

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM

ORIGINAL APPLICATION NO.366 OF 2002

FRIDAY THIS THE 21ST DAY OF FEBRUARY, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

K.G.Rajan,
Superintendent of Central Excise,
Special Customs Preventive Unit,
Alappuzha.Applicant

(By Advocate Mr. C.S.G. Nair)

v.

1. Commissioner of Central Excise & Customs,
Calicut Commissionerate,
Mananchira,
Kozhikode.1.
2. The Commissioner of Central Excise & Customs
Cochin Commissionerate,
Central Revenue Buildings,
IS Press Road, Cochin.18.
3. The Chief Commissioner of Central Excise
and Customs, Central Revenue Buildings,
Queen's Road
Bangalore.2.
4. Union of India, represented by the Secretary
Department of Revenue,
North Block,
New Delhi-110 001.Respondents

(By Advocate Mr. C.Rajendran, Sr.C.G.S.C.)

The Original Application having been on 27.1.2003, the
Tribunal on 21.2.2003 delivered the following:

O R D E R

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

This Original Application filed by the applicant
Superintendent of Central Excise is directed against
Annexure.A8 order dated 31st December, 2001 of the first

M/

respondent refusing to review the earlier order rejecting his claim for reimbursement of medical expenses.

2. The facts briefly stated are as follows. The applicant is presently working as Superintendent of Central Excise, Alappuzha. He had been suffering from paralysis of the right side of the body and has been taking ayurvedic treatment for that since 1994. He had registered his name for treatment as an inpatient in Government Ayurveda College, Trivandrum on 28.11.1997 but had to wait for his turn. While so while working at Kannur he took leave from 6.8.1998 and started to Trivandrum. On reaching Trivandrum he felt severe pain on right side of his body which developed into paralysis. Since he could not get admission as inpatient in Government Ayurveda College Hospital, on 6.8.1998 he had to be admitted in Santhigiri Hospital, Trivandrum which is an ayurvedic hospital recognised by the State Government and also by the Central Government for treatment of employees. The fact that he was admitted in that hospital under emergent situation was intimated to the second respondent through proper channel. He underwent treatment as an inpatient from 6.8.98 to 16.8.98. A medical reimbursement claim for Rs. 12,892/- was submitted by the applicant on 12.9.98. The claim was rejected by Annexure.A2 order dated 10.2.99 on the ground that an emergency certificate and a certificate from AMA that proper accommodation for treatment was not available at the relevant time had not been furnished. The applicant resubmitted the claim alongwith Annexure.A3 letter enclosing

n/

certificates to the effect that the applicant was admitted in Santhigiri Hospital in an emergency and that proper accommodation at that time was not available at the Govt. Ayurveda College Panchkarma Hospital. The claim was again rejected by the first respondent's order (A4) on the ground that the condition prescribed for relaxing the provisions of CS(MA) Rules for taking treatment in private hospitals in emergency were not satisfied. The applicant submitted a petition to review that order (A5). This request was rejected by Annexure.A6 order stating that since the applicant has not consulted the AMA or DMO of his District before consulting specialist outside the district. An appeal was made by the applicant (Annexure.A7) to the third respondent on 6.11.2000. The third respondent directed the first respondent to re-examine the order dated 5.6.2000 in the light of Appendix VII of Medical Attendance Rules and other relevant rules. The first respondent has again rejected the claim by Annexure.A8 order on the grounds that (a) the applicant who was working at Kannur did not consult AMA or any doctor at Kannur as required in OM No.S.14025/113/79.Misc. dated 28.5.1982 of Ministry of Health and Circular No.445/Audit/17/87/111/90(86) dated 10.8.90 of the C&AG and (b) the treatment could not be treated as emergent as the applicant had travelled from Kannur to Trivandrum covering a distance of 500 kms. Aggrieved by that the applicant has filed this application impugning Annexure.A8 order and for a direction to the Ist responddnt to pass the medical claim of Rs. 12,892/-.

3. The respondents in the reply statement contend that the applicant had in his letter dated 12.9.98 stated that on 5.8.98 he felt partial paralysis, that he immediately travelled to Trivandrum and got admitted in Santhigiri Hospital and that therefore, the applicant having not consulted an AMA before getting admitted in the private hospital and as there was no emergency the claim of the applicant cannot be granted.

4. The applicant in his rejoinder has explained that when he left Kannur there was some pain which became acute and finding that paralysis had set in he got admitted in Santhigiri Hospital as no room was available in Government Ayurveda Hospital for his treatment and that therefore, the claim being genuine calls for relaxation of the rules.

5. I have carefully perused all the material papers and have heard the argument of Shri C.S.G.Nair, learned counsel of the applicant and of Shri C.Rajendran, the Senior Central Government Standing Counsel appearing for the respondents. That Santhigiri Hospital is a hospital recognised by the Government for ayurvedic treatment of employees is not disputed. That the applicant was admitted in that hospital on 6.8.98 and was treated till 16.8.98 as inpatient also is not disputed. The ground on which the claim is rejected by the first respondent even after the third respondent directed him to re-examine the claim in the light of relevant rules and instructions regarding emergent treatment

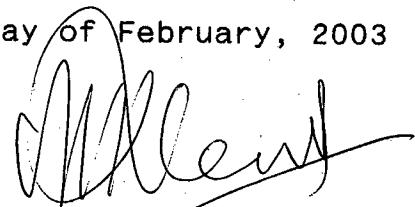
M

was that the applicant did not consult AMA at Kannur and that there was no emergency. A careful scrutiny of the records shows that the first respondent dealt with the claim with a closed and prejudiced mind. It is true that in Annexure.R.1 letter the applicant stated that he felt partial paralysis on 5.8.98 and went straight to Trivandrum and on failing to get admission in Government Ayurveda Panchakarma Hospital at Trivandrum got admitted in Santhigiri Hospital Trivandrum in the applicant's native place. The applicant had explained that on reaching Trivandrum when the condition became acute he failing to get admission in Government Ayurveda Hospital at Trivandrum got admitted in Santhirigi Hospital. When leaving Kannur, the applicant would not have decided to take treatment at Trivandrum. Further the doctor he consulted was not a specialist. The applicant had produced certificate to the effect that he was admitted in Santhigiri Hospital in an emergency and another certificate to the effect that proper accommodation was not available in Government Ayurveda Panchakarma Hospital at the relevant time. In spite of all these, the first respondent again rejected the claim raising untenable technical points. I am convinced that the decision contained in Annexure.A8 order is vitiated for non-application of mind to the relevant aspects. I also find that the claim is required to be passed in relaxation of the normal rules as the circumstances show that the treatment was taken in Santhigiri hospital in an emergency as accommodation was not available in Government Ayurveda Hospital.

01

6. In the light of what is stated above, I allow the application, set aside Annexure.A8 order and direct the first respondent to pass the pending medical claim for Rs. 12,892/- of the applicant or to the extent admissible as per rules in relaxation of the normal rules and conditions. The above direction shall be complied with and payment made to the applicant within a period of one month from the date of receipt of a copy of this order. There is no order as to costs.

Dated this the 21st day of February, 2003



A.V. HARIDASAN
VICE CHAIRMAN

(S)