

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00506/15

Reserved on : 21.10.2016

Jodhpur, this the 17th November, 2016

◆ **CORAM**

Hon'ble Ms Praveen Mahajan, Admn. Member

Anant Ram Sharma S/o Shri Balu Ram, aged about 57 years, R/o village IKSР, Post Ramsara Jakhran, Tehsil Suratgarh, District Sri Ganganagar. Presently working on the post of Fireman in the office of Garrison Engineer, Engineer Park Suratgarh, District Sri Ganganagar.

.....Applicant

By Advocate: Mr S.K. Malik.

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Garrison Engineer, Engineer Park, Suratgarh, District Sri Ganganagar.
3. Principal Controller of Defence Accounts (PCDA), South Western Command, Khatipura Road, Jaipur (Rajasthan).

.....Respondents

By Advocate : Mr B.L. Tiwari.

ORDER

The present Original Application has been filed U/s 19 of Administrative Tribunals Act, 1985 seeking following reliefs:



- (i) By an appropriate writ order or direction impugned order dated 15.09.2015 at Annex. A/1 and impugned order dated 14.10.2015 at Annex A/2 be declared illegal and be quashed and set aside.

- (ii) By an order or direction respondents may be directed to make payment of medical claim amounting to Rs 4,02,421/- and Rs 8,189/- totalling to Rs 4,10,610/- alongwith interest @ 12% per annum.
- (iii) Exemplary cost be imposed on respondent No. 3 for causing undue harassment to the applicant.
- (iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. The facts of the case, in brief, are that the applicant's wife late Smt. Kalawati went to her parents at Jaipur in the month of February, 2015. On 23.02.2015, she suddenly fell seriously ill and in an emergent condition she was admitted in Santokba Durlabhji Memorial Hospital Cum Medical Research Institute, Jaipur (in short the Hospital). She was diagnosed as suffering from brain related disease Thrombocytopenia and decreased platelet count oral mucositif. The treatment was started by the Hospital and intimation was given to the applicant. The applicant took loan and went to Jaipur to look after his wife. Her treatment continued upto to 31.05.2015 in different spells as indoor patient, and she expired on 02.08.2015. During the period of hospitalization of wife of the applicant, he suffered a heart attack on 20.04.2015. Immediately he was admitted as emergency patient in the hospital where he was diagnosed as suffering from heart ailment and accordingly he underwent angioplasty and angiography. The respondent No. 2 verified the claim of the applicant and raised a special bill for reimbursement of medical claim of the applicant amounting to Rs

4,02,421/- through voucher dated 19.08.2015 and forwarded the same vide letter dated 19.08.2015 (Annex. A/3) alongwith bills and all connected documents related to medical claim. Another medical claim amounting to Rs 8,189/- was raised in respect of treatment of applicant's wife by the applicant, and forwarded by the respondent No. 2 vide letter dated 14.09.2015 (Annex. A/4) mentioning therein that individual has claimed FMA upto March, 2015. However, the respondent No. 3 vide order dated 15.09.2015 (Annex. A/1)rejected the claim for the reason that as per Govt. of India, Ministry of Health & Family Welfare letter dated 14.07.2010, employees in receipt of fixed monthly medical allowance are not eligible for reimbursement of medical claim in respect of treatment obtained under any circumstances. The applicant states in his OA that vide OM dated 15.12.2014 (Annex. A/5) the Govt. of India has already clarified that FMA is granted in lieu of OPD treatment only. The Govt. of India, Ministry of Defence vide OM dated 15.12.2014 clarified that there may be some isolated areas where no AMA/Government Doctor or RMP is available within a radius of 5 kilometers. In these areas FMA @ Rs 300/- per month may be continued to be paid to civilian in terms of Ministry of Health & Family Welfare OM dated 11.07.1990 as the same is in lieu of OPD treatment only. The reimbursement of medical expenses for indoor treatment in respect of employees posted in these areas may also be allowed under CS (MA) Rule.

