CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR.

Date of decision : March 29,2005

CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN (JUDICIAL).

(I) O.A.No.348/2003

(II) O.A.No.384/2003

(1) Smt. Neetu Singh wife of Late Shri Kulwant Singh, aged about 42 years

(2) Miss Sonia Singh, daughter of Late Shri Kulwant Singh, aged about 24 years,

(3) Miss Monia Singh, Daughter of Late Shri Kulwant Singh, aged about 21 years,

All are resident of 4 (ga), 29, Housing Board, Shastri Nagar, Jaipur.

.... Applicants

Versus

1. Union of India through the Secretary, Ministry of Mines (Department of Mines), Shastri Bhawan, New Delhi-1.

2. Director General Geological Survey of India, 27, Jawaharlal Nehru Road, Kolkata-16.

3. Deputy Director General, Geological Survey of India, Western Region, 15-16, Jahalana Dungri, Jaipur-17.

4. The Additional Director, Central Government Health Scheme, Government of India, Station Road, Jaipur.

.... Respondents

Present : Mr.Hawa Singh, Advocate for the applicant.
Mr.Tej Prakash Sharma for Respondent-s No.1 to 3.
Mr.Kunal Rawat for Respondent No.4.

ORDER

KULDIP SINGH,VC

The deceased Late Shri Kulwant Singh was working as Junior Technical Assistant under the respondents and posted at Jaipur. He was subscriber of Central Government Health Scheme. The case set up by applicants in O.A. No.348/2003 is that deceased suffered with Coronary Artery Disease in 1997 and took treatment at Batra Hospital & Medical Research Centre, New Delhi and incurred a sum of Rs.1,33,500/- on his treatment. He again suffered

with unstable Angina Coronary Artery disease and hypertension and remained under treatment from 6.7.2000 to 12.7.2000 at Escorts Heart Institute & Research Centre and incurred a sum of Rs.1,76,480/- on his treatment. His case was duly recommended by the doctors of CGHS to undergo treatment at Batra Hospital. He submitted medical bills to the respondents for reimbursement. However, the respondents did not make full reimbursement of the amounts claimed by applicant. They paid a sum of Rs.1,23,500/- against the bill for Rs.1,33,500/- and a sum of Rs.1,52,845/- against the Bill of Rs.1,76,480/-. The applicant submitted a detailed representation for full reimbursement of the medical expenses on 28.8.2002 (Annexure A-5) which was rejected by the respondents by order dated 19.9.2002 (Annexure A-1). Further representation submitted by the applicant on 24.1.2003 (Annexure A-6) failed to evoke any response from the respondents.

In O.A.No.384/2003 the applicants submit that deceased suffered from CABG Left Corotid Ender Terectomy and took treatment from Escorts Hospital w.e.f. 9.11.2001 to 29.11.2001 on which he incurred a sum of Rs.2,45,000/- . The respondents made reimbursement to the tune of Rs.1,16,657/- only . The applicant submitted a representation to the respondents for full reimbursement which was rejected by letter dated 19.8.2002 (Annexure A-1). He submitted a further representation on 24.1.2003 to which no reply was given by the respondents.

Thus, the present two O.As. have been filed with a prayer to direct the respondents to make the full payment of the medical reimbursement along with interest.

In the ground to challenge the impugned action of the respondents , it has been pleaded that under rules 3 and 6 of the Central Services (Medical Attendance) Rules, 1944, a Government Servant is entitled to full

reimbursement and the respondents cannot restrict such payment in the garb of package rate etc. This rule position has been accepted by a Division Bench of Central Administrative Tribunal, Chandigarh Bench, in the case of R.P. Mehta Vs. Union of India & Others, 2002 (1) ATJ, page 264.

Respondents are contesting the Original Application. In their reply, it is stated that the amount of reimbursement of treatment has been sanction to the applicant as per the Government of India, Ministry of Health and Family Welfare, Office Memo No.14025/43/94-MS dated 22.4.1998 (Annexure R-1). It is also stated that the O.As are barred by time and as such these are liable to be dismissed on the ground of limitation.

I have heard Mr. Hawa Singh, learned counsel for the applicant; Mr. Tej Prakash Sharma, learned counsel for the Respondents No.1 to 3 and Mr. Kunal Rawat, learned counsel for the respondent no.4 and perused the material on the file.

