

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.82/2002

Thursday, this the 11th day of July, 2002.

CORAM

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER  
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

M.P.A. Kurup, S/o M.K.P. Kurup,  
Scientist 'C' (Retd.),  
Central Leather Research Institute,  
Chennai. Residing at Thiruvathira,  
Kattakalil Lane,  
Vettamukku, Thiruvananthapuram-695 006.

Applicant

[By Advocate Mr N. Unnikrishnan]

Vs.

1. The Director General,  
Council of Scientific & Industrial Research,  
Anusandhan Bhavan, 2nd Rafi Marg,  
New Delhi-110 001.
2. The Director,  
Central Leather Research Institute,  
Adayar, Chennai-600 020.
3. The Union of India represented by the  
Cabinet Secretary to the Government,  
South Block, Central Secretariat,  
New Delhi-110 011.

Respondents

[By Advocate Mr Sunil Jose, ACGSC]

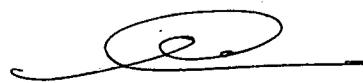
The application having been heard on 28.6.2002, the  
Tribunal delivered the following order on 11.7.2002.

O R D E R

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

The applicant having agreed by the non-disbursement of  
medical claim towards the Cancer treatment at Cosmopolitan  
Hospital, Thiruvananthapuram by the respondents, has filed this  
O.A. under Section 19 of the Administrative Tribunals Act of  
1985 seeking the following reliefs:

"i) call for the records leading to the nonpayment  
of medical reimbursement claim of Rs.7,550/- to  
the applicant by the respondent Nos 1 and 2;



- ii) declare that the respondents 1 and 2 are bound to release the medical reimbursement claim of the applicant for surgery for cancer at Cosmopolitan Hospital, Thiruvananthapuram without any further delay along with interest at the rate of 12% per annum from 19.02.1999 to the date of its payment;
- iii) to issue an appropriate order or direction to the respondents to release medical reimbursement claim of the applicant within a reasonable time along with interest at the rate of 12% per annum from 19.02.1999 to the date of its payment;
- iv) issue such other or further directions or orders as this Hon'ble Tribunal may deem fit and necessary in the interest of justice;

AND

- V) award the cost of this Original Application."

2. The applicant has taken the plea in the O.A. that he was a pensioner retired as Scientist 'C' from the Council of Scientific and Industrial Research (CSIR, for short) and attached to the Central Leather Research Institute, Chennai (CLRI, for short) and was drawing pension through the State Bank of India, Main Branch, Thiruvananthapuram where he settled after retirement. In July, 1998, when a small lump was noticed on his right breast and showed it to a Doctor near to his house, he directed to undergo a Biopsy Test for determining the growth as malignant or benign and was advised to undergo the test under a new Diagnostic method, F.N.A.C. test which was available at Mangalam Diagnostic Research Centre, Kottayam. Accordingly, he had undergone the test as per ID No.7773 dated 20.11.98 (Annexure A-1) which suggested possibility of breast cancer and was further advised for Excision Biopsy. The applicant returned to Thiruvananthapuram and contacted the local CSIR Laboratory, namely, Regional Research Laboratory. Both the authorities expressed their inability to assist the applicant on the matter for want of specific guidelines for attending to the medical treatment facilities for CSIR pensioners in Thiruvananthapuram. When the applicant undergone



the above test from 27.11.98 to 12.12.98, it was noticed that the Doctors, House Surgeons and other medical staff were at strike enmasse and since the operation had to be performed immediately, he was admitted in the Cosmopolitan Hospital, Thiruvananthapuram, for consultation and further investigation on 5.12.98. On 7.12.98, the applicant again contacted the designated P.M.O. of CSIR and explained the confusion prevailing in Government Hospital due to the patient and doctors feud, the need for urgent operation and so requested him to direct the applicant to any major hospital like Cosmopolitan Hospital as there was no possibility of ending the strike in the near future. The Medical Officer of CSIR referred the applicant to Cosmopolitan Hospital, Thiruvananthapuram for cancer treatment as per letter dated 7.12.98 (Annexure A-2). The applicant made a last attempt to refer his case to any recognized Central Government Health Scheme (CGHS, for short) with a written request dated 10.12.98 (Annexure A-3). The Joint Director, CGHS, Thiruvananthapuram, by his letter dated 29.12.98 informed that the CLRI is not covered by the CGHS. He was operated on 19.12.98 and discharged from the Hospital on 23.12.98. He was referred to the Regional Cancer Centre, Thiruvananthapuram and for further management of his cancer ailment like radiation, etc. The discharge summary letter is dated 23.12.98 (Annexure A-4). The applicant forwarded his medical claim bill for the treatment from 16.12.98 to 23.12.98 by letter dated 9.1.99 to the 2nd respondent as per letter dated 9.1.99 (Annexure A-5). The applicant had also treated in the Cancer Institute, Adayar, Madras for post operative treatment. However, in the case of treatment availed at Cosmopolitan Hospital, Thiruvananthapuram, the Administrative Officer, CLRI, Chennai by letter dated



