

Reserved on 21.3.2018

Central Administrative Tribunal, Allahabad Bench,
Allahabad

Original Application No.330/01628/2011

This the 4th day of April, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Ram Misra son of Shri Ram Akshayabar Misra r/o Village Tilakpur, P.O. Tilakpur-via- Kaptainganj, District- Basti, presently posted as Postal Assistant in Sub Post Office, Harraiya, District- Basti.

Applicant

By Advocate: **Sri Ashok Kumar Tiwari proxy for Sri G.D. Mishra**

Versus

1. Union of India through its Secretary, Post and Telegraph Department, New Delhi.
2. Post Master General, Gorakhpur Kshetra, Gorakhpur.
3. Superintendent of Post Offices, Basti Division, Basti.

Respondents

By Advocate: **Sri Sameer Srivastava for Sri Saurabh Srivastava**

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant has filed the present O.A. under Section 19 of the AT Act with the following reliefs:-

- i) Issue a writ order or direction in the nature of certiorari calling for the records from the respondents and quash the impugned order/letter dated 27.6.2008 issued by respondent No. 3 and also letter dated 6.6.2006 issued by respondent No. 3 as mentioned in letter dated 27.6.2008 (Annexure -7 of compilation -I to

this O.A.) and filed as (Annexure No. CA-8 to the counter affidavit.)

ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents and directing them to reimburse the medical bills of the applicant amounting to Rs. 1,49,401.10 with suitable interest to the applicant at least 12 % per annum.

iii) Issue a suitable writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

iv) Allow the application with costs.

2. The brief facts emerging from the O.A. are that the applicant was appointed as Postal Assistant in Basti in November, 2005. Applicant suffered from serious disease which has been dictated as "Gangrenous Chlulitip Septicaemia very low GC."

2.1 The applicant was treated by District Hospital Basti from 13.11.2005 to 15.11.2005. Thereafter from 15.11.2005 to 21.11.2005, the applicant was admitted in Baba Raghavdas Medical College, Gorakhpur and on 21.11.2005, the applicant was referred to Lucknow Medical College but due to strike in Lucknow Medical College, the applicant was admitted in Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow.

2.2 The applicant submitted two application on prescribed proforma on 28.4.2006 regarding Rs. 3261.10

expenses made by the applicant in BRD Medical College, Gorakhpur. Another application claiming Rs. 1,46,410/- as expenses done by the applicant while applicant was admitted in Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow.

2.3 Respondents made certain queries and applicant submitted reply. Applicant also submitted certificate on 24.3.2008 of Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow as directed by the respondents.

2.4 Applicant received letter dated 27.6.2008 (Annexure A-7) issued by respondent No. 3 wherein it is mentioned that respondent No. 3 has already rejected the claim of the applicant vide letter dated 6.6.2006.

2.5 Applicant submitted representation dated 5.3.2009 to the respondents through proper channel for reimbursement of medical expenses done by the applicant.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that applicant submitted medical claims to the tune of Rs. 3261.10/- pertaining to his treatment in Nehru Hospital, BRD Medical College, Gorakhpur for the period 15.11.2005 to 21.11.2005 and for Rs. Rs. 1,46,410/- pertaining to his treatment in Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow for the period of 21.11.2005 to 29.1.2006. The bill for treatment in

Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow was not authorized for the treatment as such the applicant was requested vide letter dated 28.4.2006 to clarify the facts pertaining to the matter and it was also informed that the medical reimbursement bills submitted by the applicant were contrary to CCS (Medical Attendant) Rules.

3.1 Applicant submitted an application dated 29.5.2006 in reply to letter dated 28.4.2006 and on careful consideration of documents and rules, respondents have rejected the bills of the applicant and informed the applicant accordingly vide letter dated 6.6.2006 (Annexure CA-8).

3.2 The applicant submitted an appeal dated 22.12.2007 addressed to Post Master General, Gorakhpur Region, Gorakhpur against the rejection order dated 6.6.2006 and the said appeal of the applicant was also rejected vide order dated 11.6.2008 (Annexure CA-9) and the applicant was informed accordingly vide letter dated 27.6.2008 (Annexure CA-10).

3.3 The applicant further submitted an appeal dated 5.3.2009 to the Post Master General, Gorakhpur Region, Gorakhpur but the same was again rejected vide order dated 23.3.2009 (Annexure CA-11).

3.4 It is also submitted that the O.A. filed by the applicant is absolutely time barred as he was informed about the rejection of claim vide order dated 6.6.2006 and 27.6.2008 and applicant filed this O.A. in the year 2011, and as such the present O.A. is liable to be dismissed as time barred.

4. Learned counsel for applicant filed Rejoinder Reply through which he has reiterated the facts as stated by him in the O.A.