The issue of payment of medical expenses on package rate basis has been engaging attention of the Courts and Tribunals from time to time. The issue came to be considered by the Hon'ble Supreme Court of India in the case of State of Punjab & Others Vs. Ram Lubhaya Bagga & Others, (1998) 4 SCC, Page 117. In that case the question to be answered by the Apex Court was as to what is the entitlement towards medical expenses of the Punjab Government Employees and pensioners as per the relevant rules and the government policy. After considering all the relevant aspects, the Hon'ble Supreme Court observed in para 25 of its judgment that it is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on, howsoever, sound and good reasoning, except where it is arbitrary or violative of any constitutional,

statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constrains based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belong to the executive. Ultimately, it was held that no State or country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. The principle of fixation of rate and scale under the new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution. Thus, the Apex Court held that the Government is well within its powers to fix the package rates according to its resources and such policy is not violative of Articles 21 or 47 of the Constitution.

The issue of entitlement of Central Government Employees for full reimbursement of medical expenses came to be considered by the High Court of Punjab & Haryana in the case of Madhu Sharma Vs. The Principal, Kendriya Vidyalaya, Sector 31, Chandigarh, 1998(4) SCT, page 31. The Court held that limitations on reimbursement cannot be made to such a degree that it may become wholly unrealistic. It was held that since the claim of the petitioner in that case was bonafide, she was entitled to full reimbursement under the rules.

Learned counsel for the applicant placed heavy reliance on a decision of Chandigarh Bench of Central Administrative Tribunal in the case of R.P. Mehta Vs. Union of India & Others (supra). He submits that the case of the

applicant is fully covered by the decision of R.P. Mehta (supra) and as such he is entitled to full reimbursement. On going through the decision in the case of R.P. Mehta (supra), I find that the Tribunal after reproducing the rules 3 and 6 of the Central Services (Medical Attendance) Rules, 1944, has held that unless genuineness of the claim is doubted, a Government employee is entitled to full reimbursement of the claims subject to certain restrictions provided in the rules itself. It was specifically held that considering the definition of 'treatment' read with provisions of rule 6, all the expenses incurred by government employees which amounts spent on medical and surgical facilities available at the Government Hospital to which the Government servant is related shall have to be reimbursed in full as such employee is entitled to free of charge medical attendance and treatment. The Bench also considered that the views expressed, if any, earlier by that Bench to the contrary shall have to be treated to be per-incuriam as provisions of the rules were specifically never taken into consideration and only general law particularly based on some judgments given based on different set of rules, particularly, Punjab Civil Services (medical Attendance) Rules, 1944, were considered. As to whether the package rates fixed by the Instructions dated 22.4.1998 is defore the statutory rules of 1944 was considered by the Tribunal in detail. It was observed that if the order dated 22.4.1998 fails under the provisions of rule 3 and 6 and 6 read with definition of medical attendance and medical treatment shall have to be ignored and total costs incurred by the government employee shall have to be reimbursed. It was declared that application of OM dated 22.4.1998 to that extent it conforms to the provisions of rule 3 and 6 can be maintained but to the extent it contravenes provisions of the rules, that part shall have to be ignored. Ultimately, the provisions of Government of India decision No.15(2)(ii) and (iv) modified by the OM dated 22.4.1998 along with such orders or instructions so far as these restricted the reimbursement of expenditure incurred on medical treatment / medical attendance were declared to e violative of provisions of Rules 3 and 6 and the applicant therein was held

entitled to full expenditure incurred by him on medical treatment. The applicant therein was held entitled to interest also @12% per annum. While distinguishing judgment in the case of Ram Lubhaya Bagga (supra), it was observed that that judgment dealt with Punjab Medical Attendance Rules applicable to employees of State of Punjab or persons covered under those rules and the Hon'ble Apex Court considering provisions of those set of rules had upheld the policy decision of the State of Punjab on limiting / restricting the expenditure of Government's liability for reimbursement. Thus the decision in the case of R.P. Mehta (supra) recognizes two things. (1) That the Central Government employees governed under the CS (MA) Rules, 1944, are entitled to full reimbursement of medical expenses incurred by them, under the statutory rules itself. (2) There is certain restriction on full reimbursement under rule 8 of the Rules (ibid) but this restriction is only to a limited extend and cannot be stretched so as to fix a package rate as was done by the respondents by issuing OM dated 22.4.1998. Thus, the OM dated 22.4.1998 and other instructions issued by the Government restricting the amount of full reimbursement were quashed by this Tribunal.

