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O.A.No.29 of 2009

Dr.Karunakar Sahoo .... Applicant

Versus

Union of India & Others .... Respondents

Order dated: 25th March, 2010

**C O R A M**

**THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)**

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Applicant is a retired Chief Medical Officer of Central Hospital Barajamda in the District of Singhbhum, Jharkhand. He retired from service on attaining the age of superannuation w.e.f. 31.8.2008. His grievance in this Original Application is against nonpayment of his Residential Telephone Bill for the period from January, 2000 to June, 2003, conveyance allowance for the period from October, 2004 to August, 2008 and medical reimbursement bill submitted by him through letter dated 5.3.2008. His claim is that though he is entitled to the aforesaid benefits the same have been withheld by the Respondents illegally and arbitrarily and according to him, there having no response in spite of repeated representations, he has approached in the present ORIGINAL Application seeking direction to the Respondents to release the aforementioned dues within a stipulated period to be fixed by this Tribunal with 18% interest per annum.

2. Respondents stand, in this regard is that as per the departmental instruction issued vide letter NO. Z-16023/2/95/CHS.V dated 26.03.1998; applicant was not entitled to official telephone in his residence prior to 2003. Since the claim of the applicant pertains from January 2000 to June, 2003 the applicant was not entitled to the same. In regard to payment of his medical reimbursement claim, it has been stated that the medical claim submitted by the Applicant was duly scrutinized but the same was rejected and intimated to the applicant in letter under Annexure-A/13. As regards his claim for payment

of conveyance allowance it has been stated in the counter that his representation for payment of Conveyance Allowance was received by the office on 15.6.2009. Detailed particulars in regard to the duties performed by him beyond the normal duty hours from 2004-2008 were called from the office of WA Barajamda who intimated vide letter dated 13.08.2009 that as per the register Dr. Sahoo (Applicant) had visited the hospital only 50 times (approx) beyond office hours during the period from 2004 to 2008. Hence the payment of the conveyance allowance for the discharge of the duties beyond normal duty hours being false and baseless was not sanctioned in his favour. Accordingly, Respondents objected to the contentions and the relief sought by the Applicant in his Original Application. Applicant has also filed rejoinder refuting some of the stands taken by the Respondents in their counter which can be considered while considering the rival submissions advanced by the Learned Counsel for both sides herein below.

3. Heard Mr. Trilochan Rath, Learned Counsel appearing for the Applicant and Mr. S.B. Jena, Learned Additional Standing Counsel appearing for the respondents and perused the materials placed on record.

4. Contentions of the Learned Counsel for the applicant are that the stand taken by the Respondents in their counter is false, fabricated and erroneous because residential telephone facility is made available since 2.4.1987 when other incumbents having same scale of pay, status and discharging similar duties have been extended such facilities. Documents placed at Annexure-A/1 & A/2 are clear to this extent and would show that CHS officers in the scale of pay of Rs. 12000-15500/- and below are entitled to the Residential Telephone facility and in fact have been allowed such benefits whereas the applicant has been discriminated. So far as payment of Conveyance Allowance is concerned, it was contended by the Learned

Counsel for the Applicant that in spite of several representations and reminder the authorities sat over the matter and for the first time came forward in the counter that the claim of the applicant is not sustainable. In this connection it was contended by him that in terms of rule, conveyance allowance is being paid to the employees like the applicant for domiciliary visits and other official duties beyond the working hours. Applicant was in-charge of the hospital and managing the hospital having 50 beds single handedly. As such odd hourly visit (beyond his duty hours) daily in day and night for the interest of the patient and for administrative work as claimed by the applicant cannot lightly be ignored by the Respondents stating that he has only visited 50 times beyond office hours during the period from 2004-2008 and that as rule permits the applicant for such entitlement and counterparts employees have been paid such conveyance allowance, non sanction of the same in favour of the applicant is illegal being discriminatory one. Further contention of the Learned Counsel for the Applicant is that as his wife had fallen ill at Cuttack being his home State she was treated at SCB Medical College, Cuttack and, an amount of Rs.8413/- was incurred towards her treatment. Applicant submitted the same with due certification of the treating physical for sanction and reimbursement which was rejected by referring to Rule 6(1) GOI decision clause 6 of CS (MA Rules, 1944. But according to the Learned Counsel for the Applicant this rule is not applicable to the present case as the applicant belongs to Cuttack/Orissa and she was at her home State/District she fell sick and therefore, was treated with the SCB Medical College and Hospital, Cuttack and, therefore, according to the Learned Counsel for the Applicant rejection of his claim is not sustainable in the touch stone of judicial scrutiny. The above stand of the Applicant was countered by the Learned Additional Standing Counsel appearing for the Respondents by reiterating his stand taken

in the counter and reproduced above, besides stating that none of the points raised by the Applicant's Counsel is sustainable when after due application of mind the Respondents rejected the claim of the applicant being not permissible under the Rules.