Applicant states that his Unit is in remote/interior area from the city and is more than 5 kilometers away from the municipal area of the city. No AMA/Government Doctor or RMP is available within radius of 5 kilometers from the place of work/residence of the employee. On the certificate of the competent authorities department is claiming FMA. Therefore, indoor treatment cannot be linked with FMA i.e. Fixed Medical Allowance. There is not even a facility of Government/Local Body Hospital/Dispensary within radius of 5 kms from the city. The Head of the Department has also obtained certificate from an appropriate District Authority that there is no State Government/Local Body Hospital/Dispensary available with radius of 5 Kms and also there is no qualified medical practitioner available and if available he is not willing to be appointed as Authorized Medical Attendant. The same controversy as raised in the impugned order by respondent No. 3 has been dealt with by this Hon'ble Court in the case of Man Singh Vs UOI & Ors decided on 30.09.2011, Smt. Geeta Devi Vs UOI & Ors decided on 04.12.2013, and in the case of Khajan Singh Vs UOI and Ors decided on 05.12.2014. The impugned orders were quashed holding, that applicant is entitled to get reimbursement of medical expenses under Rules 6 of CS (MA) Rules, 1944 incurred on treatment of his wife within three months period. Therefore, the applicant has filed the instant OA challenging the orders dated 15.09.2015 (Annex. A/1) and

14.10.2015 (Annex. A/2) seeking reimbursement of medical claim of his wife.

3. The respondents in their reply have stated that the wife of the applicant fell ill at Jaipur city. The factum of non-availability of AMA/Govt. Doctor/RMP within radius of 5 Kms from the place of work/residence of employee has no relevance in the present case since the facts of the earlier decided cases are distinguishable. The applicant and his family members are not entitled for free medical facilities under the provision of Central Services (Medical Attendance) Rules, 1944, because he is in receipt of fixed medical allowances and hence not eligible for reimbursement of medical claim in respect of treatment obtained at any circumstances. Therefore, the OM dated 14.12.2015 (Annex. A/5) is of no help to the applicant. They aver that the whole edifice of case has been built upon the basis of wrong presumption of relevant provision in the favour of applicant on the basis of fabricated story. The applicant cannot claim medical reimbursement as a matter of right, since same is available to him only as per the relevant legal provisions. The applicant was in receipt of FMA and therefore, in view of MoH&FW letter No. 390/2010-MS dated 14.07.2010, he is not eligible for any reimbursements of medical claim in respect of treatment, under any circumstances. Internal communications of the respondents are not representative of the final decision of the

competent authority. Forwarding the claim of the applicant by respondent No. 2 is merely a routine forwarding of letters as is common in official working. The applicant and his wife fell ill at Jaipur city where expert facilities are available at Govt. Hospital. However, for reasons best known to the applicant, the treatment was undertaken at a private hospital, twice. Thus, the respondents have prayed to dismiss the OA with cost, being devoid of merit and substance.

4. Heard both the counsels and perused the record.

5. Mr S.K. Malik, Ld. counsel for applicant while reiterating the facts mentioned in OA and relying upon the O.M. dated 15.12.2014(Annex. A/5) contended that the FMA is being paid in lieu of OPD treatment only. The reimbursement of medical expenses for indoor treatment cannot be disallowed by the respondents. In support of his contentions, he referred to the following judgments passed in:

- (i) OA No. 821/2001 by CAT Principal Bench (K.P. Singh Vs. Govt. of NCT of Delhi & Anr)
- (ii) OA No. 216/2010 by CAT Jodhpur Bench (Man Singh Vs. UOI & Ors)
- (iii) OA No. 280/2013 by CAT Jodhpur Bench (Smt. Geeta Devi Vs. UOI & Ors)



(v) OA No. 290/00016/14 by CAT Jodhpur Bench (Khajan Singh Vs. UOI & Ors.)

