

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 327/2000.

Dated this 19/5 the day of March, 2003.

Shri R.S. Mishra

Applicant.

Shri G.K. Masand

Advocate.
for applicant.

VERSUS

Union of India & 2 others.

Respondents.

Shri R.R. Shetty for Shri R.K. Shetty
for R.No.1 and 3 and Shri V.G. Rege
for R.No.2.

Advocate for
Respondents.

Coram : Hon'ble Shri Govindan S. Tampli, Member (A).
Hon'ble Shri K.V. Sachidanandan, Member (J).

- (i) To be referred to the Reporter or not ? - *y*
- (ii) Whether it needs to be circulated to other Benches *X*
of the Tribunal ?
- (iii) Library. *x✓*


(K.V. Sachidanandan)
Member (J).

H.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.327/2000.

Dated this 19/5/2003 the Day of March, 2003.

Coram : Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri K.V. Sachidanandan, Member (J).

Shri R.S. Mishra,
working as
Principal Scientific Officer,
Quality Assurance Estt.(Metals),
Ordnance Factory Estate,
Ambernath.Applicant.

(By Advocate Shri G.K. Masand)

Versus

1. Union of India, through
Secretary, Defence Production
& Supplies, Min. of Defence,
Room No.136, South Block,
New Delhi - 110 001.
2. The Secretary, Ministry of
Health & Family Welfare,
Nirman Bhavan, New Delhi.
3. The Director General of
Quality Assurance, Dept. of
Defence Production & Supplies,
Govt. of India, Ministry of
Defence, South Block,
New Delhi.

....Respondents.

(By Advocates Shri R.R. Shetty for
Shri R.K. Shetty for R-1 & 3 and
Shri V.G. Rege for R-2).

ORDER

By K.V. Sachidanandan, Member (J).

The applicant who is a citizen of India, joined
the Ministry of Defence in the year 1971 as a
Jr. Scientific Officer was promoted as Senior Scientific
Officer, Grade II and thereafter as Senior Scientific
Officer, Grade I and presently working as Principal

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Scientific Officer, Quality Assurance Estt. (Metal), Ambernath at the time of filing of the application. He has served in various capacities in Defence and claims that he remained excellent, meritorious and to the entire satisfaction of the superiors. While working as Principal Scientific Officer at Controllerate of Quality Assurance (Weapon), Jabalpur, applicant developed acute breathlessness and bulge in the abdomen on 27.1.1998. Immediately he reported to the Principal Medical Officer, GCF Hospital, Jabalpur who referred him to Military Hospital Jabalpur and after examination he was admitted in ICU. The applicant states that initial examination revealed that a massive fluid was accumulated on his right lung and approximately 1.5 litres of fluid was tapped per day from his right lung for three consecutive days which led to suspected malignancy and the Military Hospital advised for a reference to Tata Memorial Cancer Hospital at Mumbai for proper evaluation and treatment and therefore, referred to Tata Memorial Hospital on 2.2.1998. Central Services (M.A.) Rules provide for investigation and treatment for suspected Cancer lung clinically and radiologically or a metastatic disease. Applicant was required to be admitted as an indoor patient. Since a bed was not available at Tata Memorial Hospital, he was referred to Bombay Hospital and admitted under Dr.D.N. Amarapurakar for further management. The medical authorities of both the hospitals subjected the applicant for different specialised tests for 2 months and could not diagnose the exact disease/ailment from

