

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A.No.501/2002

This the 2nd day of April 2004

C O R A M:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER.

M.K.Venugopalan
Motor Driver, Civil Construction Wing,
All India Radio, Kakkanad P.O,
Kochi-30.

(By Advocate Shri Vinod Chandran)

Applicant

Vs.

1. Union of India
represented by its Secretary
Ministry of information & Broadcasting
New Delhi.
2. Prasar Bharathi represented by Director General
(Broadcasting Corporation of India)
All India Radio, Parliament Street
New Delhi-110001.
3. The Executive Engineer (Civil)
Civil Construction Wing, Prasar Bharathi,
All India Radio, Kakkanad P.O
Kochi-30.
4. U.Raju,
Executive Engineer(Civil)
O/o the Executive Engineer(Civil)
Civil Construction Wing, Prasar Bharathi,
All India Radio, Kakkanad P.O.
Kochi-30

Respondents

(By Advocate Shri Prasanthkumar, ACGSC)

The application having been heard on 11.2.2004 and the
Tribunal on 2.4.2004 delivered the following:

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER.

The applicant is aggrieved by the reduced sanction of
the claim of medical reimbursement made by the applicant vide
sanction orders Annx.A2, A3, A4, A6 and A7 dated 31.1.02,
Annx.A11(2) dated 12.2.02 and Annx.A9 & A 11(1) by the
respondents which are the replies to the representation Annx.A8
and A12. These orders are impugned and the applicant has filed
this O.A seeking for the following reliefs:



"(i) to call for the records relating to Annx.A2 to Annx.A4, Annx.A6, A7 and Annx.A11 and set aside the same to the extent the said Annexures reduced the claims for medical reimbursement submitted by the applicant.

(ii) to call for the records leading to Annx.A9 and Annx.A13 and set aside the same as illegal and arbitrary.

(iii) to declare that the applicant is entitled to be sanctioned the full claim submitted for reimbursement for medical expenses in accordance with Central Service (Medical Attendance) Rules.

(iv) to declare that the applicant is entitled to be paid interest at the rate of 18% per annum for the delayed reimbursement of medical expenses.

(v) to direct the respondents to pay the applicant an amount of Rs.12,244.43 Ps over and above the amount sanctioned as per Annx.A11.

(vi) direct the respondents to pay an amount of Rs.1454 over and above the amount sanctioned as per Annx.A2 to Annx.A4, Annx.A6 and A7.

(vii) direct the respondents to pay interest at the rate of 18% per annum for the delayed reimbursement of the medical expenses starting from one month after the submission of the claims by the applicant."

2. The applicant, a Motor Driver, working in the Broadcasting Corporation of India, All India Radio in Civil Construction Wing, Kakkanad, Kochi. As per the provisions of Central Services (Medical Attendance) Rules he is entitled for reimbursement of himself and his family. The applicant's mother who is dependent on him was taken to Lakshmi Hospital with severe Chest pain which was a recognised private Hospital under the rules. Since she was in a critical condition, the Hospital authorities referred her to Sudheendra Medical Mission, Ernakulam for expert management. She was treated there and the claim for reimbursement was sanctioned as per order dated 18.11.99. The applicant's mother again developed severe chest pain and taken her to Sudheendra Medical Mission Hospital and was admitted in the Critical Coronary Care Unit. During the course of treatment she developed acute 'phyogonic cholecystitis' and an emergency surgery had performed on 20.10.99. The applicant incurred a total expense of



Rs.34,926.80 and submitted a claim for the said amount which was rejected and directed to refund the amount already sanctioned on 18.11.99. The applicant filed an O.A before this Tribunal and this Court directed the respondents not to recover the amount already sanctioned and paid and directed to reimburse the amount spent for the treatment of his mother in Sudheendra Medical Mission as per the rate prescribed under the Central Services (Medical Attendance) Rules. The respondents failed to comply the orders of this Tribunal therefore a Contempt Petition was filed. The respondents filed an appeal before the Hon'ble High Court by O.P No.13913 of 2001 which was dismissed on 14.12.01. On undertaking to comply the order, the CP was closed. In the meantime, the applicant submitted two more Medical Bills of his mother for the period from 3.1.2000 for Rs.776/- and for the period from 2.3.2000 for Rs.2084.44. He had also claimed treatment expenses of his son starting from 30.11.2000 to 6.2.01 for Rs.193/-. Thereafter he claimed treatment expenses of his mother for the period from 14.2.01 for Rs.301/-, for the period from 11.3.01 for Rs.8164/-, for the period from 24.3.01 for Rs.2270/- and for the period from 19.4.01 for Rs.2366/-. The claims were kept pending and subsequently they were sanctioned vide order dated 31.1.02. While the earlier medical claims were not considered and even vide orders dated 31.1.02 a reduced amount was sanctioned. The applicant claims that he is entitled to be drawn the entire amount as medical reimbursement. According to him, this was for extraneous reasons the claim was arbitrarily reduced. The applicant made representation Annx.A8 which was replied by a nonspeaking order Annx.A9. The reduction of the claims submitted by the applicant is clearly malafide and prompted by extraneous considerations. The applicant made another representation Annx.A12 against the sanction order



Annx.A11 which was replied by Annx.A13 by a nonspeaking order. No reason whatsoever given for the reduced sanction. Aggrieved by the inaction, the applicant has filed this O.A.

