing that the applicant had obtained treatment from B.M.Birla Heart Research Center, Calcutta, on the recommendation of the D.V.C. Hospital without obtaining necessary no objection certificate from the Chief Administrative Medical Officer of the then State of Bihar, in terms of the provisions made under CS (Medical Attendance) Rule. The internal audit had raised objection on the ground that the applicant could not have taken medical treatment outside the state without following the procedure as laid down under CS(MA) Rules and therefore, the medical expenses incurred by him as also the amount spent by him on TA/DA for journey to the hospital outside the state was not permissible. In their counter, the Respondents have also shown the detail objections raised by the internal audit with regard to the T.A. bills submitted by the applicant in this connection. They have further submitted that the objections had also been raised by the audit regarding medical treatment availed by him during 21.11.1998 to 28.11.1988 and 11.1.2000 to 16.1.2000 for not having followed the procedure laid down in CS(MA) Rules. The rules provide that the applicant should have obtained necessary certificate from the authorized AMA/Specialist/Medical Officer that the journey was unavoidable and that he required to take an attendant with him having regard to his health condition. They have further alleged that these observations of the audit were made available to him in the year 1997 itself and thereafter, they have been in constant communication with him urging upon him either to comply with the requirements of the rules for admitting his claim or to



refund the amount paid to him in excess. As he did not respond to the repeated request made to him, finally, the Principal, KVS, Maithan approached the Principal, INS, Chilika to recover the amount of Rs.15,660/- on account of over payment made to him, as pointed out by the internal audit for the year 1997-2000.

4. I have heard the learned counsel of both the sides and perused the materials placed before me.

5. From the facts of the case, it is clear that during the course of internal audit inspection of KVS, Maithan, the audit party had raised objection regarding passing of the medical bill by the Respondent No.3 in connection with medical treatment undertaken by the applicant outside the State of Bihar and the TA/DA claims preferred by the applicant in respect of the said medical treatment. The applicant has taken the plea that the recovery was made from his salary without giving him an opportunity to explain his case. The Respondents, on the other hand, in their counter have blamed the applicant by stating that it is he who had claimed medical bill, TA/DA without giving requisite certificates, and therefore, he is liable either to refund the amount drawn by him or to repay the amount determined as excess by the internal audit. From a perusal of the records, I find that the Respondent No.3 had brought to the notice of the applicant the objections raised by the audit in its inspection report. By filing Annexure R/1 to their counter, they have drawn my notice to the fact that the applicant had signed the document (Annexure R/1) in token of having perused the same. In fact there is a remark appearing at the bottom of Page 1 of Annexure R/1, where the applicant seems to have written as follows:

"Seen in protest".

6. From the above document it is clear that the Respondents had brought the fact of audit objection to the notice of the applicant, who had taken

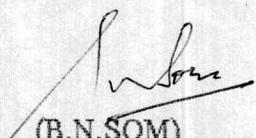


note of the same and had also given his reaction on receipt of the same as reflected above. It, therefore, goes to prove that the allegation leveled by the applicant in the O.A. that he was never told that certain amount was paid to him in excess or that he had drawn any excess amount was not known to him is not correct. Similarly, I am also not impressed by the submissions made by the Respondents in their counter that it is the applicant who is to be blamed for making claims without furnishing requisite certificates. It is the Respondent No.3 who was duty bound to scrutinize the medical claim of the applicant before passing the same for payment ensuring that the claim had been preferred complete in all respects. If the applicant had, at the time of passing the claim for treatment outside the state, omitted to put up the certificates or follow the procedure as laid down in the CS(M.A) Rules, still his claim was passed, the onus lies on the controlling authority for having accepted the bills in complete manner. As the medical bill had been accepted and passed by the controlling authority, it is also to be presumed that irregularities, if any, had been waived off by that authority. As I see from the fact of the case that it is the D.V.C. Hospital which had recommended, having regard to the health condition of the patient that the applicant required specialized treatment at B.M.Birla Institute of Heart and Research Center, Calcutta. However, as the audit has raised a valid objection, it is now for the Respondents No. 3 to take up the matter with the Chief Administrative Medical Officer, Bihar/Jharkhand for ex post facto approval in the matter explaining the circumstances of the case and regularize the treatment of the applicant at a specialized medical institute in the neighbouring state, i.e., West Bengal. It is not the allegation of the audit or any other authority that the applicant had made a false medical claim. It would, therefore, suffice if the due procedure of availing medical treatment outside the State as laid down in the CS (MA) Rules

is complied with now. It is also logical then that the payment already made to the applicant for his treatment should not be disallowed as otherwise that will prejudice the applicant and deny him the right to life as enshrined under Article 21 of the Constitution. I order accordingly.

7. However, with regard to TA/DA claims, if any amount has been disallowed by the audit on account of claim of excess mileage or inadmissible D.A. has been claimed, under the Rules, the same amount is liable to be recovered from the applicant and as some amount has already been recovered from his pay, the same should be adjusted from the amount already recovered and the rest may be refunded to him

With the above observations and directions, this O.A. is disposed of. No costs.



(B.N.SOM)
VICE-CHAIRMAN