which the applicant was suffering. There was no improvement in the condition of the applicant and on the contrary he lost 15 kgs. of weight in 2 months and his condition was fast deteriorating and the "medical authorities advised him to take his own decision as to whether he would like to go abroad for treatment as the authorities", applicant felt that they could not treat the applicant in the absence of proper diagnosis. Considering his serious condition in which he was placed and for want of sufficient time to complete the formalities of obtaining prior permission from Ministry of Health & Family Welfare. The applicant proceeded to USA for medical treatment after obtaining necessary permission from Director General Quality Assurance, New Delhi. No objection certificate was also obtained on 24.3.1998 issued by Director General Quality Assurance, Ministry of Defence, New Delhi. The applicant submitted that on reaching USA on 2.4.1998 in University of California, Sanfrancisco Medical School Hospital, USA and after the tests conducted by Medical Authorities at University of California, Sanfrancisco Medical School Hospital, USA, it was diagnosed that applicant was suffering from "BUDD-CHIARI SYNDROME", a rarest of the rare disease which is looked upon as a harbinger of death and which could not even be diagnosed while applicant was in India and no Centre in India has got facilities for treatment of the said disease and only 2-3 centres in USA have got facilities to treat this ailment. The applicant states that cost of hospitalisation in USA

being very high. He received treatment there upto 6.4.1998 and even though the condition of the applicant was not stable, he took discharge on 8.4.1998 and thereafter took follow up treatment while staying at the residence of his son at USA and reported to Bombay Hospital for further follow up.

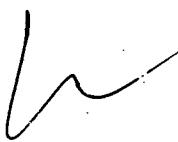
2. The applicant submitted that as per the terms of Rule 11 of Central Services (M.A.) Rules, he submitted application dated 30.6.1998 to the Respondents through proper channel for grant of ex-post-facto sanction/permission for treatment abroad and reimbursement of the medical expenses including incidental expenditure and furnished all relevant documents and explained therein, the circumstances under which the permission could not be obtained as it was necessary for the applicant to save his life rather than to wait completing the formalities of prior permission. He was advised to submit all original bills and documents which were duly submitted and Respondent No.2 despite of this formalities turned down the request of the applicant to grant ex-post-facto permission for treatment abroad alleging that facilities for such treatment were available in India. The applicant submitted that he was eligible and entitled to medical treatment outside India and to claim reimbursement of the cost of the medical treatment and incidental expenditure by following procedure laid down in that regard, since the medical authorities of Bombay Hospital could not even diagnose

the exact disease even after 2 months of continuous tests. The applicant had no other alternative but to go abroad for saving his life and after obtaining necessary permission from the Ministry of Defence, he proceeded to USA to save his life without spending precious time for completing formalities of obtaining prior permission and subsequently it was informed that his case for reimbursement of medical expenses was put up to the Expert Committee but the Expert Committee has rejected the said claim. There is no provision for constitution of any Expert Committee to decide whether the expenses incurred by an employee for treatment abroad should be sanctioned or not as per sub-rule 5 of Rule 11 of Central Government Standing Committee. The applicant also relied upon 4.5.1998 addressed by Dr.Paul Blanc of San Francisco to Dr.D.N. Amarapurkar and the certificate dated 11.6.1998 issued by Dr.D.N. Amarapurkar of Bombay Hospital. The said disease could not even be diagnosed by medical authorities in India despite of 2 months of extensive and specialised tests and the claim was rejected.

3. Being aggrieved by non consideration of granting his claim for reimbursement he has filed this O.A. claiming the following reliefs:-

(a) That this Hon'ble Tribunal will be pleased to hold and declare that in the situation in which the applicant was placed at the relevant time when each minutes delay would endanger his life, applicant was justified in proceeding to USA for the treatment of his disease which was subsequently diagnosed as "Budd Chiari Syndrome" after obtaining the necessary prior permission

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from the Director General Quality Assurance, New Delhi to do so.

(a-1) That this Hon'ble Tribunal will be pleased to hold and declare that the action of the Respondents for referring the Applicant's case for ex-post-facto sanction of the Medical reimbursement to the Expert Committee of Prof.A.S. Bais, Dr.B. Gupta, Dr.S.K. Jain was not in conformity with Rule 11 of Central Services (M.A.) Rules; this Hon'ble Tribunal will therefore be pleased to quash and set aside the said decision dated 2/3.8.99 of the Expert Committee as reflected under Exh R-2.

