CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.118 of 2006

Thursday, this the 11th day of January, 2007

CORAM :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

A.N. Gopinathan Nair,
S/o. Neelakantan Nair,
Residing at Surabhi, Vellapad,
Palai : 686 575 ... Applicant.

(By Advocate Mr. P.C. Sebastian)

versus

1. The Union of India represented by
Secretary, Ministry of Communication,
Department of Posts, New Delhi

2. The Postmaster General,
General Region, Kochi-682016

3. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram

4. The Senior Supdt. Of Post offices,
Kottayam Division, Kottayam. ... Respondents.

(By Advocate Mr. George Joseph, ACGSC)

The Original Application having been heard on 13.12.06, this Tribunal on 11.01.2007 delivered the following:

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The short but sharp question involved in this case is whether the applicant, who initially proceeded with his treatment strictly in accordance

with the Medical Attendant Rules, but who, at a stage deviated from the rules in that he had failed to obtain certificate from the Chief Medical Officer for undergoing treatment in a hospital outside the State, is entitled to the medical reimbursement for the heart operation which he underwent at MIOT Hospital, Chennai.

2. Respondents have rejected the claim on twin grounds: (a) That he had failed to obtain such a certificate from the Chief Medical Officer and (b) That the hospital where he had undertaken the surgery is not recognized one.

3. A few facts of the case, as succinctly brought out in the impugned order itself are worth borrowing and the same are as under:-

> (i) While at home at Palai on 16.9.2002 the applicant suddenly felt acute chest pain and fell down unconscious. He was taken to nearest Marian Medical Centre, Arunapuram, Palai. After urgent medical attendance given to him the Medical Officer informed him of symptoms of Cardiac attack and advised emergent follow up treatment at any appropriate hospital.
>
> (ii) After discharge from that private hospital on 21.9.2002, he was taken to Medical College Hospital, Kottayam on 30.9.2002. He was under treatment of Dr. Jay Prakash, M.D. Cardiologist upto 9.10.2002. The said Doctor referred him to Amritha Institute of Medical Sciences, Kochi for further

treatment/test including Coronary Angiography and follow up surgery since such facilities were not available at Kottayam Medical College. He was under treatment at Amrita Institute of Medical Sciences, kochi, from 11.10.2002 to 13.10.2002. He was advised CASG surgery which was posted to 18.11.2002.

(iii) He has further stated that his condition deteriorated and his family made enquiries at Sree Chithira Institute of Medical Sciences, Trivandrum and some other recognised hospitals for an advanced surgery.

(iv) As there was no hope of getting the surgery done earlier than 18.11.2002, his relatives decided to take him To Chennai where he was admitted in MIOT Hospital Centre for Thoracic and Cardio Vascular Care on 4.11.02 and on their advice he underwent Coronary Artery Bypass Surgery on 6.11.02. The surgery was successful and he was discharged from hospital on 15.11.02.

(v) He had incurred an expenditure of Rs. 1,50,000/- on treatment for surgery, but he made a claim Rs. 1,02,000/- only for the bypass surgery at MIOT Hospital supported by all relevant bills and certificates to the Postmaster General Kochi on 5.12.02 through the Senior Superintendent of Post Offices, Kottayam.

(vi) His failure to obtain the prior permission, was not due to any wilful negligence on his part. The treatment was most urgent to save his life.

(vii) Shri A.N. Gopinathan Nair has also stated that his claim has been rejected by the controlling authority without application of mind to the facts and circumstances of the case and without giving him an opportunity of personal hearing as required in the proviso to Rule 6(2) of CS(MA) Rules, 1944.

