

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 699/98

7.2.2002
Date of Decision :

Dr.R.L.Butani _____ Applicant.

Advocate for the
Applicant.

VERSUS

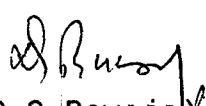
Union of India & Others, _____ Respondents.

Shri V.G.Rege _____ Advocate for the
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

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


(D.S.Baweja)
Member (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.699/98

Dated this the 7th day of February 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Dr.Ramesh Lachiram Butani,
302, Nalini Apartments,
2, Sholapur Road,
Pune-411 001.

...Applicant

V/S.

1. The President of India,
Through Under Secretary
to the Government,
Ministry of Health and Family
Welfare (Dept. of Health),
Nirman Bhawan, New Delhi.
2. The Director,
C.G.H.S.
Directorate of Health Services,
Nirman Bhawan, New Delhi.
3. The Joint Director,
Central Government Health Scheme,
Swasthya Sadan,
Mukund Nagar,
Pune-411 037.

...Respondents

By Advocate Shri V.G.Rege

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

This OA. has been filed seeking the relief of reimbursement of the medical expenses incurred in the treatment of his wife.



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2. The applicant is a pensioner beneficiary of Central Government Health Services (CGHS) Pune. He submitted a medical claim of Rs.14,862/- for the treatment availed for his wife. The claim was rejected initially on the ground that the treatment was taken in a private Hospital at Pune as well as Hospital of his choice at Mumbai without taking prior permission of CGHS, Pune. The applicant filed a petition before the Pune District Consumer Redressal Forum for getting full reimbursement of Rs.14,862/-. In the meantime, the claim was reconsidered and a sum of Rs.3,510/- was sanctioned as per letter dated 29.7.1992 based on the expenditure the Government would have incurred if the same treatment was taken in the recognised Hospital of Pune. However, the applicant did not accept this claim. The matter was decided by the Pune District Consumer Redressal Forum in favour of the Government. The applicant filed an appeal against the decision before Consumer Disputes Redressal Commission, Mumbai which referred the matter back to Pune District Consumer Redressal Forum for reconsideration. The applicant thereafter filed revision petition before the National Consumer Disputes Redressal Commission which decided the matter in favour of the Government. Thereafter, the applicant has appealed to Supreme Court as per his letter dated 27.3.1996. The applicant has filed the present OA. on 6.4.1998 seeking the full payment of the claim of the medical expenses of Rs.14,862/- with interest of 18% per annum since 20.7.1992.

3. The respondents have resisted the OA. through the written statement. At the outset, the respondents have taken the plea that (a) OA. is barred by limitation as first time the claim was rejected in March, 1991. Even after passing of the order dated 9.2.1996 by the National Consumer Disputes Redressal Commission rejecting the claim of the applicant, the applicant has filed the present OA. late on 6.4.1998. (b) The applicant has filed appeal against the order dated 9.2.1996 and therefore he cannot pursue two remedies at the same time. On merits, the respondents submit that claim of the applicant was rejected as per order dated 18.3.1991 as the treatment was taken from a private Hospital by choice. It was within the knowledge of the applicant as per CGHS rules that the beneficiary has to take treatment only at Government/recognised hospitals to enable him to claim reimbursement. Beneficiaries residing within the area falling on the jurisdiction of Joint Director, CGHS, Pune, Respondent No. 3 have to avail the treatment at the hospitals/institutions recognised at Pune. However, such beneficiaries are referred out of Pune only for specialised treatments which are not available in Pune. The applicant's wife has undergone Disc Surgery which is not a specialised treatment and is done routinely in many CGHS approved hospitals at Pune itself. The applicant therefore was not entitled to go to Mumbai for treatment until he had been granted permission. Therefore, the claim of the applicant for reimbursement was not in compliance of the rules and was rejected. However, on an appeal made to the President of India, the matter was reviewed and a claim of Rs 3,510/- was allowed on

the basis that had he taken treatment in Pune, what the Government would have incurred for him in Pune hospitals as per the order dated 29.7.1992, copy of which was also endorsed to the applicant. This fact was also informed to the District Consumer Forum, Pune during the hearing but the applicant declined to accept the sanctioned amount of Rs.3510/-. This payment was however made on 6.1.1999 after the matter was finally decided by the National Consumer Disputes Redressal Commission and getting the earlier sanction revalidated. With these submissions, the respondents plead that the applicant has no case and the OA deserves to be dismissed.

