

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 180/00689/2016

Tuesday, this the 10th day of April, 2018

CORAM:

HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER

Lekha S. Nair, W/o. Sreejesh S. Nair,
 aged 31 years, Accountant, Kanjirapally HO,
 residing at lakayil House, Chenappady PO,
 Chirakadavu – 686 520.

..... **Applicant**

(By Advocate : Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by Secretary to Government,
 Department of Posts, Ministry of Communications,
 Government of India, New Delhi – 110 001.
2. The Chief Postmaster General, Kerala Circle, Trivandrum-695 033.
3. The Post Master General, Cochin Region, Cochin – 682 018.
4. The Superintendent of Post Offices, Changanassery Postal Division,
 Changanassery – 686 101.
5. Postmaster, Head Post Office, Kanjirapally,
 686 507.

..... **Respondents**

(By Advocate : Mr. Sreenath Sasidharan, ACGSC)

The application having been heard on 28.03.2018, the Tribunal on 10.04.2018 delivered the following:

ORDER

Per Hon'ble Mr. U. Sarathchandran, Judicial Member -

Applicant has approached this Tribunal being aggrieved by Annexure A1 impugned order rejecting her claim for medical reimbursement for the IVF treatment she had undergone in a private hospital i.e. Matha Hospital, Thellakom. Applicant is presently working as Accountant in Kanjirapally Head Post Office. She states that due to her hunchback body it was difficult

for her to conceive in the normal manner and she was advised by the medical authorities that she should undergo IVF treatment. According to her she went to the Medical College, Kottayam and also to the District Hospital, Kottayam from where she was recommended for IVF treatment at private hospital i.e. Matha Hospital, Thellakom. Applicant states that she had informed this matter to the respondent authorities vide Annexures A2 and A3 and other communications seeking permission for undertaking IVF treatment at private hospital. Vide Annexure A3 representation she had sought for medical advance of Rs. 50,000/-, furnishing a detailed estimate issued by the aforesaid private hospital. She further states that she had furnished Annexure A7 undertaking that she has not claimed reimbursement for IVF treatment in the past and that she will not claim in future, in terms of the Government of India guidelines. When her claim was rejected by the impugned Annexure A1 order she had submitted Annexure A8 representation to respondent No. 2 on 7.7.2015. But no relief was granted to her. Hence she has approached this Tribunal seeking relief as under:

- “(i) To quash Annexure A1,
- (ii) To direct the respondents to release the medical reimbursement in relation to IVF treatment conducted by the applicant with interest at the rate of 12%.
- (iii) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (iv) Grant the cost of this Original Application.”

2. Respondents filed reply contending that the applicant has approached this Tribunal belatedly and hence the OA is barred by limitation. According to them this OA is experimental in nature. Respondents state that prior approval of the Head of the Department is required before obtaining IVF

treatment but the applicant has submitted some of the documents along with her representation and without waiting for prior approval from the competent authority she submitted Annexure A3 request for medical advance and had undergone IVF treatment from the said hospital which is contrary to Annexure R1 administrative instructions. The respondents contend that the applicant had not obtained any recommendation of the Head of the Department of Gynecology and Obstetrics of a Government Medical institution. As per Annexure R1 OM the private medical institution where the procedure is proposed to be undertaken should be an institution registered with the State/Central Government. Matha Hospital, Thellakom is registered only with Ettumanoor Panchayat and which is upgraded as a municipality and is not in compliance with Annexure R1 administrative instructions. Annexure A8 appeal preferred by the applicant was rejected by the competent authority on the ground that the hospital where she took treatment was not recognized either by the State Government or by the Central Government in terms of Annexure R1 instructions.

3. Along with the rejoinder the applicant produced Annexures A10 and A11 documents. Annexure A10 is a letter dated 8.12.2016 informing the rejection of Annexure A8 appeal. Annexure A11 is a certificate issued by the Ettumanoor Municipality stating that Matha Hospital, Thellakom, Kottayam is registered with Ettumanoor Municipality under Kerala Panchayat Raj (Registration of Private Hospitals and Private Para-medical Institutions) Rules, 1997.

4. An additional reply statement also was filed by the respondents reiterating the contentions in the reply already filed and also stating that the details of the infertility treatment undergone by the applicant after her marriage up to June, 2013 was not furnished by her.

5. We have heard Shri V. Sajith Kumar, learned counsel appearing for the applicant and Mr. Sreenath Sasidharan, ACGSC learned counsel appearing for the respondents. Perused the record.

