

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.222/2001

Friday, this the 21st day of December, 2001.

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M.M. Marykutty, W/o M.V. Jacob,
Inspector of Income Tax,
Office of the Joint Commissioner of Income Tax, Ernakulam Range.
Residing at Moonjapilly House,
St. Alberts High School Lane, Kochi-682035.

Applicant

[By Advocate Mr. M.R. Rajendran Nair.

Versus

1. Union of India, represented by the Secretary to the Government of India, Ministry of Finance.
2. The Commissioner of Income Tax, Kochi.
3. The Joint Commissioner of Income Tax, Ernakulam Bench, Ernakulam-682 018.

Respondents

By Advocate Mr C. Rajendran, Sr.CGSC

The application having been heard on 12.12.2001, the Tribunal delivered the following order on 21.12.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A-11 letter dated 19.12.2000 of the Zonal Accounts Officer addressed to the Administrative Officer and A-12 containing O.M dated 19.8.1993 and 31.10.1994, has filed this Original Application seeking the following reliefs:

"(i) To quash Annexure A11 to the extent it denies full reimbursement of medical expenses incurred by those who had undergone treatment in Private Hospital outside the State.

(ii) To quash Annexure A12 to the extent it prescribes an upper ceiling for the rates for coronary bypass surgery in Private Hospital.



- (iii) To declare that the applicant is entitled to get full reimbursement of the medical expenses incurred by her for treatment in Malar Hospital, Madras.
- (iv) To direct the respondent to pay the applicant the balance amount due to her towards reimbursement of medical expenses after adjusting Rs.81,000/- already paid to her with 18% interest per annum.
- (v) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- (vi) Grant the cost of this Original Application."

2. Applicant, an Inspector of Income Tax working under the Commissioner of Income Tax, Kochi, was ailing from coronary artery disease since 1998 and was under the treatment of Dr A.K. Abraham, Consultant Cardiologist, Indira Gandhi Cooperative Hospital, Kochi-20. According to her, after two hospitalizations, first in January 1996 and the next in October 1996, she was referred to Sri Chithra Tirunal Institute for Medical Science and Technology, Trivandrum by Dr A.K. Abraham for investigation and angiography to evaluate location, percentage and number of blocks in the coronary artery but the Institute was unable to give her treatment and appointment for tests and investigation within six months. The Senior Medical Records Officer of the Institute advised her so by A-1 letter dated 6.11.96. Considering the emergency of her illness, with the consent of the Director of Health Services, she proceeded to Malar Hospital, Madras to conduct the angiogram and further follow up. Applicant was admitted in Malar Hospital, Madras on 11.11.96 and she underwent preliminary test on that day and angiogram was taken on 12.11.96. She underwent coronary artery and bypass grafting on 13.11.96 and she was discharged on 24.11.96. On discharge, as per A-4 Cardiac package statement dated 24.11.96, she paid Rs.1,20,902/- towards expenses. She submitted A-5 representation dated 27.12.96 to the Commissioner of Income Tax, Kochi seeking reimbursement of



medical expenses incurred by her towards her treatment in Malar Hospital, Madras. By A-6 order dated 13.3.97, Commissioner of Income Tax, Kochi, accorded sanction for admitting the medical claim of the applicant and for reimbursement of Rs.81,000/-. Not satisfied with the amount sanctioned by the Commissioner of Income Tax, she submitted A-7 representation dated 30.7.99 requesting for full reimbursement of medical expenses incurred by her for treatment in Malar Hospital, Madras, based on Government of India, Ministry of Health and Family Welfare O.M. No.14021/5/88-MS dated 17.10.88 and the Supreme Court decision in SLP (Civil) No.10957 - 10958 of 1996 in the case of Union of India Vs. Smt. Uma Sasi Thakur. A-8 representation dated 7.9.99 followed A-7. She also submitted A-9 representation dated 28.12.99 before the Director of Health Services, Thiruvananthapuram. The Director of Health Services gave A-10 reply dated 15.2.2000. In spite of these, the Central Board of Direct Taxes took the view that in view of the Ministry of Health and Family Welfare O.M. dated 31.10.94, the applicant is entitled for reimbursement medical expenses to Rs.81,000/-. According to her, the Board also took the view that there is no specific provision in the C.S (MA) Rules, 1944 for reopening a claim once settled and that for special relaxation of rules, the individual may have to approach the Government of India, Ministry of Finance. A-11 letter dated 19.12.2000 was issued by the Office of the Principal Chief Controller of Accounts, Central Board of Direct Taxes, Zonal Accounts Office to the Office of the Commissioner of Income Tax, Kochi. In view of the decision of the Apex Court, she was entitled for full reimbursement despite the restrictions contained in A-11 letter. She also relied on the Ministry of Finance letter No F.No.D-12015/33/92/Ad.IX dated 3.6.93 according to which no reference for reimbursement of medical expenses should be made to the Board and such cases would be settled by Chief



