CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.530 OF 2016
New Delhi, this the 16th day of January, 2018

CORAM:
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Smt. Bhoori Devi,
W/o late Sh.Har Prasad,
E-27, Budh Vihar, Phase I,
New Delhi 110043 ..... Applicant

(By Advocate: Mr.Rishi Kapoor)

Vs.

1. The Commissioner,
North Delhi Municipal Corporation,
Civic Centre,
JLN Marg,
New Delhi

2. Dy. Commissioner,
North Delhi Municipal Corporation,
Sector-7, Rohini Zone,
New Delhi 110085 ..... Respondents

(By Advocate: Mr.R.N.Singh)

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ORDER

The applicant's husband served as a Mali with the respondent-Municipal Corporation. He obtained medical treatment from private hospitals for cancer. He passed away on 28.8.2008 while in service. On 11.11.2009 the applicant submitted claim for reimbursement of a total expenditure amounting to Rs.3,09,113/- incurred for medical treatment of her husband. When her claim was not settled by the respondent-Municipal

Corporation, she filed OA No.2984 of 2010 seeking a direction to the respondent-Municipal Corporation to make payment of the medical claim. On 10.9.2010, when OA No.2984 of 2010 was taken up by the Bench for preliminary hearing on the question of admission, the applicant's counsel sought to withdraw the same with liberty to file a fresh OA with better particulars. Accordingly, OA No.2984 of 2010 was dismissed by the Tribunal. Thereafter, the applicant filed a fresh O.A., i.e., OA No.415 of 2011, which was taken up by the coordinate Bench of the Tribunal on 25.1.2011 for hearing on the question of admission. After hearing the applicant's counsel, the coordinate Bench of the Tribunal allowed OA No.415 of 2011, vide order dated 25.1.2011, which is reproduced below:

> "Heard the learned counsel for the applicant.
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> 2. The applicant seeks reimbursement of medical expenses relating to her husband, a cancer patient, who died during the treatment. On 28.8.2008, the employee of the respondents passed-away and apparently since he was only a Mali and the level of poverty and education being such, the applicant did not know that it was possible for her to get the medical expenses reimbursed. She would say that there is a delay of three months, which was later on condoned by the authorities but somehow or the other the matter is held up somewhere in the administrative hierarchy. It appears that the Paras Hospital where he was under treatment was not a panel hospital. Since the applicants husband treatment culminated in his death, there cannot be any further contention that it was of emergent nature. Therefore, going by the Apex Courts judgments, a rational and logical view is to be taken in relation to not being treated in a government hospital. The delay of three months in submitting the bills taken in the light of economic situation of the applicant and particularly so following the death of her husband is not a crucial factor, which is to be condoned and I hereby direct the respondents-authorities to actively consider the matter and pass an appropriate order within one month next. She shall be at liberty to contest the grant of amount to her, if she finds that she has not been adequately compensated but it is made clear that within ten days of passing such an order by the respondents, the amount as found due must be paid to the applicant whether she objects the quantum of amount or not.
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> 3. The OA is allowed to the extent noted above."

Thereafter, alleging non-compliance of the above order of the Tribunal, the applicant filed CP No.564 of 2011. The Tribunal dismissed CP No.564 of 2011, vide order dated 19.9.2011, which is reproduced below:

> "This contempt petition has been filed against the alleged violation of the order dated 25.01.2011whereby this Tribunal has directed the respondents to grant amount as admissible to the applicant on account of medical expenses and it was further made clear that the amount, as found due, must be paid to the applicant whether she objects quantum of the amount or not.
> 2. The respondents have filed reply whereby they have enclosed photocopy of cheque no.306852 dated 26.06.2011drawn on Vijay Bank, Rohini Branch, New Delhi, which has been received by the applicant on 16.6.2011. Learned counsel for the respondents submits that this fact has been deliberately suppressed by the applicant in the contempt petition, which led to issuance of notice on this contempt petition on 11.07.2011.
> Applicant is not present in the court. However, in view of what has been stated above, we are of the view that the present contempt petition is not maintainable, which is accordingly dismissed. Notices issued to the respondents are hereby discharged. No costs."