6. Rule 6 of Central Service (Medical Attendance) Rules, 1944 is the governing provision of law relating to the medical treatment of a Government servant. It reads:

“6 (1)- A Government servant shall be entitled, free of charge, to treatment -

(a) in such Government hospital at or near the place where he falls ill as can in the opinion of the authorised medical attendant provide the necessary and suitable treatment; or

(b) if there is no such hospital as is referred to in sub-clause (a) in such hospital other than a Government hospital at or near the place as can in the opinion of the authorised medical attendant, provide the necessary and suitable treatment;

(2) Where a Government servant is entitled under sub-rule (1), free of charge, to treatment in a hospital, any amount paid by him on account of such treatment shall, on production of a certificate in writing by the authorised medical attendant in this behalf, be reimbursed to him by the Central Government.

Provided that the Controlling Officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the Controlling Officer shall communicate to the claimant the reasons, in brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of forty-five days of the date of receipt of the order rejecting the claim.”

According to the respondents the administrative instructions relating to the guidelines for reimbursement of expenses for IVF treatments are contained in Annexure R1 OM dated 22.11.2011 issued by the Department of Health and Family Welfare, Government of India. It reads:

**“Government of India
Ministry of Health and Family Welfare
Department of Health & Family Welfare
Nirman Bhawan, New Delhi 110 108**

No: Z. 15025/5/201 1-CGHS III/CGHS (P)

Dated, the 2 November, 2011

OFFICE MEMORANDUM

Subject: Guidelines / Criteria for reimbursement of expenses for In-Vitro Fertilisation (IVF) treatment to CGHS beneficiaries and beneficiaries under Central Services (Medical Attendance) Rules. 1944.

The undersigned is directed to say that the Ministry of Health & Family Welfare has been receiving requests for providing clarifications as to whether the expenditure incurred on In-Vitro Fertilisation ((IVF) treatment is admissible under CGHS, and if so. whether any guidelines have been laid down for reimbursement of the expenses incurred on IVF treatment.

(2) The matter has been examined by a Technical Committee of the Heads of Department of Gynaecology & Obstetrics of Government Medical institutions, and based on the recommendations of the Committee, the following guidelines are laid down for considering cases for reimbursement of expenses incurred on IVF treatment by CGHS beneficiaries and beneficiaries under Central Services (Medical Attendance) Rules, 1944:-

(i) Requests for IVF treatment will be considered only on the basis of advice tendered by the Head of Department of Gynaecology & Obstetrics of a Government Medical institution;

(ii) Permission for IVF treatment to be undertaken may be given by the Head of Department in the Ministries / Departments on the recommendations of the Head of Department of Gynaecology & Obstetrics of a Government Medical institution;

(iii) IVF procedure will be allowed in a Government Medical institution on the recommendations of the Head of Department of Gynaecology & Obstetrics of a Government Medical institution;

(iv) IVF procedure may be allowed, on a case to case basis, in a private medical institution if the Institution is registered with the State / Central Government and has the necessary facilities including equipment and trained man power for carrying out the procedure. It is, however, mandatory to obtain the recommendations of the Head of Department of Gynaecology & Obstetrics of a Government Medical institution for permitting the procedure to be undertaken in a private institution;

(v) There should be clear evidence of failure of conventional treatment before permitting IVF treatment procedure;

(vi) The age of women undergoing IVF treatment procedure should be between 21 and 39 years

(vii) The woman has to be married and living with her husband;

(viii) The IVF treatment procedure will be allowed only in cases of infertility where the couple has no living issue

(ix) Reimbursement of expenditure incurred on IVF procedure will be allowed upto a maximum of 3 (three) fresh cycles;

(x) An amount not exceeding Rs.65,000/- (Rupees sixty five thousand only) per cycle or the actual cost, whichever is lower, will be allowed for reimbursement. This amount will be inclusive of the cost of drugs and disposables and monitoring cost during IVF procedures;

(xi) As IVF treatment is a planned procedure, reimbursement cases can be considered by the Ministries / Departments only if prior approval was obtained by the beneficiary for undergoing the IVF treatment.

(xii) There will be a onetime permission for availing IVF treatment consisting of three cycles in total, which would be admissible to the beneficiary. The concerned Ministry / Department shall obtain an undertaking from the applicant that he / she has not claimed the reimbursement earlier from the Government of India in the past and will not claim it in the future.

3. These guidelines come into force from the date of issue of the Office Memorandum and reimbursement cases of IVF treatment undertaken after the issue of the Office Memorandum only can be considered by the Ministries / Departments.

4. This issues with the concurrence of Integrated Finance Division in the Ministry of Health & Family Welfare, vide Dy. No.C.1747/IFD (Health)/2011 dated the 21st November, October, 2011.

