

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO.528 of 2007

Cuttack, this the 01st day of August, 2008

Dipak Kumar Bose	Applicant
Versus		
Union of India & Ors.	Respondents

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Tribunal?

(C.R. MOHAPATRA)
MEMBER (ADMN.)

10

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Dipak Kumar Bose, Aged about 58 years, Son of Late A.C.Bose, at present working as Investigator Gr.II in the office of the Directorate of Census Operations, Orissa, Janpath, Unit IX, Bhubaneswar, Dist. Khurda-A permanent resident of Nima Sahi, Cuttack-I and at present residing at Plot No. N-4/143, At/Po.IRC Village, Bhubaneswar-15.

..... Applicant

By legal practitioner: In person.

-Versus-

1. Union of India represented through its Secretary to Government of India, Ministry of Home Affairs, North Block, New Delhi-110 001.
2. Registrar General of India, Ministry of Home Affairs, 2/A, Mansingh Road, Kota House Annex, New Delhi-110 011.
3. Deputy Director of Census Operations, Office of the Directorate of Census, Government of India, Janpath Unit IX, Po. Bhoinagar, Bhubaneswar, Dist. Khurda.

.....Respondents

By legal practitioner: Mr.U.B.Mohapastra, SSC.

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ORDER

MR. C.R. MOHAPATRA, MEMBER (ADMN.):

Applicant Dipak Kumar Bose is an employee of the Office of the Directorate of Census Operations, Orissa, Bhubaneswar working as Investigator Gr.II. His grievance is that during April, 2006 while coming to office he met with a road accident and became unconscious. After becoming conscious, he came to know that due to road accident he was taken to the nearest available physician by some strangers. After investigation it was detected that the applicant had sustained multiple neck injury. However, after becoming fit, he joined his duty and submitted re-imbursment bills of the expenses incurred towards his treatment. Since the bills preferred by him for reimbursement could not be settled for a long time, by submitting representation under Annexure-A/3 he requested for early settlement and reimbursement of the amount incurred by him towards his treatment. The said request of the Applicant was rejected under Annexure-A/4 dated 15th December, 2006 on the ground of non compliance of the Office Order



No.97/1/2001-Accts dated 26.04.2005 (Annexure-A/1) and letter No.D-12016/7/2005-GS dated 16.03.2006 (Annexure-A/2). Again he represented praying for exemption of the requirements and for reimbursement of bills which was rejected and communicated to the Applicant under Annexure-A/11 dated 12th October, 2007 on the grounds earlier given. Hence, by filing this Original Application U/s.19 of the A.T. Act, 1985 besides questioning the authority of Annexure-A/1 & A/2 he prayed for issuance of necessary directions to the Respondents for reimbursement of his medical claims by quashing the order of rejection under Annexure-A/4 and A/11.

2. Reasons for non-payment of the medical re-imburement claims ascribed by the Respondents in their counter are that the treatment of the Applicant was not in Government Hospital or in a dispensary approved by Government of India but by the AMA and, therefore, to verify the genuineness of the medicines used, the Applicant was asked to submit the wrappers, empty medicine bottles etc. which he failed to do. The second ground of rejection of the claim of the applicant described in the counter is that the claim preferred



by the applicant is not as per the provision of CS (Medical Attendant) Rules inasmuch as the treating physician of applicant was a private practitioner who has been appointed as AMA for Central Government employees and their family members stationed in areas wherein hospital facility is available. The AMAs are authorized to make treatment for a period not exceeding ten days. But the applicant remained under constant treatment of the AMA for 6 weeks which is irregular and that instead of remaining under constant treatment of AMA for six weeks, he could have availed treatment from a Government hospital when the treatment period exceeded 10 days. The third ground of rejection has been stated that the medicine prescribed by Dr. S.C. Mishra, AMA had serious reaction for which he was attended by another physician Dr. Amitabh Mohanty who admitted him in a private Nurshing Home. But the claim papers of the entire period of treatment are signed by Dr. S.C. Mishra AMA. The reimbursement claim in question was found suspicious after verification of documents like prescription of essential certificate, cash memos and medical unfit certificate for leave. However it has been stated that the part of the claim



11 of applicant which are in conformity with the provisions of Rule have been sanctioned and paid to him. According to the Respondents accident occurred around 9.30 AM in the morning when the Government hospital remained opened. But there was no reason of not availing the treatment at Government Hospital and preferring treatment with AMA. For the above reasons, the Respondents have prayed for dismissal of this OA.

3. Applicant, more or less reiterating the stand taken in the OA with regard to the circumstances under which he went to AMA, by relying several decisions of the Hon'ble Supreme Court and various Benches of the Tribunal tried to impress upon this Tribunal that non-payment of his medical claim and imposition of restriction under Annexure-A/1 and A/2 are illegal and against the provisions enshrined under Article 21 of the Constitution. Hence, he has prayed for allowing the prayers made in the Original Application.