4. The applicant has stated that he had sent the rejoinder reply by post. The same has, however, been neither received by the Tribunal nor by the counsel for the respondents. However, a letter dated 24.10.1999 has been received and is on record which gives the details of the progress of the case and some details of the representations made by him.

5. The applicant is appearing in person. On the date of hearing, the applicant sent written arguments through somebody with a request to decide the matter based on his written arguments. In view of this, the arguments of the counsel for the respondents Shri V.G.Rege were heard.

6. Before I consider the matter on merits, the technical issues raised by the respondents to oppose the OA. will be deliberated upon first. The first objection is that OA. is barred by limitation. From the facts brought out by the respondents to support the plea of limitation, I note (a) first time the claim of reimbursement of medical expenses was rejected in March 1991 which gave a cause of action to the applicant. (b) Thereafter, the claim was partly allowed as per sanction letter dated 29.7.1992, copy of which was endorsed to the applicant. (c) The applicant had been agitating the matter before Consumer Forum as brought out earlier. The ^{National} Consumer Disputes Redressal Commission also finally settled the issue in the revision petition filed by the respondents as per order dated 9.2.1996. From these facts, it is clear that first cause of action arose in March, 1991 and second in 1992. Even granting the benefit of the time taken in pursuing his claim before the Consumer Forum, there is still delay of more than two years after the matter was finally decided by the Consumer Disputes Redressal Commission on 9.2.1996 in filing the present OA. on 6.4.1998. The applicant however has taken the stand that the OA. is within the limitation period as the applicant had been representing for redressal of his grievance and the last being the notices dated 25.7.1997 and 26.8.1997 from his Advocate as brought out in written arguments and referring to his rejoinder reply. He has further averred that after expiry of six months after sending these notices and one year thereafter, the OA. filed in April, 1998 is within the limitation period as laid down in Section 21 (b) of AT Act, 1985.

As indicated earlier, the rejoinder reply has not been received. However, it is noted that the details of the representations made ^{been} have given with his letter dated 24.10.1999 as referred to above in para 4. From these details, I note that applicant has been mainly representing for payment of Rs.3510/-, i.e. part claim admitted by the respondents. Once the respondents had rejected his claim for full reimbursement and the petition was also ^{National} dismissed by the Consumer Disputes Redressal Commission on 9.2.1996, then the applicant should have promptly agitated the matter before the tribunal if he was still aggrieved. The applicant had been only representing for payment of the admitted claim which implies that the applicant had accepted this position. It is not clear as to why the applicant agitated the matter again after two years. Limitation is to be reckoned from the date of cause of action and merely sending repeated representations does not extend the limitation period. In the light of these facts, I am inclined to endorse the contention of the respondents that the present OA. is barred by limitation.

7. The second objection raised by the respondents is that the applicant has filed an appeal against the order of Consumer Disputes Redressal Commission before Hon'ble Supreme Court as will be clear from the document brought on the record at R-5. Therefore the applicant cannot seek two legal remedies at the same time for the same cause of action. The applicant however has contended that no appeal lies against the order of the Commission and his SLP sent through the letter dated 27.3.1996 is

infractuous. When this issue was raised by the counsel for respondents, the applicant was asked to clarify whether he had written to Hon'ble Supreme Court for the withdrawal of SLP. The applicant has produced a copy of his letter dated 25.10.1999 where by he has addressed the Apex Court indicating that he withdraws his appeal sent by registered post by letter dated 27.3.1996. In view of this fact situation, the objection of the respondents does not survive.

