

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original application No. 325 of 2005

*Thursday*, this the 13<sup>th</sup> day of July, 2006

**C O R A M :**

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

I.K. Kala,  
W/o. E.T. Gopalakrishnan,  
L.D.C., South Naval Command (CE-I),  
Kochi - 4,  
Residing at House No. 34/203 A,  
BTS Approach Road, Mamangalam,  
Edappally, Kochi - 24.

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by  
Secretary to the Government of India,  
Ministry of Defence, New Delhi.
2. The Accounts Officer (N),  
Office of the Joint Controller of Defence Accounts,  
Area Accounts Office, CDA (Navy),  
Thevara, Kochi.
3. The Senior Accounts Officer (AN),  
Office of the Joint Controller of Defence Accounts,  
Area Accounts Office, CDA (Navy),  
Thevara, Kochi.
4. The Joint Controller of Defence Accounts,  
Area Accounts Office, CDA (Navy),  
Thevara, Kochi.
5. Principal Controller of Defence Accounts,  
CDA (N), Mumbai.
6. The Senior Staff Officer (Civilian Personnel),  
Headquarters Southern Naval Command,  
Naval Base, Kochi - 4.



7. The Flag Officer Commanding-in-Chief,  
Headquarters Southern Naval Command,  
Naval Base, Kochi – 4.

... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

This application having been heard on 6.7.06, the Tribunal on 13-7-06 delivered the following:

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

Truncation in the claim of medical reimbursement is the challenge in this case. Brief facts of the case as contained in the OA are as under:-

- (a) The applicant is working as Lower Division Clerk. Her mother has been under treatment for Cancer at M/s. Lakshmi Hospital, Ernakulam, which is a recognised Hospital for the medical attendance and treatment of Government servants and his/her family members as per the Memorandum of Understanding arrived at between the Government of India and the Hospital. The respondents, based on the estimated cost of the expenditure for the treatment of each spell, used to sanction and remit advance deposits directly to the Hospital. After the treatment, the applicant makes the final medical reimbursement claims duly certified by the Authorised Medical Attendant of the Hospital and place the same before the respondents for final



settlement. In this manner, the respondents had sanctioned and remitted deposits so far for a total of Rs. 1,05,800.00.

- (b) In that process, for the first spell of medical treatment, the Lakshmi Hospital was paid an advance of Rs. 15,000/- and the final medical reimbursement claim submitted for the same was for Rs. 16,049/-. Thus, the applicant was entitled to be reimbursed an amount of Rs. 1049/-. However, the respondents passed the bill for Rs. 10629/- only whereby disallowing Rs. 5420/- and ordering recovery for Rs. 4371/- being the difference between the advance and the final admitted amount. By order dated 10.1.05, similarly the respondents had sanctioned advances of Rs. 63700/-, Rs.12,400/-, Rs.6,200/-, Rs. 8500/- and Rs. 33,900/- at different intervals and the applicant, in turn, submitted Medical Reimbursement claims based on the actual alongwith necessary certificates , vouchers etc. for Rs. 78,195/-, Rs.6520/-, Rs. 6839/-, Rs. 7582/- and Rs. 21,484/- respectively against those advances. Surplus funds available with the Lakshmi Hospital were remitted to the Government Account immediately after the particular spell of treatment was over. However, the respondents admitted the aforesaid claims for Rs. 10,629/-, Rs. 72,275/-, Rs. 4,735/-, Rs. 5,249/-, Rs. 5,295/- and Rs. 14,990/-. In other words, as against the total reimbursement claims for a total Rs. 1,36,669/-, the respondents have admitted them for Rs. 1,13,173/- only and they have disallowed a total amount of Rs. 23,496/- and ordered recovery of Rs. 15,888/- from the applicant. The applicant submitted a detailed representation on 1.12.2004 which was not responded to and on the contrary, the



applicant received another letter dated 5.1.05 indicating certain reasons for disallowing the claims. The applicant, therefore, submitted another detailed representation dated 14.1.05 refuting the contention raised by the second respondent in his letter (A/8) and contended that the same is without application of mind and hence, arbitrary. However, she received a communication dated 25.2.2005 wherein it was indicated that the matter regarding reimbursement of medical claims in respect of the applicant has been referred to the Principal Controller Defence Accounts (N), Mumbai for clarification. Further recovery was stopped and while so, the applicant's representation (A/9) came to be rejected stating that the matter was taken up with the JCDA (N), Kochi and that they have intimated that the medical claims in question have been reexamined and it has been confirmed that the amount passed by JCDA (N), Kochi, is in order. The applicant has been directed to remit the amount back to the Government through Money Receivable Order at the earliest.