4. Reasons for rejection by the respondents are given in the very same impugned order and the same are as under:-

"(i) As per CS (MA) Rules 1944 condition for treatment in hospitals outside District/State is as under:

Conditions for treatment in hospitals outside District/State :

It has been decided that Central Government servants and members of their families may receive treatment for all diseases (other than TB, Cancer, Polio and medical diseases for which separate orders exist) for the treatment is provided under the rules, in a Government/ recognised hospital outside the District/State but within India provided -

(a) necessary and suitable facilities for treatment are not available in a Government or recognised hospital at the District or State Head quarters or within the District or State where one falls ill;

(b) the treatment outside the District/State is recommended by the Authorised Medical Attendant and countersigned by the Chief Medical Officer of the District if the treatment to be

undertaken outside the district or by the Chief Administrative Medical officer of the State if it is to be undertaken outside the State.

MIOT Hospital, Chennai is not a Government/Government recognised hospital for obtaining such a treatment. One can avail treatment outside State only in a Government / Government recognised hospital with prior permission of the competent authority prescribed under CS (MA) Rules. The official had not only failed to obtain prior permission from the appropriate authority for treatment outside the State but also underwent treatment in a private hospital in an other State, which is not recognised under CS (MA) Rules.

(ii) The controlling officer in this case did not find any extraneous circumstances to reconsider the case in relaxation of CS (MA) Rules as the official assumed things for himself and proceeded for treatment on his own. It may also be added that in Chennai itself, there are a number of Government and private recognised hospitals (under CGHS/SC(MA) Rules) for the purpose of cardiac surgery but the official availed the treatment in a private hospital not recognised under these rules.

(iii) There is nothing on record to show that the official had real emergency for treatment prior to 18.11.02, i.e. date allotted by the Amrita Institute of Medical Sciences. The official also did not appear to have approached emergency/casuality of the said hospital or any other hospital within the State after his condition deteriorated as stated by him. However, he, all along travelled to Chennai for his treatment.

(iv) As regards his plea that he was not given the personal hearing by the CPMG, the CPMG has informed that the official had not made any request for personal hearing in this case. Para 6(2) of CS(MA) Rules provide that where a Government servant is entitled under sub rule (i), free of charge, to treatment in hospital any amount paid by him on account of such treatment shall, on production of a certificate in writing by the authorised medical attendant in this behalf, be reimbursed to him by the Central Government. Provided that the Controlling Officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the Controlling Officer shall communicate to the claimant the reason, in brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of 45 days of the date of receipt of the order rejecting the claim.

CPMG Kerala Circle has given the reason in brief for rejecting the medical claims of Shri Nair and therefore, his plea that he has not been given the opportunity of personal hearing is not tenable.

(v) The official appears to have violated the CS (MA) Rules on his own. There is no provision for accepting a medical claim in circumvention of these rules. Secretary (Posts) has considered the appeal of Shri A.N. Gopinathan Nair, Sub Postmaster, Kottayam and does not find any ground for admitting the claim for reimbursement of medical expenses as the petitioner has not followed the rules and guidelines of CS (MA) Rules, 1944."

5. By and large the above have been reflected in the OA as regards facts and Reply as regards reasons for rejection. In the O.A. the fact that the applicant had sought for permission to carry out the surgery at MIOT Hospital Chennai on 06-11-2002 vide Annexure A-2(b) letter dated 02-11-2002 which was not, however, rejected till 27-11-2002, vide Annexure A-2 (b) letter of the respondents, has also been specified.

6. Counsel for the applicant relied upon the decision of the Apex Court in the case of *Surjit Singh v. State of Punjab, (1996) 2 SCC 336,* to hammer home the point that the condition that permission in advance should be sought for having the treatment outside the station is not an inflexible one.

7. Arguments were heard and documents perused. The question for consideration is whether the claim of the applicant is outside the purview of the Rules or could the same be accommodated under the provisions of the Rules.