Thereafter, the applicant filed MA No.1424 of 2014 for revival of CP No.564 of 2011. The Tribunal dismissed MA No.1424 of 2014, vide order dated 14.9.2012, which is reproduced below:

> "This MA has been filed for revival of the Contempt Petition. It is seen that OANo.415/2011 was decided on 25.01.2011 whereby following directions were passed:-
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> > "Therefore, going by the Apex Courts judgments, a rational and logical view is to be taken in relation to not being treated in a government hospital. The delay of three months in submitting the bills taken in the light of economic situation of the applicant and particularly so following the death of her husband is not a crucial factor, which is to be condoned and I hereby direct the respondents-authorities to actively consider the matter and pass an appropriate order within one month next. She shall be at liberty to contest the grant of amount to her, if she finds that she has not been adequately compensated but it is made clear that within ten days of passing such an order by the respondents, the amount as found due must be paid to the applicant whether she objects the quantum of amount or not."
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> 2. The respondents have since filed a reply on 08.08.2012, along with an order dated 09.07.2012 wherein an amount of Rs.1,58,710/- has already been shown to have been paid to the applicant. They have also filed note sheets(pages 37 to 40) in which the entire details and calculation of the amount payable has been arrived at.
> 3. In view of this, we do not find any reason to revive the Contempt Petition and the MA praying for revival of the CP is dismissed. Needless to add that the order dated 09.07.2012 is afresh cause of action, and in

case the applicant is still aggrieved with the quantum of payments, he would be at liberty to agitate the matter before the appropriate forum."

Hence, the applicant filed the present OA No.530 of 2016 on 22.8.2016 seeking the following reliefs:

"A. Quash and set aside the order dt.09.07.2012 passed by the respondents.
B. To direct the respondents to reimburse the applicant's medical claim towards balance amount ofRs.1,50,403 (One lakh fifty thousand four hundred three only) with interest of 24%.
C. The cost of the proceedings may also be awarded in favour of the applicants.
D. Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Resisting the O.A., the respondent-Municipal Corporation has filed a counter reply. Besides pleading that the O.A. is barred by limitation and hit by the doctrine of *res judicata*, the respondent-Municipal Corporation, at pages 1, 2 and 3 of its counter reply, has stated thus:

"2. That the applicant is aggrieved by the order dated 09.07.2012 (Annexure A-1 to OA) issued by the Dy. Director Horticulture/NDMC whereby the applicant was intimated that claim amounting to Rs.1,58,710/- admissible under CSMA rules has been settled by the Health Department in respect of the claim for reimbursement of amount of Rs.3,09,113/-. In this context, the brief facts leading to above settlement of reimbursement are submitted below for appreciation of the case on merits. The applicant submitted claim for reimbursement of medical expenses amounting to Rs.3,09,113/- on account of expenses incurred towards medical treatment given to her husband, viz., late Shri Har Prasad Mali at Paras Hospital, Brahm Shakti Hospital & Batra Hospital. The break up details of process of the claim hospital-wise is submitted below:-

i) In respect of Paras Hospital, on scrutiny of the claim, it was revealed that the applicant indicated total expenses incurred in Paras Hospital amounting to Rs.2,71,950/- whereas one authentic bill amounting to total amount Rs.1,30,500/- was found attached to the claim. In this context, it is submitted that another bill amounting to Rs.1,40,500/- dated 16.07.2008 incorporating the same receipts as per previous bill for total amount Rs.1,30,500/- was also attached. The previous bill for the amount of Rs.1,40,500/- was found unauthentic without the signature of hospital authority and also it covered the same items of expenses corresponding to the discharge summary issued by the Paras Hospital. As against one valid bill in respect of expenses incurred in Paras Hospital for Rs.1,30,500/-, the payment was made for total amount of Rs.1,23,984/-. The balance amount was deducted

because of excess bed charges are inadmissible as per CSMA rules.

ii) As regards Brahm Shakti Hospital, as against the claim amount Rs.400/- the admissible amount of Rs.365/- was paid.

iii) As regards Batra Hospital, the claim was for Rs.22,864/- and the admissible amount of Rs.21,962/- was paid.

iv) As against the claim towards chemist bill amounting to Rs.1999/-, the entire amount has been paid.

v) As against the claim of Rs.11,900/- for expenses incurred at Saral Diagnostic Centre, the payment of Rs.10,400/- was made.