2. The respondents have contested the OA and their version of the case and the legal issues involved are as under:-

- (a) Lakshmi Hospital is a recognised Hospital as per letter dated 28.10.1996 issued by the Ministry of Health & Family Welfare. M/s. Lakshmi Hospital is required to provide treatment to the beneficiaries of CS (MA) Rules as per schedule of rate of M/s. Indira Gandhi Co-operative Hospital/Goutham Hospital, Kochi vide paragraph 2 of the aforesaid letter. The approved rate of Lakshmi Hospital is those of Indira Gandhi Co-operative Hospital/



Goutham Hospital only. As rates for Cancer treatment is not available in the rate list of Indira Gandhi Co-operative Hospital/ Goutham Hospital, the claims were regulated as per Government rates at Ernakulam Government Hospital. The applicant's mother had been admitted in Lakshmi Hospital, which is purely a private recognised Hospital as per Government of India, Ministry of Health and Family Welfare dated 28.10.96. The approved rates as per the above letter are those of Indira Gandhi Co-operative Hospital/Goutham Hospital only. In pursuance of the above order and further escalation of rates of Indira Gandhi Co-operative Hospital by 15% authorised by Government of India, Ministry of Health and Family Welfare order dated 15.5.2000, the reimbursement claims of the applicant were regulated accordingly.

3. The applicant has also filed a rejoinder reiterating the contentions made in the O.A. and further adding as under:

- (a) That in Medical Attendance Rules, restrictions are imposed on the reimbursement of expenses on consultation fee, specialist consultation, diet charges, special nursing charges, room rent, clinical test charges paid to private Institutions etc. However, no such restrictions have been made in the matter of regulation of claims preferred and pertain to charges paid to Government Hospitals for the use of all medical and surgical facilities available at that Hospital.



4. Arguments were heard and documents perused. The learned counsel for the applicant argued that when there is a memorandum of understanding between the Government of India and Lakshmi Hospital and the transaction is direct between the two institution. As such, when the hospital charges as per rates or otherwise, it is for the Respondents to take up the matter with the hospital and see that the charges are not over and above the scheduled rate. Once an agreement exists, restricting the claim to a rate as applicable to other institution would not be appropriate. The applicant also relies upon the decision of the Principal Bench in the case of Pramod Kumar vs UOI and others, (2005) 3 SLJ (CAT) 173.

5. The counsel for the respondents on the other hand contended that while Lakshmi Hospital is one of the recognized hospitals, in so far as a particular ailment and treatment therefor is concerned, unless there exists a specific rate schedule with reference to that hospital, all that the applicant is entitled to is the rate as applicable to Indira Gandhi Co-operative Hospital/Goutham Hospital in accordance with the provisions of letter dated 28-10-1996. The above order underwent a slight modification to the effect that the rates in respect of Lakshmi Hospital would undergo an upward revision by 15% and it also referred to the requirement of having a Memorandum of Understanding between the respondents and the said Hospital.



6. The Memorandum of Understanding dated 14th July, 2000 (Annexure A-12) does refer to the above orders and the following are the conditions specified as part of the Memorandum:-

"1. Lakshmi Hospital, Cochin-16, is recognised under Rule 2 (d) of the CS (MA) Rules, 1944 for treatment of Central Government Employees and Members of their family subject to the conditions that :-

- (i) Lakshmi Hospital, Cochin-16, will charge the Central Government Employees as per the schedule of approved charges of Lakshmi Hospital which are detailed at Annexure -I.
- (ii) Lakshmi Hospital, Cochin-16, shall in no event charge an amount more than that agreed to as per Annexure -I from any Central Government Employees for a period of 2 years from the date of signing of MOU or until such time that the rates are revised by the Central Government, whichever is later."

