

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.319/2003.

Friday this the 7th day of May 2004.

CORAM:

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

1. K.Sudhamani Amma, Primary Teacher,
Kendriya Vidyalaya Naval Base, Cochin-4.
2. Chandrasekharan Nair,
Husband of the deceased K.Sudhamani Amma,
34/299, Siva Sailam, 1st floor, Edappally P.O.,
Cochin-24.
3. Kishore, S/o the deceased K.Sudhamani Amma,
-do- -do-
4. Kiran, S/o the deceased K.Sudhamani Amma,
-do- -do- Applicants

(By Advocate Shri.M.P.Krishnan Nair)

Vs.

1. The Commissioner, Kendriya Vidyalaya
Sanghathan, New Delhi-16.
2. Assistant Commissioner, Kendriya Vidyalaya
Sanghathan, Regional Office, IIT Campus,
Chennai-600 036.
3. The Principal, Kendriya Vidyalaya No.1.,
Naval Base, Kochi-4. Respondents

(By Advocate M/s Iyer & Iyer)

O R D E R

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicant while working as Primary Teacher in Kendriya Vidyalaya Number - 1, Naval Base, Cochin was admitted in Lakshmi hospital, Ernakulam as she was suffering from breathing difficulty, abdominal discomfort and bleeding. After two weeks' of treatment in Lakshmi Hospital, it could not diagnose the disease of the applicant and therefore she was referred to A.I.M.S.(Amrita Institute of Medical Sciences and Research Centre), Elamakkara P.O., Kochi-26 as per A-1. A-2 is an

Essentiality Certificate issued by the Lakshmi hospital. Finally she was undergone an operation for pelvic tumor with reimplantation of left ureter for malignant pelvic tumour on 12.2.2002. Though she was discharged on 21.3.2002 she was again admitted in the same hospital subsequently. According to the applicant, as per Rule 2 (d) of the Central Services (M.A.) rules she is entitled to get the entire amount that was incurred for her treatment. Aggrieved by the non-sanction of the said amount the applicant has filed this O.A. (subsequently amended as per order dated 27.10.03 in M.A.657/03) and sought the following main reliefs:

- f) to declare that late Sudhamani Amma, the 1st applicant died as proper treatment was not given to her in time due to lack of amount for treating her and the respondents 1 to 3 and their officers are personally (jointly and severally) liable for the death of Smt. Sudhamani Amma as the respondents could not release the Medical reimbursement bill forwarded as per Annexure A-4 on 2.4.2002 in time and therefore they are liable to pay interest at the rate of 24% for Rs.1,00,000/- from 2.4.2002 to 6.5.2003 and interest at the rate of Rs.24% for Rs.98,021/- from 2.4.02 to 21.6.03 and the remaining amount of Rs.23,585/- with interest from 2.4.02 till the date of payment of the same. She is also entitled to get all pending reimbursement bills from the respondents which are already submitted by late Sudhamani Amma.
- g) to declare that late Sudhamani Amma, the 1st applicant died as proper treatment was not given to her in time due to lack of amount for treating her and the respondents 1 to 3 and their officers are personally (jointly and severally) liable for the death of Smt. Sudhamani Amma as the respondents could not release the Medical reimbursement bill forwarded as per Annexure A-4 on 2.4.2002 in time and therefore they are liable to pay Rs.50,00,000/- towards compensation for untimely death of Smt. Sudhamani Amma and the same is liable to be released personally (jointly and severely) from the respondents 1 to 3 and also from their assets.

2. The respondents have filed a detailed reply statement contending that the A.I.M.S. Research Centre is not recognized for the treatment of Cancer either in CS(MA) Rules or by the State Government and this is a case for relaxation by the competent authority subject to their satisfaction. It is evident