Commissioner of Income Tax themselves under the delegated power and hence, under this provision, she could not approach the Ministry of Finance for special relaxation of rules. According to her, A-6 as well as A-11 orders were highly illegal, arbitrary, unjust and unreasonable. They did not lay down the correct position in law. She also relied on the judgment of the Hon'ble Supreme Court in the case of Surjit Singh vs. State of Punjab.

3. Respondents filed a reply statement resisting the claim of the applicant. According to them, the applicant was entitled to only Rs.81,000/-on a package deal basis for coronary bypass surgery as per existing rules for treatment in private recognized hospitals. The package included professional charges like surgeon's fee, anesthetist's fee etc. hospital stoppage charges for the total period of stay from admission till discharge, medication and food. The claim was admitted by the respondents after relaxing the rules because the treatment was made in a private hospital instead of Government hospital. It was so done as mentioned in Ministry of Health and Family Welfare O.M. dated 31.10.94. According to the O.M. any amount charged over and above the prescribed rates was to be borne by the official concerned. Prior permission obtained by the official from the Director of Health Services for getting treatment outside the State did not make her entitled to the full reimbursement of expenses disregarding the provisions in the CS (MA) Rules, 1944. There was no provision under CS (MA) Rules, 1944 for reopening claims once settled. Further it was submitted that even the Central Government employes stationed at Chennai and covered by Central Government Health Scheme were entitled only for an amount of Rs.81,000/-. They admitted that the Hospitals recognized by State Government were automatically covered to Central



Government Employees also, but the amount to be reimbursed were governed by separate rules framed by the Government of India. The O.A. was devoid of any merit and was liable to be dismissed.

4. Applicant filed rejoinder.

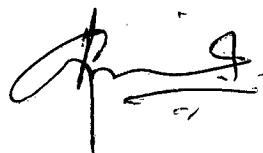
5. Heard the learned counsel for the parties. Learned counsel for the applicant submitted that applying the ratio of Supreme Court decision in the case of Surjit Singh Vs. State of Punjab (AIR 1996 SC 1388) the applicant was entitled to get full reimbursement of the medical expenses incurred by her. According to him, in that case the appellant developed a heart condition, fell ill while he was in England and had undergone surgery in England and Rs. 3 Lakhs were spent by him for treatment in England, but his claim for reimbursement was turned down by the department. When the appellant approached the the High Court of Punjab and Haryana, the State Government agreed to pay him the expenses incurred for bypass surgery and angiography at the rates prevalent in AIIMS. However, the appellant challenged the orders of the High Court before the Hon'ble Supreme Court claiming payment of rates prevalent in the Escorts Heart Institute and Research Center and the Supreme Court allowed the said said claim. He relied on the following passage of the judgment in support of the claim of the applicant in this O.A.:

"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 bare facedly makes its meetings difficult to happen. The appellant also did not have to stand in the Government Hospital of AIIMS and could go elsewhere to an alternate hospital as per policy. When the state itself has brought the Escorts on the recognized list, it is futile for it to contend that the appellant could in no event have gone to the 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 the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expenses. 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...."