19.1.99 (Annexure A-6) to the Director Regional Research Laboratory Thiruvananthapuram, sought the following information/clarification as under:

"(1) (a) List of recognized hospitals for treatment of C.S.I.R. pensioners at Trivandrum and rates for treatment (copy of letter dated 9.01.1999 of Shri M.P.A. Kurup enclosed).

(b) In the absence of recognized list of hospitals the same may be confirmed.

(2) The reason why the Medical Officer of RRL, Trivandrum could not refer the patient to a Government/Recognize Hospital for treatment (copy of reference slip dated 2.12.1998 of Dr. Radhakrishna Prasad enclosed)."

3. Subsequently, the CLRI referred the matter to the CSIR, New Delhi with the recommendation to pay the subscription for medical reimbursement claim for the periods as enunciated in Annexure A-7 letter dated 8.3.99. The CLRI requested the applicant as per letter dated 1.6.99 (Annexure A-8) to furnish documentary proof to the effect that he was admitted in the Cosmopolitan Hospital Thiruvananthapuram under emergent circumstances and the operation was very essential. The applicant thus submitted the certificate dated 18.6.99 (Annexure A-9) in response to Annexure A-8. The Section Officer, CLRI issued a letter to the Secretary (Administration), CSIR, New Delhi, for regularization of the rules to permit reimbursement as admissible for cancer treatment under CGHS/AIIMS rates as per letter dated 6.7.99 (Annexure A-10). The applicant again submitted a letter dated 24.6.99 (Annexure A-11) to the second respondent. The Section Officer, CLRI issued a letter dated 6.8.99 (Annexure A-12), the contention of which reads as under:

"Shri Kurup had undergone inpatient treatment at Cosmopolitan Hospital, Trivandrum from 16.12.98 to 23.12.98 for surgery for cancer. The official holds Medical Card No.175 (valid for inpatient treatment



only) having paid his subscription for inpatient treatment from 1.1.98 to 31.12.98 on 5.11.98. For the period 1.1.99 to 31.12.99 the official had paid Rs.600/- on 31.12.98 and Rs.240/- on 23.3.99, after correspondence, intimating him the shortfall in remittance.

The Official has since revised his option and relinquished fixed medical allowance of Rs.100/- p.m. w.e.f. 1.1.99 (copy of CLRI letter dated 11.6.99 enclosed).

Formal orders of the competent authority for relaxation of the rules to permit reimbursement as admissible for cancer treatment under CGHS/AIIMS rates may kindly be issued."

4. Despite Annexure A-12, the 1st respondent did not issue any orders giving concurrence for sanctioning and paying the medical claim. The applicant again submitted a letter dated 25.11.99 (Annexure A-13) before the 2nd respondent requesting to release the medical reimbursement bill for expenses incurred for cancer treatment. Thereafter, the Section Officer, CLRI issued the letter dated 16.3.2000 (Annexure A-14) to the applicant stating that:

"The bill for Rs.7,550/- is pending with them for want of clarification from the CSIR. It was also stated that they have received applicant's pension contribution for taking medical treatment for the year, 2000 for Rs.800/- only instead of Rs.840/-. Therefore, it was requested to remit the balance of Rs.40/-. It was also stated they are issuing a new medical card after reviving Rs.40/-. "

5. In response to Annexure A-14, the applicant sent a letter dated 7.4.2000 remitting the balance amount and also requested to release the medical claim amount of Rs.7,550/- at the earliest. and he sent repeated representations dated 29.5.2000, 29.12.2000 and 27.2.2001 before the 2nd respondent. Since there was no response, the applicant made a request letter dated 12.10.2001 (Annexure A-15). Again, he made another representation dated 15.11.2001 (Annexure A-16) for the same purpose. As per letter dated 6.5.98 (Annexure A-17), the

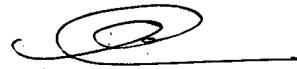


CSIR issued recognition of Private Hospitals/Diagnostic Centres recognized under CGHS for the benefit of CSIR employees. It was further stated that:

"The Governing Body considered the matter and approved the recognition of the C.G.H.S. approved hospitals for availing the medical facilities by the C. S.I.R. serving employees as well as the pensioners under C. S (MA) Rules. The procedure and ceiling rates entitlement and other conditions for availing the above facility would be same as prescribed by the C. G.H.S. from time to time at places where C. G.H.S. facility exists."