7. The above clearly goes to show that the entire arrangement of schedule of rates is between the two institutions and the government employees are the beneficiaries of the medical treatment. Under these circumstances, the objections raised by the Office of the JCDA (N) vide Annexure A-18 (one of the impugned orders) and suggestions for recovery from the applicant of the excess amount paid to the Lakshmi Hospital cannot be legally sustained. It would be appropriate at this juncture to have the benefit of the decisions of the Apex Court and other Courts on the subject matter of medical reimbursements:

8. In the case of State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117,

the Apex Court has, highlighting the obligations of the State relating to right to life under Art. 21 read with Art. 47 of the Constitution, held as under:-

"26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. 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 centers, 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. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority."

9. Next is in respect of cases when the Government was restricting the claims at the rates applicable to AIIMS, and the individuals had undergone the treatment in Escorts Hospital, invariably they were reimbursed the amount as per the bill of Escorts Hospital. In this regard, even in the case of Ram Lubhaya Bagga referred to above, his review application was considered by the Apex





Court and the Apex Court had ordered as under:-

" However, his contention is that he was paid the full amount of medical reimbursement charges even under the new policy and in the common order sought to be reviewed, we have taken the view that if any amount on the medical reimbursement bill is already paid to the person concerned after the new policy came into operation, then the amount already paid should not be recovered. Consequently, if the petitioner's case falls within this exceptional category permitted by us in the common judgment, appropriate orders will be required to be passed in his case also by giving him a fresh opportunity to prove his case. Hence, notice is directed to be issued to the respondents limited to the consideration whether the petitioner was paid the full amount of medical reimbursement charges after the new policy had already come into force, and if yes, whether any recovery can be effected from him."

10. In the case of State of Punjab v. Mohan Lal Jindal, (2001) 9 SCC 217 while allowing the appeal preferred by the Government, the Apex Court has observed as under:-

" 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."

11. In addition, reference can be made to the case of one G.S. Sood vide order dated 27<sup>th</sup> May, 2003 in OA 141 of 2001, wherein referring to a decision of the Hon'ble Delhi High Court, this Tribunal held as under:-

"9. At this stage it would be relevant to refer to the judgment given by



Hon'ble Supreme Court and Hon'ble High Court of Delhi. In somewhat similar circumstances it was held by Hon'ble Supreme Court in the case of Uma Shashi Thakur as under :-

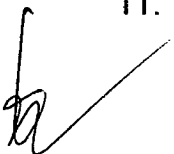
"We have read, from the judgment under appeal, some of the rates that are prescribed, and are charged. They are totally unrealistic having regard to medical expenses that are required to be incurred those days. There is very urgent need to update the prescribed rates.

The appeal is allowed. The order of the Tribunal under appeal is set aside. The orders of recovery dated 20<sup>th</sup> July and 17<sup>th</sup> August, 1994, are quashed. If any amount has already been recovered, the same shall be returned to the applicant. No orders as to costs."

10. Similarly in 2001(3) ATJ 470, Hon'ble High Court in identical case as in hand held as under :-

"I have given careful considerations to the arguments advanced by learned counsel for both the parties. There cannot be any dispute with regard to the ratio laid down by the Supreme Court in State of Punjab Vs. Ram Lubhaya Bagga's case (supra). In that case the petitioner challenged the policy of the Government with regard to fixation of allowances. In that case no recommendation was made by the CGHS for getting the treatment from a private hospital. As far as the case in hand is concerned, it is the Government hospital, namely RML Hospital which has recommended the case of the petitioner for a specialized treatment by a specialty hospital, which is on the approved list of CGHS. When the respondents themselves have recommended the case of the petitioner for getting treatment at a specialty hospital, to deny the benefit of giving full reimbursement would be contrary to the grant of medical facilities to a retired Government servant, if he cannot actually avail of the same. If the Government hospital did not have the facility for giving treatment like the one which was required to be given to the petitioner then it was an obligation on the part of the respondents to have reimbursed the total amount paid to the said hospital. Following the ratio laid down in the State of Punjab and others V. Mohinder Singh Chawla (supra) I direct the respondents to reimburse the amount of Rs.80,620/- to the petitioner within a period of four weeks."