He also relied on the judgment of the Supreme Court in Union of India Vs. Uma Sasi Thakur referred to in this O.A. as also the judgment of the Hon'ble Supreme Court in Consumer Education and Research Centre and others Vs. Union of India and others (AIR 1995 SC 922) in support of the claim of the applicant. Further, right to self preservation being the part and parcel of Article 21 of the Constitution of India the department could not compel its employees to have treatment only from certain Hospitals. In emergency cases like that of the applicant the employees had to seek treatment from private hospitals and denial of full reimbursement in such cases would be violative of Article 14 and 21 of the Constitution of India. The learned ^{Adv.} ~~Counsel~~ for the applicant also relied on the Ministry of Health and Family Welfare O.M. No.14021/5/88-MS dated 17.10.88 and submitted that the said O.M. provided that the claims for reimbursement of charges of treatment/examinations etc. for which corresponding rates were not available in the nearest Government Hospitals, may be reimbursed without referring to that Ministry/Directorate General of Health Services by the concerned/Departments by restricting such claims to the rate of Government Hospital in the concerned State and where such rates/facilities were not available in the concerned State, full reimbursement of such charges may be made provided the Director of Health Services of the concerned state certified to that effect. He argued that the said Memorandum, especially the 2nd clause could be logically extended to a case where treatment outside the State was sought with sanction of the Director of Health Services due to emergency and the applicant

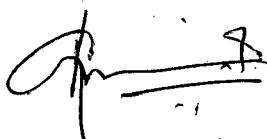


was entitled to get full reimbursement. There was no provision in the CS (MA) Rules which prohibited reopening of a case already settled and that the Commissioner of Income Tax having been delegated with the powers, the applicant could not approach the Ministry for further relaxation

6. I have given careful consideration to the submissions made by the learned counsel for the parties, rival pleadings and perused the documents brought on record.

7. From the pleadings and reliefs claimed what is basically being challenged in this O. A. is the ceiling fixed by the Government for coronary bypass surgery in private recognized Hospitals as contained in A-12 and the communication from the Zonal Accounts Officer to the Administrative Officer of the Office of the Commissioner of Income Tax, Kochi. Applicant has relied on the judgment of the Hon'ble Supreme Court in Surjit Singh Vs. State of Punjab (AIR 1996 SC 1388).

8. On considering the submissions made by the learned counsel for the applicant and the judgment of the Hon'ble Supreme Court in Surjit Singh's case cited by him, I am of the view that the said judgment does not give much assistance to the applicant's case. In fact, in that case, the applicant when he approached the Hon'ble High Court of Punjab and Haryana had claimed reimbursement of the expenditure incurred by him in London, the said claim was not allowed by the respondents therein. In the Hon'ble High Court on behalf of the State of Punjab a submission was made that the expenditure to the extent that would have been incurred had the applicant gone to the AIIMS, was agreed to be paid and the Hon'ble High Court of Punjab disposed of the Writ Petition on that basis. Against the Judgment of the Hon'ble High Court of Punjab and Haryana,



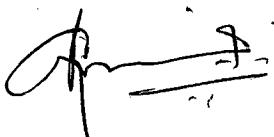
the applicant approached the Hon'ble Supreme Court. By that time he had changed his claim from the one of reimbursement of the expenditure incurred by him in England to what he would have got had he gone to the Escorts Heart Institute and Research Center in India. The Hon'ble Supreme Court after examining the provisions of the reimbursement of medical expenses policy of the State Government of Punjab framed by the state on 25.1.91, allowed the appeal. The Hon'ble Supreme Court held as above in State of Punjab and others vs Ramlubhaya Bagga and others [(1998) 4 SCC 117]:

"That was a case where the petitioner got heart attack being in England and was hospitalized and operated in Birmingham Hospital and this Court held that inasmuch as Escorts was one of the designated hospitals under the old policy, the reimbursement permissible to the appellant would be at the rate as that of Escorts and not of AIIMS as ordered by the State."

Thus what I find and what had been held by the Hon'ble Supreme Court is that it had allowed the claim of Surjit Singh because it was covered by the rules for medical reimbursement of the State of Punjab. The Hon'ble Court held that having laid down in the rules framed by the State that Escorts Hospital was recognized for heart surgery, it directed reimbursement as would be admissible for Escorts Hospital.

9. Further, Hon'ble Supreme Court in the above case also considered the validity of laying a ceiling on the reimbursement of expenditure incurred by its employees for heart disease by the State Government of Punjab in its policy decision taken on 13.2.95. On this aspect the Hon'ble Supreme Court held as follows:

"29. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to



be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."