(b) That this Hon'ble Tribunal will be further pleased to hold and declare that Applicant was justified, in the circumstances in which he was placed, for saving his life, to get himself admitted to the University of California, San Francisco Medical School Hospital, USA for the treatment of his ailment.

(c) That this Hon'ble Tribunal will be further pleased to hold and declare that the Respondents decision as communicated vide impugned Orders dated 24.8.1999 and 21.12.1999 (Exhs.A and B respectively) by which Respondents have refused to grant ex-post facto permission for medical treatment of abroad are illegal, bad in law and liable to be set aside.

(d) That this Hon'ble Tribunal will be pleased to direct the Respondents to sanction the Applicant's claim for reimbursement of medical bills to the tune of \$ US 35541 and further reimburse the expenditure of Rs.1,42,000/incurred by the Applicant towards Air fare for self and his wife, who accompanied him as a sick attendant as per CSMA Rules, with interest from the date of submission of the Bill.

(e) That costs of this application be awarded in favour of the Applicant;

(f) That such other and further reliefs as are expedient be granted in favour of the Applicant."

4. The respondents had filed their detailed reply affidavit, contending that the question of reimbursement of medical expenses incurred by an individual who has to undergo or has undergone medical treatment, is covered by Rule 11 of the Central Services (Medical Attendant) Rules 1944 (Exhibit R-1) for its true meaning and effect. It

is clear that the applicant before obtaining or undergoing or deciding to undergo medical treatment abroad has to make an application through the department/Ministry to which he is attached to the Standing Committee established under Rule 11 in the form prescribed by the Standing Committee. On receipt of the application for medical treatment outside India, the Standing Committee may after due consideration if satisfied that the ailment or treatment 'can be treated only' outside India shall issue such a certificate to the concerned Department of Ministry to which the applicant Government servant is attached conveying its approval of the application and concerned Department or Ministry shall, on the strength of that certificate incur necessary necessary expenditure in getting the Government servant concerned or the member of his family treated outside in accordance with the procedure laid down by the Standing Committee. The applicant has not made any such application to the Standing Committee which would then have considered the case of the applicant and made detailed investigations to find out as to whether the treatment required by the applicant is available in India or otherwise. The certificate given by a Doctor from the Bombay Hospital to the effect that no medical treatment for the illness known as Budd Chiari Syndrome is available in India. This was also confirmed Dr. Paul Blanc, M.D. from the University of California, San Francisco Hospital. The respondents now submit that the case of the applicant for ex-post facto sanction under

sub-rule 7 of Rule 11 was put up before the Expert Committee. The Expert Committee considered the case of the applicant and came to the conclusion that no ex-post facto sanction could be granted to the applicant for treatment in United States of India on the ground that the medical treatment for the illness Budd Chiari Syndrome is freely available in India especially at the All India Institute of Medical Sciences and several other Institutes and G.B. Pant Hospital, New Delhi. The Expert Committee Report is enclosed and marked as Exh.R-2. The applicant had made application to go abroad as is required to be done by Government servant for any reason whatsoever. The application for obtaining no objection certificate for Passport-Cum-proceeding abroad is categorically mentioned that he is making a trip abroad for medical investigation of self and that the same is being financed by his son Gaurav Mishra who lives at 1505, Sparkman Drive, 297, Hunevilla A 35016, Alabama, New York (U.S.A.). He also further categorically contended that the entire medical treatment is being financed by his son Gaurav Mishra. The respondents submit that they are absolutely not bound by Rules to grant him the cost of medical treatment that he has undergone at the United States of America. Under the Chairmanship of Prof.A.S. Bais. The patient had gone to USA for treatment on his own risk and undertaking that the expenditure would be borne by his son vide application dated 2.3.1998. The Government is not liable to pay the amount and request for grant of ex-post facto

