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

Original Application No. 09/2006 with
Misc. Application No. 42/2006

Date of order: 12.12.2006

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

Gaffar Khan S/o Shri Piru Khan Pathan (Musalman), R/o near Charbhuja Ji's Temple, Kotari, District Bhilwara, presently posted as Sub-Post Master, Jahajpur Mandi, Jahajpur, District Bhilwara.

...Applicant.

Mr. Devi Lal 'R' Vyas, counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Postal Department, Government of India, Dak Bhawan, New Delhi.
2. The Post Master General (S.R.), Jahajpur, District Bhilwara.
3. The Superintendent of Post Offices, Bhilwara Division, District Bhilwara.

...Respondents.

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

ORDER

(By Mr. J K Kaushik, Judicial Member)

Shri Gaffar Khan has questioned the validity of orders dated 06.02.2001 (A/1) and 01.08.2001 (A/1-A) and has sought for setting aside the same with further a direction to the respondents to reimburse amount of the medical claim of the applicant with interest of 18% p.a.

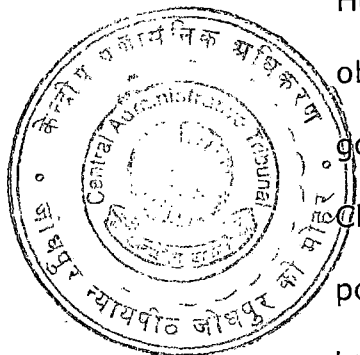
2. We have heard learned counsel for both the parties and carefully perused the pleadings and records of this case. The brief facts of this case are that the applicant is employed under respondent



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No. 3 as Up-Dakpal in the Post Office, Piplund, Tehsil Jahajpur. He used to fall sick because of frequent attacks of vertigo and acute pain in nerves of both the sides of head. It created great strain and tension in his mind. He contacted the Government Doctor who advised him immediately to consult some good Neurologist vide memo dated 20.02.1999. He took two days casual leave for 25.02.1999 and 26.02.1999 and went to Udaipur for consultation with Neurologist as no Neurologist was available at the Mahatma Gandhi Hospital, Bhilwara. At Udaipur, the applicant had to take the treatment, which was urgently required because of serious problem. He submitted his medical claim for Rs. 5688.21 to the respondent No. 3 on 17.11.1999. He sent numerous reminders for clearing his medical claim. An objection was taken by the respondent that as to how the applicant got treatment outside the district without obtaining prior approval from Chief Medical Officer of the district. He explained the complete position and submitted that in emergency he had to take the treatment and that to on a reference, which was made by the Government Doctor. Finally, his claim came to be rejected vide impugned orders on the ground that he has not taken prior approval for such treatment from the competent authority. He served a notice under Section 80 CPC and finding no response, he was advised to file a Civil Suit in the year 2003. The same was decided vide order dated 24.10.2005 on the ground that the Civil Court has no jurisdiction to entertain the same. Thereafter, this Original Application has been filed on numerous grounds mentioned in para 5 and its sub-paras.



3. The respondents have filed their detailed reply to the Original Application and have averred that the applicant without examination and reference by the Chief Medical Officer, Bhilwara, consulted the Neurologist of Medical College, Udaipur, which is outside Bhilwara

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district and as such, the Superintendent of Post Offices, Bhilwara, rejected his medical reimbursement claim. He preferred an appeal against the same, which also came to be rejected. A petition was filed before the next higher authority was also rejected. Further defence of the respondents is that they are not aware about the disease, the applicant was suffering. The applicant did not take any prior approval from CMO Bhilwara for consulting Neurologist at Udaipur. He submitted two medical bills for Rs. 4257.41 and 1430.80 on 17th November 1999 and 21st March 2000, respectively. He did not follow the prescribed instructions and consulted the Neurologist at Udaipur without getting referred to and advised by the Chief Medical Officer, Bhilwara and since his claim was not covered under the rules, his claim was rightly rejected. There was no urgency for which immediate consultation was required outside district without following the prescribed procedure as evident from Annexure A/2. The same is followed by an additional affidavit whereby it has been submitted that the OA deserves to be dismissed on the ground of delay.