10. In the light of the law laid down by the Hon'ble Supreme Court, the relief sought for by the applicant against O.Ms. dated 19.8.93 and 31.10.94 contained in Annexure A-12 prescribing a ceiling in rates for angiography and coronary bypass surgery in the private recognized hospitals cannot be faulted. Hence, the applicant cannot get the relief, for quashing A-12 to the extent it prescribed an upper ceiling for the rates for coronary bypass surgery in private recognized hospitals.

11. There is no dispute that Malar Hospital, Madras, was not a recognized private hospital at the time when the applicant was admitted there. The letter of the Director of Health Services relied on by the applicant in support of her claim reads as under:

"Director of Health Services,
Thiruvananthapuram.

" No.M15-4035/2000/DHS
15.2.2000

Dated

From

The Director of Health Services.

To

The Income Tax Officer (H),
Office of the Commissioner of Income Tax,
C.R. Building, I.S. Press Road, Cochin.

Sir,

Sub: Full reimbursement of Medical claim of
M.M. Marykutty.

Ref: Your Lr. No.332/B/Estt./14/99-2000
dt.6.1.2000.



I invite your attention to the reference cited. If outside State treatment sanction from Director of Health Services is obtained full amount is admissible except disposable items, service charge, diet charge and Bed charge 50%. If applicant obtained *ex post facto* sanction Government rate is admissible. The above rules are existing for State Government employees.

Yours faithfully,

Sd/-
For Director of Health Services

11(a) I find from above, that the Director of Health Services himself has stated that the rule quoted by him was applicable to the State Government employees. The applicant being a Central Government employee is not governed by the State Government rules. The rules applicable to the applicant are the C.S (MA) Rules, 1944. According to applicant, the O.M.No.S.14021/5/88-MS dated 17.10.88 governs the claim for reimbursement of charges for treatment/examination which was not available in the nearest Government hospital. The letter dated 17.10.88 reads as under as appearing on page 64 of Swamy's Compilation of CS (MA) Rules [Twenty-second Edition 1994]:

"CHARGES FOR TREATMENT IN PRIVATE HOSPITALS.

(12) Reimbursement of charges for various treatment/examinations taken in private recognized hospitals under CS (MA) Rules, 1944.- The Ministry of Health and Family Welfare have been receiving references from various Ministries/Departments regarding the regulation of claims on account of charges of various treatment/examinations undertaken in private hospitals recognized or otherwise under the CS (MA) Rules with reference to charges of Government hospitals for which comparative charges are not available due to the non-availability of such facilities.

2. It has now been decided by this Ministry that the claims for reimbursement of charges of treatment/examinations, etc., for which corresponding rates are not available in the nearest Government hospitals for regulating such claims may be reimbursed without referring them to this Ministry/Directorate General of Health Services by the concerned Ministries/Departments by (a) restricting such claims to the rate of Government hospitals in the concerned

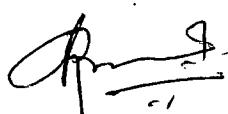


State, and (b) where such rates/facilities are not available in the concerned State full reimbursement of such charges may be provided, provided the Director of Health Services of the concerned State certifies to that effect."

12. Respondents did not aver anything regarding this ground in their reply statement. Learned counsel for the respondents also could not submit anything in the matter during the course of the hearing. Applicant's case is that she did not opt for the private hospital viz., Malar Hospital, Madras. Her specific case is that because the Government hospital could not provide the required service to her, she was forced to undergo treatment in the private hospital and that under such circumstance, she was entitled to be reimbursed the full charges in the light of the Government of India's O.M. dated 17.10.88 referred to above. Respondents admit that Sree Chitra Tirunal Institute for Medical Sciences & Technology, Trivandrum, could not give her treatment and appointment for tests and instructions within five months. The only reason advanced by the respondents for reimbursing Rs.81,000/-only against Rs.1,20,902/- claimed by the applicant is that the ceiling is prescribed by the Government orders. However, what I find in this case is that the applicant was prepared to go to the hospital which was recognized by the respondents for her ailment viz., Sree Chitra Tirunal for Medical Sciences & Technology, Trivandrum but because of the circumstances in which Sree Chitra Tirunal Institute for Medical Sciences & Technology, Trivandrum could not provide the treatment (Annexure A-1 dated 6.11.96) that she went to Malar Hospital, Madras.