5. Learned counsel for applicant has also filed delay condonation application for condoning the delay in filing the O.A. in which it is stated that claim of the applicant for medical reimbursement was rejected on 6.6.2006 and applicant submitted an appeal dated 22.12.2007 addressed to Post Master General, Gorakhpur Region, Gorakhpur against the rejection order dated 6.6.2006 which was rejected vide order dated 11.6.2008 and the applicant was informed accordingly vide letter dated 27.6.2008. Thereafter, applicant submitted application dated 5.3.2009 but till date the respondents have not communicated any decision on his application dated 5.3.2009. Applicant was under hope and trust that his application dated 5.3.2009 will be considered by the respondents and as such he could not file O.A. earlier challenging the order dated 27.6.2008 issued by the respondent No. 3.

6. This Tribunal vide order dated 3.11.2017 condoned the delay in filing the O.A. and listing the case for hearing.

7. Learned counsel for applicant has also filed Supplementary Affidavit in which it is stated that counsel for applicant has received counter affidavit dated 10.5.2012 on 11.5.2012 filed by respondent No. 3 in which respondent No. 3 has filed letter dated 6.6.2006 (Annexure CA-8 and further respondent No. 3 has filed copy of letter dated 11.6.08 issued by respondent No. and respondent No. 3 has further filed letter dated 23.3.2009 (Annexure No. CA-11) written by respondent No. 2 to the respondent No. 3 deciding the appeal of the applicant. It is stated that the letters dated 11.6.2008 and 23.3.2009 were never communicated to the applicant as such the applicant could not challenge the same in the O.A. and requested for amending the relief in the O.A.

8. Learned counsel for respondents filed Supplementary Affidavit and stated that the order dated 6.6.2006 has been addressed to the applicant, as such the plea put forth by the applicant regarding non-availability of order dated 6.6.2006 is not tenable and prayed for dismissal of the amendment application.

9. This Tribunal vide order dated 27.4.2015 allowed the amendment and accordingly, the applicant has amended the relief clause in the O.A.

10. Supplementary Counter reply has also been filed by the counsel for respondents through which he has reiterated the facts as stated in the counter reply and further submitted that the averment put forth by the applicant that applicant had suffered from serious disease as "Gangrenous Chlulitip Spticemi a very low G.C." but the applicant was on medical leave showing the reason of operation of piles and has shown his address during leave at his native village Tilakpur and during the entire leave the applicant had submitted the medical certificate granted by the Medical Officer Ayurvedic Hospital, Tilakpur and no information was available in the application for leave submitted by the applicant regarding his treatment in District Hospital, Basti, BRD Medical College, Gorakhpur and in Sushruta Maternity and Surgical Centre, Lucknow.

11. Supplementary rejoinder reply has also been filed by the learned counsel for applicant through which he has reiterated the facts as stated in the O.A. as well as in the Rejoinder Reply. It is further submitted that applicant submitted appeal and order of appeal was never communicated to the applicant and it is for the first time in the counter affidavit filed by the

respondents, the order passed in appeal was annexed. It is further submitted that case of applicant was of emergency and respondents authority have committed illegality in not considering the case of applicant on merit and thereby the respondents have passed illegal order.

12. Heard learned counsel for applicant Sri Ashok Kumar Tiwari proxyfor Sri G.D. Mishra and learned counsel for respondents Sri Sameer Srivastava for Sri Saurabh Srivastava.

13. Learned counsel for applicant submitted that applicant while working as Postal Assistant in Basti suffered from serious disease which has been dictated as "Gangrenous Chlulitip Septicaemia very low GC." and was treated by District Hospital Basti from 13.11.2005 to 15.11.2005. Thereafter from 15.11.2005 to 21.11.2005, the applicant was admitted in Baba Raghavdas Medical College, Gorakhpur and on 21.11.2005, the applicant was referred to Lucknow Medical College but due to strike in Lucknow Medical College, the applicant taken treatment in Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow. Applicant submitted two application on prescribed proforma on 28.4.2006 regarding Rs. 3261.10 expenses made by the applicant in BRD Medical College, Gorakhpur. Another application claiming Rs. 1,46,410/-

as expenses done by the applicant while applicant was admitted in Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow. Applicant also submitted certificate on 24.3.2008 of Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow as directed by the respondents. Applicant received letter dated 27.6.2008 issued by respondent No. 3 wherein it was mentioned that respondent No. 3 has already rejected the claim of the applicant vide letter dated 6.6.2006 but applicant submitted that order of appeal was never communicated to the applicant and it is for the first time in the counter affidavit filed by the respondents.

14. Learned counsel for respondents submitted that applicant submitted medical claims to the tune of Rs. 3261.10/- pertaining to his treatment in Nehru Hospital, BRD Medical College, Gorakhpur for the period 15.11.2005 to 21.11.2005 and for Rs. Rs. 1,46,410/- pertaining to his treatment in Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow for the period of 21.11.2005 to 29.1.2006. The bill for treatment in Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow was not authorized for the treatment and it was also submitted that the medical reimbursement bills submitted by the applicant were contrary to CCS Medical (Attendance) Rules. It is further submitted that the order dated 6.6.2006 has already been addressed to the

applicant, as such the plea put forth by the applicant regarding non-availability of order dated 6.6.2006 is not tenable.

