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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A. No.102/95

Date of order: 3.3.1998

S.M.Handa

: Applicant

Vs.

Union of India through the Secretary Defence, Ministry of Defence, New Delhi.

2. The Chief Engineer, Jaipur Zone (MES), Power House Road, Bani Park, Jaipur - 302 006.

...Respondents.

Mr.Manish Bhandari - Counsel for applicant

Mr.V.S.Gurjar - Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri S.M.Handa has prayed that Annx.A1 dated 19.12.94 and all other documents regarding demand of the amount of Rs.66,637/- be declared as illegal and be quashed. He has further prayed that circular of the Govt which prescribes the rates of the medical treatment and the details which have been given in the order Annx.All be declared as illegal and unconstitutional. There is yet another prayer by the applicant that the action of the respondents in obtaining an undertaking from the applicant under duress may also be declared as illegal and without jurisdiction. And finally he has prayed that the applicant may be given all benefits of retirement alongwith 18% interest.

2. The facts of the case as stated by the applicant are that while functioning on the post of Surveyor of Works in the MES he suffered a heart ailment in April 1993 and was under treatment at the S.M.S. Hospital, Jaipur. The Doctor concerned at the S.M.S Hospital, Jaipur, advised the applicant to undergo heart surgery (Annx.A2 dated 14.12.93). On receipt of the advice of the Doctor, the applicant made a request to the CGHS, Jaipur to refer his case to the Escort Heart Institute and Research Centre, Delhi, for heart surgery. Vide Annx.A3 dated 17.12.93, the CGHS, Jaipur referred the case of the applicant to the Escort Heart Institute & Research Centre, Delhi. On receipt of the order dated 17.12.93 referring the applicant's case to the Escort Heart Institute, he sent his case to the said Institute to get the package deal. The Escort Hospital vide letter dated 29.12.93 (Annx.A4) sent the package deal stating that an amount of Rs.2,10,300 would be payable on account of the heart surgery of the applicant. The applicant thereafter applied to the Chief Engineer, MES, Jaipur Zone,

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Jaipur for sanction of the aforesaid amount. An amount of 80% of the amount of Rs.2,10,300 was granted as advance by the Chief Engineer, Headquarters Southern Command Engineers Branch, Pune, vide Annx.A8 dated 6.1.94. The 80% amount which worked out to Rs.1,68,240 was directly deposited by the Engineers Branch with the Escort Hospital, Delhi. However, over and above the amount deposited by the competent authority the applicant was also asked to deposit an amount of Rs.15,000/- with the Escort Hospital. After successful heart surgery of the applicant, at the time of his discharge, the final bill given by the Hospital was Rs.1,89,950 and as such the applicant was again asked to deposit a sum of 6710/- with the Hospital. Thus in all the applicant was required to deposit from his own pocket an amount of Rs.21,710 with the Hospital which was over and above the amount of Rs.1,68,240 deposited directly by the competent authority with the Hospital.

3. Further according to the applicant, thereafter he submitted a bill for reimbursement of Rs.22,162.65 after furnishing all other details. When the applicant furnished the bill for reimbursement as aforesaid, the respondents instead of reimbursing the amount, demanded a sum of Rs.66,637 from the applicant vide communication Annx.All dated 13.5.94. The applicant represented against the said demand but the representation was turned down. A further representation to the CDA Southern Command, Pune, also evoked no favourable response. The applicant had applied for voluntary retirement in May 1994 but in July 94 he was asked to give an undertaking to the effect that the amount of Rs.66,637 may be recovered from his pension/gratuity/leave encashment payable on account of his voluntary retirement, if his claim regarding reimbursement of the said amount is not established. This undertaking was obtained from him under duress. The respondents rather than reimbursing the amount of Rs.21,710 spent by the applicant from his pocket have finally demanded a sum of Rs.66,637 from the applicant vide Annx.A1 dated 19.12.94. The applicant's case is that the demand of a sum of Rs.66,637 is absolutely illegal, the applicant was never made aware about the circular of the Government under which the full reimbursement of the expenditure incurred could not be made to him and when the treatment was taken at a recognised Hospital like Escort Hospital where MES employees can undergo medical treatment, there was no reason not to sanction the full amount of medical expenditure incurred while taking treatment at the Hospital.

4. The respondents have filed a detailed reply to the O.A, the sum and substance of which is that full amount of the bill for treatment at the Escort Hospital was not reimbursed on account of the instructions contained and the restrictions on the entitlement

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prescribed in the Govt of India, Ministry of Health and Family Welfare O.M dated 11.3.93 (Annx.F2). They have, therefore, denied that non-reimbursement/recovery of the amount of Rs.66,637 is perfectly legal. They have denied the applicant's averment that any undertaking was obtained from him under duress.

5. The applicant has also filed a rejoinder to the reply of the respondents which is on record.

6. During his oral arguments, the learned counsel for the applicant drew our attention to the judgment of the Hon'ble Supreme Court in the case of State of Punjab & Ors Vs. Mohindra Singh Chawala & Ors, 1997 SCC (L&S) 294, according to which full amount of expenditure incurred in connection with treatment at a recognized Hospital to which the case of the patient (Govt servant) is referred by the competent authority is reimbursable. Therefore, notwithstanding any instructions issued by the Govt of India placing restriction on reimbursement of full amount of the expenditure incurred in such Hospital, the full expenditure is reimbursable. The learned counsel for the respondents contended on the other hand that there are clear cut Govt of India's instruction regarding entitlement with regard to the expenditure incurred on medical treatment and there is nothing unreasonable about these instructions. He also sought to distinguish the judgments of Hon'ble Supreme Court on facts.