As explained above, the respondent NDMC has paid total amount Rs.1,58,710/- towards total actual expenditure incurred by the applicant amounting to Rs.1,67,663/-. Accordingly, it is self-explanatory that the reimbursement case of the applicant was processed and settled by the respondent/NDMC with liberal approach and in accordance with CSMA Rules, 1944.

As such, the relief sought against the answering respondent for reimbursement of entire amount of claim preferred by the applicant is not maintainable as per rules in vogue. Therefore, the claim for the balance amount projected by the applicant in the subject OA is untenable on merits of the case."

3. In her rejoinder reply, the applicant, without specifically rebutting the above statement made by the respondent-Municipal Corporation in its counter reply, has stated that on the facts and in the circumstances of the case, the plea of limitation or *res judicata* raised by the respondent-Municipal Corporation is untenable.

4. In the aforesaid context, it has been submitted by Mr.Rishi Kapoor, learned counsel appearing for the applicant, that the medical claim was raised by the applicant in accordance with the rules, and the respondent-Municipal Corporation acted illegally and arbitrarily in making payment of Rs.1,58,710/- as against the applicant's total claim of Rs.3,09,113/- and in disallowing the balance amount of Rs.1,50,403/- without any rhyme or reason. It has also been submitted by Mr.Rishi Kapoor that the applicant has

never been informed by the respondent-Municipal Corporation of any defect or infirmity in her medical claim. Therefore, the respondent-Municipal Corporation should be directed to make payment of the balance amount of medical claim with interest, as prayed for in the O.A. In support of his contentions, Mr.Rishi Kapoor relied upon the judgment dated 30.8.2013 passed by the Hon'ble High Court of Delhi in **Jai Pal Aggarwal Vs. Union of India**, W.P. (C) No.5576 of 2012; the judgment dated 24.1.2008 passed by the Hon'ble High Court of Punjab & Haryana reported as (2008) 2 PLR601, **Baljinder Kaur Vs. State of Punjab & others;** and the judgment dated 13.2.2017 passed by the Hon'ble High Court of Punjab & Haryana in LPA No.1813 of 2016, **State of Haryana and others Vs. Bhagwat Prasad Sharma.**

4.1 In **Jai Pal Aggarwal Vs. Union of India** (supra), the Hon'ble High Court of Delhi has observed thus:

> "In my view, the only logical interpretation which can be given to clause 10 of the OM dated 17.8.2010 is that if a government servant or a government pensioner holding a CGHS card takes treatment in emergency in a non-empanelled private hospital, he is entitled to reimbursement at the rates prescribed by CGHS for hospitals which are at par with the hospitals in which the treatment is taken. In other words, if a CGHS card holder, in emergency, takes treatment in a non-empanelled private super-speciality hospital, he is entitled to reimbursement at the package rates prescribed by CGHS for super-speciality hospital, irrespective of whether that hospital is empanelled with CGHS or not. One needs to keep in mind that treatment at an empanelled super-speciality hospital is available to CGHS card holder even in a non-emergency condition. Clause 10 of the OM dated 17.8.2010 deals only with the cases where a card holder on account of some emergent medical requirement has to go to a non-empanelled hospital. There is no logical reason for not reimbursing him as per package rates approved by CGHS for its empanelled hospitals if the treatment is taken in a hospital, which is qualified and eligible for being empanelled as a super-speciality hospital though they were not actually empanelled with CGHS. Any other interpretation would result in a situation where CGHS card holder, despite needing immediate medical treatment will either not be able to take treatment in a nearby hospital or he will have to bear the

cost of such treatment from his own pocket though he may or may not be in a position to afford that treatment."

