

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1133 of 1997.

Dated this _____ the 8th day of September, 1999.

Dr. B. R. Bhandari, _____ Applicant.

Shri Suresh Kumar, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri S. S. Karkera for _____ Advocate for the
Shri P. M. Pradhan, _____ respondents.

CORAM: Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? No
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? No

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A)

OS*

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Dr. B. R. Bhandari,
Chief Medical Officer, C.H.S.,
Antop Hill, Sion Koliwada,
Mumbai - 400 037.

... Applicant.

(By Advocate Shri Suresh Kumar).

VERSUS

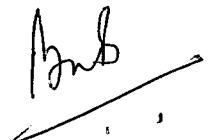
1. Union of India through
The Ministry of Labour,
Shram Shakti Bhawan,
Jaisalmer House,
Mansingh Road,
New Delhi - 110 011.
2. The Director General,
Labour Welfare,
Shram Shakti Bhawan,
Mansingh Road,
New Delhi 110 011.
3. Welfare Commissioner,
Labour Welfare Organisation,
Government of India,
Ministry of Labour,
CGO Complex, Block 'C',
Seminary Hills, Nagpur,
Maharashtra - 440 010.
4. Assistant Welfare Commissioner,
Labour Welfare Organisation,
Panjim, Goa.

... Respondents.

(By Advocate Shri S. S. Karkeraa for
Shri P.M. Pradhan).

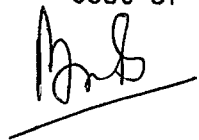
O R D E R

This is an application made by Dr. B. R. Bhandari seeking
the relief as follows :



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- (a) This Hon'ble Court be pleased to direct the respondents to pay the applicant his share out of the amount collected and deposited in the Union Bank of India, Panjim, Branch Goa.
- (b) To hold and declare that the applicant is entitled to 2/3rd share out of the total receipt between July, 1994 till the applicant was transferred on 03.02.1996.
- (c) To hold and declare that the respondents cannot retain more than 1/3rd share of the amount collected by them between July 1992 and 03.02.1996.
- (d) The respondents be directed to pay the applicant amount shown in Exhibit A-6 at page 31.
- (e) The respondent be directed to pay interest at the rate of 18% per annum on the amount.
- (f) This Hon'ble Tribunal may be pleased to grant any other relief to which the applicant may be found entitled and in this respect, may pass any such order or direction or suitable writ as deemed fit.
- (g) Cost of this application may be provided for.



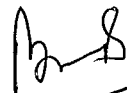
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2. The relief is sought for the period during which the applicant was working as Chief Medical Officer at TISKA in Goa. The applicant states that he worked for 12 to 18 hours a day at that hospital, and, apart from providing the medical services to workers engaged in Iron Ore/Mining Industry, the Hospital catered to workers of certain private factories in that area, as a regular arrangement.

3. The applicant claims that he was providing professional services to these workers, and that the Hospital was charging a fees for these services. Applicant claims that he is entitled to a share of fees charged as per Government rules contained in F.R./S.R.s. He argues that Government permission was implicit in view of the documents at Annexure-4.

4. The respondents have filed a written statement, where they have referred to an earlier O.A. i.e. 752/96 (filed by the same applicant) and disposed of by this Tribunal on 12.12.1996 directing the applicant to make a representation and the respondents to take a decision on it. It is averred that this point was not raised by the applicant, then.

5. The respondents state that they deny that applicant was working 12 to 18 hours a day at the Hospital, and also deny that



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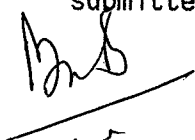
the hospital provided services to the various private firms/factories named. Only for period between March 1994 to February 1996, a sum of Rs. 3,705.00 was received from one company (M/s. M.R.F.) for services provided.

6. It is averred in the reply statement by respondents that no prior permission/approval of Competent Authority for claim of Over-time was secured by the applicant, as required under F.R. 46(A) and F.R. 9(21)(a). Also, there was no mention in the earlier O.A. 752/96 of claim for entitlement to any share as now being claimed. Respondents claim that two medical officers were enough to meet the work load in the Hospital at the given time. The respondents conclude by saying that applicant has not made out any case for the relief sought, and pray that the application may be dismissed.

7. All papers in the case including the rejoinder filed have been seen. The arguments of the Learned Counsel appearing on behalf of applicant and respondents have been heard.

8. The Learned Counsel for the applicant made in brief the following points while arguing the case :

(a) Counsel took the Tribunal over the facts of the case and highlighted the letter dated 16.01.1996 (Annexure-4) and the statement for special allowance or Honorarium submitted by him at page 34.



