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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 287/2005 and
Misc. App. No. 127/2005

Date of order: 20th December 2006.

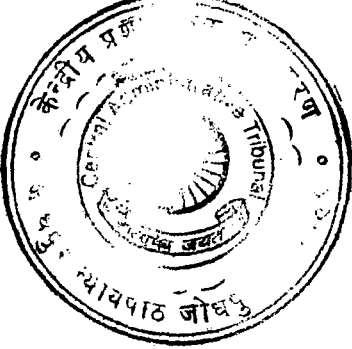
**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

Pukh Raj Gehlot, S/o Shri Joghi Dasji Gehlot by caste Gehlot aged about 65 years resident of Chand Pole Gate, Jodhpur, retired from the office of DET Coaxial, Maintenance, Jodhpur from the post of S.G. Technician

...Applicant.

Mr. Manoj Bhandari, counsel for the applicant.

VERSUS

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1. Union of India through the Secretary, Ministry of Communication, Department of Telecom, Sanchar Bhawan, New Delhi.
 2. The Dy. General Manager, Maintenance (MTC), Office of the Chief General Manager, Maintenance, Northern Telecom Region (NTR), New Delhi, II Floor, Amenity Block, GMTD Compound, M.I. Road, Jaipur.
 3. The Controller of Communication (Accounts), DOT. Cell Department of Communications, Prasad Nagar, D.T.O., Compound, New Delhi- 5
 4. The Controller of Communication (Accounts), DOT. Cell Department of Communications, Office of the C.G.M. Rajasthan Circle, Jhalani Doongri, Jaipur (Rajasthan)
 5. The Union of India through the Secretary, Ministry of Health and Family Welfare, New Delhi.


...Respondents.

Mr. Vinit Mathur and Mr. M. Godara, counsel for respondents.

ORDER

(By Mr. J K Kaushik, Judicial Member)

Shri Pukh Raj Gehlot has preferred this Original Application seeking the following reliefs:-

- "1. By an appropriate order or direction, the impugned order dated 17.03.2004 (Annex. a/1) may kindly be declared illegal and be quashed and the respondents be directed to reimburse the medical expenses to the tune of Rs. 61,913.70 incurred by the applicant for his bye-pass surgery conducted at AIIMS, New Delhi on
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15.03.2001 and Rs. 14,000/- incurred by him towards angioplasty conducted at ESCORT Hospital New Delhi with effect from 22.06.2000

2. by an appropriate order or direction, the clarification dated 20th August 2004 issued by the Ministry of Health and Family Welfare be declared illegal and be quashed and set aside.
3. by an appropriate order or directed the respondents be directed to make the payment of interest @ 18% per annum for the amount from the date the same had become due till the date of the reimbursement of the payment.
4. Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

2. We have heard learned counsel for both the parties and have carefully perused the pleadings as well as the records of this case. The material facts that necessitated the filing of this case are that the applicant while holding the post of HG Technician retired from service on attaining the age of superannuation in the year 1996. The applicant suffered a heart attack in the year 1999 and he took treatment from Mahatma Gandhi Hospital and felt recovered. The heart problem did not get subside and continued to subsist. He was recommended for angiography in the year 2000 and he got the same done up in Escort Hospital New Delhi by incurring expenditure of Rs. 14,000/- on dated 22.6.2000. In the angiography test three blockage in the artery were shown and he was required to undergo bye-pass surgery at AIIMS, New Delhi, which he did and incurred an amount of Rs. 61,913.70.

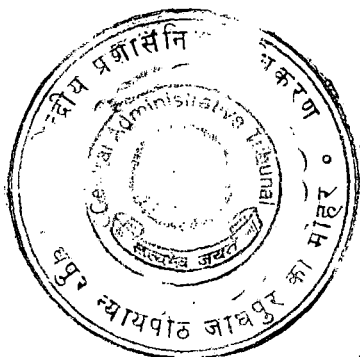


3. The further facts of the case are that the applicant submitted the medical expenditure bill for reimbursement to the respondent No. 2 i.e. his erstwhile parent department. Unfortunately, he has been informed that there is no provision in the medical rules for such medical reimbursement to the pensioners of the department. It has

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been averred that P&T Dispensary exists at Jodhpur wherein the normal treatment is being given to the applicant. He is not being paid any cash allowance and no facility of heart treatment is available at P&T Dispensary and that is the reason he had to resort to MG Hospital for treatment. The OA has been filed on numerous grounds intermixed with para 4.6. to 4.16 as well as para 5 and its sub paras. Reliance has been placed on OM dated 5.6.1998 as well on decisions of various courts of law. The OM dated 20.8.2004 has been issued in the name of clarification just to make the decisions of various court as ineffective.