6. The applicant contended that in Kerala no Government/Private Hospitals are recognized by the CSIR or CLRI and therefore, the genuinity of the claim made by the applicant be recommended for reimbursement at par with the rates of AIIMS/CGHS and other recognized hospitals. Since the 2nd respondent has accepted and recommended the claim of the applicant for reimbursement, no action seems to have taken by the 1st respondent. The applicant had earlier filed O.A.1249/94 before the Madras Bench of the Tribunal for treating his voluntary retirement from the date of request and since the wrath of the 1st respondent towards the applicant started, the President of the Officers Association filed a Public Interest Litigation on corruption charges against the 1st respondent. They compelled the applicant to withdraw the same so as to accept the voluntary retirement request and protracted the matter. The applicant apprehends that the 1st respondent is purposely keeping the matter without any justification.

7. Respondents have filed a reply statement contending that under the CGHS, the applicant is to be treated only at Government Hospital or at a hospital recognized for treatment by the CSIR. In the case of the applicant, the treatment was done at Cosmopolitan Hospital, which is a private hospital and

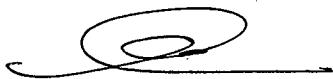


not recognized under the CGHS for the treatment of CSIR pensioners. In view of the above reasons, the applicant's claim cannot be entertained and his case will be considered subject to the ceilings as per approved rates under the CGSS immediately of his furnishing the reasons for leading to the treatment at the private hospital instead of going to a Government Hospital or a recognized hospital.

8. The applicant has filed a rejoinder stating that he had taken the treatment in a private hospital on compulsion and the situation was beyond his control since Doctors and the staff of Government Hospital at Thiruvananthapuram were on strike and the Government Hospital system has practically paralyzed and since he has to be treated very urgently for cancer which is a terminal disease, the necessity compelled to admit in the Cosmopolitan Hospital

9. We have heard the counsel for the applicant as also the respondents at length.

10. It is the admitted case that the applicant is eligible for the benefit claimed in the O.A., but the respondents' plea is that since the applicant was admitted in a private hospital which is not a recognized one for treatment under the CGHS for treatment of CSIR pensioners, the applicant is not eligible for the same. The applicant's case is that having the 2nd respondent accepted the contention and recommended for reimbursement, it is not fair to deny the benefit and this recommendation which has been done after a elaborate inquiry and based on the factual documentary evidence, the 1st respondent has convinced that the applicant has taken treatment outside the Government Hospital which was necessitated at that point of time due the situation beyond his expectation and



control. Since the operation has to be performed immediately, there was no other alternative for the applicant but to get admitted in the Cosmopolitan Hospital, Thiruvananthapuram on 5.12.98. The fact that the applicant was in correspondence with the respondents/their representative and requested them to direct him to any hospital where this treatment is available leads to the inference that the case of the applicant is bona fide. Cancer admittedly a deadly disease and the applicant was advised by the Doctor for emergent treatment and operation thereof and he had uneventful post operative course. The applicant admittedly has suffered the ailment and required urgent and immediate treatment and he has made earnest attempt to take prior sanction for treatment in non CGHS Hospitals which is permitted under rules. The survival of the person is the prime and paramount consideration. It is always open to the Government to grant ex-post-facto sanction subject to verification of the claim which has not been denied in this case. On the other hand, the respondents has taken the plea that the case of the applicant will be considered subject to the ceiling as per the approved rates of CGHS, immediately on his furnishing the reasons for leading to the treatment at the private hospital instead of going to a Government Hospital or a recognized hospital with proof thereof.

