IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH : HYDERABAD.

O.A.No.1214/99 DATE OF ORDER :29 -6-2000.

BETWEEN :

O. Suryanarayana ... Applicant

A N D

1. The Directeor, Defence Electronic Research Laboratory, Chandrayanagutta, Hyderabad-5.

2. The Director General, Research and Development, Directorate of Personnel (RD Personnel) Ministry of Defence, B. Wing, Sena Bhavan, New Delhi-011.

3. The Secretary to Government of India, Ministry of Health and Family Welfare Department of Health, Nirman Bhavan, New Delhi. ... Respondents.

Counsel for Applicant : Mr. K. Venkateswara Rao

Counsel for Respondents : Mr. B.N.Sharma,Sr.CGSC

CORAM :

THE HONOURABLE MR. JUSTICE D. H. NASIR, VICE-CHAIRMAN

Contd... 2.

O R D E R.

Justice D.H.Nasir, VC :

1. By an order dated 14.10.1992 the Department of Health, Ministry of Health and Family Welfare, Government of India, directed that the question of fixing a rationale amount for payment towards the cost of Heart Pacemaker to CGHS beneficiaries had ben under consideration of the Government for quite some time and that it was decided that the maximum amount to be reimbursed towards the purchase of Pacemaker would be limited to a maximum of Rs.26,000/- or the cost of Pacemaker , whichever is less and the balance cost, if any, would be borne by the beneficiaries themselves. In the said order dated 14.10.1992 in paragraph-2 it is mentioned that the cost of Pacemaker of serving Central Government employees and members of their family covered under CGHS would be paid by their respective Departments directly to supplying agent from Service Head. As regards pensioners of Central Government , Ex-members of Parliament and Freedom Fighters covered under the Scheme, the charges would be paid direct to the supplying agent where the CGHS is in operation.

2. The applicant has challenged the legality of this order dated 14.10.1992 as well as the letter dated 2.8.1999 issued by the Director, DLRL, Chandrayanagutta, Hyderabad.

3. According to the applicant, his mother aged 70 years had a stroke Adm's syndrome and complete heart block on 11.11.1995 and she was admitted to Sagarlal Memorial Hospital, Hyderabad through CGHS, Secunderabad for treatment. ~~He~~ she was discharged from the said hospital on 13.11.1995 with a direction to refer her case to MIMS/Medwin/CGH for better treatment. The applicant's mother was therefore, admitted to Medwin hospital on 13.11.1995 through CGHS, Secunderabad. The hospital authorities gave an estimate of expenditure of Rs.80,000/- including a sum of Rs.45,000/- towards the cost of permanent Pacemaker. In pursuance

of the said estimation, the applicant was sanctioned an amount of Rs.64,000/- being 80% of the total estimated expenditure towards medical advance for treatment of the applicant's dependent mother. Accordingly she received necessary treatment in Medwin Hospital from 13.11.1995 to 1.12.1995 and permanent Pacemaker was implanted. At the time of discharge the Hospital authorities issued a Discharge Bill for Rs.54,454/- including a sum of Rs.45,000/- as the cost of Pacemaker. The remaining amount of Rs.10,546/- was returned to the Hospital authorities by way of a cheque to DLRL. Further according to the applicant, when he submitted the medical bill for Rs.43,454/- for reimbursement, he was informed that an amount of Rs.26,000/- only was admissible towards the cost of permanent Pacemaker and that the balance of Rs.19000/- had to be recovered from the pay of the beneficiary, namely, the applicant which, according to the applicant, was illegal and arbitrary. Further according to the applicant, when Medwin Hospital gave an estimation of Rs.80,000/- for treatment of the applicant's mother and an amount of Rs.64,000/- being the 80% of the total estimated cost, the said amount was sanctioned to him towards the medicdal advance. But at no point of time, the applicant was informed that the amount of permanent Pacemaker will be limited to Rs.26,000/- irrespective of its actual cost. According to the applicant, he was informed at the time of sanctioning the advance that the maximum amount to be reimbursed towards the cost of Pacemaker would be limited to Rs.26,000/- he would have thought of alternative system of treatment, namely, Ayurveda, Unani or Homoeopathic so that the expenses would ~~have~~ not have exceeded the applicant's permissible financial limits. The learned counsel for the applicant Mr. K.Venkateswara Rao submitted that there was no rationale or justification in restricting the cost of Pacemaker to Rs.26,000/-. Its cost was Rs.45,000/- as on the date of use. The counsel Mr. Venkateswara Rao also submitted that the cost of Rs.26,000/- was fixed on

14.9.1992 which was more than 3½ years back from the actual date of implementation. Further according to the counsel, the applicant reliably understood that the Government had further increased the cost of Pacemaker from Rs.55,000/- to Rs.75,000/- recently and therefore, it was obvious that there was fluctuation in the rate of Pacemaker in every 2 years from the year 1996.

4. In the reply statement the respondents point out that the applicant filed O.A.No.1197/98 before this Tribunal on the same issues and the Tribunal by its order dated 19.4.1999 gave certain directions. Therefore, according to the respondents, the present O.A. reagitating the same question is not maintainable. After raising this contention of maintainability of the O.A., the respondents submit that the claim for additional amount made by the applicant could not be reimbursed over and above the admissible rate which was Rs.26,000/-, which amount was undisputedly being reimbursed to the applicant. This was done, according to the respondents, in compliance of Para-14(i) to (iii) of the order dated 19.4.1999 in O.A.No.197/98. Further according to the respondents, as the estimate submitted by the applicant was in the nature of a lump sum amount without any break up that a sum of Rs.64,000/- was allowed being 80 per cent of the estimated cost as per rules in force because of the critical condition of the patient. It is further pointed out by the respondents that at the time of sanction of the medical advance an undertaking dated 16.11.1995 (Annexure-R/1) was signed by the applicant stating that any extra expenditure charged by the hospital authorities over and above the CGHS approved rates would be paid by him irrespective of the advance granted by the respondent No.1.