13. Rules 6 of the CS (MA) Rules reads as under:

"Medical Treatment



(Contd..p/12)

6.(1) A Government servant shall be entitled, free of charge, to treatment-

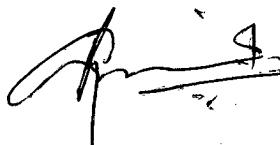
(a) in such Government hospital at or near the place where he falls ill as can in the opinion of the authorized medical attendant provide the necessary and suitable treatment; or

(b) if there is no such hospital as is referred to in sub-clause (a) in such hospital other than a Government hospital at or near in the place as can in the opinion of the authorized medical attendant, provide the necessary and suitable treatment.

(2) Where a Government servant is entitled under sub-rule (1), 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 authorized 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 reasons, in brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of forty-five days of the date of receipt of the order rejecting the claim."

14. It is clear from the above that had she taken the treatment in a Government hospital, she was entitled for free treatment. In this case, if she had gone to Sree Chitra Tirunal Institute for Medical Sciences & Technology, Trivandrum, she would have got either free treatment or would have incurred a certain amount of expenditure, depending on the agreement between the Government of India and Sree Chithra Thirunal Institute. There can be three possibilities. (i) When Central Government employees go for treatment to the Institute they will not have to make any payment at all and all expenditure would be borne by the Government, or (ii) The Government servant will be charged by the Institute whatever are their charges, but the government servant will only get a reimbursement of Rs.81,000/- from the Government, or (iii) Whatever be the

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charges incurred by the Institute, it will charge the government servant only Rs.81,000/-. The exact position is not discernible from the pleadings.

15. Under such circumstances, I am of the view that it is only fair that the applicant is not burdened with any expenditure other than what would have incurred had ^{if she} she gone to the Institute. This aspect of the applicant's case had not been considered at all in the impugned A-11 letter.

16. In the light of the above, A-11 is liable to be set aside and quashed and accordingly I do so. I direct the second respondent to reconsider the claim of the applicant for reimbursement keeping in view the above aspects. If on reconsideration, the applicant becomes due for any amount, the same shall be paid to her within two months from the date of receipt of a copy of this order. In any case the result of the reconsideration should be advised to her by a detailed order within six weeks from the date of receipt of a copy of this order.

17. The Original Application is disposed of as above with no order as to costs.

Dated the 21st of December, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

LIST OF ANNEXURES

INDEX

Applicant's Annexures

A-1 True copy of the letter dated 6.11.96 issued by the Senior Medical Records Officer, Shri Chithra Tirunal Institute for Medical Sciences & Technology, Trivandrum.

A-2 True copy of the representation dated 7.11.96 submitted by the applicant to the Director of Health Services, Thiruvananthapuram.

A-3 True copy of the Certificate dated 21.11.96 issued by the Malar Heart Foundation.

A-4 True copy of the Cardiac package statement dated 24.11.96 issued by the Malar Heart Foundation to the applicant.

A-5 True copy of the representation dated 27.12.96 submitted by the applicant to the Commissioner of Income Tax, Kochi.

A-6 True copy of the Order No.332/B/Estt/20/96-97 dated 13.3.97 issued by the Commissioner of Income Tax.

A-7 True copy of the representation dated 30.7.99 submitted by the applicant to the Commissioner of Income Tax.

A-8 True copy of the representation dated 7.9.99 submitted by the applicant to the Commissioner of Income Tax.

A-9 True copy of the representation dated 28.12.99 submitted by the applicant to the Director of Health Services, Thiruvananthapuram.

A-10 True copy of the Clarificatory letter No.MH5/035/2000/DHS dated 15..2.2000 issued on behalf of the Director of Health Services.

A-11 True copy of the letter No.ZAO/CHN/PCU/2000-01/435 dated 19.12.2000 issued by the Zonal Accounts Officer to the Administrative Officer.

A-12 True extract of the Office Memorandum Noo.G!, MH & FW.O.M. No.S-14025/55/92-MS dated 19th August, 1993 and S-14025/43/94-MS dated 31.10.94 issued by the 1st respondent.