3. Separate detailed reply statements have filed by respondents Nos.3&4 and other respondents on 13.1.2004 and 18.2.2003. It is contended that the respondents are at liberty to reduce the medical bills in tune with the rates applicable to Central Services (Medical Attendance) Rules. Since there was an interim order by the Hon'ble High Court, the order of the Tribunal was not complied with at the appropriate time. The delay was occurred due to the changed attitude and negligence of the applicant in the discharge of his duties and various court cases pending regarding reimbursement of the medical expenses and other claims. The Medical claims of the applicant were regulated as per Schedule of Rates of the Hospitals concerned approved by the Govt of India. Annx.R3(g)(h) and (i) to show that detailed reports stating reasons for the reduction of claim giving particulars of the amounts claimed, claims allowable under the Schedule of Rates under the SS(MA) Rules, amount passed for payment amounts disallowed and the reasons thereof of the medical claim involved are produced. The claim for Rs.2084.44 was involved in this case was a treatment in a private hospital i.e. Sree Sudheendra Medical Mission Hospital and these claims could not be processed earlier due to the pending of court cases in respect of the medical claims. Annx.R3(g) the Govt of India decision No.11, the Central Govt employees and the members of their family may be permitted to avail of medical facilities in any of the hospitals recognised by the Govt/CGHS Rules/CS(MA) Rules subject to the conditions that they will be reimbursed the medical expenditure at the rates fixed by the Govt under the CS(MA) or the actual expenditure incurred whichever is less. The relevant extract



from Swamy's Compilation of Medical Attendance Rules is also produced as Annx.R3(k) and R3(h) prescribes the rates to be applied in Lakshmi Hospital. Even though the procedure prescribed in emergency treatment has not been followed by the applicant for reimbursement in full in accordance with the rates as approved by the CS(MA) Rules. The claims of the applicant were passed as per schedule approved by the Govt of India as detailed in Annx.R3(k)(l)(m). If the applicant is not satisfied, he should appeal before the Central Govt under the proviso to Rule 3(6) of the CS(MA) which the applicant has not preferred to do so. In other words the applicant has not exhausted the alternative remedy available to him under the rules and directly approached this Tribunal and therefore submitted that the O.A having no merit is liable to be dismissed.

4. The applicant has filed rejoinder reiterating the pleadings in the O.A and further contending that the Gautham Hospital has no facility for treating the ailment of the applicant's mother and the additional amounts billed by the Sudheendra Medical Mission where his mother was treated has good facilities and in fact Amrutha Institute of Medical Sciences, an approved hospital of the Govt has higher rates than the Sudheendra Medical Mission and has not clarified as to why the 4th respondent has taken the rates of Gautham Hospital as the bench mark for comparison. The rate of Gautham Hospital is not substantiated by the respondents. Therefore, there is no reason to reject the claim of the applicant.

5. I have heard Shri Vinod Chandran, learned counsel for the applicant and Sh.Prasanth Kumar, ACGSC, representing respondents Nos.1 to 3. Respondent No.4, U.Raju has been



personally impleaded and certain malafides were alleged against him. The learned counsel have taken me through various pleadings, evidence and material placed on record.

6. The learned counsel for the applicant submitted that the claim is for his mother and his son who are dependent on him. Since the claim of his son is only for Rs.193/- and a separate cause of action is derivated, the claim of his son is not pressed and may be dismissed. Therefore, only his mother's claim for reimbursement remains. He submitted that in the case of emergency and in the absence of facility in the authorised hospital the treatment can be carried out in a Hospital which has the appropriate facility to treat the patient. The orders rejecting the claim of the applicant are non-speaking and do not discuss the provisions of CS(MA) Rules under which the amount claimed by the applicant were reduced and the claims were delayed over a period of one year for which has to be compensated by way of interest. The learned counsel for the respondents on the other hand precisely argued that there were various cases not only regarding reimbursement of medical claims but also service matters pending before the various courts therefore the matter was delayed and the earlier order of this Tribunal has been fully complied with. Difference in payment of amount was on the calculation of reduced amount as per rules and the applicant cannot expect to get reimbursement whatever that he claims in contravention of the CS(MA) Rules.

