

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.No.060-00061/2014

Orders pronounced on: 28.5.2014
(Orders reserved on: 26.05.2014)**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

Raj Kumar Sharma son of Sh. Jangiri Lal aged 66 years, Senior Divisional Accounts Officer (Retired), resident of House No. 388, Sector 15, Panchkula (Haryana).

By: Mr. Harjinder Singh, Advocate. ...

Applicant

Versus

1. Union of India through Comptroller and Auditor General of India, New Delhi.
2. Principal Accountant General (A&E), Punjab, Sector-17, Chandigarh.

By: Mr. Barjesh Mittal, Advocate.

3. Additional Director, Central Government Health Scheme Kendriya Sadan, Sector 9, Chandigarh.

By: Mrs. Mohinder Gupta, Advocate.

4. State of Punjab through Secretary, Department of Finance, Civil Secretariat, Punjab, Chandigarh.
5. Secretary to Government of Punjab, Water Supply and Sanitation Department Mini Secretariat, Punjab Sector 9, Chandigarh.

6. Chief Engineer (South), Punjab, Water Supply and Sanitation, Department, Nabha Road, Patiala.

7. Executive Engineer, Water Supply and Sanitation Division, New Sub Divisional Complex, Rajpura.

By: Mr. B.S. Chahal, Advocate.

Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant is before this Tribunal by filing an application under section 19 of the Administrative Tribunals Act, 1985, seeking primarily the following reliefs:

"(i) Speaking Office Order issued by Respondent No. 6 and received by his office endorsement vide No. WSS/G-2(4)/34104-07 dated 15.07.2013 / (Annexure A-1) - rejecting claim of the applicant for the reimbursement of medical bill for Rs.235449/- on erroneous, arbitrary, untenable and illegal grounds may please be quashed.

(ii) Directions may please be issued to the respondents for the reimbursement of his indoor medical treatment expenses amounting to Rs.235449/-.

(iii) Directions may also be issued to Respondents for the payment of interest @ 12% per annum on Rs.2,35,449/- from

the date of submission of his medical bill till the actual date of payment".

2. The applicant, even though a Central Government Employee, was on deputation with the Punjab Government and retired as Divisional Accounts Officer w.e.f. 28.2.2007 from there itself. Since he retired from State of Punjab, his pay and allowances and pension including Fixed Medical Allowance is entirely borne by the Punjab Government and met out of Consolidated Fund of State of Punjab.

3. The applicant developed cardio-vascular complications in June, 2010 and was hospitalized in PGIMER, Chandigarh for emergency treatment and was discharged on 16.6.2010. He incurred an expenditure of Rs.2,35,449/- Respondent No. 7 accorded sanction for payment of medical reimbursement on 2.9.2011. However, ultimately his claim was rejected on 15.7.2013 on the premise that Punjab Government cannot reimburse the medical expense of Central Government Employee (applicant herein).

4. The Hon'ble Apex Court in its authoritative pronouncement dealing with the issue of medical reimbursement in the matter of **State of Punjab & Ors. Vs. Ram Lubhaya Bagga & Ors.** (1998) 4 SCC 117 has observed as under:-

"20. The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be. Let us now examine this new policy. Learned senior counsel for the appellants submits that the new policy

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is more liberal in as much as it gives freedom of choice to every employee to undertake treatment in any private hospital of his own choice any where in the country. The only clog is that the reimbursement would be to the level of expenditure as per rates which are fixed by the Director, Health and Family Welfare, Punjab for a similar package treatment or actual expenditure which ever is less. Such rate for a particular treatment will be included in the advice issued by the District/State Medical Board for fixing this. Under the said policy a Committee of Technical Experts is constituted by the Director to finalize the rates of various treatment packages and such rate list shall be made available to the offices of the Civil surgeons of the State. Under this new policy, it is clear that none has to wait in a queue. One can avail and go to any private hospital anywhere in India. Hence the objection that, even under the new policy in emergency one has to wait in a queue as argued in Surjit Singh, case (supra) does not hold good.

