

Central Administrative Tribunal
Principal Bench
New Delhi

R.A.No.20/2016 with M.A.No.250/2016
in
T.A.No.20/2013

New Delhi, this the 8th day of February, 2016

Hon'ble Shri V. Ajay Kumar, Member (J)

1. Union of India
Through its Secretary,
Ministry of Defence
South Block
New Delhi.
2. The Ministry of Personnel, Public Grievances and Pensions
Department of Administrative Reforms and Public
Grievances, through its Secretary
Sardar Patel Bhawan, Sansad Marg
New Delhi – 110 001.
3. The Ministry of Health & Family Welfare
Government of India, through its Secretary
Nirman Bhawan, Maulana Azad Road
New Delhi – 110 011.
4. The Director CGHS
A-545, Nirman Bhawan, Maulana Azad Road
New Delhi – 110 011.
5. Controller General of Defence Accounts
Through its Accountant, Ulan Batar Road
Palam, Delhi Cantt-110 010. ... Review Applicants

Versus

Chandra Bhan Yadav
S/o Sh. Ganga Ram Yadav
R/o D-48, CDA, (Pension) Colony
Dropati Ghat
Allahabad, U.P. ... Review Respondent

ORDER (By Circulation)

MA No.250/2016, filed for condonation of delay in filing the RA, for the reasons stated therein, is allowed in the interest of justice.

2. The present RA has been filed under Section 22(3)(f) of the Administrative Tribunals Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, seeking to review of the Order dated 15.09.2015 in TA No.20/2013.

3. Aggrieved by the action of the review applicants in not reimbursing the full medical expenditure incurred by him in connection with the Kidney Transplantation of his son, the applicant filed the T.A. and the brief facts of the same are that during November, 2009, the son of the applicant was referred by CGHS Allahabad to the Nephrology (OPD) of Swaroop Rani Nehru Hospital, Allahabad and who in turn referred the patient to the Indraprastha Appolo Hospital for Kidney Transplantation. The respondents vide Annexure P2 dated 4.01.2010 accorded permission to the applicant for taking treatment of his Son at Indraprastha Appolo Hospital, New Delhi. Accordingly, the applicant's son's kidney was transplanted on 30.01.2010 and in this connection incurred a total expenditure of Rs.6,28,404/- . When the applicant submitted his medical bills for reimbursement of the said amount, the respondents reimbursed only Rs.3,92,713/-, leaving a balance of Rs.2,35,691/- by stating that the applicant is entitled for reimbursement of the medical expenses as per the CGHS approved rates only. This Tribunal after hearing both sides and after following

the decision of the Hon'ble High Court of Delhi in WP(C) No.4790/2007 (Rattan Lal Gupta v. UOI & Others) dated 09.08.2010, allowed the TA by order dated 15.09.2015.

4. The review applicants filed the present RA raising the following grounds:

a) The Judgement of the Hon'ble High Court of Delhi in Writ Petition No.4790/2007, dated 09.08.2010 was allowed in a different context inasmuch as the pacemaker (dual chamber) of the rate fixed within the ceiling limit was not available in the market, therefore, the difference amount of Rs.29220/- was directed to be paid to the petitioner therein, but in the present case neither external device has been implanted in the treatment of the review respondent's son nor he had purchased some external device for treatment of his son but his claim for reimbursement of said purchase of external device has not been permitted as in the market said device is not available in the ceiling prescribed by or under CGHS.

b) That the aforesaid fact inadvertently could not be submitted during the course of arguments and the counsel for the respondents, inadvertently, did not dispute that the facts of the present case are not identical to the aforesaid Writ Petition and the said lapse is sincerely regretted.

5. Perused the contents of the RA and its Annexures.

6. This Tribunal by its Order dated 15.09.2015, after hearing both sides, and after giving reasons, allowed the TA and directed the respondents to reimburse the balance medical expenses incurred by the applicant. The relevant paragraphs of the said Order read as under:

"7. The learned counsel for the respondents while not disputing that the facts in the present TA are identical to the facts in the aforesaid WP, however, submits that the TA is liable to be dismissed as they have acted in terms of Annexure R1 Circular dated 11.03.1993, which does not permit the reimbursement of expenses incurred in excess of the ceiling prescribed for test/treatment as per the CGHS rates.

8. Since the Hon'ble High Court has considered the identical grounds raised by the respondents while allowing the WP, we are unable to accept the contentions of the respondents.

9. In the circumstances and for the aforesaid reasons the TA is allowed, and the impugned Annexure P4 is quashed and set aside and the respondents are directed to reimburse the balance medical expenses incurred by the applicant within 60 days from the date of receipt of a copy of this order. No order as to costs."

7. This Tribunal not only allowed the TA, by simply depending on the statement of the learned counsel for the respondents to the effect that the facts in the TA are identical to the facts in the aforesaid WP(C) No.4790/2007 (**Rattan Lal Gupta v. Union of India & Others**) but also, after independent analysis of the facts, came to the conclusion that both are identical.

8. The sole contention of the respondents in the TA was that reimbursement under CGHS in excess of the ceiling prescribed for test/treatment is not permissible in view of the OM dated 11.03.1993 (Annexure R1 to TA). Even in **Rattan Lal Gupta** (supra) the Hon'ble High Court considered an identical OM dated 12.06.1996 which

restricts reimbursement in excess of the CGHS rates, and for the reasons mentioned therein, held that the claimant is entitled for reimbursement of the entire expenses incurred by him.

9. The Hon'ble Supreme Court in **Kamlesh Verma v. Mayawati and Others** (2013) 8 SCC 320, after discussing various case laws on the jurisdiction and scope of review, summarised the principles of review as under:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in *Chhajju Ram v. Neki*, [AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius & Ors.*, [(1955) 1 SCR 520], to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*, [JT 2013 (8) SC 275].

20.2. When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

10. The review applicant failed to show any valid reason or any error apparent on the face of the record for invoking the review jurisdiction of this Tribunal. Since this Tribunal while allowing the TA, independently came to the conclusion that the facts in **Rattan Lal Gupta** (supra) are identical to the facts in the TA, and as held in the aforesaid decision of the Hon'ble Apex Court, the minor mistakes of inconsequential import or the mere possibility of two views on the subject cannot be the grounds for review. We do not see any miscarriage of justice in taking the view that the applicant is entitled for the relief claimed in the T.A.

11. In the circumstances and in view of the aforementioned principles of law, the RA is devoid of any merit and accordingly, the same is dismissed in circulation. No costs.

(V. Ajay Kumar)
Member (J)

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