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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 34/2007.
JODHPUR THIS IS THE 20TH DAY OF AUGUST, 2010.**

CORAM:

**HON'BLE DR. K.B.SURESH, MEMBER (J)
HON'BLE MR. V.K. KAPOOR, MEMBER (A)**

R.N. Ahuja S/o Shri Ganesh Das Ji Ahuja aged about 70 years, Resident of 263, Jwala Vihar, Behind Somani College, Jodhpur, Official Address : Retd. Chief Accounts Officer, GMTD, Karnal.

.....Applicant.

[Mr. Salil Trivedi for Mr. Kamal Dave, Advocate]

Vs.

- 1- The Union of India through the Secretary,
Ministry of Communication,
Department of Telecom, Sanchar Bhawan, New Delhi.
- 2- The General Manager, BSNL Telecom District Karnal,
Sector-8, Urban State, Karnal, Haryana.

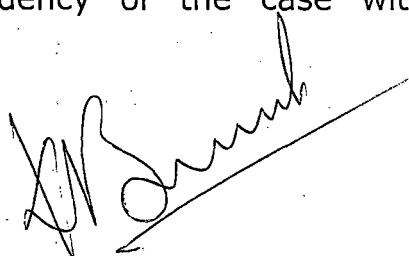
.....Respondents.

[Mr. Vijay Bishnoi, for respondents]

O R D E R

[PER DR. K.B.SURESH, JUDICIAL MEMBER]

The applicant, who retired as Chief Accounts Officer from the respondent-department stays now at Jodhpur, which is not a CGHS area. On 1st April, 1994, he suffered from Heart-attack and thereupon, was advised for bye-pass surgery. In view of the seriousness of the situation, it was conducted at the Escorts Hospital, New Delhi in 2001 and after recouping, he submitted a claim for medical reimbursement to the respondent No. 2, in September, 2001 which was followed by correspondence galore and on 22nd February, 2003, the Department forwarded his representation to the higher authorities and on 26th June, 2003, 27th October, 2003 and 4th November, 2004, the applicant was informed about the pendency of the case with the higher authorities.

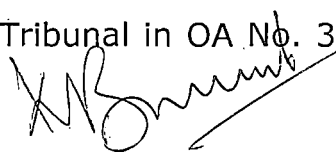


2- On 10th November, 2004, the Department passed an order which is now under challenge but, before that apparently, vide Annexs. A/2 and A/3, subsequent correspondence took place between the applicant and the respondents.

3- The ground taken by the respondent-department is that since the applicant is residing in a non-CGHS area as such, apparently the benefit of Central Services (Medical Attendance) Rules, could not be extended to him. The respondents further points-out that the BSNL is not under the jurisdictional ambit of this Tribunal; there is a delay of more than two years and, even though, the applicant is residing at Jodhpur, he had filed the application against the order passed by the authority at Ambala, therefore, the respondents pray that the application be dismissed.

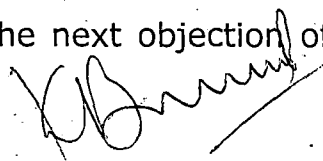
It is also submitted that the Memorandum dated 5th June, 1998 is simply a communication between two departments of the Government and cannot be taken into account while deciding any case as no final order has been passed by the Department of Personnel & Training and, therefore, the Office Memorandum issued by the Department of Health on 5th June, 1998 cannot be implemented. They have also contended that various Government Departments including the BSNL, have filed SLPs before the Hon'ble Supreme Court against the applicability of Medical Attendance Rules, 1944 and in particular SLP Nos. 22812 of 2004, but decision is still awaited.

4- The applicant would rely on the decision dated 11th September, 2002 of a coordinate Bench of this Tribunal at Ahmedabad (OA No. 631 of 2001), which has been up-held by Judgements of Hon'ble High Court of Gujarat. Reliance is also placed on the decision of this Tribunal in OA No. 35/2006 – **Smt.**



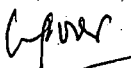
Roop Kanwar Mehta Vs. UOI & Ors., decided on 28th April, 2010 wherein, the issue was similar. The facts evolved-out is that had the applicant been a resident of a CGHS area then effect of Medical Attendance Rules would come to his rescue. But, being residents of any part of India is under the constitutional right guaranteed to it, that being so, selective instances of application of CGHS a facility available to an equally situated person. When it is available to him, it cannot be denied to the applicant. Besides this, when the Government framed Medical Attendance Rules, it was equally applicable to the Telecom Employees who later came to be under BSNL under the same charter with similarity of circumstances and, therefore, under application of Article 14 the applicant is also to be treated on equivalent basis. It is to be held that proximity to CGHS or BSNL dispensary is not relevant and what is relevant is the immediate necessity as well as the facilities available at each centre or hospital. Each and every illness cannot be handled by every hospital and the main idea is, welfare of the employee and to save his life.

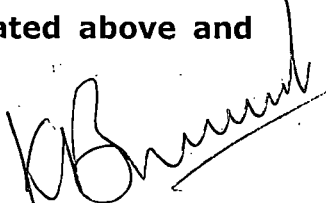
4- Coming to the next defence of the respondents that the applicant's claim was rejected by an officer sitting at Ambala cannot be of any merit. The BSNL is an All India operation and, therefore amenable to jurisdiction of the Courts in India. The cause of action in this matter has arisen at Jodhpur because the cause and effect of denial of his claim is in Jodhpur. Even though it may have arisen at Ambala also, it is the choice of the applicant to decide between multiple choices available. The BSNL have now been brought into the jurisdictional ambit by appropriate notifications and, therefore, this objection also cannot be considered as relevant. The next objection of the respondents is



that they have challenged a similar issue in the Hon'ble Apex Court, however, it is admitted that the Apex Court has not granted an interim stay order in such identical matters. It will be unjust that a retired employee cannot claim the reimbursement legally due to him for all these years. In cumulative analysis, therefore, it can be found that not only for the wrong reason but for the wrong interpretation also the claim of the applicant is being with-held, therefore, the O.A. is allowed and the following orders are issued :

- (i) The impugned order at Annex. A/1 dated 10.11.2004 is hereby quashed.
- (ii) The respondents are directed to scrutinize the claim of the applicant under the relevant rules and determine the amount payable within one month from today.
- (iii) Upon this determination, a calculative statement shall be issued to the applicant within the above said one month.
- (iv) The applicant is allowed to submit his comments on such determination by the respondents on the quantum payable to him within the next ten days.
- (v) If the applicant controverts this amount, a fresh determination shall be made and if the parties cannot agree on the quantum determinable after the scrutiny then that amount determined alongwith interest at 10% annum shall be paid to the applicant by the BSNL within three months next, calculated from the date of preferment of claim.
- (vi) The respondents shall pay Cost of Rs. 5,000/- (Rupees Five Thousand) to the applicant.
- (vii) The O.A. is Allowed with Cost as stated above and stands disposed of accordingly.


(V.K.Kapoor)
AM


(Dr.K.B.Suresh)
JM