6. Rebutting the arguments, Mr B.L. Tiwari, Ld. counsel for respondents contended that the applicant cannot claim medical reimbursement as a matter of right, since same is available to him as per the relevant legal provisions. The applicant was in receipt of Fixed Medical Allowance (FMA). Therefore, in view of MoH&FW letter dated 14.07.2010, he is not eligible for any reimbursement of medical claim in respect of treatment obtained in any circumstances. In support of his arguments, he relied upon the judgment rendered by Hon'ble Supreme Court in the case of State of Rajasthan Vs. Mahesh Kumar Sharma, reported in 2011(4) SCC 257.

7. I have considered the rival contentions and also carefully examined the record. The impugned orders Annex. A/1 and A/2 were passed on the basis of MoH&FW O.M. No. 390/2010-MS dated 14.07.2010 and OM No. S-14025/09/2013-MS dated 03.06.2015 whereby the medical claims of the applicant have been rejected. The respondents did not annex these documents with their reply; however, on being asked the Ld. counsel for respondents furnished the same. The OM dated 14.07.2010 is reproduced below :

Subject : Reimbursement of medical claims pertaining to availing in-patient treatment to those employees who are getting fixed medical allowance reg:-

The undersigned is directed to refer to OM No. 9(1)2010/D(Civ-II) dated 18.03.2010 received from Ministry of Defence regarding the subject mentioned above and to say that after issuing of this Ministry's OM No. S-14020/1/88-MS dated 17.07.1990, the matter was taken up with Department of Pension and Pensioners' Welfare and Department of Expenditure, and it was decided that the employees in receipt of fixed monthly medical allowance are not eligible for reimbursement of medical claims in respect of treatment obtained at any circumstances. In this regard, a clarification given to Department of Agriculture and Cooperation, a copy of the same is enclosed.

Ld. counsel for applicant while arguing the case, relied upon the following Office Memorandum dated 13.12.2014, issued by Ministry of Defence to MoH&FW, Medical Services Division :

Subject :- Proposal for reimbursement of in-patient medical expenses in addition to Fixed Medical Allowance (FMA) to service Government employees in remote areas :

The undersigned is directed to refer to Ministry of Health & Family Welfare' ID No. S.14025/9/2011-MS dated 14.08.2014 on the above mentioned subject.

2. This Ministry agrees with the proposal of MoH&FW that the "FMA being granted to CS (MA) beneficiaries be stopped and they should be governed by the provisions of CS(MA) Rules, 1944 under which medical reimbursement for outdoor treatment as well as indoor treatment is permissible as per rules."

3. In addition to above, the following provisions for inclusion in the proposal, are also submitted for consideration of Ministry of Health & Family Welfare:

- (a) FMA at enhanced rates @ Rs 300/- p.m. may be paid w.e.f. 01.09.2008 till the provisions of CS(MA) Rules at para 2 above is made applicable;
- (b) Procedure for appointment of AMA may be simplified and HoD may be authorised to nominate a RMP as AMA in case there is no Govt. doctor available with radius of 5 kms;

- (c) Provision of credit facilities maybe made for serving & retired employees and dependent in emergency in Govt. approved hospitals;
- (d) Provision for medical advance for Non-approved hospitals;
- (e) There may be some isolated areas where no AMA/Govt. doctor or RMP is available within the radius of 5 Kms. In these areas, FMA @ Rs 300/- p.m. may be continued to be paid to civilian in terms of Min of H&FW OM dated 17.07.1990 as the same is in lieu of OPD treatment only. The reimbursement of medical expenses for the indoor treatment, in respect of employees posted in these areas, may also be allowed under the CS(MA) Rules.