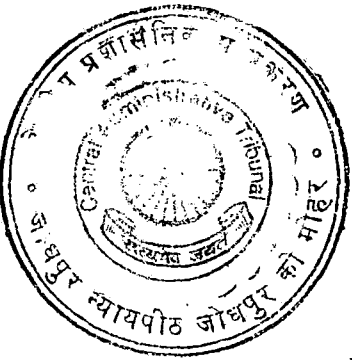
4. The respondents have filed an exhaustive reply to the OA and have taken certain preliminary objection e.g. misjoinder of parties the cases of retired officials are dealt with by Senior CCA New Delhi but the respondent No. 4 has been wrongly impleaded which may be deleted. The applicant has earlier filed an OA No. 87/2005 but the same was withdrawn with liberty to file fresh O.A. on the same of cause of action. The CS (MA) Rules, 1944 (for brevity the rules) are not applicable in case of applicant being a pensioner. The OM dated 5.6.1998 was a proposal to extend the rules to the pensioners residing in areas not covered by CGHS scheme. The clarification had to be issued to this effect vide OM dated 20.8.2004. The applicant is not entitled for reimbursement of medical expenses as the same is not provided by the rules. The Union of India has approached the Hon'ble Supreme Court against the judgement of Hon'ble High Court Gujarat upholding and affirming the decision of Coordinate bench of this Tribunal at Ahmedabad who have held that the rules would apply to the pensioners not residing in the area covered by CGHS. Their

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Lordships of Supreme Court have been pleased to pass an order on dated 2.5.2005 to the effect that "contempt proceedings initiated shall remain in abeyance until further orders." Another consequential OM dated 7.10.2005 has been issued in this respect. The legal grounds have been generally refuted. The same is followed by a short rejoinder to the reply wherein it has been shown that provisional as well revised PPO were issued by fourth respondent, hence objection of misjoinder or non-joinder of parties is rejected.

5. A Misc Application for condonation of delay has been filed. The claim of the applicant came to be rejected vide order dated 17.3.2004. The applicant filed an OA No. 87/2005 but the same had to be withdrawn with liberty to file fresh O.A. on dated 3.8.2005. This OA has been filed on dated 20.9.2005. It has been averred that the applicant has got a strong and prima facie case in his favour. In reply to the same, it has been stated that there is no convincing and reasonable justification for not approaching the court in time. The MA as well as the O.A. deserves to be dismissed.



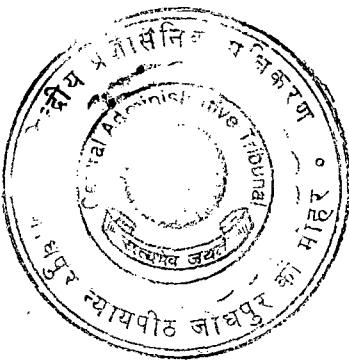
6. Both the learned counsel representing the contesting parties have reiterated the facts and grounds narrated in their respective pleadings. The learned counsel for the applicant has made us to traverse through various OMs forming part of records of this case. He has tried to demonstrate that an administrative order cannot take away the effect of a judicial decision/order. He next contented that the OM dated 5.6.98 provided in unequivocal terms that the pensioners not covered by CGHS are entitled for the benefits of the rules. He has placed reliance on the decision dated 5.11.2004 passed by a coordinate bench

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of the Tribunal at Chennai in OA No. 669/2004 and has submitted that the controversy stands resolved by the same and the claim of applicant deserves to be allowed on similar terms. Per contra, the learned counsel for the respondents has emphasized on the defence version as set out in the reply and has drawn our attention towards the stay order granted by the Apex Court in a similar matter. He has submitted that till final decision is taken in the said case, the matter may be kept pending.

7. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect is concerned there is hardly any quarrel. Before adverting the crux of controversy involved in this case, we would clear the preliminary issues especially relating to the limitation. Admittedly, the claim of the applicant came to be rejected on dated 17.3.2004. As per the provisions of limitation envisaged in section 21 of A T Act 1985, relating to filing of case before this Tribunal, the OA ought to have been filed by 16.3.2005 i.e. within a period of one year from the date of cause of action. He thereafter filed this OA on dated 20.9.2005. Thus there is a delay of about six months. The applicant did file a case before this bench of Tribunal that was withdrawn after about seven months with liberty to file a fresh one. Thus substantially, the delay in filing of this OA has been explained and we are satisfied that there are good and sufficient reasons for condonation delay in filing of this OA. Otherwise also the applicant has a meritorious case and that to of seminal significance, having far reaching effect. We therefore, condone the delay in filing of this OA and accept the MA for condonation of delay. We are also not

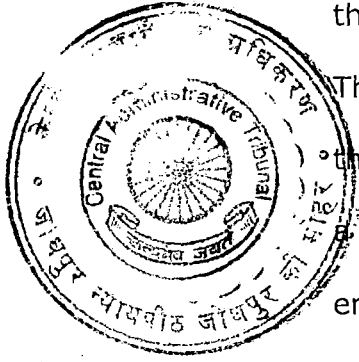


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satisfied that there is any mis-joinder or non-joinder of necessary parties.