from the letter No.G.O.(P) 263/2002 H & FWD dated 21.2.2002 issued by the Government of Kerala, Department of Health and Family Welfare (A2). Therefore, the claim could not be finalised at the Vidyalaya level or regional office level. It is also a misconception that the applicant's claim was sanctioned vide A-10 letter. It was only a communication sent by the 2nd respondent to the 1st respondent regarding the recommendation to sanction of her medical claim. The subsequent bills for her further treatment at Medical College Hospital, Calicut were received in the Regional Office on 30.11.2002 and the same was returned to the KV No.1 Kochi on 4.12.2002 itself with a direction to process and make payment of the bill, since the treatment was taken from the Medical College Hospital, Calicut, which was recognised under the rules. The allegation that the applicant was borrowed money for treatment from various sources by giving huge interest is denied. This contingency could have been avoided if the applicant had applied for the medical advance for taking the treatment in the Government Hospital or any Recognized Hospital under CS(MA) Rules and such hospitals are available in and around Kochi as evidenced by Annexure R-1. As per the directions of this Tribunal an advance of Rs.1,00,000/- was paid within fifteen days i.e. on 3.5.2003. The balance amount of Rs.98,201/- was sanctioned vide letter dated 25.2.2003(A-10) and disbursed on 19.5.2003 as well before the expiry of the 1st applicant i.e. on 27.5.2003.

3. The applicant has filed a rejoinder contending that as per Rule 2 (d) the patient was referred to non-recognized institute and arrangements have been made to reimburse the amount by the Government for the treatment of the Government servant, which is not done in this case.



4. Shri M.P.Krishnan Nair, learned counsel for the applicant and Shri Paul Abraham Vakkanal, (for M/s Iyer and Iyer) appeared for the respondents. Learned counsel have taken me to various pleadings, material and evidence placed on record. I have given due consideration to their submissions. Learned counsel has agreed that an amount of Rs.1,00,000/- was paid to the applicant as per the interim order of this Tribunal dated 22.4.2003 within a period of 15 days, and thereafter the balance amount of Rs.98,021 also finally paid as per the Cheque No.606358 dated 19.5.2003 but the case of the applicant is that this has received only after the expiry of the Ist applicant and the total claim was for Rs.2,21,607/- and the difference is not yet paid.



The applicant has also vehemently argued that they are entitled to get interest at 24% from the date of submission of the Bill till it is disbursed. Therefore, since a substantial amount of which was already disbursed and received by the applicant, the only dispute that remains is for the balance amount and for the interest. Therefore, the O.A. was amended to that effect. This issue has to be adjudicated.

5. The argument that has been advanced by the respondents is that the rate at which an amount of Rs.2,21,607/- incurred to the patient in the A.I.M.S and Research Institute is not in tune with the rate that is prescribed in the authorised Medical Attendance Rules. The respondents have no case that such an amount has not been incurred by the deceased patient in AIMS and Research Centre, Kochi. Their case is that since it is not recognised for the treatment of Cancer either in CSMA Rules or any other rules, such a rate cannot be claimed by the applicant. The rates which are recognised by the Scheme should be applicable in this case. In this context, it is also pertinent to note that the case of the applicant was a decease of cancer which could not be diagnosed



by the recognized Lakshmi Hospital as there were no facilities for proper investigation and treatment and Lakshmi Hospital has referred the patient to the AIMS and Reserarch Centre for better treatment. Finally, AIMS and Reserarch Centre found that the case of the applicant was that of Cancer and was operated on 12.2.2002. On going through the Medical Attendance Rules it is clear that, "a Government Servant may be allowed to receive treatment as an in-patient, for himself and members of his family without consulting his authorised medical attendant, especially in emergent case and in Appendix VIII of Central Services (Medical Attendance) Rules regarding reimbursement in relaxation of rules in emergent cases, it is clearly stated that "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 recognized hospital is available nearer than the private hospital for such emergent treatment."


6. As per A-2 essentiality certificate issued by the Lakshmi Hospital, the patient was referred to AIMS Research Centre for specialised consultation. Therefore, it is clear that the patient was taken to Amritha Institute as per the reference of the recognized medical institution i.e. Lakshmi Hospital. Having undergone this procedure, I am of the considered view that the respondents are not justified in denying the claim on the ground that the applicant had spent for her treatment in Amritha Institute to the tune of Rs.2,21,607/-[✓] where the rate is higher. This rate is not contradicted by the respondents with reference to any other rates from any other recognized hospitals. Therefore, I am of the view that the applicant is entitled to get the balance amount of Rs.23,586/- (Total Rs.2,21,607/-
Already disbursed Rs.1,98,021/- (as ^{per the} O.A.)). Balance Rs.23,586/-).