At this stage, learned counsel for the respondents submitted that the judgment in the case of R.P. Mehta (supra) has been challenged by the Government in the High Court of Punjab & Haryana in C.W.P.No.11918-CAT-02 (Union of India & Others Vs. R.P. Mehta). However, it has been submitted by the learned counsel for the applicant that even though the judgment in the case of R.P. Mehta (supra) is under challenge, but the Hon'ble High Court has been pleased to admit the C.W.P. only qua the grant of interest to the employee therein as the Tribunal had also allowed @ 12% on the amount of full reimbursement. In a way, the Hon'ble High Court has already upheld the decision of this Tribunal in the case of R.P. Mehta (supra) and as such he is entitled to benefit of this decision.

At this stage, learned counsel appearing for the respondent no.4 submitted that the view taken by Chandigarh Bench of this Tribunal in M.C.Mehta's case has been over – ruled by the Hon'ble High Court of Punjab & Haryana in the case titled RCP Karan Vs. The Union of India & Others, reported as 2003(3) SCT, Page 520. In that case,the Hon'ble High Court has considered the Central Services (Medical Attendance) Rules, 1944 and the policy of the Government framed to restrict the medical reimbursement claim on package rate basis. Placing reliance on the decision of the Hon'ble Supreme Court in the case of Ram Lubhaya Bagga (supra), the Hon'ble High Court has held that policy of Government restricting the reimbursement cannot be held to be violative of Article 21 or Article 47 of the Constitution of India. The argument put forward by learned counsel for the respondent no.4 appears to be quite attractive but cannot be accepted for the simple reason that neither the Hon'ble Supreme Court in the case of Ram Lubhaya Bagga (supra) nor the Hon'ble High Court of Punjab & Haryana in the case of R.C.P.Karan (supra) has considered the vital point as to whether if some benefit like full reimbursement of medical claim is available to a government employee in the statutory rules itself, can such benefit be taken away or restricted by the Government by issuing Office Memorandums or policy guidelines. Had the rule been silent bout the quantum of amount or extent of reimbursement of medical claim to a government employee, the Government could have issued the instructions to fill in such gap subject to the condition that the basic fabric of the rule is not changed. It is well settled that non-statutory rules cannot modify statutory rules but there is nothing to prevent the Government from issuing administrative instructions on matters upon which the statutory rules are silent, as has been settled in the case of Comptroller & Auditor General of India etc. Vs. Mohan (1992) 1 SCC, Page 20. The judgments in the case of Ram Lubhaya Bagga and R.C.P.Karan proceed on general law and examination of general policy guidelines issued by the Government.

The issue as to whether the employees are entitled to full reimbursement or not came to be considered in the case of

> treatment it shall be referred to the Government and the decision of the Government shall be final."

A conjoint reading of the above rules makes it amply clear that the government servants covered under the CS (MA) Rules, 1944, are entitled to "medical attendance" by authorised medical attendance and "treatment" free of charges. However, such reimbursement can be refused only if the genuineness of the claim is found to be doubtful. "Treatment" means the use of all medical and surgical facilities available at the Government Hospital in which the Government servant is treated and includes the employment of such pathological, bacteriological, radiological or other methods as are considered necessary by the authorized medical attendant etc.etc. "Medical Attendance" has also been defined in Rule 2 (e) . The rules and orders issued thereunder are quite clear that the items covered under the definition of "Medical Attendance" and"Treatment" shall have to be reimbursed to the extent of amount paid by the Government employee which he may have incurred and all such amount spent on pathological, bacteriological, radiological or other methods of examination for the purpose of treatment as are available in Government Hospital or consulting room or any other nearest Government Hospital which are considered necessary by the AMA and even amounts spent on consultation with a specialist or other medical officer in the service of the government as the AMA certifies shall have to be reimbursed. However, the government is empowered to restrict the claims to the extent mentioned under rule and orders, which are not contrary to rule 3 and 6.Thus, the OM dated 22.4.1998,was certain against the statutory provisions of rules 3 and 6.