8. Admittedly, the applicant was entitled to the medical treatment in the recognized hospitals within the station and accordingly initially he was under treatment in such hospitals. Equally admitted is the fact that there was a requirement of a cardiac surgery to be performed upon the applicant and the time scheduled (tentatively) by AIMS was 18-11-2002, vide Annexure A-2 certificate dated 24-10-2002. Again, it is not disputed that the applicant

sought permission from the respondents vide letter dated 02-11-2002 for his treatment at MIOT and that the said letter was not replied to prior to his undergoing the surgery. Whatever reasons were stated in their rejection order dated 27-11-2002 (11 days after the operation was conducted) and in para 4 of the reply, the respondents could have given the same immediately on receipt of Annexure A-2(b) letter from the applicant. Admittedly, this was not so done.

9. It is not the case of the respondents that the applicant was not at all entitled to reimbursement. He is certainly entitled, but subject to following the procedure. Whether omission to follow the procedure totally shuts the door for his claim is the question.

10. Now an analysis of the grounds for rejection of the case of the applicant by the respondents. First contention is that provisions of Rule 6(2) of the M.A. Rules have not been followed by the applicant. Of course, seeking the certification from the Chief Medical Officer is one of the procedures to be adopted before having the treatment outside the state. Such a certification does not create a new entitlement but only enables extension of the existing entitlement of the applicant for medical reimbursement outside. This provision is not insisted for 'emergent cases' as could be seen from Annexure R-2. The said Annexure inter alia reads as under:-

"**(1) Procedure for obtaining treatment from private medical institutions in emergent cases.**- The question of streamlining the procedure involved in obtaining treatment in emergent cases has been engaging the attention of the Government of India and as a result of the decision taken in this regard, the Ministry of Finance in their O.M. No. F.26 (10)-E.V(B)/74, dated the 16th July, 1974, Ministry of Finance in their O.M. No. F.26(1))-E.V(B)/74 dated the 16th July, 1974, have delegated more financial powers to the Heads of Departments/Ministries to meet the situation. In consultation with the Finance Ministry, the following further decisions have been taken in this regard:-

(i) Circumstances to justify treatment in private medical institution:- In emergent cases involving accidents, serious nature of disease, etc. the person/persons on the spot may use their discretion for taking the patient for treatment in a private hospital in case no Government or recognised hospital is available nearer than the private hospital. The Controlling Authority / Department will decide on merits of the case whether it w as a case of real emergency necessitating admission in a private institution. If the Controlling Authorities / Departments have any doubt, they may make a reference to the Director General of Health Services for opinion.

Note:1:- In order to eliminate the confusion regarding distinction between a private hospital and a private nursing home/clinic, the delegated powers are applicable to all medical institutions without making any distinction between a private hospital and a private nursing home/clinic.

Note:2:- It may be reiterated that reimbursement of expenses incurred on treatment obtained in the private clinics/nursing homes of the Authorised Medical Attendants would not be admissible under the above provision and also in relaxation of the CS (MA) Rules, 1944, even in emergent cases."

11. It is appropriate to take the support of the decisions by the Apex Court

in regard to Medical Reimbursement, where certain deviations from the Medical Attendant Rules had taken place. That would help in arriving at a just decision.

12. First, the very decision relied upon by the counsel for the applicant. In *Surjit Singh v. State of Punjab, (1996) 2 SCC 336,* the Apex Court has held as under:-

> The Division Bench in *Sadhu R. Pall case* observed as follows:
>
> > The respondents appear to have patently used excusals in refusing full reimbursement, when the factum of treatment and the urgency for the same has been accepted by the respondents by reimbursing the petitioner the expenses incurred by him, which he would have incurred in the AIIMS, New Delhi. We cannot lose sight of factual situation in the AIIMS, New Delhi, i.e., with respect to the number of patients received there for heart problems. **In such an urgency, one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved.**
>
> We share the views afore-expressed. (Emphasis supplied)
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> **11.** It is otherwise important to bear in mind that self-preservation of ones life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of the *Garuda Purana* (A dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:
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> *17. Vinaa dehena kasyaapi canpurushaartho na vidyate*
> *Tasmaaddeham dhanam rakshetpunyakarmaani saadhayet*

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18. Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam Rakshane yatnamaatishthejje vanbhaadraani pashyati

One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

20. Shariirarakshanopaayaah kriyante sarvadaa budhaih Necchanti cha punastyaagamapi kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body. * * *

22. Aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsyo hitakarastasmaadaatmaanam taarayishyati

If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.

