

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 320 of 2000

Wednesday, this the 6th day of September, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. M.K. Venugópalan,
Motor Driver,
Civil Construction Wing,
AIR/DD, Cochin.Applicant

By Advocate Mr. V.B. Harinarayan

Versus

1. Union of India, represented by its
Secretary to Government,
Ministry of Information and Broadcasting,
New Delhi.

2. The Executive Engineer (Civil),
Civil Construction Wing,
AIR & TV, Kakkanad, Cochin.Respondents

By Advocate Ms. I. Sheeladevi, ACGSC

The application having been heard on 6th September, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A4, to direct the 2nd respondent to reimburse an amount of Rs.34,926.80 with interest at 12% per annum from the date of the application for reimbursement till payment, not to recover the amount already sanctioned and paid as per A2, and to declare that denial of the medical reimbursement claim for the treatment of his mother is against the provisions of Central Services (Medical Attendance) Rules.

2. The applicant is working under the respondents. On 19-4-1999 his mother was taken to Lakshmi Hospital with severe chest pain. The said Hospital is a recognised private hospital. From Lakshmi Hospital the applicant's mother was

referred to Sudheendra Medical Mission, Ernakulam for expert management. She was treated there. The applicant thereafter submitted a claim for reimbursement of the charges incurred and sanction was accorded for payment as per A2. The applicant's mother again developed serious chest pain on 9-10-1999 and was immediately taken to Sudheendra Medical Mission hospital. She was in the Critical Coronary Care Unit and at that time she developed acute 'Phyogonic Cholecystitis' and an emergency surgery had to be performed on 20th October, 1999. Total expenses incurred was to the tune of Rs.34,926.80. Application submitted by the applicant for reimbursement of the said amount was returned. He was also directed to refund the amount already sanctioned to him as per A2. No opportunity of being heard was given to the applicant before ordering recovery of the amount already paid. A4 is the order demanding recovery. A4 was issued without proper application of mind. It is a non-speaking order. So says the applicant.

3. Respondents resist the OA contending that Sudheendra Medical Mission Hospital is not recognised under CS(MA) Rules. The applicant was so served with a memorandum on the advise of the audit party directing him to refund the amount of Rs.6,771/- already sanctioned and paid and bills for Rs.34,926.80 were returned as claim for reimbursement for medical treatment taken from private hospital. The applicant was given an opportunity of being heard. He was orally informed that his claim for the treatment received at a non-recognised private hospital was not admissible.

4. The applicant has specifically taken the stand that A4, the impugned order, was passed behind his back. Respondents say that an opportunity was afforded to the

applicant. They further say that he was orally informed that claim for treatment received at a non-recognised private hospital was not admissible. It is not known under what provision the applicant was informed orally. There is absolutely no material in support of the stand of the respondents that a pre-decisional notice was given to the applicant in compliance with the principles of natural justice. The only conclusion that could be arrived is that A4 is passed behind the back of the applicant in gross violation of the principles of natural justice.

5. A4, the impugned order, says that as per the discussion with the audit party the charges of Sudheendra Hospital cannot be reimbursed and as such the applicant is to remit the amount of Rs.6,771/- to the 2nd respondent immediately. So, it is clear that the only foundation for A4 is the discussion with the audit party. What was the nature of discussion, what was the subject matter of the discussion and what was the outcome of the discussion are not disclosed in A4. Even assuming that the audit party has raised an objection and has opined that the applicant is not entitled for reimbursement of the medical charges on the ground that Sudheendra Hospital is not a recognised one, I shall see what is the position. A Full Bench of this Tribunal in OA No. 737/1996 (to which I was also a party) has held that the role of an auditor is advisory in character, that he has to tender advice with professional expertise and that is what is expected of him, that he is to record his observations, his professional view; but is not act as a decision maker, that his role does not go beyond that, and that such professional advice must be considered in all earnestness by the decision

making authority and the decision making authority has to make his decision guided by the counsel of the internal auditor and not by his command.

6. From a reading of A4, the impugned order, it is crystal clear that the 2nd respondent did not exercise his mind and acted rather on the dictation of the audit party. On this ground also, A4 is liable to be quashed.

7. The stand of the respondents is that Sudheendra Medical Mission hospital is not a recognised one and therefore the applicant is not entitled to claim medical reimbursement.

8. A1 shows that applicant's mother was referred by Lakshmi Hospital, which is a recognised one, to Sudheendra Medical Mission hospital for expert management. A3 shows that an emergency surgery was performed. What is the position in such a situation is covered by the ruling in Surjit Singh Vs. State of Punjab & Others [AIR 1996 SC 1388], wherein the Apex Court after sharing the views expressed by the Punjab and Haryana High Court at Chandigarh in C.W.P.No.13493 of 1992 titled as Sadhu R. Pall v. State of Punjab through Secretary Health and Family Welfare Punjab, Civil Secretariat, Chandigarh and others, which reads thus:

"The respondents appear to have patently used excuses 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 loose 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."

In the said ruling, it has been held that:

"10. It is otherwise important to bear in mind that self preservation of one's 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-reservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right had recognised it. Attention can usefully be drawn to versus 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:

(See Table below)

11. 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 queue 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 recognised 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 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 rules. 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."

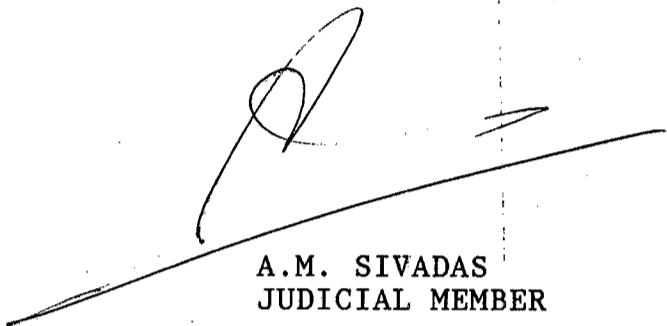
9. Accordingly, A4 is quashed. Respondents are directed not to recover the amount already sanctioned and paid as per A2. It is declared that the applicant is entitled to get reimbursement of the medical expenses incurred by him for the treatment of his mother. Respondents are directed to



reimburse the amount spent by the applicant in Sudheendra Medical Mission, Ernakulam as per the rates prescribed under the CS(MA) rules.

10. The Original Application is disposed of as above. No costs.

Wednesday, this the 6th day of September, 2000



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred to in this Order:

1. A1 True copy of the Certificate dated 19-4-1999 issued by the Resident Medical Officer, Lakshmi Hospital, Ernakulam.
2. A2 True copy of the Sanction Order No. CCS/AIR/TV/10(2) 99/2000/AC dated 18-11-1999 issued by the 2nd respondent.
3. A3 True copy of the Certificate dated 22-10-1999 issued by the Head of the Department of Cardiology, Sree Sudheendra Medical Mission, Ernakulam.
4. A4 True copy of the Memorandum No. CCS/AIR/CHN/10(2) 99-2000/AC/2020 dated 29-2-2000 issued by the 2nd respondent to the applicant.