11. Admittedly, the applicant is suffering from Cancer and we have fully convinced the reasons for leading to undergo treatment in a private hospital instead of going to a Government hospital / recognized hospital. In this context, the strike by the Doctors and other medical staff has paralysed the entire medical system in the Government Hospitals in Thiruvananthapuram and that the fact has been asserted in the O.A. which is not specifically denied by the respondents. A poor pensioner who has been denied medical treatment due to



strike is a concern of the social conscience. Since the 'right to health' has become integral part of life and the government's constitutional obligation to provide health facilities to the retired employees has been deprived the chance by the strike of Doctors and other medical professionals in the Government Hospital. In these circumstances, a retired employee, like the applicant, is entitled to get reimbursement of medical treatment as claimed in this O.A. It is also brought to our notice a similar case reported in Narendra Pal Singh Vs. Union of India and others [ (1994) 4 SLR 648] the Delhi High Court has observed as follows:

"The law is, therefore, well settled that right to health is an integral part to life and the Government has constitutional obligation to provide the health facilities to its employees or retired employees and in case an employee requires a specialized treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses. The petitioner in this case had to be operated in an emergency as he suffered a heart problem and in case he had waited for a prior sanction he might not have been survived. Therefore, in this situation it is the duty of the Government to grant ex-post facto sanction and not deny the claim of the petitioner on technical and flimsy grounds. Firstly the Government does not give any proper reasoning to deny the claim of the petitioner in its communication dated 4th December, 1997 and secondly the affidavit of Dr.P.K. Balbir Singh merely states that since the petitioner had taken the treatment in non-C.G.H.S. covered area and as per Central Government Health Scheme Orders and instructions as issued by the Government, a pensioner is not entitled to the facilities of reimbursement. These reasons cannot be appreciated in view of the settled position that the petitioner is entitled to take recourse to an emergency treatment in any area if the circumstances and the nature of disease so warrant."

Considering the above facts, we are of the opinion that the applicant is entitled to get the reimbursement for the treatment as claimed in the O.A. We have also considered the claim for interest which the applicant is not entitled.



12. In the conspectus of facts and circumstances, we hold and declare that there is no reason to deny the relief claimed by the applicant and therefore, the application is liable to succeed. Accordingly, we direct the respondents to reimburse the medical claim sought for by the applicant in the O. A. and the medical reimbursement for the surgery conducted in the Cosmopolitan Hospital, at Thiruvananthapuram, subject to the ceiling at the approved rate under the Central Government Health Scheme. This shall be done within three months from the date of receipt of this order.

13. The Original Application is allowed as aforesaid. No costs.

Dated the 11th of July, 2002.

  
K.V. SACHIDANANDAN  
JUDICIAL MEMBER

  
G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

P.

#### APPENDIX

##### Applicants' annexure

- A-1 Copy of Report I.D.No.7773 dated 20.11.98 issued by Mangalam Diagnostic Research, Centre, Kottayam.
- A-2 Copy of letter dated 7.12.98 issued by Dr. Radhakrishna Prasad, Gayathree Medical Centre.
- A-3 Copy of letter dated 10.12.98 submitted by the applicant before the Joint Director, CGHS, Thiruvananthapuram.
- A-4 Copy of discharge summery dated 23.12.98 issued by the Cosmopolitan Hospital, Thiruvananthapuram.
- A-5 Copy of letter dated 9.1.99 submitted by the applicant before the 2nd respondent.



- A-6 Copy of letter dated 19.1.99 issued by the Administrative Officer, CLRI, Chennai.
- A-7 Copy of letter dated 8.3.99 issued by the Section Officer, CLCRI, Chennai.
- A-8 Copy of letter dated 1.6.99 issued by the Section Officer, CLRI, Chennai.
- A-9 Copy of Medical Certificate dated 18.6.99 issued by the Cosmopolitan Hospital, Thiruvananthapuram.
- A-10 Copy of letter dated 6.7.99 issued by the Section Officer, CLRI, Chennai.
- A-11 Copy of letter dated 24.6.99 submitted by the applicant before the 2nd respondent.
- A-12 Copy of letter dated 6.8.99 issued by the Section Officer, CLRI, Chennai.
- A-13 Copy of letter dated 25.11.99 submitted by the applicant before the 2nd respondent.
- A-14 Copy of letter dated 16.3.2000 issued by the Section Officer, CLRI, Chennai.
- A-15 Copy of letter dated 12.10.2001 submitted by the applicant before the 1st respondent.
- A-16 Copy of representation dated 15.11.2001 submitted by the applicant before the 1st and 2nd respondent.
- A-17 Copy of letter dated 6.5.98 issued by the Deputy Secretary, CSIR.