5. It is pertinent to note that by letter dated 29.7.1997 Senior Administrative Officer-II addressed a letter to the Director General, Research and Development, Directorate of

Personnel, Ministry of Defence, New Delhi recommending in the penultimate paragraph that the Ministry of Health and Family Welfare had revised the rates of permanent Pacemaker with effect from Ist July,1996 to Rs.55,000/- vide letter dated Ist July,1997. Thereupon the applicant again made a representation dated 11.12.1996 to the Additional Director, C.G.H.S., Hyderabad with a request to reconsider his case for sanction of the additional amount of Rs.19000/-. The representation of the applicant was forwarded to the Additional Director, CGHS, Hyderabad dated 16.1.1997 duly recommending the case of the individual for reimbursement of the additional amount of Rs.45000/- as charged by the Medwin hospital in view of the Government letter dated Ist July, 1996 to avoid financial hardship to the individual. However the request of the applicant was again turned down by the Additional Director, CGHS, Hyderabad vide letter dated 30th April,1997. Being aggrieved by the same, the applicant made a further representation which was forwarded to the Research and Development Directorate for consideration.

6. It is pertinent to note that in the O.A.No.1197/98 filed by the present applicant, which was disposed of on 19.4.1999 it is stated in paragraph-13 of the judgment that the applicant as stated earlier, had agreed to pay the excess amount and therefore he cannot protest against the paying of excess amount. However, it was further recorded in the said para-13 that as his case was still pending with the respondent No.3 it was preferable that the respondent No.3 should dispose of his case expeditiously and inform the decision taken to the concerned authorities in Hyderabad.

7. It is clear from what is stated above that from the legal validity point of view it cannot be held that the respondents were not justified in taking the stand as already narrated above. The learned counsel for the applicant, however, pointed out from the Office Memorandum dated Ist July,1996

produced during course of arguments (which is now directed to be taken on record) as stated in paragraph 8 of the said circular dated 1.7.1996 that "the rates will remain in force for a period of two years effective from the date of issue of this Office Memorandum and no request for enhancement/revision would be accepted during this period". In the enclosure to the said letter on page-3 against item No.3.30 the cost of Permanent Pacemaker which could be allowed is shown as Rs.55,000/-. However, the treatment taken by the mother of the applicant was during November, 1995 and that she was discharged from the hospital on 13.11.1995. The directions given in the Office Memorandum dated Ist July,1996, therefore, cannot be allowed to the applicant as treatment was taken 6/7 months before the new rates were sanctioned by the authority.

8. The learned Standing Counsel for the respondents drew my attention to the decision of this Tribunal in O.A.No.1032/99 dated 4.2.2000 which took into considesration in paragraph-17 the observations made by the Supreme Court in para-24 of the judgment referred to the Tribunal which was in the following terms :

> " No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale of rates is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."

9. It was considered in OA 1032/99 that Mumbai Bench of this Tribunal in OA No.362/99 (KR Nair Vs. Union of India and another) followed the decision of the Supreme Court and held that the restricting the medical expenses according to the rates prescribed by the All India Institute of Medical Sciences was not violative of Article 21 of the Constitution of India.

10. It is further considered in OA No.1032/99 in para-20 that the applicant had given an undertaking to the Department that he would bear the extra charges which may be charged by the hospital over and above the rates prescribed by the CGHS authorities and in para-21 it is recored that the respondent authorities were not bound to reimburse the entire medical expenditure incurred by the applicant and that the applicant was entitled to claim reimbursement only in accordance with the rules prescribed by the CGHS authorities. When a hospital is recognised by the CGHS, normally the hospital has to charge as per the rates prescribed by the CGHS authorities and in certain cases it might happen that the hospital charges over and above the rates prescribed by the CGHS authorities and that in such an event the excess amount charged by the hospital had to be borne by the Government employee.

11. The case before us in this O.A. is not different from the case which was considered by this Bench of the Tribunal in O.A.No.1032/99 and there is no reason why the same view should not be taken in the case before us. The only point which engaged our ~~mind~~ attention is that the cost of Permanent Pacemaker implantation was increased to Rs.55,000/- with effect from Ist July, 1996 which 7 months earlier was only Rs.26,000/-. However, since the relevant date in the case before us is 11.11.1995 it would not be in fitness of things to allow the enhanced rate which was not in existence on 11.11.1995. The submissions made by the learned counsel Mr. K. Venkateswara Rao for the applicant cannot be accepted firstly in view of the fact that there was a categorical agreement that the applicant would bear and pay any amount in excess of the estimate which had been approved by the respondents and secondly because, the enhancement came 7 months after the applicant's mother was treated and therefore, the benefit of enhanced rate cannot be given to the applicant.

12. Hence it is to be held that the applicant is not

entitled to be awarded the relief which he claimed in this O.A. Hence the O.A. is dismissed. No costs.

(D.H. NASIR)
VICE-CHAIRMAN.

Dated the 29th day of June, 2000.

DJ/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

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THE HON'BLE MR.JUSTICE D.H.NASIR
VICE-CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR.B.S.JAI PARAMESHWAR
MEMBER (JUDL.)

DATE OF ORDER 29/6/00

MA/RA/CP.NO.
IN
OA. NO. 1214/99

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

C.P.CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

(8 copies)

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Central Administrative Tribunal
प्रेषण / DESPATCH
- 5 JUL 2000
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