

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/00193/2014

Decided on : 15.10.2014

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

S.S. Chana son of Shri Mohinder Singh, aged 81 years, Principal Chief Conservator of Forests, IFS (Retired), resident of House No. 58-1, Sarabha Nagar, Ludhiana-1451001.

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Applicant

1. Union of India, Ministry of Environment & Forests through its Secretary, Paryavaran Bhawan, CGA Complex, Lodhi Road, New Delhi-110003.
2. Lt. Governor (Administrator), Andaman & Nicobar Island through Chief Secretary, Andaman & Nicobar Islands Secretariat, Port Blair-744101 (U.T.).
3. Principal Chief Conservator of Forests, Andaman & Nicobar Islands, Van Sadan, HADDO-744102 Port Blair.

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Respondents

Present: Mr. Manohar Lal, counsel for applicant.

None for Respondent No.1.

Mr. Deepak Agnihotri, counsel for Respondents No.2&3.

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

The applicant has filed this Original Application for issuance of direction to the respondents to reimburse him Rs.1,37,362/- incurred by him on Right Knee Replacement of his

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wife at Dayanand Medical College & Hospital, Ludhiana, with 12% interest.

2. The applicant pleads that he is a retired IFS Officer from the Respondent No.3 and is settled at Ludhiana. His wife Smt. Manjeet Kaur underwent a knee replacement at Dayanand Medical College and Hospital, Ludhiana and incurred a sum of Rs.1,36,362/- thereon. The applicant submitted bill for medical reimbursement to respondent no.3 which was turned down vide order dated 16.7.2013 on the premise that Central Services (Medical Attendance) Rules, 1944, are not applicable to retired employees .

3. The applicant claims that courts of law upto the apex level have held that a retiree is entitled to medical reimbursement along with interest also and no discrimination can be made by the authorities in extending benefit of medical reimbursement to its employees. Reliance is placed upon the following decisions :-

(a) Consumer Education and Research Centre Vs. Union of India, AIR 1995 (SC) 922.

(b) Laxmi Chand Vs. Comptroller & Auditor General of India, 2005 (1) ATJ 31 C.A.T. Jabalpur Bench.

© Partap Singh Vs. Director Subsidiary Intelligence Bureau & Ors, 2007 (2) (CAT) AISLJ by C.A.T. Principal Bench, New Delhi.

(d) Suman Rakheja Vs. State of Haryana, 2004 (13) SCC 563.

(e) V. Gopalakrishnan Vs. Union of India & Others, 2006 (3) AISLJ, 90 by C.A.T. Ernakulum Bench.

(f) Dr. M.A. Haque Vs. Secretary of Environments & Forests, 8/2008 Swam news Page 69, O.A.No. 179/2007 by Principal Bench of C.A.T., New Delhi.

(g) Mohinder Singh Vs. Union of India etc. 2008 (2) SCT 239.

(h) Kishan Chand Vs. Govt. of NCT & Others, Writ Petition No. © No. 889/2007.

(i) Krishan Chand Vs. Govt. of NCT & Others, Writ Petition © No. 889 of 2007 decided on 12.3.2010 etc.

4. The respondents in their reply have taken the sole plea that CS (Medical Attendance) Rules, 1944 do not apply to retired government employees and as such the Original Application deserves to be dismissed. It is submitted that the applicant is in receipt of fixed medical allowance and as such he cannot claim the medical reimbursement.

5. We have heard learned counsel for the parties at length and examined the material on the file.

6. Be that as it may the facts remains that an identical plea was raised in O.A.No.1046-PB-2013 titled Banarsi Dass Gupta Vs. Union of India & Others, which was partly allowed in

favour of the applicant therein by a Single Bench of this Tribunal on 23.10.2013 in the following words :-

"From the material on record, it is seen that the courts/tribunals have time and again held that the retired Government officials not residing in CGHS areas are entitled to avail medical care in emergency from privately managed health institutions and get the same reimbursed to the extent of rates prescribed under the CGHS Scheme. This is also the position taken in OA No. 401/PB/13 titled Surjit Kaur Vs. UOI and Ors. decided on 7.8.2013. It is also clear that in view of OM dated 20.1.2011 issued by Government of India, Ministry of Health and Family Welfare, medical claim of the applicant should be allowed as per the rates prescribed by the CGHS. Accordingly, the impugned order is quashed and set aside. The respondents are directed to reimburse the medical claim of the applicant as per the rates prescribed by the CGHS. Exercise in this regard, may be carried out within a period of two months from the date of certified copy of this order being served upon the respondents No. 2 & 3"

7. For the parity of reasons given in the aforesaid decision, this O.A. too deserves to be partly allowed. The claim of the applicant for full reimbursement of the amount has to be rejected as the Government has allowed reimbursement as per CGHS rates only. For this we place reliance on a decision of the Principal Bench of this Tribunal in O.A.No.3721/2012 -