The patient was referred to Amritha Hospital by a recognised institution. (Subsequently Amritha also came in the list of recognised hospitals.)

7. The next question that arises in this O.A. is the claim for 24% interest from the date of submission of Bill till the date of disbursement. Learned counsel for the respondents persuasively argued that there is no statutory provision for the applicant's claim in the CS(MA) Rules to pay interest on any belated payments. Therefore, the applicant is not entitled to get the same. More-over, he has also argued that since the applicant has taken treatment in a non-recognized Medical Centre it could not have been sanctioned as a routine matter but only on the basis of relaxation of rules and naturally the process has taken some more time and such a delay is not willful and deliberate on the part of the respondents. He has also taken my attention to the fact that when subsequently the applicant was admitted to the Medical College Calicut for the continuous treatment and that the Bill was submitted for the said claim which was immediately sanctioned and disbursed, as there was no process of hurdle as the Medical College was a recognized institute and hence, the Medical Attendance Rules are applicable. Therefore, there is no wilful default and the interest cannot be claimed.

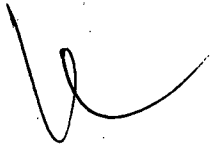
8. Learned counsel for the applicant on the other hand submitted that he has borrowed money from his relatives at 24% interest for the treatment of the applicant. This was not substantiated. However, the Hon'ble Supreme Court in Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another reported in 2003 AIR SCW 1266 has declared that:



"Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept him out of the money which ought to have been paid to him. No principle could be deduced nor any rate of interest can be fixed to have a general application. xxxx Awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity, to be applied."

9. Learned counsel for the applicant has filed a memo producing a copy of the judgement reported in Dr.Uma Agrawal Vs. State of U.P. and another (AIR 1999 SC 1212) in which the Apex Court had granted interest payable from the retiral benefit with special reference to the Provident Fund under FR 58 and compensated for the delayed payment of liability. Learned counsel argued that the benefit should be extended to the applicant herein. But in that judgement the Apex Court has made clear that the interest has to be paid by a statutory provision and therefore, the lumpsum interest was paid. In the given case rule/statute is never provided for payment of interest and the facts of the case is entirely different. As observed above, we find that there is no willful delay on the part of the respondents since the delay caused if any, was due to invoking the relaxation provision. Therefore, the said judgement is not squarely applicable in this case.

10. Considering the entire aspects of the case and in furtherance of the dictum laid down by the Apex Court, I am of the view that there is no willful delay in disbursement of the amount to the applicant and not supported by statutory provisions and the delay, if any, that has been caused is the processing delay for invoking relaxation^{of} rules. But, however, I do not find any justifiable reason in detaining an amount of Rs.23,586/- to the applicant which in my view is a deliberate delay on the part of the respondents. Therefore, the respondents has to compensate the applicant by way of interest to that amount for the delay.

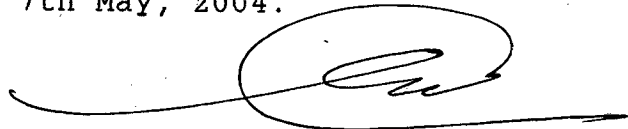


11. In the conspectus of facts and circumstances, I am of the considered view that, the applicant is entitled to get a sum of Rs.23,586/- being the balance amount that has incurred for the treatment of the deceased applicant and the applicants are also entitled to get 8% interest for such amount from 19.5.03 till it is paid. (2003 AIR (SCW) 1266. Abati Bebaruah Vs. Deputy Director General, Geological Survey of India and another).

12. Therefore, I direct the respondents to pay sum of Rs.23,586/- being the balance amount to the applicant and pay interest at 8% from 19.5.03 till the date of disbursement of the amount and the entire exercise of disbursing the amount shall be completed within a period of two months from the date of receipt of a copy of this order. I also direct that the applicant is entitled to get costs of Rs.500/- which the respondents shall pay within the above stipulated period.

13. O.A. is allowed. In the circumstance, no order as to costs.

Dated the 7th May, 2004.



K.V.SACHIDANANDAN
JUDICIAL MEMBER