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- (b) It was contended that in para 16 of the written statement of the respondents, the fact that even a certain amount of money has been admitted to have been received from a private company goes in his favour, and amounts to admission by respondents.
- (c) The Learned Counsel strenuously contended that on the basis of the rules, the applicant was due his share, and denied that it was only one company from whom charges were ^{Rs} ~~being~~ collected for treatment of workers of private factories. He contended that the amounts collected would be very large, and had been credited into the Bank.

9. The Learned Counsel for the respondents made, in gist, the following points :

- (a) No written permission was obtained by the applicant from the Competent Authority and no document has been brought forth in this regard. This is an important pre-condition to the claim of any fees.
- (b) Even if Government earns a certain amount of fees in the manner that applicant points out, its sharing with the employee officer is not automatic when no prior permission is taken.

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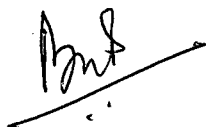
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(c) This point is being raised for the first time and was not raised in O.A. No. 752/96 and hence this would go against the applicant's seeking relief at this stage in a fresh O.A.

(d) The relief sought is at a very late juncture and hence the application was barred by limitation.

10. From the analysis of the papers in the case, the arguments made, it is clear that no specific prior written permission was obtained by the applicant for this kind of work. No application to seek permission for the sharing of the fees, as per rules cited before us, has been even claimed to have been filed. In this regard, the Learned Counsel for the applicant strenuously sought to take support from the letter at page 20 of his O.A. titled Annexure A-4 and contended that even though there was no specific order granting permission to applicant for sharing of fees, the contents of this document (Annexure A-4) were relevant in this context. He said that in this letter the Assistant Welfare Commissioner of the Ministry of Labour at Panaji, Goa, had moved the Health Secretary to the Government of Goa for making urgent posting of two Medical Officers at Central Hospital, Tiska. He contended that it had been stated in this letter, inter-alia, that apart from Iron Ore Mining Workers, this

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Hospital was also catering to the general public, which had resulted in considerable increase in the workload of the two Doctors working there.

11. Reference has also been invited in this letter to the setting up of a High Level Committee for considering the transfer of this Hospital to the Directorate of Health Services, Government of Goa. The Learned Counsel made this point to assert that this showed that the hospital was catering to private population and it was obvious that this system operated with the full approval of the Government and hence no separate approval was necessary. Certain other letters and documents annexed at pages 23 to 34 were also similarly relied upon by the Counsel for the applicant. It is not an acceptable argument that these documents can be considered to be an implicit agreement of the Government to the sharing of fees, if any by the applicant, nor even to any kind of convincing agreement for establishing the fact that the regular system of treatment of private patients was existing. Merely because certain correspondences between two departments have been cited or some figures in a report are being put forth, it would be carrying the argument too far if these were to form the basis of a conclusion to the fact that permission for sharing of fees was implicit. Similarly, none of the letters of which copies are given at pages 25 to 30 can help the applicant in establishing his case. In this context, the

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argument made by the counsel for respondents to the effect that a formal written permission is an important pre-condition to the claim of any kind holds water. The relevant portion of S.R. 10 reads as follows :

"No work or class of work involving the acceptance of fees may be undertaken on behalf of a private person or body or public body, except with the knowledge and sanction, whether general or special, of a competent authority to be prescribed by the Central Government under whom the Medical Officer is serving."

Thus, S.R. 10 clarifies ^{the} position. Now, no case is made out before the Tribunal to say that any specific permission was even taken. To assume that such permission was implicit, or that the system operating in the Hospital automatically granted such a permission, would not be correct. Certainly, the documents relied upon by the applicant do not help him in this regard.

12. One point made by the Counsel for the respondents was that this application was time barred and that all issues had been settled in the earlier O.A. (O.A. No. 752 of 1996). The period for which the benefits are being claimed relates to July, 1994 to 03.02.1996. However, as the applicant's counsel has contended, this application is, infact, made against the decision given on the representation made by applicant subsequent to the order on O.A. No. 752/96. The decision has been communicated to the applicant in March, 1999. ~~The~~ limitation

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does not hit the applicant, since the O.A. was filed in 1997 only. But on merits, there is no convincing case made out in view of the discussions made in earlier paragraphs.

13. In consequence, the application is dismissed with no order as to costs.

B. N. Bahadur

 - 08/09/99
(B. N. BAHADUR)

MEMBER (A)

OS*