It is well settled that so long as the statutory rules are not amended, it is binding on the Government and its action in matter covered by the rules must be regulated by the Rules and a rule made in exercise of the power under the proviso to Article 309 Constitutes law within the meaning of Article 235. So, the policy decision taken by the government by Om dated 22.4.1998 or such other decisions which are contrary to the statutory rules are nonest in the eyes of law and as such the Chandigarh Bench of this Tribunal has rightly quashed such instructions.

In this case also the respondents have taken a defence that they have

At this stage, learned counsel appearing for the respondent no.4 submitted that the view taken by Chandigarh Bench of this Tribunal in M.C.Mehta's case has been over – ruled by the Hon'ble High Court of Punjab & Haryana in the case titled RCP Karan Vs. The Union of India & Others, reported as 2003(3) SCT, Page 520. In that case,the Hon'ble High Court has considered the Central Services (Medical Attendance) Rules, 1944 and the policy of the Government framed to restrict the medical reimbursement claim on package rate basis. Placing reliance on the decision of the Hon'ble Supreme Court in the case of Ram Lubhaya Bagga (supra), the Hon'ble High Court has held that policy of Government restricting the reimbursement cannot be held to be violative of Article 21 or Article 47 of the Constitution of India. The argument put forward by learned counsel for the respondent no.4 appears to be quite attractive but cannot be accepted for the simple reason that neither the Hon'ble Supreme Court in the case of Ram Lubhaya Bagga (supra) nor the Hon'ble High Court of Punjab & Haryana in the case of R.C.P.Karan (supra) has considered the vital point as to whether if some benefit like full reimbursement of medical claim is available to a government employee in the statutory rules itself, can such benefit be taken away or restricted by the Government by issuing Office Memorandums or policy guidelines. Had the rule been silent bout the quantum of amount or extent of reimbursement of medical claim to a government employee, the Government could have issued the instructions to fill in such gap subject to the condition that the basic fabric of the rule is not changed. It is well settled that non-statutory rules cannot modify statutory rules but there is nothing to prevent the Government from issuing administrative instructions on matters upon which the statutory rules are silent, as has been settled in the case of Comptroller & Auditor General of India etc. Vs. Mohan (1992) 1 SCC, Page 20. The judgments in the case of Ram Lubhaya Bagga and R.C.P.Karan proceed on general law and examination of general policy guidelines issued by the Government.

The issue as to whether the employees are entitled to full reimbursement or not came to be considered in the case of

Madhu Sharma (supra) and the Hon'ble High Court has rightly held entitlement of the employee therein to full reimbursement of her medical claim. Infact there cannot be any dispute about the proposition of law laid down in these judgments in so far as general law is concerned but when the question of a policy decision taken contrary to the statutory rules is to be answered, the judgments in the case of Ram Lubhaya Bagga (supra) and R.C.P. Karan (supra) can at best be termed as per enquiriam for the simple reason that in these cases, the issue as to whether Central Government employees are entitled to full reimbursement of medical claim under rule 3 and 6 of the Rules (ibid) of course subject to limitation provided under rule 8 thereof, was never considered. Thus, to say that the view taken by Chandigarh Bench of C.A.T. In the case of R. P. Mehta (supra) stands over ruled in the case of R. C. P.Karan (supra) is nothing but mis-understanding about the proposition of law, as there is no dispute about the law laid down in both the decisions. Rules 3,5, 6 & 8 of the CS (MA) Rules, 1944, as reproduced in the case of R.P. Mehta (supra) are reproduced herein below for ready reference :

entitled, attendance

"3(1)(A) A Government servant shall be ***free of charge***, to receive medical by the authorized medical attendant.

(2)Where a Government servant is entitled under sub-rule (1), free of charge, to receive medical attendance, any amount paid by him on account of such medical attendance shall, on production of a certificate in writing by the authorized medical attendant In this behalf, be reimbursed to him by the Central Government.

Provided that the controlling officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case after giving an opportunity to the claimant of being heard in the matter. While doing so, the controlling office shall communicate to the claimant the reasons,in brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of forty-five days of the date of receipt of the order rejecting the claim.

5(1) If the authorized medical attendant is of opinion that the case of a patient is of such a serious or special nature as to require medical attendance by some person other than himself, he may--

(a) send the patient to the nearest specialist or other medical officer as provided in clause (e) of Rule 2 by whom, in his opinion, medical attendance is required for the patient, or

(b) if the patient is too ill to travel, summon such specialist or other medical officer to attend upon the patient.