permission for treatment in USA, was not recommended and it was again examined in the Ministry and the case also referred to Ministry of Health and Family Welfare, but it was rejected on the ground that the ex-post facto approval cannot be given since the facilities for treatment of the disease are available in India for the last 10 years. In this connection Ministry of Health & Family Welfare OM No.S.14025/35/99-MS dated 21.12.1999 is referred which is marked as Exh.R.5 and this was informed the applicant. The respondents further contended that if the applicant had to follow Rule 11 of CS (MS) Rules 1944 and put up his case for sanction of his medical treatment abroad, the Expert Committee would have been then and there considered his case and referred him to the AIIMS or any other Hospital where this treatment is available. Since the applicant did not avail of the facilities under Rule 11, he is now estopped from claiming reimbursement of the medical expenses on the huge amount of money that he has allegedly spent in the USA. Therefore, the respondents reiterated that they are not liable to pay any amount as claimed in the O.A. Certain amendments were made in the O.A. for which the respondents has replied. The applicant has also filed rejoinder to written statement reiterating the same pleadings. The applicant reiterated his contention that he could not have taken prior permission because only in night of 26.1.1998 he felt acute stomach pain, stomach bulge and shortness of breath and he has immediately taken to the hospital and after preliminary treatment his disease

could not diagnosed. The process of tapping of fluid continued for next 3 consecutive days. All these medical reports submitted to the respondents and, therefore, the emergency situation did not permit him to complete the formalities. The applicant strongly denied that the said treatment is available in India as contended by the respondents. The contention of the applicant is that there is no force in the reply filed by the respondents.

5. We have heard the learned counsel for the applicant Shri G.K. Masand and Shri R.R. Shetty for Shri R.K. Shetty, learned counsel for the respondents no.1 and 3 and Shri V.G. Rege, learned counsel for Respondent No.2 and have gone through the pleadings, documents and materials on record. Learned counsel for the applicant submitted that treatment for Budd-Chiari Syndrome were only available in USA and he has submitted that certificate identified by Government of India as having facilities for specialist treatment which is annexed to Swamy's Medical Attendance Rules. There is no mention either of Bud Chiari Syndrome or of the name of the institution where treatment for the same is available and it is unheard in India. The learned counsel for the respondents on the other hand submitted that without the sanction of Standing Committee it was not possible to grant the required amount to the applicant as the same disease can be treated in India in the institutions like AIIMS, G.B. Panth, New Delhi, therefore, it is unilateral decision without the approval of head of the

department that the applicant has taken and went for treatment to USA at his risk and cost. The learned counsel reiterated that had he applied for prior permission, the applicant would have advised to take a treatment in India itself where the facilities are available.

6. The case of the applicant is that he is entitled for reimbursement of the medical bills to the tune of \$ 35541 and further reimbursement of expenditure of Rs.1,42,000/incurred by the applicant towards air fare for self and his wife as per. the CS (MA) Rules with interest. The rule position of the medical attendance rules. Rule 11 (1), (2) & (3) reads as follows:-

"Rule 11(1) A Government servant shall be eligible to obtain medical treatment outside India or, as the case may be, to claim reimbursement of the cost of medical treatment obtained inside or outside India in accordance with the provisions of this rule.

(2) A Government servant desirous of availing of medical treatment outside India may make an application through the Department/Ministry to which the Government is attached to the Standing Committee established under this rule, in the form specified by the Standing Committee.

(3) A Government servant desiring to avail of medical treatment outside India for himself or for a member of his family for any treatment specified in the Table below shall, subject to the other provisions of this rule, be eligible for medical treatment outside India."

The plain reading of the said rule is clear that a Government servant shall be eligible for the medical treatment outside India and for all medical treatment outside India may make an application to the

Department/Ministry to the Government to which the Government servant is attached to the Standing Committee established under this rule in a prescribed format specified by the Standing Committee. Rule 6 reads as follows:-

"(6) On receipt of an application for medical treatment outside India, the Standing Committee may, if after due consideration, satisfied that the ailment or illness can be treated only outside India, issue a certificate to the concerned Department of Ministry to which the applicant Government servant is attached conveying its approval of the application and the concerned Department or Ministry shall, on the strength of that certificate incur necessary expenditure in getting the Government servant concerned or the member of his family treated outside India in accordance with the procedure laid down by the Standing Committee."