4. This issued with the approval of Joint Secretary.

It is not in dispute that the Central Services (Medical Attendance) Rules, 1944 are applicable to all Govt. servants, and their families, civilians paid from the Defence Services Estimates. The applicant has placed reliance on above proposal sent to Ministry of Health & Family Welfare, Medical Services Section by the Ministry of Defence. In para 3 (e) of the aforesaid OM, it is proposed/opined that reimbursement of in-patient medical expenses, in addition to Fixed Medical Allowance (FMA), to serving Government employees in remote areas may be continued to be paid to civilian in terms of Min of H&FW OM dated 17.07.1990 as the same is in lieu of OPD treatment. Therefore, the moot question still remains to be answered, whether civilian employees in receipt of FMA, are entitled, free of charge, to treatment and if yes, to what extent ; as Indoor (In-patient) or Outdoor (OPD)? In this regard the O.M. No. S-14020/1/88-MS dated 17.07.1990, referred in OM

dated 14.07.2010 issued by MoH&FW and dated 13.12.2014 issued

by Ministry of Defence is reproduced below:

“Subject: CS (MA) Rules, 1944 – Grant of Fixed Medical Allowance to the staff working in the interior.

In the National Council of J.C. M., the Staff Side has demanded for grant of Medical Allowance to the staff working in the interior where no Authorized Medical Attendant is available within a radius of 5 kms.

2. This matter has been considered by the Government and now it has been decided that quantum of medical allowance of Rs. 25/- (Rupees twenty five only) per month per employee working in the interior where no Authorized Medical Attendant is available within a radius of 5kms, may be granted on the condition,

(i) The Head of the Department should obtain a Certificate from an appropriate District Authority that there is no State Government/Local Body Hospital/Dispensary available within a radius of 5 kms. and also there is no qualified medical practitioner available and if available he is not willing to be appointed as Authorized Medical Attendant.

(ii) The position will be reviewed every three years and a fresh certificate is to be obtained by the Head of Department.

This issues with the concurrence of the Ministry of Finance (Department of Expenditure and the Department of Personnel and Training.”

On carefully examining the issue and going through the above quoted OM, in the context of medical reimbursement, whereby the FMA was introduced, I find that the FMA has been considered for those employees who are posted in the interior and where no Authorized Medical Attendant is available within a radius of 5 kms. After going through the above quoted O.M., I am in agreement with the opinion of the Ministry of Defence in OM

dated 13.12.2014 that FMA is in lieu of OPD treatment only. Once an isolated area is declared, as per conditions, eligible for FMA, it is mandatory that he will get FMA in lieu of OPD treatment. The FMA is a measure meant to alleviate difficult situations, where immediate outdoor patient treatment facility through Authorized Medical Attendant in terms of CS(MA) Rules, 1944 is not at all available in the radius of 5 kms. The OM dated 17.07.1990 does not preclude the reimbursement of the medical expenses in case the serving Govt. employee or his dependent is being treated as "indoor patient" as provided under Rule 6 of CSMA Rules, 1944. However, FMA is not an optional substitute for CS(MA) Rules, 1944. The FMA only compensates the serving employees in the remote areas, to the extent of OPD treatment, where they have to bear the cost of medicine prescribed and fee paid to the doctor as an outdoor patient. Therefore, in emergency conditions or otherwise where the serving govt. employee or his/her dependent need indoor treatment, the same cannot be declined on the basis of OM dated 17.07.1990 and clarificatory OM dated 14.07.2010 issued by the MoH&FW. It is worthwhile to mention that in the case of *Man Singh vs UOI & Ors (supra)*, this Tribunal has already settled that "*FMA is meant in a situation where medical facility is not available and thus as a palliative measure. But, it cannot support medical attendance, which is available to all employees and the applicant is not in receipt of the same also.*" In

the said case, the applicant was not in receipt of Fixed Medical Allowance. However, in the present case, the applicant claimed FMA upto March, 2015 and his wife fell ill in February, 2015.