7. I have given due consideration to the materials and arguments advanced by the learned counsel.

When
8. The case came up for hearing the learned counsel for the applicant submitted that the claim of medical reimbursement in respect of his son is not pressed. On going through the

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materials, pleadings and record, I am of the view that the malafide that has been alleged against respondent No.4 who is also impleaded as respondent No.3 in his official capacity has no ground to attribute malafides on the part of the respondent. The contention of the applicant against respondent No.4 in attributing malafides is because of the prejudice and ill-will that he had maintained against the applicant and the applicant also has filed other cases before the Hon'ble High Court impleading the 4th respondent which was dismissed. Considering all this aspect, this court could not find any malafide on the part of 4th respondent as far as this claim is concerned and the said plea is rejected. Therefore, this court confining its decision only on the disputed claim of the reduced sanction of the medical bills.

9. When the medical reimbursement claims are being processed the Courts are reminded of Article 21 of the Constitution which enshrines the protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to the procedure established by law. The right to 'life' is a precious freedom as observed by Field J. in Munn Vs. Illinois, (1877) 94 US 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed (AIR 1986 SC 180 in the case of Olga Tellis & Ors Vs. Bombay Municipal Corporation & Ors.). The Central Services (Medical Attendance) Rules 1944 has to be evaluated with the above principles.

10. Interpreting Article 21 of the Constitution in a case reported in AIR 1997 SC 1225, State of Punjab & Ors. Vs. Mohinder Singh Chawla, etc, the Supreme Court once again concluded that having had the constitutional obligation to bear



the expenses for the Govt servant while in service or after retirement from service, the Govt is required to fulfil the constitutional obligation. In State of Punjab & Ors Vs. Ram Lubhaya Bagga etc.etc., reported in JT 1998(2) SC 136, the Supreme Court reiterated the same principle by holding that it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State. Further in a case reported in (1989) 4 SCC 286, Pt. Parmanand Katara Vs. Union of India & Ors., the Supreme Court observed that the obligation of a doctor in the Govt Hospitals to extend assistance for preserving the life of the patient is fundamental and the basic feature of our constitution. As a corollary, it follows that right to medical assistance also would be a basic feature in the case of retired Govt servants. Since this is one of the basic rights, the State has a legal obligation to provide assistance to the Govt servants who had rendered service during the prime of their life subject to reimbursement and availability of medical facilities.

11. It is, in this view of the matter, when we evaluate the facts of this case, we find that the applicant's mother was initially taken to Lakshmi Hospital recognised under the CS(MA) Rules who was referred to Sudheendra Medical Mission, Ernakulam for expert management and treated there and the claim for reimbursement was sanctioned as per order dated 18.11.99 and when his mother again developed severe chest pain she was naturally taken her to Sucheendra Medical Mission Hospital and since she developed acute 'phyogonic cholecystitis' and an emergency surgery was undertaken and performed on 20.10.99 and the applicant incurred the expenses and later the amount already granted was directed to be refunded on the question of differences in rates as the rates of Sudheendra Medical Mission cannot be accepted by the Department. Though the rate was



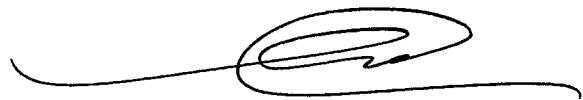
disputed by the respondents, no material evidence was placed before this court to substantiate the contention of the respondents that the rates are excessive. On the other hand the rate has been compared is that of one Gautham Hospital, Kochi, approved under the CS(MA) Rules. Strangely enough we find that the Gautham Hospital do not have the treatment that has provided to the applicant's mother. I am at a loss to understand that the Hospital which do not have the required treatment facilities that of the applicant's mother received could not be equated with that of the rate that has been claimed by the applicant. For that reason alone, I am of the view that the impugned order is not sustainable and deserved to be dismissed. It is also pertinent to note that the hospital charges claimed by the applicant has already been granted by the respondents thereafter vide Annx.A11 dated 4.2.02 the medical claims were rejected on the ground of audit inspection. According to me the rejection of a claim without proper application of mind on the basis of audit objection is not sustainable and therefore to be faulted.

12. Considering the above aspects, I am of the view that Annxs.A2-A4, A6, A7 and A11 are not sustainable and they are set aside to the extent the said annexures are reduced the claim of the medical reimbursement submitted by the applicant in respect of the applicant's mother. Therefore, Annxs.A9 and A13 are also set aside and declare that the applicant is entitled for sanction of full claim submitted for reimbursement of medical expenses which includes an amount of Rs.12,244.43 mentioned in prayer (v) of the O.A. Considering the entire aspects, I am of the view that the delay if any has been caused because of litigation and other proceedings, the applicant is not entitled for any interest or costs. The respondents are directed to grant the reliefs within three months from the date of receipt

[Handwritten signature]

of a copy of this order failing which the applicant is entitled for an interest at the rate of 9% per annum from the date of this order on such amount.

(Dated, the 2nd day of April, 2004)



(K.V.Sachidanandan)
Judicial Member.

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