8. Now we would advert to the main controversy. At the very outset, we would assert that we are not scribing on a clean slate since much water has already flown over the bridge ever since the OM dated 5.6.98 was issued. The matter has been dealt with extensively by various benches of this Tribunal as well as Hon'ble High Courts and the consistent view has been that the rules are applicable to the retired government servant residing in non-CGHS areas. We would refer to one of them passed on dated 23.8.2006 in case of Shri Pratap Singh Vs. Director SBI and Ors in OA No. 284/2006 by the Principal Bench of this Tribunal and place a copy of the same on records of this case.



The same is elaborate, exhaustive and illustrative and squarely covers the controversy on all fours. The contents of the same may be read as part of this order. We are therefore restraining ourselves from entering into any fresh discussion. We may only assert here that independent of the various authorities cited on the subject, if we were to examine the matter afresh, we would have reached to the same conclusion.

9. It would be pertinent to note the in another case **Shri Prabhakar Sridhar Bapat Vs. Union of India & Ors** decided on 10.11.2003 in OA No. 205/2003 by the coordinate bench of this Tribunal at Ahmedabad, similar controversy was decided in favour of the applicant therein. A Special Civil Application No. 3843/2004 was preferred by the Union of India & ors against the said decision before the Hon'ble High Court of Gujarat and the same came to dismissed finding no

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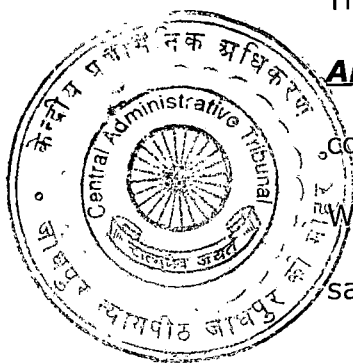
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merits. We are bound to follow the same as precedent. The Union of India has further taken up the matter with the Hon'ble Supreme court vide SLP No. 9939/2004 wherein their Lordships of Supreme Court have been pleased to pass an interim order on dated 2.5.2005 that "contempt proceedings initiated shall remain in abeyance until further orders." The same is pending adjudication.

10. As regards the effect of aforesaid development is concerned, it was submitted that we might wait for the final judgement in the aforesaid case. The said development would not cause any hurdle or obstruction in deciding this case on merits. We take judicial notice of the one of the elaborate decision of the co-ordinate Bench of the Tribunal at Principal Bench in O.A. No. 745 of 2005 (**Ram Sewak &**

Another Vs. UOI etc.) dated 23.8.2005. The judgment also gives a complete answer to the aforesaid defence version of the respondents.

We find it expedient that para 21 & 22 should be reproduced and the same are reproduced as under:



"21. As regards pendency of SLP before the Apex Court against the affirmed decision of the Chandigarh Bench of the Tribunal by the High Court of Punjab and Haryana, it is trite law that unless the decision is overturned, reversed or modified the decision of the High Court or the Tribunal remains as precedent and as per the decision of the Apex Court in **S.I. Rooplal & Anr. V. Lt. Governor of Delhi & Others**, JT 1999 (9) SC 597 the doctrine of precedent has to be respected. We are bound to follow the decision of the Full Bench. A Full Bench of this Tribunal in **Ganga Ram v. Union of India** reported in CAT Full Bench Judgments Vol. II 441 (Bahri Brothers) categorically held that a non-speaking interim order in SLP is not a declaration of law and is not binding under Article 141 of the Constitution of India unless the decision of the High Court of Punjab and Haryana, affirming the decision of the Chandigarh Bench of the Tribunal is set aside, reversed or modified by the Apex Court the same remains effective.

22. Following the above, we respectfully agree with the decision of the Full Bench and are also bound by the decision of the High Court of Punjab and Haryana as well as the decision of the Chandigarh Bench of the Tribunal where clause 14 of the restructuring scheme has been set aside. We follow the same."

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11. In the premises, we reach to an inescapable conclusion that there is ample force in this Original Application and the same deserves to be allowed which we direct accordingly. The impugned order dated 17.3.2004 (A/1) is hereby quashed. The respondents are directed to reimburse the medical expenses incurred by the applicant for his treatment as prayed for but without any interest, within a period of three months from the date of receipt of this order. However, the same shall be subject to the outcome of SLP in Bapat's case supra pending before the Hon'ble Apex Court. No costs.



R.R. Bhandari
(R.R.BHANDARI)
 Administrative Member

J.K. Kaushik
(J.K.KAUSHIK)
 Judicial Member

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