8. The MoH&FW vide OM dated 03.06.2015 has already withdrawn the OM dated 17.07.1990 and 18.01.1999. In view of the discussions hereinabove made, **it is held that the clarificatory OM dated 14.07.2010 issued by the MoH&FW to the extent that “employees in receipt of fixed monthly medical allowance are not eligible for reimbursement of medical claims in respect of treatment obtained at any circumstances” is held illegal and arbitrary.** Surprisingly, this clarification seems to have been issued for serving employees after taking up the matter with Ministry of Pension and Pensioners' Welfare whereas the retired employees are not covered under CS(MA) Rules, 1944. It is, however, made clear that cases finalized prior to this order are not open to scrutiny again in this regard.

9. The respondents have placed reliance on judgment rendered in the case of State of Rajasthan vs. Mahesh Kumar Sharma by the Hon'ble Supreme Court, reported in 2011 (4) SCC 257. The judgment cited by the Ld. counsel for respondents is not applicable in the facts and circumstances of the present case

as the applicant is entitled for reimbursement of indoor treatment as held above.

10. The case of the respondents in the instant OA is limited to the contention that since the applicant is in receipt of FMA, he is not entitled for any medical reimbursement under CS(MA) Rules, 1944 in light of OM dated 14.07.2010. The respondents have themselves admitted that the applicant was in receipt of FMA upto March, 2015 only. In my considered view, the applicant is entitled for in-patient or indoor free of charge treatment, for himself, or, and his dependent in terms of CS(MA) Rules, 1944. The fact that applicant and his wife, got ill suddenly and were treated in Santokba Durlabhji Memorial Hospital Cum Medical Research Institute, Jaipur, which is a private Hospital has not been disputed while forwarding of bills by respondent No. 2 vide Annex. A/3 and A/4. The wife of the applicant Smt. Kalawati died of her disease on 02.08.2015, leaving no room for speculation whether her condition was medically emergent or not. Had she been in better health and not in case of medical emergency, she would not have died of the disease. In view of this confirmed medical emergency, the fact of getting treated in Santokba Durlabhji Memorial Hospital Cum Medical Research Institute, Jaipur (private Hospital) would not debar the applicant for reimbursement of expenses on treatment of his wife as indoor or in-patient

treatment, especially under the peculiar circumstances of the case. Immediately thereafter, the applicant was also diagnosed as suffering from heart ailment while attending to his wife during her treatment. Since he was attending to his seriously ill wife, it is not expected that in the middle of this crisis, the applicant would rush to a Govt. hospital leaving his wife unattended. Expectedly, he got himself checked up in the same hospital where his wife was admitted and undergoing treatment i.e Santokba Durlabhji Memorial Hospital Cum Medical Research Institute, Jaipur. He was advised for angiography and angioplasty and the same procedures were performed on him. It has consistently been held by this Tribunal that policy is equal for all employees, but technical riders in the policy, should not be implemented mechanically, frustrating the spirit behind the medical reimbursement scheme. Therefore, the respondents are directed to process the indoor/in-patient medical reimbursement claim of the applicant.

11. In view of discussions hereinabove made, it is held that the applicant is entitled for free of charge treatment of himself and his dependent as Indoor (In-patient) under CS(MA) Rules, 1944. In the facts and circumstances of the present case, the respondent No. 3 is directed to process and reimburse the indoor medical claim of Smt. Kalawati (wife of the applicant), after scrutiny, in full.

The indoor medical claims of the applicant, however, should be processed and scrutinized at the rates prescribed for treatment in hospitals recognized under CS(MA) Rules, 1944.

The respondents are directed complete this exercise within the next 02 months. Looking to the facts and circumstances of the present case, I am not inclined to impose any cost.

12. Accordingly, impugned orders dated 15.09.2015 (Annex. A/1) & 14.10.2015 (Annex. A/2) are quashed and OA is allowed to the above extent. No costs.


[Praveen Mahajan]
Administrative Member

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Or
3/11/16