21. In this regard Mr. Sodhi appearing for the State of Punjab has specifically stated that as per the Director's decision under the new policy, the present rate admissible to any employee is the same as prevalent in AIIMS. It is also submitted, under the new policy in case of emergency if prior approval for treatment in the private hospital is not obtained, the ex-post-facto sanction can be obtained later from the concerned Board or authority for such medical reimbursement. After due consideration we find these to be reasonable.

22. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view 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 however 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,

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it is based on number of circumstances on facts, law including constraints 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 belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 When it restricts reimbursement on account of its financial constraints.

23. When we speak about a right, it correlates to a duty upon another, individual, employer, Government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt Government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its up-keep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

24. Coming back to test the claim of respondents, the State can neither urge nor say that it has no obligation to provide medical facility. If that were so it would be ex facie violative of

Article 21. Under the new policy, medical facility continues to be given and now an employee is given free choice to get treatment in any private hospital in India but the amount of payment towards reimbursement is regulated. Without fixing any specific rate, the new policy refers to the obligation of paying at the rate fixed by the Director. The words are:

"...to the level of expenditure as per the rate fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure which ever is less."

25. The new policy does not leave this fixation to the sweet will of the Director but it is to be done by a Committee of technical experts.

"The rate for a particular treatment would be included in the advice issued by the District/State Medical Board. A Committee of technical experts shall be constituted by the Director, Health and Family Welfare, Punjab to finalize the roles of various treatment packages."

26. No State or 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 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. 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."

5. A three Judges Bench of the Hon'ble Supreme Court of India in the case of **Consumer Education & Research Centre and Others Vs. Union of India & Others**, 1995 (3) SCC 42 has held that right to health and medical aid of workers during service and

thereafter is a fundamental right. Following the same view, in

Surjit Singh Vs. State of Punjab and Others, 1996 (2) SCC 336,

it has been held as under :-

"self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right and recognised it. Attention can usefully be drawn to versus 17 18, 20, and 22 in Chapter 16 of the Garuda Purana"

6. Same view was again reiterated in the case of **State of**

Punjab Vs. Mohinder Singh Chawla, JT 1997 (1) SC 416.

"...right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee."

7. In the case of **Ranbir Singh Kundu vs. Haryana State**

Agricultural Marketing Board, Panchkula and Others, 2008 (2)

SCT 314, it has been held as under :-

"the provision of the medical reimbursement is beneficial act of the welfare state for its employees and such provision has to be construed liberally in favour of the employees".

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8. Today, when the case was listed for hearing, Mr. B.S. Chahal, DAG, State of Punjab, appearing for Respondents No. 4 to 7 filed a short reply by way of affidavit of Anil Kumar, Executive Engineer, Water Supply & Sanitation Division, Rajpura, which is taken on record, on the oral request of learned counsel.

9. A perusal of the reply affidavit filed on behalf of Respondents No. 4 to 7 does indicate that a specific stand has been taken in para 4 thereof which is reproduced as under :-

"That even though the answering respondent is ready to medical reimbursement claimed by the applicant of amount Rs.2,35,450/- as and when budget grant was released by the department".

10. A perusal of extraction aforesaid does not leave any manner of doubt that the State is ready to make the payment of medical reimbursement to the applicant but they are facing budget constrains. In view of the stand taken by them, the objection qua jurisdiction loses its significance more so when the applicant was essentially an employee of the Central Government and was on deputation with the State of Punjab.

11. Be that as it may the fact remains that the respondents No. 4 to 7 are ready to make the payment of medical reimbursement to the applicant but budget constrain is coming in its way. This O.A. is, thus, disposed of with a fervent hope that the respondents would be bound by

their affidavit-supported undertaking to release the due amount to the applicant expeditiously, as and when budget is received by them.

12. In so far as prayer of the applicant for grant of interest on delayed payment of medical reimbursement is concerned, the same is declined in view of the law laid down by the Hon'ble Supreme Court in the case of **Om Parkash Gargi Vs. State of Punjab**, 1996 (11) 399 and **State of Haryana Vs. Anita Chaudhary**, (2004) 136 PLR 209.

13. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(UDAY KUMAR VARMA)
MEMBER (A)**

Place: Chandigarh
Dated: 28.5.2014

HC*