15. It is crystal clear from perusal of order dated 6.6.2006 that the claim of the applicant was rejected only on the ground that the same was not produced by the applicant within time. The applicant submitted the medical bill for the period 15.11.2005 to 21.11.2005 for amounting to Rs. 3261.10/- on 28.4.2006 and for the period from 21.11.2005 to 29.1.2006 for amounting to Rs. 145140/- on 28.4.2006 and applicant was not referred by the competent authority to take treatment in Sushurt Maternity and Surgical Centre, Nishatganj, Lucknow and this hospital is not authorized under CS (MA) Rules for treatment of Central Govt. employees

16. Applicant submitted appeal on 22.12.2007 addressed to the Post Master General, Gorakhpur Region, Gorakhpur against the rejection order dated 6.6.2006 which was rejected by the appellate authority vide order dated 11.6.2008 saying that there is no provision under the departmental medical rules for providing relaxation in medical claims.

17. It is further pertinent to mention that claim of the applicant was rejected on the sole ground that applicant preferred his medical bills after expiry of limit of three months from the date of final discharge of the patient.

This fact is reflected in the order dated 6.6.2006 passed by the respondents which clearly provides that treatment for the period from 15.11.2005 to 21.11.2005 for Rs. 3261.10/- was preferred by the applicant on 28.4.2006 which is not within three months. Further another bill for the period from 21.11.2005 to 29.1.2006 for Rs. 114540/- was also preferred by the applicant on 28.4.2006 which is also not within time and appeal preferred by the applicant was rejected by the respondents on the ground that there is no provision for relaxation in rules. The respondents themselves referred that according to Medical Attendance Rules, there is no provision for relaxation. The court is unable to accept this contentions raised by the learned counsel for respondents.

18. The Medical Attendance Rules clearly provides that there is time limit of three months. Further, the same was amended and Rule 8 (1) extended the time of three months to 6 months but the said revision of time limit was applicable from the date of issuance of the letter dated 27.5.2015 which is not applicable in the case of applicant as his case is for the period of 2006. However, Rule 9 of Central Services (MA) Rules clearly provides that Head of Departments have power to condone the delay in submission of medical bills which is reproduced below:-

(9) Heads of Departments delegated powers to condone delay in submission of claims- (a) General- As per existing instructions, all cases where the medical claims are submitted after three months have to be referred to the Ministry of Health for relaxation and condonation of delay. It has since been decided that delay beyond three months in submissions of the medical claims may be condoned by the Ministries/Departments of the Central Government/Comptroller and Auditor-General of India, etc., subject the following:-

(i) Each individual case seeking condonation of delay in submission of medical claims will be considered by the controlling authorities/administrative authorities on merit particularly keeping in view the need to prevent malpractices. After giving reasonable opportunity to the Government employee, the controlling authorities will be free to reject the medical claims when they are not convinced of the reasons for delay involved in the submission of the claims.

(ii) It will be open to the Controlling/Administrative Ministries/the Comptroller and Auditor-General of India to lay down monetary limits of the medical claims and the period up to which delay can be condoned at various levels, it is being ensured that no case relating to condonation of delay is agreed to at a level lower than the Head of a Department.

(iii) The treatment has been obtained from authorized medical attendant/recognized hospital/dispensary/clinic etc. under the CS (MA) Rules, 1944 and orders.

19. The aforesaid rule clearly provides that there is power vested with the Head of Departments and other delegated authorities to condone the delay in submission of medical reimbursement claim, as such contention raised by the learned counsel for respondents that there is no provision for relaxation of rules in respect of time limit for submission of medical claim bill has no force. The order passed by the respondents on 6.6.2006 (impugned in the O.A.) and appellate order dated

11.6.2008 were passed solely on the ground that there is no provision of relaxation of rules, which is not tenable in the eyes of law. In fact, there is provision of condonation of delay in submission of medical reimbursement bill. In the orders, there is no mention that controlling authority or Head of Department had considered the case of applicant for condoning the delay. As far as submission of medical reimbursement bills beyond the period of three months is concerned, Head of Department has power to condone the delay if he is satisfied that there is sufficient ground for condoning the delay. Since no other ground is taken by the respondents for rejecting the claim of applicant, court is left with no option but to remit the matter to the Head of Department for considering the case of applicant for condoning the delay on the grounds stated by the applicant.

20. The Hon'ble Apex Court in the case of **State of Punjab and others Vs. Mohan Lal Jindal** reported in (2002) Supreme Court Cases (L&S) 189 has observed that ***"The medical reimbursement available to the respondents will be at the AIIMS hospital rate which has already been paid to him."***

21. In view of the above discussion, O.A. is allowed. The impugned orders dated 6.6.2006 and 27.6.2008 are quashed and the matter is remitted to the respondents

to reconsider the case of applicant for medical reimbursement and for condoning the delay in submission of medical reimbursement claim and if Head of Department is satisfied with the explanation given by the applicant for delay, then he may pass appropriate order for condoning the delay. So far as merit of the case is concerned, respondents are at liberty to decide the medical claim of the applicant in accordance with existing rules and regulations available in this regard. No order as to costs.

(Justice Dinesh Gupta)
Member (J)

HLS/-