11. A perusal of these judgments would show that the present case in hand is squarely covered by this judgment, therefore, applicant would



be entitled to reimbursement of full amount.

12. It would also be relevant to quote another judgment given by Hon'ble High Court of Delhi reported in 2003(96) FLR 181 wherein it was held as under: -

- "(i) The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a hospital recognized by them for treatment on the basis of applying the rates as per the previous memorandum which were intended for a period of two years and were subject to revision. Reference is also invited to a decision of a Co-ordinate Bench of this Court in Civil Writ No.5317 of 1999 titled M.G. Mahindru v. Union of India and another, decided on 18 December, 2002, wherein the learned Single Bench relying on the decisions of Narendra Pal Singh v. Union of India and others, as well as State of Punjab and others v. Mohinder Singh Chawla, directed reimbursement of the full expenses incurred. In the instant case, it is not in dispute that the said facility or treatment was not available at C.G.H.S. or RML hospital and the petitioner was referred after due permission to a specialty hospital duly recognized by the respondents. The cannot therefore, deny full reimbursement to the petitioner by placing reliance on an earlier memorandum of 1996 wherein the rates given were applicable and intended for a period of two years on the ground that the said rates have not been revised.
- (ii) Reference may also be usefully invited to the last office memorandum bearing F.D. Rec-24/2001/JD(M)/CGHS/DELHI/CGHS(P), Government of India, Ministry of Health and Family Welfare, dated 7 September 2001. The said circular reconsidered the question of recognition of private hospitals, diagnostic centers under CGHS scheme for specialized treatment as well as fixing of package ceiling rates. The salient term as per this memorandum is that the recognized hospital is obliged not to charge more than the package rates from the beneficiary.
- (iii) *The only submission by learned counsel for respondent Ms. Pinky Anand was that the respondents had reimbursed the rates as per the circular of 1996 and in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory State of Affairs. Respondents are required to be more responsive and*



*cannot in a mechanical manner deprive an employee of his legitimate reimbursement, especially on account of their own failure in not revising the rates. In view of the foregoing discussion and the judicial pronouncements as noted above, the petitioner is entitled to full reimbursement of the expenses incurred at the Escorts Heart Institute and Research Center New Delhi where he was duly referred for specialized treatment by the respondents after according permission. Escorts Heart Institute and Research Center being a recognized hospital for this purpose, the petitioner is entitled to be reimbursed the actual expenses, as incurred. A writ of mandamus shall issue to the respondents who shall pay Rs.70,115.85 to the petitioner within four weeks from today, together with costs assessed at Rs.1,500." "*

12. The above decisions clearly index towards the fact that the respondents are to be pragmatic. Telescoping the decisions of the Apex Court and other Courts upon the facts of the present case, one would easily come to the conclusion that the decision of the respondents in recovering the so called excess amount from the applicant is hardly justified. After all, the applicant has not made any personal gain in the transaction. Again, the Memorandum of understanding cast a duty upon the Hospital and the respondents to have the payment made in accordance with the conditions. As such, under no circumstances can the alleged excess amount of medical treatment be recovered from the applicant.

13. In view of the above, the impugned orders disallowing an amount of Rs. 23,496/- out of the medical claim and directing recovery from the applicant of the excess medical expenses in respect of the medical treatment of the mother of the applicant are quashed and set aside. It is declared that the applicant



shall be reimbursed the amount of Rs 23,496/- by the respondents and that there shall be no recovery from the applicant on this score and any recovery already made should be reimbursed to the applicant within a period of three months from the date of receipt of a copy of this order. Thus, the OA is allowed. *h*

14. Under the circumstances, there shall be no orders as to costs.

(Dated, the 13<sup>th</sup> July, 2006)

  
**K B S RAJAN**  
**JUDICIAL MEMBER**

Cvr.