Sd/-

[V.P. Singh]

Deputy Secretary to the Government of India”

7. By Annexure A1 impugned order the respondents have rejected the request of the applicant for reimbursement on the ground that she had not obtained prior permission for undertaking the IVF treatment. However, Annexures A2 and A3 clearly shows that the applicant had indeed sought for permission to undergo IVF treatment in the private hospital but the respondents had been keeping a deafening silence on such requests. Therefore, this Tribunal is not inclined to accept the aforesaid grounds stated in Annexure A1. However, in the reply statement the respondents has raised yet another contention that the applicant had not taken any recommendation of a Government approved Gynecologist referring her case for IVF treatment to be undertaken in a private hospital. True, Annexure R1 administrative instructions do insist that request for IVF treatment would be considered only

on the basis of the advice of the Head of Department of Gynecology and Obstetrics. The applicant has produced Annexure A4 information obtained from the Medical College Hospital, Kottayam under Right to Information Act, 2005. Annexure A5 information so obtained by the applicant reveals that infertility treatment machines like IVF are not available in the Kottayam Medical College Hospital, Gandhinagar. Annexure A2(a) shows that she had applied for further recommendation of the Superintendent of the District Hospital, Kottayam permitting her to undergo the IVF treatment in the private medical institution. Annexure A2(b) further shows that the certificate so obtained from the Gynecology Department of District Hospital, Kottayam recommending IVF treatment at private hospital. Annexure A2(b) is addressed to respondent No. 4.

8. Yet another objection raised by the respondents on the claim of the applicant for reimbursement is that the private hospital i.e. Matha Hospital, Thellakom is not a hospital which is recognized by the State or Central Government. In this connection the respondents rely on the administrative instructions issued by the Ministry of Health, Government of India OM F. No. S.14021/06/2005-MS, dated 4.1.2007. It reads:

“(12) Hospitals recognized by the State Governments/CGHS/CS(MA) Rules, 1944 – The issue for grant of permission for treatment of Central Government employees and the members of their family in any of the hospitals recognized by the State Government/CGHS Rules/CS(MA) Rules, 1944 had been under consideration of the Government for sometime past. It has now been decided that the Central Government employees and the members of their families may be permitted to avail of medical facilities in any of the Central Government, State Governments hospitals and the hospitals recognized by the State Government / CGHS Rules /CS(MA) Rules, 1944, as well as the hospitals fully funded by either Central Government or the State Government subject to the condition that they will be reimbursed the medical expenditure at the rates fixed by the Government under the CGHS Rules / CS (MA) Rules, 1944 or the actual expenditure incurred, whichever is less. In other words, the permission can be granted by the Head of the Ministry / Department / Office to the Central Government employees / members of their families to obtain medical services from any of the private hospitals recognized under CGHS in the 24 CGHS covered cities also. IN view of this decision, there is no objection if the Central Government employees also undertake medical treatment in any of the

Hospitals for the procedures for which the hospitals are already recognized by the concerned State Governments.

2. If the treatment for a particular disease / procedure is available in the same city where the Government servant is employed, he may be permitted to avail of the medical services in any other city of his choice but in such cases, he will not be eligible for sanction of TA/DA. In case the treatment for a particular disease / procedure is not available at the same station, the beneficiary will be eligible for sanction of TA of his entitled class for taking treatment in a different city.

3. These orders will be effective from the date of issue.

4. This issues with the concurrence of Finance Division vide their Dy. No. 757/2000-JS & FA(H), dated 16.2.2000.”

However, the applicant has produced Annexure A11 certificate showing that the aforesaid hospital is registered with the Ettumanoor Municipality as per the Kerala Panchayat Raj (Registration of Private Hospitals Para-medical Institutions) Rules, 1997. According to the respondents Annexure A11 registration certificate will not satisfy the aforequoted Government of India instructions.