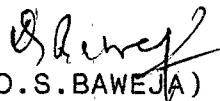
8. Now coming on merits, after careful consideration of the rival contentions and the documents brought on the record, I am of the considered opinion that applicant has not made out any case. The respondents have submitted that CGHS beneficiary residing within the area falling on the jurisdiction of Joint Director, CGHS Pune (Respondent No. 3) ~~has~~ to avail of the treatment at the hospitals/institutions recognised at Pune. It is further stated that such beneficiary is referred out of Pune only for specialised treatments which are not available in Pune. In the case of the surgery undergone by the wife of the applicant for which claim of reimbursement of Rs.14,862/- has been made, the respondents aver that the same is not a specialised treatment and is being routinely done in many recognised hospitals at Pune itself. In view of these facts, it is the stand of the respondents that applicant's wife was not entitled for treatment at Mumbai until and unless his case was referred to and since this has not been done, the applicant has taken treatment at

Mumbai on his own choice. The applicant has on the other hand contended that the Surgery which the wife of the applicant has undergone was a special nature and was not being done at Pune at the relevant time and the case was strongly recommended but the respondents are intentionally withholding the relevant documents. He has further stated that Bombay Hospital has an arrangement with CGHS to treat patients covered under CGHS Scheme. I am unable to find substance in the arguments of the applicant. The respondents have brought on record references from the three hospitals at Pune which have confirmed that the necessary facilities for the surgery undergone by the wife of the applicant are available and such operations are being regularly done. I am therefore not able to appreciate as to how the applicant has arrived at the conclusion that surgery undergone by his wife is not being performed at Pune. This is the decision to be taken by the concerned medical authority and not by the beneficiary himself. Further even if the Bombay Hospital is approved for treatment under CGHS Scheme, the treatment can be taken only on reference being made and not his own by the beneficiary. In the present case, it is clear that no such reference was made by the authorised medical authority. The applicant has chosen for treatment at Mumbai on his own and in such a case, the reimbursement for the medical expenses has to be governed as per the extant rules. I, therefore, find merit in the stand of the respondents that in the absence of reference to Bombay Hospital, the reimbursement has to be restricted to what would have been

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the expenditure, if the surgery was undergone in one of the recognised hospitals at Pune. In this view of the matter, I am unable to find any merit in the claim of the applicant.

9. In the result of the above, the OA. is not only barred by limitation but is also devoid of merits. The same is accordingly dismissed. No order as to costs.


(D.S. BAWEJA)

MEMBER (A)

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Review Petition No.10/2000

in

Original Application No.699/98

Dated this 10/2 the 19/4 Day of April, 2000.

Coram : Hon'ble Shri D.S. Baweja, Member (A)

Dr.R.L. Butani

... Applicant.

Vs.

Union of India & 2 Others

... Respondents.

Order on Review Petition on Circulation
(Per : Shri D.S. Baweja, Member (A))

The Review Application has been filed seeking the review of the order dated 7.2.2000 in O.A. 699/98.

2. Hon'ble Supreme Court in a recent Judgement dated 2.11.1999 in the case of Ajit Kumar Rath Vs. State of Orissa & Others, 2000 SCC (L&S) 192, has clarified the scope of power of review available to the Tribunal under Section 22(3)(f). Relevant paras 30 and 31 are reproduced below:-

"30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error

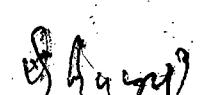
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of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment".

3. In the light of the parameters laid down by the Hon'ble Supreme Court, I have carefully gone through the grounds taken in the Review Application to make out a case for review of the order dated 7.2.2000. I find that the applicant has not pointed out any error apparent on the record. No new facts or material has been also cited. In fact I find that relying on the material already brought on the record in the OA and gone into in the order, the applicant has attempted to make out a case that the order dated 7.2.2000 is erroneous on merits. This is not the scope of power of review as laid down by the Apex Court. Review Application cannot be an appeal in disguise and to seek rehearing of the matter on merits again and record fresh findings. If the applicant is aggrieved by the order on merits, then the remedy lies elsewhere and not through Review Application.

4. In the result of the above, I do not find any merit in the Review Application and the same is dismissed accordingly.


(D.S. Bawaia)
Member (A).

H.