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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.246/2012

Jodhpur this the 26th day of August, 2013

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),

K.C. Bohra S/o Shri Ram Krishna, aged about 48 years, R/o 161 Maderna Colony, Jodhpur, presently working as Peon with the M.E.S. i.e Military Engineering Services (Army), Jodhpur under the Garrison Engineer (Army), Jodhpur.

.....Applicant

Mr. Manoj Bhandari, counsel for applicant.

Versus

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, Government of India, New Delhi.
2. The PCDA (Principal Controller Finance & Accounts) MES, South Command, Pune.
3. Chief Works Engineer (Army) C/o Multan Lines, Army Area, Jodhpur-342010.
4. The AAO (SC) Prem Niwas, Polo-II Mandore Road, Jodhpur.
5. The Garrison Engineer (Army) Central, Multan Lines, Army Area, MES, Jodhpur.

.....Respondents

Smt. K. Parveen, counsel for respondents.

ORDER (Oral)

Applicant, K.C. Bohra, has filed this application under Section 21 of the Administrative Tribunals Act, 1985 stating that he is serving as class IV employee in the respondent department i.e.

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Garrison Engineer (Army), Central, Jodhpur. It has been averred in the application that in the month of June, 2011, the applicant along with his wife traveled to Mumbai on their personal visit and resided at their relative's house, where all of sudden his wife Smt. Kamla Bohra became severely sick and was immediately taken to emergency of Saiffee Hospital situated at Mumbai. After preliminary examinations, it was found that wife of the applicant is suffering from Exophytic Haemangioma of the Liver with impending rupture and had to be operated as early as possible. The wife of the applicant was admitted in Saiffee Hospital and on 6th July, 2011 she was operated upon. She was kept for 6 days in the Hospital and thereafter discharged on 11th July, 2011. The operation was conducted successfully in emergency and for that purpose sum of Rs.3,57,149.78 was incurred. The applicant thereafter submitted an application along with certificate issued by the Saiffee Hospital, prescription slip, total bill, statement of charge code summary and consolidated bill to the competent authority for reimbursement of the same. The applicant also submitted a representation in the month of October, 2011 to the competent authority to clear his bills and reimburse the medical claim of his wife. On 17th October, 2011, it was communicated to the applicant that reimbursement of the medical claim is not admissible as wife of the applicant was operated in private hospital. Thereafter, the applicant made a

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representation on 11.11.2011 stating that it was an emergent situation that he had to take treatment in Mumbai, as there is no such hospital available in Jodhpur for such a disease. The matter was referred by the Garrison Engineer to the AAO as well as to the Higher Officer and same was returned by the Senior Office of AAO, Jodhpur on 22.11.2011. The applicant again made representation for reconsideration of his medical claim and the same was again referred to the Higher Office. On being several representations of the applicant, the matter was inquired by the Garrison Engineer from the Saifee Hospital and the same was referred to the Director General of Health Sciences, Jaipur. Thereafter another communication was made on 5th March, 2012 by the CWE (Army), Jodhpur to the Garrison Engineer (Army), but the claim of the applicant was rejected by the respondents. Hence, the applicant by way of this application has prayed for the following reliefs:-

- “(i) by an appropriate order or direction, the impugned communications dated 15.03.2012 and 29.03.2012 and 17.10.2011 (Annexures-A/1, A/2 & A/7) passed by the respondents rejecting the claim of the medical reimbursement may kindly be declared illegal and be quashed.*
- (ii) by an appropriate order or direction, the respondents be directed to release the claim of the applicant to the tune of Rs.3,57,150/- along with interest @ 24% per annum from the date the claim has become due till the date of payment.*
- (iii) by an appropriate order or direction, the applicant may kindly be awarded the compensation of Rs.50,000/- as cost of harassment caused to him by the respondents.*
- (iv) 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. By way of reply, the respondent department denied the right of the applicant for any medical reimbursement on the ground that this was not an emergent case in which the patient needs any surgery immediately, because initially wife of the applicant was examined by the Doctors of Saiffee Hospital, Mumbai, on 29.06.2011 and she was admitted as indoor patient on 04.07.2011 (after 05 days of initial emergency occurred) and operation was done on 06.07.2011 i.e. after 7 days of consultation. Therefore, there was sufficient time available for the applicant to consult the nearest Government or recognized hospital. Since, there was no emergency case and the applicant is not entitled to reimburse the expenditure incurred for his wife's treatment in private hospital. It has been further averred that as per Rule 6 of CS (MA) Rules, 1944 patient is entitled for treatment from the Hospital advised by his AMA. But in this case, patient has not been advised by his AMA to take treatment from Saiffee Hospital and Appendix VIII is also not applicable in the case of the applicant, since it is not an emergency case. It is also averred that circular dated 18.06.1982 is also not applicable for Saiffee Hospital since it is not recognized under Central Government Health Scheme or under CS (MA) Rules, 1944. Further, it has been averred in the reply that applicant on his own took his wife to Saiffee Hospital Mumbai, which clearly shows that the applicant acted in the manner suited to him. It has also

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been averred that when the claim was again resubmitted by Garrison Engineer (A) Central, Jodhpur, vide its letter dated 02.03.2012 with a semi emergency certificate issued by the concerned Doctor of the Hospital, the same was again returned vide letter dated 15.03.2012 with the remarks that the claim is not tenable. It has been averred in the reply that the respondents have full sympathy with the applicant but unfortunately humility cannot be extended beyond four corners of the statutory bindings.