5. The letter under Annexure-A/1 is dated 26.03.1998 written by the Under Secretary to Government of India, Ministry of Health and FW to all participating Units stating therein that the President is pleased to decide that CHS officers in the scale of pay of Rs.12000-16,500/- and above may be provided with the official residential telephone at their residence on functional basis only in terms of Ministry of Finance Department of Expenditure OM dated 2.4.1987 subject to the conditions laid down in the Ministry of Finance Department of Expenditure order dated 8.6.1982 and 28.10.1987. This has again been reiterated in letter under Annexure-/2 dated 2<sup>nd</sup> December, 1998 providing therein that president is pleased to decide that hereafter 25% of Central Health Officers working below the scale of Rs.1200-1650/- in an institution/ organization may be granted residential telephone at their residence on functional basis. It is not in dispute that the applicant was in the scale of Rs. 12000-16500/- besides being the in charge of the Hospital having 50 beds. As such, in my opinion non-sanction of the residential telephone bills for the period from January, 2000 to June, 2003 on ground stated by the Respondents is not acceptable. Hence, the Respondents are hereby directed to sanction and reimburse the telephone bills incurred by the Applicant during the aforesaid period of course it goes without saying that keeping the limit of the bills within the prescribed ceiling.

6. In regard to the Medical Reimbursement when the wife of the applicant fell ill in her native place at Cuttack/Orissa and treated in a Government Hospital non-sanction of the bills by application of the aforesaid

rule cannot be countenanced. In this connection, it is necessary to take into consideration some of the decisions of the Hon'ble Apex Court in which it has been held that preservation of human life is of paramount importance to protect all irrespective of innocent or criminal persons. The case of Rokde v Union of India and another [1996 (2) ATJ 16], the full amount charged by the private hospital was directed to be reimbursed to the Applicant therein irrespective of ceiling. In the case of State of Punjab v Mohinder Singh Chawla, etc. [1997 (1) SLJ (SC) 204] is also a great reliance. In that case, an amount of Rs.20,000.00 paid as room rent was disallowed by Government and the Apex Court intervened and had held that the High Court was right in directing reimbursement towards room rent as in-patient. In the case of Suman Rakheja v State of Harayana and another [2006 SCC (L&S) 890], the Apex Court held that widow be entitled to get refund of 100% medical expenses at the AIIMS rate and 75% of expenditure in excess thereto. In case of Pt. Parmanand Katara v Union of India and others [1989 AIR (SC)2039], the Apex Court held that preservation of human life is of paramount importance to protect all irrespective of innocent or criminal persons. Relying Katara case, it was held in the case of N.B.Rao v Union of India [1995 (2) ATJ 542], the Applicant therein even if underwent treatment in an unapproved medical hospital is entitled for full medical reimbursement as preservation of human life is of paramount importance. In the case of Suriyet Singh v State of Punjab and others [1996 (2) JT (SC) 28] held that even though he underwent open heart surgery in London in Escorts Heart Institute, a recognized hospital in India, the applicant therein is entitled for reimbursement as per rates admissible in Escorts. In the case of Venkarai Srinivasan Raghavan v Union of India and others, 5/2007, Swamysnews 90 (Bombay), date of judgment 25.09.2006 [May, 2007 reported] the entire cost of the charge spent in an

unapproved hospital was directed to be reimbursed. In the case of R.P.Mehta v Union of India and others [2002 (3) SLJ (CAT) 198] wherein it was observed 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 reimbursed full excess amount. In the case of Farooq Hasan v Union of India [2007 ( 2) SCT 675] of Rajasthan High Court, it was observed full reimbursement of medical expenditure cannot be denied and if there is excess it has to be recovered from the hospital concerned. Similar is the view in the case of Promlesh Bhatnagar V Employees' State Insurance Corporation and another [2007 (1) SLJ 537 of Delhi High Court. In the case of K.P.Singh v Government of NCT through the Principal Secretary, Health and another, 5/2008, Swamysnews 105 (PBG), date of judgment 28.09.2007 direction was also given for reimbursement of full amount of medical expenses. The wife of applicant fell ill while she was at her home state. As such she availed treatment at a Government Hospital i.e. SCB Medical College and Hospital, Cuttack. The Bills were certified by the treating physician/Superintendent of the SCB Medical College, Cuttack. As such rejection of such claim is against the mandate provided in Article 21 of the Constitution which has over riding effect of any of the Rules made. Hence, applicant is entitled to get the amount incurred by him for the treatment of his wife reimbursed which shall be processed and paid to the applicant without any further delay.

7. So far as payment of Conveyance Allowance is concerned it is noticed that the Respondents rejected such claim of the applicant on the ground of non-availability of record. It is well settled principle of law that men may lie but document will not. It is the contention of the Applicant's counsel that had his case been considered while the applicant was in service, he would


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have got opportunity to substantiate the same. Be that as it may, the Respondents are hereby directed to reconcile the records giving opportunity to the Applicant to place documentary proof in support of his work beyond duty hours during the period in question and based on the records take a decision in regard to the entitlement and payment of Conveyance Allowance to the Applicant.

8. The entire exercise shall be completed and payment be made to the Applicant within a period of 90(ninety) days from the date of receipt of this order failing which the Applicant shall be entitled to 8% interest on his outstanding dues as directed above.

9. In the result, this OA stands allowed to the extent stated above.

No costs.

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

