

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM**

Original Application No. 283 of 2009

THURSDAY, this the 6TH day of August, 2009

C O R A M :

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

Beena Sulochanan,
Processing Cum Quality Assurance Supervisor,
National Institute of Fisheries Post Harvest
Technology and Training, Cochin – 682 016 ... Applicant.

(By Advocate Mr. CSG Nair)

v e r s u s

1. The Director,
National Institute of Fisheries Post Harvest
Technology and Training, Cochin – 682 016
2. Union of India represented by its
Secretary, Ministry of Agriculture,
Department of Animal Husbandry,
Dairying & Fisheries, Krishi Bhavan,
New Delhi : 110 001
3. The Principal Pay & Accounts Officer,
Ministry of Agriculture,
16/A, Akbar Road Hutmants,
New Delhi.
4. The Pay and Accounts Officer,
Ministry of Agriculture,
Fine Arts Avenue, Cochin – 16 ... Respondents.

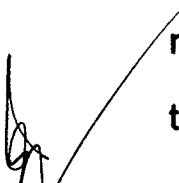
(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The Original Application having been heard on 31.07.09, this
Tribunal on 6-8-09 delivered the following :



O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant has been working as Processing-cum-Quality Assurance Supervisor, under the first respondent and is entitled to medical treatment as per the Medical Attendance Rules of the Central Government. During April 2008, she had to undergo certain treatment for cancer and the Cochin Hospital, Ernakulam, which is a recognized hospital under the CS (MA) Rules 1944 referred the applicant to Amrita Institute of Medical Sciences (AIMS for short) vide Annexure A-1. The entire medical expenses were reimbursed by the first respondent. For complete recovery the applicant was advised to undergo further treatment for about a year, which is by way of taking 16 injections, at an interval of 3 weeks each, vide Annexure A-3. AIMS accordingly informed the first respondent over the cost of such treatment vide Annexure A-4. On her part, the applicant submitted a representation, vide Annexure A-5. As the expenses involved warranted further funds, the first respondent had approached the second respondent for necessary budget provision, vide Annexure A-6. By Annexure A-7 a sum of Rs. 4 lakhs was re-appropriated. As the respondents were convinced about the entitlement of the applicant and on applicant's representation vide Annexure A-8, the first respondent had requested the AIMS to extend credit facility for the treatment of the applicant, vide Annexure A-9. This entailed another letter from AIMS to the first respondent about the necessity to have the injection, vide Annexure A-10, on receipt of which the first respondent had approached the second respondent to to



allocate further funds, vide Annexure A-11. Meanwhile, from out of the re-appropriated funds, the first respondent reimbursed cost of three injections to AIMS while the expense for the fourth injection amounting to Rs 1.28 lakhs is pending remittance by the first respondent to AIMS. Due to non payment of the amount due to AIMS, and consequent reluctance by AIMS to administer further injections to the applicant, coupled with the fact that at Trivandrum Regional Cancer Centre, Trivandrum facilities are available, the applicant had requested AIMS to issue necessary letter to the Regional Cancer Centre, Trivandrum, and such a letter was issued by AIMS vide Annexure A-12. It was at this juncture that the applicant received a communication from respondent No. 1 stating that Amrita Institute of Medical Sciences is not a recognized hospital by the State Government for the purpose of Oncology and that no further amount will be reimbursed. Annexure A-13 refers. The respondent No. 1 relied upon the State Government letter vide Annexure A-4 issued on 21st October 2002, when Oncology was not in existence at the AIMS. It was at the time when Annexure A-13 was issued that the applicant approached Regional Cancer Centre, Trivandrum and correspondence between the said Cancer Centre and first respondent took place regarding extension of credit facility etc., as well as availability of substitute medicine in India to the one administered upon the applicant. During this period, the applicant had, in order to ensure that the medical treatment is not discontinued, mobilized funds to the tune of Rs 1,05,000/- and paid the same for her next injection. The Regional Cancer Centre had stated that there is no



substitute to the medicine and the same was informed to the first respondent by the applicant . Annexures A-20 to A-22 refer. The matter stands at that stage. Medical claim sent for a sum of Rs 1,05,000/- being the expenses pending payment to AIMS has also not been cleared.

Hence this OA seeking the following relief:-

- (i) to direct the respondents 1 and 4 to reimburse the entire medical expenses of the applicant to enable her to get the injections administered in time;
- (ii) direct the respondents to release the budget provisions for the above.

2. Respondent No. 1 appears to have taken all efforts to have the medical claim reimbursed, but for the fact that as per Annexure A-14, Amrita Institute of Medical Sciences is not recognized one for oncology department and the 2nd respondent has not been placing necessary budget provisions.

3. Counsel for the applicant submitted that it is only for two injections that the amount has to be reimbursed, one for AIMS and the other which the applicant had spent from his own funds.

4. Arguments were heard and documents perused. Cochin Hospital is a recognized hospital and on its reference only the applicant had to rush to AIMS. In fact, by allowing reimbursement of the medical expenses for treatment at AIMS, the respondents have appreciated the gravity of the ailment and it is only with reference to the fact that



Oncology was not a recognized faculty in Amrita Institute that there seems to be some hesitation. First of all, if the contention of the applicant that at the time when recognition was granted by the State Government to AIMS there was no oncology department is correct, then a pragmatic view has to be taken to extend the benefit of medical reimbursement, for, there is no negative communication from the State Government that the said Oncology department has NOT been recognized. Again, the treatment of the applicant is not for anything but to save her life. Right to life is a fundamental right, vide Art. 21 of the Constitution of India. The following decisions of the Apex Court would support the case of the applicant:-

(a) In **Consumer Education & Research Centre v. Union of India, (1995) 3 SCC 42**, Apex Court observed as under :

“... we hold that right to health, medical aid to protect the health and vigour to 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.-

(b) In **State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117**, the Apex Court has held as under:-

“..Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another

hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal."

(c) In a recent case, State of Karnataka vs R. Vivekananda Swamy, (2008) 5 SCC 328, the apex court has held as under:-

"24. In view of the aforementioned settled principles of law there cannot be any doubt that the Rules regarding reimbursement of medical claim of an employee when he obtains treatment from a hospital of his choice can be made limited. Such Rules furthermore having been framed under the proviso to Article 309 of the Constitution of India constitute conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognized government hospitals and on the other, he, at his option, may get himself treated from other recognized hospitals/institutions subject of course to the condition that the reimbursement by the State therefor would be limited."

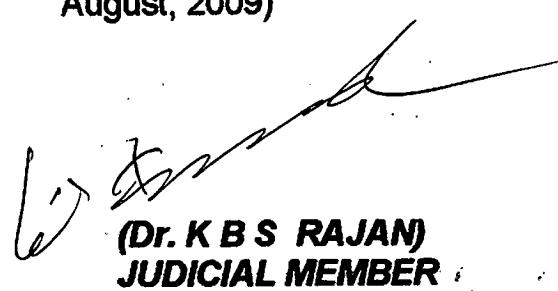
5. In the instant case, admittedly, the applicant had been referred to AIMS by Cochin Hospital which is recognized by the Government of India under the CS(MA) Rules and hence, in his case, the question of limiting the claim may not arise.

6. In view of the above, it is declared that the applicant is entitled to the claim of reimbursement of the medical expenses in respect of the two injections she had got administered for which necessary claims if

not already preferred be preferred and in the event of such preferring of the claim by the applicant, the same shall be considered and settled, subject to availability of funds, within a period of three months.

7. The O.A. is disposed of with the above observations. No costs.

(Dated, the 6TH August, 2009)



W. S. Rajan
(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.