Therefore, the scrutiny by the Standing Committee and satisfaction of Standing Committee and issuance of the certificate to the fact of the ailment can be treated only outside India and treatment is only outside India are all the condition precedent in granting the claim. However, as per Section 7, it shall be competent for the Central Government to authorise reimbursement of expenditure on medical treatment obtained outside India, if it is satisfied that the prior approval could not be obtained by the Central Government servant due to circumstances beyond control. The contention of the applicant is that he was suffering from 'Budd Chiari Syndrome' the rarest of rare disease which is looked upon as a harbinger of death and which could not even be diagnosed while the applicant was in India and no Centre in India has got facilities for treatment of the said

disease. Only 2-3 centres in USA have got facilities to treat this ailment and the applicant could not obtain prior permission as it was necessary for the applicant to save his life rather than wait for completing the formalities of obtaining prior sanction. In this context it will be of some use to find out what the disease the applicant was suffering from. The applicant's counsel submitted on the basis of medical authorities that "Budd Chiari Syndrome" the treatment in patients with membranous obstruction of the inferior vena cava, a transatrial meatotomy. In those in whom the portal vein and inferior vein and inferior vena cava are patent, a portacaval or mesocaval shunt should be tried for the relief for the relief of portal hypertension (but not an end-to-side shunt, Fig.45.25). In patients with a blocked inferior vena cava a mesoatrial shunt may be attempted. One of the contention of the Respondent is that it was not acute life threatening disease and it could have been diagnosed in India and there are centres in India like AIIMS, G.B. Pant, New Delhi where the treatment is available, hence the respondents also took shelter of the Expert Committee Meeting held on 2.8.1999 under the Chairmanship of Prof.A.S. Bais, DDS (M) and it has been opined as under:-

- (i) the facilities for treatment of Budd Chiari Syndrome are available at AIIMS, GB Pant Hospital, New Delhi and may other Centres in India for the last 10 years.

(ii) the certificate given by Dr.DN Amrapurkar of Bombay Hospital dated 11.7.98 (Exh.1 of O.A.) certifying that presumably no Centre in India has got facilities to treat Budd Chiary Syndrome has been issued after the Surgery has been performed at Medical Centre, University of California, San Fransisco, USA in April, 1998.

(iii) The Experts have taken note of the statement made by the applicant in his application dated 7.1.99 (Para 6) stating that "finally my younger son who come from USA, shifted me to UCSF California on my own risk. I was admitted on 2.4.98 and on 5.4.98 I was diagnosed as a case of Budd Chiari Syndrome.

(iv) the patient had never contacted any of the super speciality Gastroenterlogy Department of Teaching/Research Institute in the Country for his diagnosis and management. Atleast there were 10 such Centres in India where facilities for diagnosis and management of Budd Chiari Syndrome were available in 1998 (the year in which the patient took treatment in USA).

(v) this was not an acute threatening condition. The patient had sufficient time to obtain prior permission to go abroad as per the CS(MA) Rules, had it been advised by one of the super specialised department of the reputed Institute."

Therefore, on considering the entire aspect it can be seen that there could not have been such a great urgency for the applicant to go abroad, as he has pleaded in O.A. His treatment admittedly was started on 27.1.1998, the urgency with which the applicant perse situation is due to his anxiety and not to factuals. Therefore, we are of the considered view that the applicant would have made an attempt to put an application before the Standing Committee for approval of the same. He did not choose to do so. On perusal of the further materials on record, we are of the view that the applicant was re-determined for proceeding to abroad even without Government resources. It is clear that the applicant has decided to proceed to USA in the month of March, 1998 through personal arrangement and resources without waiting the sanction from the Committee or finance from the Government. It is evident from the para 4 of letter dated 2.3.1998 (Exhibit R-3) which is reproduced as below:-

"4. In keeping with the professional medical advice rendered, I am planning to go to U.S.A. in the month of MAR 1998 through personal arrangements and resources. I may, therefore, request you to kindly accord permission to move abroad for a tentative period of four months w.e.f. 15 MAR'98 for the stipulated purpose and thus gratify."