(2) A patient sent under clause (a) of sub-rule (1) shall, on production of a certificate in writing by the authorized medical attendant in this behalf, be entitled to traveling allowance for the journeys to and from the headquarters of the specialist or other medical officer.

(3) A specialist or other medical officer summoned under clause (b) of sub-rule (1) shall, on production of a certificate in writing by the authorized medical attendant in this behalf be entitled to travelling allowance for the journey to and from the place where the patient is.

Xxxxx

6. (1) A Government servant shall be entitled **free of charge** to treatment-

(a) in such Government hospital at or near the place where he falls ill as can in the opinion of the authorized medical attendant provide the necessary and suitable treatment; or

(b) if there is no such hospital as is referred to in sub-clause (a) in such hospital other than a Government Hospital at or near the place as can in the opinion of the authorized medical attendant, provide the necessary and suitable treatment.

(2) Where a Government servant is entitled under sub – rule (1), free of charge, to treatment in hospital, any amount paid by him on account of such treatment shall, on production of a certificate in writing by the authorized medical attendant in this behalf, be reimbursed to him by the Central Government.

Provided that the controlling officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the controlling officer shall communicate to the claimant the reasons, in brief, for rejecting the claim and the claimant may submit an appeal to the Central government within a period of forty-five days of the date of receipt of the order rejecting the claim.

7. x x x x

8.(1) Charges for services rendered in connection with but not included in medical attendance on, or treatment of, a patient entitled, free of charge, to medical attendance or treatment under these Rules, shall be determined by the authorized medical attendant and paid by the patient.

(2) If any question arises as to whether any service is included in medical attendance or

treatment it shall be referred to the Government and the decision of the Government shall be final."

A conjoint reading of the above rules makes it amply clear that the government servants covered under the CS (MA) Rules, 1944, are entitled to "medical attendance" by authorised medical attendance and "treatment" free of charges. However, such reimbursement can be refused only if the genuineness of the claim is found to be doubtful. "Treatment" means the use of all medical and surgical facilities available at the Government Hospital in which the Government servant is treated and includes the employment of such pathological, bacteriological, radiological or other methods as are considered necessary by the authorized medical attendant etc.etc. "Medical Attendance" has also been defined in Rule 2 (e) . The rules and orders issued thereunder are quite clear that the items covered under the definition of "Medical Attendance" and"Treatment" shall have to be reimbursed to the extent of amount paid by the Government employee which he may have incurred and all such amount spent on pathological, bacteriological, radiological or other methods of examination for the purpose of treatment as are available in Government Hospital or consulting room or any other nearest Government Hospital which are considered necessary by the AMA and even amounts spent on consultation with a specialist or other medical officer in the service of the government as the AMA certifies shall have to be reimbursed. However, the government is empowered to restrict the claims to the extent mentioned under rule and orders, which are not contrary to rule 3 and 6.Thus, the OM dated 22.4.1998,was certain against the statutory provisions of rules 3 and 6.

It is well settled that so long as the statutory rules are not amended, it is binding on the Government and its action in matter covered by the rules must be regulated by the Rules and a rule made in exercise of the power under the proviso to Article 309 Constitutes law within the meaning of Article 235. So, the policy decision taken by the government by Om dated 22.4.1998 or such other decisions which are contrary to the statutory rules are nonest in the eyes of law and as such the Chandigarh Bench of this Tribunal has rightly quashed such instructions.

In this case also the respondents have taken a defence that they have

restricted the claim of the applicant on the basis of OM dated 22.4.1998. What is status of this O.M. It stands quashed by this Tribunal. Thus, this O.M. Cannot be pressed into service to restrict the claim of the applicant more particularly when it runs counter to the statutory rules itself.

In the result I find that both the cases are covered by the decision in the case of R.P. Mehta (supra). Accordingly, these O.As. Are allowed. Impugned orders in both the cases are quashed and set aside. The respondents are directed to examine the claim of the applicant for full medical reimbursement in accordance with the rules 3 and 6 of the Rules (ibid), subject to limitation provided in rule 8 thereof and make payment of balance amount to the applicants within a period of three months from the date a copy of this order is produced before the competent authority. No costs.

(KULDIP SINGH)
VICE CHAIRMAN

March 29, 2005.

HC*