4. During hearing the Applicant, who is appearing in this case in person and Learned Counsel appearing for and on behalf of the Respondents have reiterated their stand in support of their claim, made in the pleadings and

after giving a thorough hearing in the matter, I have perused the materials placed on record. The accident and the treatment of the Applicant is not in dispute. It is also not in dispute that the applicant is covered by the Central Services (Medical Attendance) Rules. Under the rules power has been vested with the controlling officer to reject any claim of medical reimbursement of an employee, if he is not satisfied with its genuineness on facts and circumstances of each case subject to giving an opportunity of being heard. But nowhere the Rules prescribe for production of wrappers, empty bottles etc. It is also not practicable either on the part of the claimants or their attendant to preserve any such items by divesting their attention from the treatment of the patient. However, insistence on production of wrappers came up for consideration before the Chandigarh Bench of the Tribunal in the case of **Murari Lal v UOI and others** in OA No. 410/CH/1987. In that case the Chandigarh Bench, taking into consideration the provisions of the CS (Medical Attendance) Rules came to the conclusion as under:

16

"We find that Rule 6(2) on which the Learned counsel for the respondent-department mainly relies, nowhere envisages that it is essential for a Government servant to produce the wrappers, empty containers. However, it suggests that it is the subjective satisfaction of the competent authority to know the genuineness of the medical claim preferred by a Government servant. In the instant case the only criterion as adopted by the respondent-department to adjudge the genuineness of the claim i.e. production of empty containers, wrappers is patently wrong and improper. It was incumbent upon the authorities to have adjudged the genuineness of the medical reimbursement claims submitted by the applicant from other documents also i.e. prescription slips essential certificate duly signed/counter signed by the medical authorities whose authentication cannot be overlooked in the guise of non-production of wrappers/empty bottles. Thus, the court is of the view that the respondent-department should have made the payment of medical reimbursement claims to the applicant without insisting upon him for production of wrappers etc., especially when the competent medical authorities had certified the genuineness of the claims and therefore there was sufficient reason for the Controlling Officer of the Administrative Department to believe the same. The Respondents are directed to make the payment of all the medical reimbursement bills to the applicant within a period of three months from the receipt of a copy of this order."

5. Taking support of the above decision this Bench ~~of~~ the Tribunal,

also directed in the case of Ram Chandra Das v UOI and others in OA No.

82/2008 disposed of on 09.01.2008 for finalization of the claim in respect of the medical reimbursement of the Applicant therein without insisting on production of empty bottles, wrappers etc. In the case of **Palaru Ramakrishnaiah and others vrs. UOI and others** – AIR 1990 SC 166, it has been held by the Apex Court that Executive instruction cannot over ride any provisions of the rules. Further in the case of **Dr. Rajinder Singh vrs. State of Punjab and others (2001) 5 SCC 482** it has been held by the Apex Court that:

“The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the high court was not justified in observing that even without the amendment of the rules, class II of the service can be treated as Class I only by way of notification, following such a course in effect amounts to amending the rules by a government order and ignoring the mandate of Article 309 of the Constitution”.

6. It is also trite law that decision rendered by one coordinate Bench of the Tribunal on a particular issue or fixing ratio is binding on the other

198
Bench. Therefore, by applying the ratio of the above decisions, we are left with no option but to hold that the imposition of condition for production of wrapper empty medical bottles in Annexure-A/1 & A/2 is held to be wholly unjustified and the same are hereby quashed being opposed to statutory Rules.

7. Coming to the next ground of rejection, it is seen that the representation of the Applicant has been rejected only on the ground of non compliance of Annexure-A/1 & A/2 i.e. production of wrapper, empty medicine bottles etc whereas in the counter, the Respondents have taken the grounds as to why the Applicant did not avail of the Government hospital when the treatment was beyond ten days though rule prescribes for ten days etc. In this connection it is noted that it is the specific case of the Applicant that while he was going to office he met with road accident and became unconscious. He was rescued by some unknown persons to the nearest available physician where it was detected that he has sustained multiple neck injury. It is an admitted fact that the treating physician was the AMA of the Census Department. In a critical stage when he was under treatment with a particular doctor that too in the

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instant case when he was under treatment with a particular doctor who is the AMA of the Department, and his accident and treatment is not in doubt, we do not think it just and proper to deny the reimbursement of the medical claims actually incurred by him. However, if there was any doubt of the prescriptions or bills the same could have been verified from the doctor concerned which has admittedly not been done in the present case. No explanation has also been given by the Respondents as to why they have sat over the claim of the applicant for such a long time.

8. In this connection, it is pointed out that substantive and procedural laws and action taken under them will have to pass the tests under Article 14. The test of reason and justice cannot be abstract. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable. It is trite law that hyper-technicality should not stand on the way of dispensation of justice as it is the basic principle that justice must not only be done but must manifestly be seen to be done. Keeping in view the above principles, the rule making authority has

22

also vested the powers of condonation of such procedural impropriety with the Head of Department. Hence, non-reimbursement of the medical bills of the Applicant is not only held to be bad in law but also is held to be against the provisions enshrined under Article 21 of the Constitution of India.

9. Last but not the least, it is pointed out that the Chandigarh Bench of the Tribunal, in the case of RP Mehta v Union of India and others, 2002 (2) SLJ (CAT) 198 has held that full amount spent on treatment is to be reimbursed. The Apex Court in the case of Suman Rakheja v State of Harayana, 2004 (13) SCC 562 ruled that even if a person took treatment without referral in unrecognized hospital, he has to be given reimbursement in full amount as right to life is a fundamental right under Article 21 of the Constitution of India.

10. In the light of the discussions made above, the rejection of the representation of Applicant under Annexure-A/4 dated 15th December, 2006 and Annexure-A/11 dated 12th October, 2007 need to be quashed. Ordered accordingly. The Respondents are hereby directed to scrutinize the medical reimbursement bills in question of the Applicant and make payment for the

21

claim except for the inadmissible medicines to the Applicant within a period of 30(thirty) days from the date of receipt of a copy of this order.

11. In the result, the OA stands allowed to the extent stated above. No costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)

KNM/PS.