What is sought through Exhibit R-3 is permission to move abroad and not request for any financial assistance from the Government, therefore, this is a case where the applicant could have obtain prior permission or atleast attempted to seek permission for the constitution of the committee. The argument is that this was an emergency

...16..



and time schedule situation is not seems to be convincing. Apart from that the applicant's case not be that this could not be treated in India also will not hold good in view of the specific contention of the respondents in the written statement that other institutions are available in India. Though we cannot accept the contention of the respondents that the disease was not acute life threatening disease. We hold that there were ample time for him in his hands for applying for sanction. Probably this he has not opted on an apprehension that Standing Committee of expert would have advised him to take treatment in India. In the above circumstances we are of the view that it is a case the applicant should have obtain and could have obtain permission for going abroad for the treatment but he has opted on his own resources and arrangement, therefore, the entire reimbursement of the amount is not justified as claimed by him.

6. The applicant has produced a copy of the proceedings of Standing Committee alongwith Smt.Girija G. Tampi dated 6.11.2001 under the Chairmanship of Dr.S.P. Agarwal, which is kept on record. On going through the proceedings, we find that both the cases are different in the situation. In Mrs. Tampi's case, she has obtain prior permission of the Secretary of the Committee agreeing with the view that the treatment should be undertaken in USA, but the petitioner's case, the Committee considered twice earlier and it was a unanimous

opinion of the experts that facilities for diagnosis and treatment of 'Budd Chiari Syndrome' are available in India atleast in ten centres and certified that the disease was not acute and life threatening and the applicant Shri Mishra is seeking permission and the experts opined that the patient had never contacted any of the super speciality Gastroenterology Department of teaching/research institutes in the country for diagnosis and management. Therefore, these two cases could not be similar and the Committee has correctly come to the proper calculation. The former treatment with prior permission later exfacto permission. Hence both these cases cannot be equated as the same.

7. It is a fact that Budd Chiari Syndrome is a rare disease which is looked upon as a harbinger of death and comes under the category of terminal disease. Considering the recent decision of the Hon'ble Supreme Court reported in 2002 SCC (L&S) 189 in State of Punjab and others Vs. Mohan Lal Jindal. The Hon'ble Supreme Court held that a patient undergoing bypass surgery of heart in a hospital other AIIMS due to long queue for bypass surgery in AIIMS and claiming additional medical expenses incurred by him after being reimbursed at rates of AIIMS. It was also held that the applicant is entitled for medical reimbursement only at AIIMS hospital rates. However the respondents representation on

compassionate ground in respect of reimbursement of additional amount permitted to be considered by appellant authorities on record. In this case also the respondents had filed additional written statement portion of which is reproduced as below:-

"2. The case regarding estimated cost of expenditure that would have been incurred by the applicant had the treatment been taken in Government Hospital in India was taken up with all India Institute of Medical Science, New Delhi and they have intimated the following charges:

(a) Room Rent 'A' Class	:Rs.900/- per dayx182 days =Rs.1,63,800/- (Room rent of 'A' class room has been revised to Rs.1700/- per day w.e.f.8.11.99.
(b) Diet Charges	:Rs.50/- per dayx182 days =Rs.9100/- (Diet charges are revised as Rs.100/- per day w.e.f.8.11.99).
(c) Procedure Charges	:Rs.6,000/-
(d) Investigation Charges	:Rs.8,000/- (Approx.)
(e) Stents	:Rs.50,000/-
Total	Rs.2,36,900/-

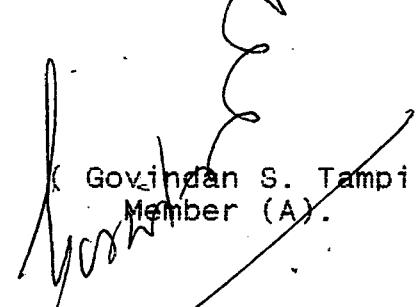
3. The Respondents submit that the above information is being submitted in compliance of the orders of the Hon'ble Tribunal and that the same may be taken on record."