R.K.Bhatia, IAS (Retd.) Vs. Secretary, Ministry of Health etc. decided on 6.5.2013 in which claim of full reimbursement was dealt with in detail and it was held as under :-

"6. In Ram Lubhaya Bagga's case (supra), a three judge bench of the Hon'ble Apex Court while

observing that right to life is not merely a right enshrined under Article 21 of the Constitution of India, but an obligation cast on the State to provide this both under Article 21 and Article 47 of the Constitution, held that the right can be put within reasonable limits under the policy which is framed after taking into consideration various factors, and upheld the policy restricting reimbursement of medical expenses as per the rates fixed by the Government. However, on the peculiar facts and circumstances of that case, allowed Escorts rates (i.e., as charged by a non-empanelled private hospital) by observing that 'it would not be treated as precedent'.

7. In Mahesh Kumar Sharma's case (supra), a two judge bench of the Hon'ble Apex Court, while interpreting the Rajasthan Civil Service (Medical Attendance) Rules, 1970 and following the Judgment in Ram Lubhaya Bagga (supra), upheld the decision of the appellant therein in restricting the reimbursement up to a certain limit, but by noticing that the applicant therein have already reimbursed full medical expenses to the respondent therein and to various others, directed not to effect any recoveries, in the facts of the said case.

8. In Suman Rakheja's case (supra), a two judge bench of the Hon'ble Apex Court observing that the appellant therein undergone the treatment in a non-recognized/approved private hospital in an emergency, directed the respondents therein to reimburse 100% medical expenses at the AIIMS rates and 75% of expenditure in excess thereto.

9. In Smt. Gauri Sen Gupta's case(supra), the Hon'ble Gauhati High Court, after considering the case of Ram Lubhaya Bagga (supra), directed the

respondents to reimburse the entire medical claim of the petitioner therein, in the facts of the said case.

10. In Shakuntla's case (supra), the Hon'ble High Court of Punjab and Haryana, held that denial of medical reimbursement only on the ground that treatment was not taken from the approved hospital is bad since emergency knows no law and saving the life of a person should be paramount consideration.

11. It is to be noted that the Ram Lubhaya Bagga's case (supra) is of a three judge bench and the two judge bench in Suman Rakheja's case (supra), without noticing the Bagga's Judgment passed orders for reimbursement of medical expenses in excess of AIIMS rates. Another two judge bench of the Hon'ble Apex Court in a recent case of Mahesh Kumar Sharma, followed Bagga's Judgment. In view of the settled legal position, the judgment in Ram Lubhaya Bagga's case (supra) is binding and applicable. Hence, the action of the respondents in reimbursing the medical expenses claim of the applicant, only to the extent of admissible amount as per the package rates in terms of OM dated 17.08.2010 (Annexure R1), cannot be interfered with. No other valid reason is also shown to take any different view in the matter."

8. It could not be disputed that the plea that if one is in receipt of fixed medical allowance, he cannot claim medical reimbursement for indoor claims has also been rejected by courts of law. The issue as to whether an employee in receipt of Fixed Medical Allowance of Rs.100/- or Rs.300/- (revised) would be entitled to reimbursement of medical expenditure incurred by him on serious ailments like cancer etc. came to be considered

by our own jurisdictional High Court in **Raghuvir Prasad Mittal Vs. State of Haryana & Others**, 2008(3) SCT 362 and a decision of this Tribunal in O.A.No. 401-PB-2013 (**Smt. Surjit Kaur Vs. UOI etc.**) and it has been held that the payment of fixed medical allowance to an employee is no ground to refuse reimbursement for serious ailment like cancer and meager amount of fixed medical allowance for routine medical treatment cannot be considered sufficient by any stretch of imagination for treatment of serious ailments requiring huge expenses. Following the ratio of the same, this very Bench has allowed O.A.No. 598-PB-2013 (**Jeet Ram Vs. Union of India & Others**) decided on 8.10.2013 holding the applicant therein entitled to the medical reimbursement. The plea taken by respondents qua jurisdiction has also to be negatived for the simple reason that this Tribunal has jurisdiction as the applicant, after his retirement, is residing at an area which falls within the territorial jurisdiction of this Tribunal.

9. In view of the above dictum, while rejecting the claim of the applicant for full reimbursement, this O.A. is partly allowed. The impugned orders are quashed and set aside. The respondents are directed to reimburse the medical claim of the applicant as per the rates prescribed by the CGHS. The necessary exercise in this regard including relevant payment,

may be carried out within a period of two months from the date of receipt of a certified copy of this order.

10. 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.

11. The parties are left to bear their own respective costs.

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

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

Place: Chandigarh
Dated: 15.10.2014

HC*