4.2 In **Baljinder Kaur Vs. State of Punjab & others** (supra), the Hon'ble Punjab & Haryana High Court has observed thus:

> "At the most, the petitioner can be deprived of the interest part of the prayer. The reimbursement of medical bills is not an act of bounty or charity on the part of the State Government or Union of India. As employee is entitled to the medical reimbursement as per the rules and such claim should be sympathetically viewed by the dealing Assistant and Officer. Unnecessary objections raising the miseries of the claimant should be avoided. By this attitude alone the images of the government can improve. Negative approach should be curtained and curbed in such like matters."

4.3 In **State of Haryana and others Vs. Bhagwat Prasad Sharma** (supra), the Hon'ble High Court of Punjab & Haryana has observed thus:

> "6. Earlier in the case of Darshan Singh Rai Versus Union of India and others, 2008 (2) SCT 242, a Coordinate (Division) Bench of this Court had deprecated the attitude of the State Governments in denying the disbursement of medical treatment expenses to the Government servants, particularly those who have retired from service. The Bench had observed:
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> > "The State cannot refuse reimbursement of the expenditure incurred by a Government servant for it is the bona fide duty of the Government to pay for the beneficial act of an employee as it is Welfare State. All the rules and regulations are to be considered in favour of the Government employee liberally and to his benefit. The State cannot be permitted to have an iron heart in such matters. It is not the plea of the respondents that the petitioner has not incurred the expenditure on his treatment. It is being noticed by this Court that quite often writ petitions are filed to obtain redress in the matter of reimbursement of medical expenses particularly by those who have retired from service, which is a sad commentary on the working style of the concerned department and particularly of the head of those departments who must own responsibility for the indifference and delays in this regard."

5. *Per contra,* it has been submitted by Mr.R.N.Singh, learned counsel appearing for the respondent-Municipal Corporation that the present O.A.is barred by limitation and hit by the doctrine of *res judicata*. It has also been submitted by Mr.R.N.Singh that the medical claim of the applicant has been settled and the amount as admissible under the rules has been paid

to the applicant. Therefore, the O.A. is devoid of merit and liable to be dismissed.

6. I have given my thoughtful consideration to the rival contentions of the parties.

7. In view of the order dated 24.4.2017 passed by the Tribunal on MA No.511 of 2016 condoning the delay in filing of the O.A., I am not inclined to accept the plea of limitation as raised by the respondent-Municipal Corporation. In view of the observation made by the Tribunal in its order dated 14.9.2012 passed in MA No.1424 of 2012 (which has already been reproduced in the present order) that the order dated 9.7.2012 gave rise to a fresh cause of action and that in the event of the applicant still feeling aggrieved thereby, she would be at liberty to agitate the matter before the appropriate forum, I am also not inclined to accept the plea of *res judicata* raised by the respondent-Municipal Corporation.

8. I have already noted that in her rejoinder, the applicant has not specifically rebutted the statement made by the respondent-Municipal Corporation at pages 1, 2 and 3 of its counter (which has been reproduced in paragraph 2 of this order). It is, thus, clear that the amount as admissible under the rules has already been paid to the applicant. In the decisions relied upon by Mr.Rishi Kapoor, learned counsel appearing for the applicant, it has nowhere been laid down by the Hon'ble High Courts that the claim made by an employee for reimbursement of expenditure incurred for medical treatment obtained from private hospital has to be settled in full without

having regard to the rules and instructions issued by the Government and without scrutinizing the admissibility or otherwise of different amounts of expenditure shown by the employee in the claim. In view of what has been explained by the respondent-Municipal Corporation at pages 1, 2 and 3 of the counter reply, I have no hesitation in holding that the applicant has not been able to make out a case for the reliefs claimed by her in the O.A.

9. Resultantly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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