In other words the respondents ~~are admits~~ that disease like 'Budd Chiari Syndrome' if treated in India will cost Rs.2,36,900/-. Thus considering the aspect of the case we are of the opinion that the applicant is entitled to get the said amount of Rs.2,36,000/- as calculated by the respondents.

8. In the conspectus and the circumstances of the

case, we declare that the applicant is entitled to get the reimbursement to the tune of Rs.2,36,900/- as calculated by the respondents and we direct the respondents to pay the amount forthwith. We also direct the respondents to re-consider the disbursement of the balance amount or portions thereof claimed to have been incurred by the applicant sympathetically for disbursement taking into account the rule position and facts of the case and pass appropriate order and communicate the same to the applicant as the respondents *within 4 weeks on receipt of this order* deem fit. In the circumstances of the case, we dispose of the O.A. as to no interest or cost.


(K.V. Sachidanandan)
Member (J)


(Govindan S. Tamai)
Member (A)
YOK

H.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. No.53/2003
IN
O.A. No.327/2000

Dated this the 25th day of July, 2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE SHRI K.V. SACHIDANANDAN, MEMBER (J)

Shri R.S. MishraApplicant

Versus

Union of India & OthersRespondents

ORDER (IN CIRCULATION)

GOVINDAN S. TAMPI, MEMBER (A) :

Review Petition No.53/2003 has been filed by the respondents in OA 327/2000 seeking the recall and review of the order by order dated 19.3.2003 allowing the OA.

We have considered the matter. OA 327/2000 filed Shri R.S. Mishra) Principal Scientific Officer, Quality Assurance Estt. (Metal), Ordnance Factory, Ambarnath has been allowed by us with the following observations:-

"7. It is a fact that Budd Chiari Syndrome is a rare disease which is looked upon as a harbinger of death and comes under the category of terminal disease considering the recent decision of the Hon'ble Supreme Court reported in 2002 SCC (L&S) 189 in State of Punjab and others Vs. Mohan Lal Jindal. The Hon'ble Supreme Court held that a patient undergoing bypass surgery of heart in a hospital other AIIMS due to long queue for bypass surgery in AIIMS and claiming additional medical expenses incurred by him after being reimbursed at rates of AIIMS. It was also held that the applicant is entitled for medical reimbursement only at AIIMS hospital rates. However the respondents represented on compassionate ground in respect of reimbursement of additional amount

permitted to be considered by appellant authorities on record. In this case also the respondents had filed additional written statement portion of which is produced below:-

"2. The case regarding estimated cost of expenditure that would have been incurred by the applicant had the treatment been taken in Government Hospital in India was taken up with all India Institute of Medical Science, New Delhi and they have intimated the following charges:-

- (a) Room Rent : Rs.900/- per day x 182 days
'A' Class = Rs.1,63,800/- (Room rent of 'A' class room has been revised to Rs.1700/- per day w.e.f.8.11.99.)
- (b) Diet Charges : Rs.50/- per day x 182 days
= Rs.9100/- (Diet charges are revised as Rs.100 per day w.e.f.8.11.99)
- (c) Procedure : Rs.6,000/-
Charges
- (d) Investigation : Rs.8,000/- (Approx.)
Charges
- (e) Stents : Rs.50,000/-

Total : Rs.2,36,900/-

3. The respondents submit that the above information is being submitted in compliance of the orders of the Hon'ble Tribunal and that the same may be taken on record."