12. The appellant therefore had the right to take steps in self-preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs 40,000 already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months

positively. The appeal is accordingly allowed. There need be no order as to costs."

13. In the above case, deviation from the procedure has been ignored and the appellant was declared to be entitled to the medical reimbursement as applicable to the treatment in Escorts Hospital, notwithstanding the fact that the appellant did not undergo the treatment in that hospital but had the treatment at England, that too without permission. The importance of life and health has been highlighted in the judgment, before which, minor deviation from the procedure sinks into oblivion.

14. In the above judgment, Hon'ble Justice M.M. Punchhi, as his Lordship then was, referred to the the significance to be attached to the fundamental right relating to life under Art. 21 of the Constitution. The Constitution Bench in a very recent case of ***Confederation of Ex-Servicemen Assns. v. Union of India,(2006) 8 SCC 399,*** **referred to such a view expressed by various other Benchs of the Apex Court as under:-**

"Relying on several previous judgments, this Court held that the right to life would mean meaningful and real right to life. It would include the right to livelihood, better standard of living in hygienic conditions at the workplace and leisure.

54. Speaking for the Court, K. Ramaswamy, J. observed in para 25: ((1995) 3 SCC 42 at p. 70)

> *25.* Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker *while in service or post retirement* is a fundamental right under Article 21, read with Articles 39(*e*), 41, 43, 48-A and all related articles and

> fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. (emphasis supplied)

55. Reliance was also placed on *CESC Ltd.* v. *Subhash Chandra Bose(1992) 1 SCC 441*, wherein His Lordship (K. Ramaswamy, J.) held that the right to health of a worker is covered by Article 21 of the Constitution. It was also indicated that health does not mean mere absence of sickness but would mean complete physical, mental and social well-being:

> Facilities of health and medical care generate devotion and dedication to give the workers best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt-edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc. (SCC p. 463, para 32)

56. Reference was made to *Bandhua Mukti Morcha* v. *Union of India(1984) 3 SCC 161* wherein Bhagwati, J. (as His Lordship then was) referring to *Francis Coralie Mullin* v. *Administrator, Union Territory of Delhi(1981) 1 SCC 608* stated: (SCC pp. 183-84, para 10)

It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin case(1981) 1 SCC 608*, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the directive principles of State policy and particularly clauses (*e*) and (*f*) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the directive principles of State policy contained in clauses (*e*) and (*f*) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the

> State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State *shall* be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State.

Thus, when the question of priority to following the procedure on the one hand and right to health/life is concerned, consistently, the Apex Court has held the latter as pre-dominant. In other words, in genuine cases, omission to follow a part of the procedure may be taken to deprive the individual of his otherwise entitlement to medical reimbursement.

15. As regards undergoing the treatment at private or unrecognozed hospitals, the view of the Apex Court is as under:-

***(a) In Chhotu Ram Yadav v. State of Haryana,(2005) 13 SCC 393,* the Apex Court has held as under:-**

> **3.** Our attention has been drawn to the judgment of the Punjab and Haryana High Court in a group of writ petitions where similar problems had arisen on the ground that the hospital where treatment was given was not a recognised hospital. The High Court allowed the writ petitions by holding that it was not open for the Government to straightaway reject the claim on the ground of non-recognition of the hospital without examining each individual case on merits as to its compliance with the applicable rules. The High Court, therefore, directed the State Government to examine each case individually and take appropriate decision in accordance with the rules about the admissibility of the medical reimbursement claim. This was directed to be done

within a specified period of time. Our attention is also drawn to the memo dated 14-10-2003 indicating compliance with the direction of the High Court in the said group of writ petitions and laying down the procedure by which such cases had to be examined.