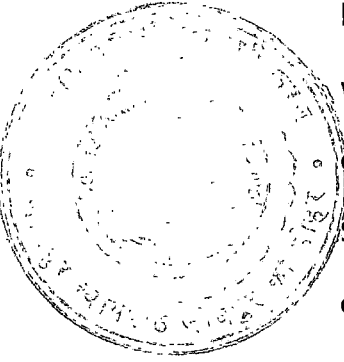
4. The Misc. Application No. 42/2006 has been filed for seeking condonation of delay in filing of the Original Application. It has been averred that the applicant has taken up the matter with the various higher authorities and after his claim was rejected, he filed a civil suit on 28.11.2003. The civil suit came to be decided on 24.10.2005 on the grounds that the Civil Court had no jurisdiction to entertain the same. Thereafter, he took steps for filing of this case before this Bench of the Tribunal. He is entitled to grant of the protection under Section 14 (Sic. 12) of the Limitation Act, as he was bonafidely and diligently pursuing the matter in the courts of law. The same, however, remained un-replied.

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5. Both the learned counsel representing the contesting parties, have reiterated the facts and grounds raised in their respective pleadings. Learned counsel for the applicant has endeavoured hard to submit that the applicant had to resort to the Neurologist on the advice of the Government Medical Officer and there was also an emergency for the treatment. On the other hand, learned counsel for the respondents has submitted that there is abnormal delay in filing of this Original Application and the same deserves to be dismissed on this part alone. He has also led stress on the defence version as set out in the reply.



6. We have considered the rival submissions put forth on behalf of both the parties. As regards the question of limitation is concerned, we find that the applicant was diligently and bonafidely pursuing his claim before a Court of law, which did not have the jurisdiction and Section 14 of the Limitation Act provides that such period may not be counted for the purpose of limitation. We also find that there are otherwise good and sufficient reasons for condoning the delay in filing of the Original Application. We are inclined to use our discretion for condoning the delay. The delay in filing of the Original Application is hereby condoned and the Misc. Application stands accepted accordingly.

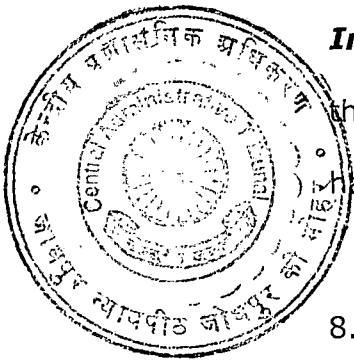
7. Now adverting to the factual aspect of the matter – we find that admittedly the Government Medical Officer advised the applicant to get himself examined by some Neurologist. It is not the case of the respondents that the Neurologist was available in the Bhilwara district. The applicant has moved on the advice of the Government Doctor. There may be some procedural mistake of non-reference by the Chief Medical Officer but in substance the case of the applicant was in fact



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referred by the Medical Officer, if the Medical Officer was not so competent, he ought to have directed him to the Chief Medical Officer for such reference. The applicant seems to have bonafidely acted and after getting the advice, he immediately got himself examined and treated from a competent Neurologist Doctor. It is not the case of respondents that the applicant in any way made any manipulation or submitted a false bill. Otherwise also, by now, it is well settled that even in emergency, one can take the treatment directly from the competent doctor and the medical reimbursement of the expenditure involved, can be reimbursed with a restriction upto to the package rate, which has been prescribed by the Government. This issue has been extensively dealt with in the case of **B B Sharma V. Union of India** ors 2004 (3) ATJ-6 PB New Delhi. In view of this, we are of the considered opinion that the medical bills of the applicant ought to have been entertained.



8. In view of what has been said and discussed above, we dispose of this Original Application with a direction to the respondents to entertain the medical reimbursement bills in question in accordance with the rules in force within a period of three months from the date of receipt of a copy of this order. The impugned orders dated 06.02.2001 (Annexure A/1) and 01.08.2001 (Annexure A/1-A) are hereby quashed and set aside. Both the parties are directed to bear their own costs.

R R Bhandari
(R R BHANDARI)
ADMINISTRATIVE MEMBER

J K Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

Kumawat