3. Heard both the parties. Counsel for the applicant contended that although the Doctors of Saifee Hospital, Mumbai issued a certificate of semi emergency, but when it was found that the liver of the patient was found ruptured, it was an emergency case and after the routine test for 4 to 5 days, she was admitted in the Saifee Hospital on 04.07.2011. Thereafter operation was conducted on 06.07.2011 and she was discharged on 11.07.2011. Therefore, the case of the applicant comes within the emergency condition. Counsel for the applicant further contended that the Hon'ble Apex Court and the Hon'ble Rajasthan High Court in several cases held that the Government/Department cannot insist upon an employee to get himself treated at recognized Government institutions. All that the government in these circumstances can do is to reimburse the concerned employee at the rates that may be applicable in the

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recognized Government hospitals. He relied upon the judgment of **State of Rajasthan & Ors. vs. Surendra Kumar Kalra**, reported in WLC, 2008 (2), page 430, in which the Hon'ble Division Bench of Rajasthan High Court while relying upon the judgment of the Hon'ble Apex court in the case of **Surjit Singh vs. State of Punjab & Ors.** reported in AIR 1996 SC 1388 and **State of Punjab and Ors. v. Mohan Lal Jindal**, reported in (2001) 9 SCC 217 has held as under:-

"Before we may part with this order, we would like to mention that the government cannot insist upon an employee to get himself treated at recognized government institution. All that the government in these circumstances can do is to reimburse the concerned employee at the rates that may be applicable in the recognized government institutions. Reference in this connection may be made to the judgment of the Supreme Court in Surjit Singh v. State of Punjab and others (AIR 1996 SC 1388) and State of Punjab and others vs. Mohan Lal Jindal (2001) 9 SCC 217)."

4. Per contra, counsel for the respondents contended that the case of the applicant does not come within the purview of emergency condition because the liver was found ruptured at the third stage of treatment and, therefore, it can very well be said that treatment was being continuously taken by the patient even earlier to the June, 2011. But, in support of her argument, she has not produced any documents on record to infer such a thing and further there is no written reply in this regard that even earlier to June, 2011 wife of the applicant has taken treatment. The learned counsel contended that the case cannot come within the purview of emergency case, therefore, applicant is not entitled to get any

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reimbursement of medical bills as he has taken the treatment of his wife from the private hospital.

5. I have considered the rival contentions of both the parties and perused the documents available on record. In this case, the stand taken by the respondents is that the case of the applicant does not come within the purview of Appendix VIII of CS (MA) Rules, 1944 dealing with emergency cases, which cannot be acceptable. When the applicant was already in Mumbai it was not proper for the applicant to approach any Government hospital or to CGHS recognized Hospital at Rajasthan for his wife's treatment.

6. The core question involved in this application is that whether the applicant's wife was admitted in an emergent situation or the applicant had the ample time to consult with any Government Hospital. It is an admitted fact that the applicant along with his wife were traveling to Mumbai, where on 29.06.2011 his wife for the first time became severely sick and on the same date the applicant approached the Saifee Hospital, Mumbai, which can be inferred from Annexure-A/11 in which the Senior Accounts Officer himself narrated this fact that the patient consulted to the concerned private hospital on 29.06.2011 and after five days of consultation, she was admitted on 04.07.2011. It has been further narrated that

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the patient could have been admitted in nearest Government Hospital. In the case of **Suman Rakheja vs. State of Haryana and Anr.**, reported in (2004) 13 SCC 562, the appellant was wife of deceased government servant, who had undergone treatment in the Apollo Hospital, New Delhi, which was a private hospital and the case was considered to be an emergent condition. In the present case also, looking to the facts and circumstances of the case, it can very well be said that when liver of applicant's wife got ruptured at Mumbai, it was an emergent case for applicant to get her admitted in the Saifee Hospital Mumbai and merely the lapse of 4 or 5 days after the first consultation for admission in the Saifee Hospital cannot be said to be a non-emergent case. When the Doctors of the Saifee Hospital issued a certificate of semi emergency case, there should have been no reason for the respondent department to refuse the entire claim of the applicant and it was duty of the respondent department to reimburse the amount at the rates applicable in the Government recognized institutions for such a treatment. Therefore, looking to the entire facts and circumstances of the case, the application filed by the present applicant requires to be allowed.

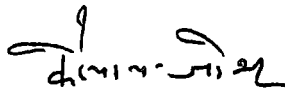
7. Accordingly, the OA is allowed and the order at Annexure-1 passed by the competent authority is quashed. The respondents are directed to reimburse the medical claim of the applicant at the rates

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that may be applicable in the Government recognized institutions, within four months from the date of receipt of a copy of this order. In case the respondents failed to pay/reimburse the amount within the stipulated time then they have to pay interest at the rate of 12% per annum. The applicant may also provide the rates of the recognized institutions to the respondent department for reimbursement of his medical claim and the respondents department shall make the payment as per the reimbursement applicable in the case of the Government recognized institutions. It is further directed that the payment is required to be made while considering Annexure-A/3.

8. The OA is accordingly allowed, as stated above, with no order as to costs.


(Justice K.C. Joshi)
Judicial Member