7. We have heard the learned counsel for the parties and have perused the material on record.

8. The factual position that has emerged is that the total bill for treatment from the Escort Hospital was for Rs.1,89,950. The Govt had already deposited an amount of Rs.1,68,240 in advance for the treatment of the applicant and the applicant had paid out of his own pocket an amount of Rs.21,710, thus making a total of Rs.1,89,950. While settling the retirement dues of the applicant, the authorities deducted an amount of Rs.66,637 from the gratuity payable to the applicant because according to them the amount reimbursable to the applicant was only Rs.1,01,602.65. The applicant is aggrieved with the recovery of the said amount from his pensionary benefits.

9. In the case of Mohinder Singh Chawala, relied upon by the learned counsel for the applicant, the cases of two employees of the Punjab Govt were dealt with. The first case was that of Mohinder Singh Chawala who had a heart ailment which required replacement of two valves. Facility for this kind of treatment was not available in the State Hospitals and permission was therefore given by the Director with the approval of the Medical Board to get the treatment outside the State. Accordingly Shri Mohinder Singh Chawala had treatment at the All India Institute of Medical Science at New Delhi. After

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treatment the applicant submitted bill for reimbursement of Rs.1,29,000 which was the actual expenditure incurred including room rent paid to the Hospital. The bill for the room rent was rejected by the authorities. The High Court to whom the Govt servant approached directed the payment of the room rent as well. The State filed an appeal before the Hon'ble Supreme Court where it took the stand that as per a policy decision taken by the State Govt by a resolution, reimbursement of the expenses by way of diet, stay of attendant and the stay of the patient in the Hotel/Hospital could not be allowed. The Hon'ble Supreme Court rejected this plea of the appellant State. The Hon'ble Supreme Court held that when specialized treatment was not available in the State Hospitals and permission with the approval of the Medical Board was granted to have treatment in the approved Hospital and the case was referred to the All India Institute of Medical Science where he was admitted for treatment, necessarily the expenses incurred towards room rent for stay in the Hospital as an inpatient were an integral part of the expenses incurred for the said treatment. The Hon'ble Supreme Court further held that the right to health is integral to the right to life. If the Govt servant has suffered an ailment which required treatment at a specialised approved Hospital and on reference whereat the Govt servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the State Govt. The Hon'ble Supreme Court accordingly upheld the decision of the High Court. The case of the other Govt servants dealt within the said judgment was also very much similar, wherein that Govt servant (Waryam Singh) had taken treatment at the Escort Heart Institute after the Medical Board of the Punjab Govt had granted ex-post facto sanction for treatment there. While granting reimbursement for expenses incurred for the treatment, the rent for the room in the Hospital for the period of stay was not reimbursed. The Govt's stand was that reimbursement for room rent could be allowed only at the rates charged by the All India Institute of Medical Science. Accordingly, a sum of Rs.20,000/- paid as room rent was deducted while sanctioning the reimbursement of the expenditure incurred by Shri Waryam Singh. When the matter went to the Hon'ble Supreme Court, it held that Escort Heart Institute, New Delhi, is one of the Hospitals/Institutions approved by the Punjab Government for open heart surgery. Consequently when the patient was admitted and had taken the treatment in the said Hospital and had incurred expenditure towards room charges, inevitably the consequential rent paid for the room during his stay there was an integral part of the expenditure incurred for the treatment.

9. In the light of the above judgment of the Hon'ble Supreme Court,

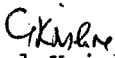
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we are of the view that whatever expenditure has been incurred by the applicant while taking treatment at the Escort Heart Institute is reimbursable to him, when the expenditure is as per the bill presented by the Hospital itself. It has already come out that the case of the applicant was referred to the Escort Heart Institute at the instance of the CGHS and the Escort Heart Institute is an institution approved by the Govt for the type of treatment taken by the applicant. In these circumstances any Govt instructions placing any restrictions on the amount reimbursable out of the bill presented by the Hospital cannot be considered to be ^{operative} in view of the judgment of the Hon'ble Supreme Court referred to above. The deduction of the amount of Rs.66,637/- from the gratuity payable to the applicant at the time of his voluntary retirement, on account of the alleged excess amount of expenditure not reimbursable in view of the instructions of the Government dated 11.3.93, was unjustified. The applicant has asked for quashing of the order by which the said amount was held to be not payable to him or was held to be deductible from the retirement benefits payable to him. In the circumstances, we hold that the action of the authorities in recovering the aforesaid amount of Rs.66,637/- was unjustified. The respondents are directed to refund the aforesaid amount of Rs.66,637/- to the applicant within a period of 3 months from the date of the receipt of a copy of this order. The applicant is not entitled to any other reliefs. The O.A is disposed of accordingly. No order as to costs.


(O.P.Sharma)

Administrative Member.


(Gopal Krishna)
Vice Chairman.