(b) In *Suman Rakheja v. State of Haryana,(2004) 13 SCC 562,* the Apex Court has held:

> **3.** The appellant is the wife of a deceased government servant who had undergone treatment in the Apollo Hospital, New Delhi, which was a private hospital and which was not recognised/approved at that time. For the treatment in that hospital the appellant incurred expenses to the tune of Rs 6,01,166 and the appellant, by way of an application prayed for reimbursement of the medical expenses incurred, but the same was declined by the State, on the ground that the hospital wherein the appellants husband had undergone the treatment was not an approved hospital.
>
> **4.** Counsel for the appellant submitted that in similar case (Annexure P-4) i.e. by the order of the High Court of Punjab and Haryana in *Sant Prakash* v. *State of Haryana*_wherein in an emergency case the patient had to be immediately admitted in hospital, the relief has been granted. In the present case also the appellants husband had to be rushed to the private hospital because he had developed a paralytic stroke on the left side of the body, as there was blood clotting on the right side of the brain and therefore, was admitted in an emergency condition in the hospital. ***In the present case the discharge certificate also shows that the case was an emergency one.*** In *Sant Prakash case* the Division Bench held that the petitioner therein would be entitled to 100% medical expenses at the AIIMS rates (emphasis supplied).

16. In the latter cases, while appreciating the rule position that normally treatment in the private hospital would not be permissible for medical reimbursement, where it is a matter of emergency, such a condition is not insisted. In the instant case, vide certificate dated 18-11-2002, the MIOT Hospital, where the applicant underwent the surgery, it has been certified

that the applicant "needed immediate by pass surgery." In the former one, the State Government itself had undertaken the exercise of reviewing the case and pass suitable office memorandum.

17. While the above decisions would confirm that priority to right to life, one of the fundamental rights, eclipses certain provisions of the Act, and treatment in private hospitals does not completely disentitle a government servant from having the facility of medical reimbursement, the following case would illustrate as to how the authority should consider cases where certain relaxation is required. In the case of ***State of Punjab v. Mohan Lal Jindal, (2001) 9 SCC 217,*** **the Apex Court has held as under:-**

> "It was however, vehemently submitted by learned counsel for the respondent that exception deserves to be made in this case as the respondent who was a Teacher could not afford such huge medical expenses which had to be incurred by him due to long queue for bypass surgery in the AIIMS Hospital and he had to go to other hospital. It is further submitted by learned counsel for the respondent that the appellants may consider his grievance. He may submit such a representation on compassionate grounds. We have no doubt that such a representation will be **sympathetically considered** by the appellant authorities on its own merits. The judgment of the High Court will stand modified to the extent indicated herein. No costs." (emphasis supplied)

Thus, keeping in view the decisions of the Apex Court in head and Constitution (Art. 21) in heart, when the case of the applicant is analyzed, it makes it clear that the appellant save for appellant's getting prior certification from the local hospital for having the treatment outside the

State, he fulfils all other conditions for becoming entitled to reimbursement of medical claim to the extent as permissible for treatment at local Hospital i.e. Rs 1,02,000/-. Provision does exist to consider cases for relaxation of the rules. When such a case is considered, the Apex Court's expectation is for consideration "sympathetically". As such, the case deserves to be sympathetically considered by the authorities, in particular, for relaxation of the Rules and accordingly, Respondent No. 1 should consider the case keeping in view the aforesaid decisions of the Apex Court and the facts of the case of the applicant.

18. The O.A. is, therefore, disposed of with a direction to the respondent No. 1 to consider the case of the applicant sympathetically and arrive at a just conclusion and if the decision is to afford the applicant the benefits as requested for by him, vide Annexure A-4 application, Such a decision be taken within a period of four months from the date of communication of this order.

19. No costs.

(Dated, the 11th January, 2007)

Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.