In other words the respondents admit that disease like 'Budd Chiari Syndrome' if treated in India will cost Rs.2,36,900/-. Thus considering the aspect of the case we are of the opinion that the applicant is entitled to get the said amount of Rs.2,36,000/- as calculated by the respondents.

8. In the conspectus and the circumstances of the case, we declare that the applicant is entitled to get the reimbursement to the tune of Rs.2,36,900/- as calculated by the respondents and we direct the respondents to pay the amount forthwith. We also direct the respondents to re-consider the disbursement of the balance amount or portions thereof claimed to have been incurred by the applicant sympathetically for disbursement taking into account the rule position and facts of the case and pass appropriate order

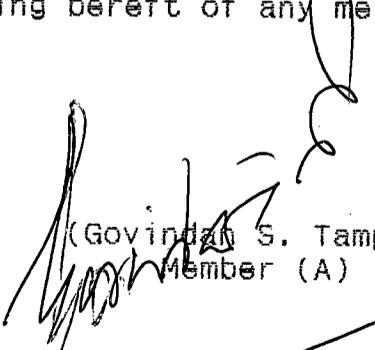
(3)

and communicate the same to the applicant as the respondents deem fit within 4 months on receipt this order. In the circumstances of the case, we dispose of the O.A. as to no interest or cost."

3. Now the respondents have come up in this review petition stating that out of the amount of Rs.2,36,900/-, Rs.9100/- towards diet charges should not have been granted by the Tribunal as Rules 26 and 27 of CS (MA) Rules were not brought to the notice of the Tribunal and, therefore, a review is called for. As it is observed from the above, an amount of Rs.2,36,900/- had been sanctioned by us on the specific submission of the respondents themselves that the expenses for the treatment of 'Budd Chiari Syndrome' in India would come to Rs.2,36,900/-. The Tribunal was justified by granting the amount and in our opinion nothing further therefore, is called for. The attempt of the present review applicants (original respondents) is to re-argue the matter, which, in our opinion, does not fall within the scope of Section 22 (3) (f) of the Administrative Tribunals Act, 1985. Such kinds of exercises are also frowned upon by the Hon'ble Supreme Court in the case of Avtar Singh Sekhon Vs. Union of India and Ors., AIR 1980 SC 2041.

4. Review application, being bereft of any merit, is rejected in circulation.


(K.V. Sachidanandan)
Member (J)


(Govindan S. Tampi)
Member (A)

/ravi/

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.66/2003
in OA No.327/2000

25th 22/8/2003

Heard Smt.S.D.Gulani for Shri G.K.Masand, Counsel for applicant. Shri R.R.Shetty, Counsel for respondents 1 and 3.

The Tribunal by its judgement dated 19/3/2003 declared that the applicant was entitled to get the reimbursement to the tune of Rs.2,36,900/- as calculated by the respondents and directed the respondents to pay the amount forthwith. The Tribunal further directed the respondents to re-consider the disbursement of the balance amount or portions thereof claimed to have been incurred by the applicant sympathetically for disbursement taking into account rule position and facts of the case and pass appropriate order and communicate the same to the applicant as the respondents deem fit within four months of receipt of the order. Shri R.R.Shetty submits that the entire amount has been paid except a sum of Rs.9,100/- which was withheld on the presumption that the applicant was not entitled to diet charges being a Group 'A' Officer. It is submitted that for a correction of the order Review Petition was filed. Shri Shetty fairly stated that Review Petition has since been dismissed and it is expected that the order of the Tribunal in respect of disbursement of rest of the amount may be complied with within a period of four weeks.

We find no justification to initiate Contempt Proceedings in the facts and circumstances of the present case. However, it is provided that the respondents shall pay the rest of the amount

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within a period of four weeks from today. The notice on CP is
discharged subject of course to payment of the balance amount.

A copy of the order may be made available to shri R.R.Shetty for due compliance.

(S.K.AGRAWAL)
MEMBER(A)

(S.R.SINGH)
VICE CHAIRMAN

abp