9. This Tribunal has considered the contention raised by the respondents regarding the recognition of the private hospital where the applicant has undergone IVF treatment. It appears that the respondents have been totally oblivious of the amendments that had been taken place in the Constitution of India bringing in Part IX introducing the Panchayat Raj system of administration. Article 243 deals with Panchayat and Article 243-P in Part IX-A deals with the Municipalities. It has been held by the apex court in *Union of India v. Rakesh Kumar* – (2010) 4 SCC 50 that the underlying purpose of Part IX is to create democratic decentralization for ensuring that traditionally marginalized groups should progressively gain foothold in local self government. It was also held in *K. Krishna Murthy v. Union of India* – (2010) 7 SCC 202 that the democratic decentralization envisaged in Part IX is with the objective of greater accountability between citizens and State

apparatus and empowerment of weaker sections and to introduce the panchayat system at grass root level. This Tribunal is of the view that it is in accordance with the aforesaid Constitutional provisions as a part of decentralization process, registration of private hospitals has been entrusted to the local self government institutions. As evident from Annexure A11 certificate the local self government body has given registration to the Matha Hospital under the Kerala Panchayat Raj (Registration of Private Hospitals Para-medical Institutions) Rules, 1997. Therefore, in the wake of the constitutional amendments brought in Part IX and Part IX-A in the Constitution, registration of the private hospital by the local self Government will satisfy the requirement of recognition by the “concerned State Governments”.

10. Going back to the provisions of Rule 6 of the CS (MA) Rules, 1944 it has to be noted that the said rules are statutory in nature. It has been clearly provided in Rule 6 that the Government servants shall be reimbursed any amount paid by him on account of treatment undergone by him by the production of certificate in writing by the authorized medical attendant. A reading of Rule 6 clearly shows that the applicant's case squarely falls under the provisions of the said rule. Therefore any administrative instructions contrary to the Rule 6 will have no validity in the eye of law and hence the requirements contained in the aforequoted administrative instructions including those in Annexure R1 is immaterial for reimbursement of the expenses incurred for the IVF treatment undergone by the applicant.

11. It has to be noted that the applicant had been desperately trying for an IVF treatment for conceiving a baby. The respondents on the other hand was adopting Shylockian attitude of pedantic following of the administrative instructions issued by the authorities, regardless of the provisions in Rule 6 of CS (MA) Rules, 1944. As observed earlier, when Rule 6 of the CS (MA) Rules, 1944 provides for reimbursement of the medical expenses incurred by the government servant in a hospital other than government hospital on the recommendation of the authorised medical attendant, the administrative instructions restricting the provisions in Rule 6 will have no legal sanctity.

12. The issue of limitation raised by the respondents are in fact not very much material in this case because the applicant has a serious grievance to be ventilated. Hence this Tribunal ignores the delay occurred to the applicant for approaching this Tribunal.

13. Taking stock of the facts, circumstances and the legal issues involved in this case, this Tribunal is of the view that the applicant is entitled to the relief sought in this OA. Accordingly, the OA is allowed. Respondents are directed to pay the cost of this OA to the applicant.

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00689/2016

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of the order dated 16.5.2015 issued by the 5th respondent.
- Annexure A2** – True copy of the representation dated 4.6.2013 submitted by the applicant to the 4th respondent.
- Annexure A2(a)**– True copy of the representation dated 13.6.2013 submitted by the applicant to the 4th respondent.
- Annexure A2(b)**– True copy of the representation dated 19.6.2013 submitted by the applicant to the 4th respondent.
- Annexure A3** – True copy of the representation dated 7.9.2013 submitted by the applicant to the 3rd respondent.
- Annexure A4** – True copy of the application dated 13.12.2012 submitted by the applicant to the Public Information Officer, Medical College Hospital along with English translation.
- Annexure A5** – True copy of the reply No. DI/188/2012/MCHG dated 1.1.2013 issued by the Public Information Officer, Medical college Hospital along with English translation.
- Annexure A6** – True copy of the representation 17.12.2013 submitted by the applicant to the 4th respondent.
- Annexure A7** – True copy of the letter No. B/3-15/09 dated 8.1.2015 issued on behalf of the 3rd respondent.
- Annexure A8** – True copy of the appeal dated 7.7.2015 submitted by the applicant to the 2nd respondent.
- Annexure A9** – True copy of the reply dated 16.12.2015 issued from the office of the 2nd respondent.
- Annexure A10** – True copy of the letter No. E/20-1/LSN dated 8.12.2016 of Matha Hospital along with English translation.
- Annexure A11** – True copy of the registration certificate dated 29.4.2016 of Matha Hospital along with English translation.
- Annexure A10** – True copy of the order No. E/20-1/LSN dated 8.12.2016 issued by the Assistant Superintendent of Posts (Head Quarters) for the 4th respondent to the applicant.
- Annexure A11** – True copy of the registration certificate in Form 3 issued by the Secretary, Ettumanoor Municipality to the

Managing Director, Matha Hospital with English Translation.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of OM No. Z.15025/5/2011-CGHS III/CGHS(P) dated 22.11.2011.

Annexure R2 – True copy of letter dated 24.9.16 received from Matha Hospital, Thellakom.

-X-X-X-X-X-X-X-X-X-