

O.A.598/2016

Coram: Hon'ble Shri Arvind J. Rohee, Member (J).

Vinay B.Patil, Age 31 years,
Occu. Service, Assistant (Gen.), Grade -I,
Employee I.D. No.1265, C.S.I.R.
National Institute of Oceanography
Presently working as C.S.I.R. -
National Institute of Oceanography,
Dona Paula Pin 403 004 Goa. **...Applicant.**

(By Advocate Shri R.S.Kadam)

VERSUS

1. Union of India, Through C.S.I.R. -
National Institute of Oceanography,
Dona Paula, Pin 403 004 Goa.
2. The Director General, C.S.I.R. -
National Institute of Oceanography (HQ)
Anusandhan Bhavan, 2 Rafi Marg,
New Delhi 110 001.

(By Advocate Shri K.P. Anil Kumar)

Order reserved on: 06.04.2018
Order delivered on : 11.04.2018.

O R D E R

The applicant who is working as Assistant
(GEN) Gr.I in National Institute of Oceanography,
Dona Paula, Goa under Council of Scientific and

Industrial Research (for short CSIR), is aggrieved by rejection of his claim for reimbursement of expenses incurred by him towards medical treatment of his father by the impugned order dated 02.12.2015 (Annexure A-1) issued by Respondent No.2. He, therefore, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 in the present O.A. seeking the following reliefs:-

“8.A) This Original Application may kindly be allowed.

8.B) That, this Hon'ble Tribunal under its original Jurisdiction under the Central Administrative Tribunal Act, be pleased to allow the claim of the applicant dated 09.10.2015 to the tune of Rs.9,20,015/- of medical reimbursement of his father late Shri. Balkrishna Dnyandeo Patil as stated more particularly in the said application and for the reasons stated herein above with interest of 10% from the date of original application dated 09.10.2015 quashing the order dated 02.12.2015.

8.C) That, this Hon'ble Tribunal be pleased to declare that, the rules on which, the respondents authorities have relied that, the father of the applicant is not dependent and, therefore, not entitled for medical reimbursement may be declared as illegal, bad in law and ultra virus to the very C.S. (M.A.) Rules and other rules of medical reimbursement and so also, ultra vires to the Constitution of India, 1950 as the same being arbitrary violating Article 14, 21 of Constitution of India 1950.

8.D) To grant any other relief as the applicant may deem fit.”

2. The applicant's father late Shri Balkrishna Dnyandeo Patil retired on 13.08.2003 while working

in Zilla Parishad, Satara. At that time he was getting monthly pension of Rs.7188/-. He was residing with the applicant and was dependent on him.

3. The applicant's father was required to be admitted at Ruby Hall Clinic, Pune during 10.05.2015 to 05.06.2015 and thereafter again on 14.07.2015 to 20.07.2015 for urgent medical treatment for head injury sustained by him by fall on ground. The applicant incurred total expenditure of Rs.9,20,015/- for the said treatment. After the applicant's father is discharged from the Hospital, he continued to reside with the applicant. However, he died on 12.11.2015 within four months of his discharge from hospital.

4. Before death of applicant's father he submitted an application annexing all the documents pertaining to medical treatment to Respondent No.2 on 09.10.2015 for reimbursement of expenses of Rs.9,20,015/- incurred by him towards medical treatment of his late father. The claim was then forwarded to Respondent No.1. However, by the impugned order dated 02.12.2015 it was regretted on the ground that applicant's father was a pensioner getting sufficient pension and hence was not dependent on applicant.

5. The impugned order has been challenged on the following grounds as mentioned in Para 5 of the O.A.:-

“5.a) That, the respondent authorities have clearly failed to appreciate that, so far as the rule on which, the claim of the medical reimbursement of the applicant is refused and denied, thus, C.S. (M.A.) Rules, if read into totality, there is no as such concept of dependent and non-dependent and, therefore, the view taken by the respondent No.2 in rejecting the claim of the applicant on the ground that, the father of the applicant not being dependent is not entitled for the medical expenditure.

5.b) Even, the order cum communication of the respondent No.2 of denial of medical claim of reimbursement of the applicant is non-speaking order as, the same is referred only C.S. (M.A.) Rules and stating that, the father of the applicant is not dependent upon the applicant. The applicant infers most probably that, due to the reason that, the father of the applicant was getting pension, the respondent No.2 has rejected the claim on the ground that, he was not dependent upon the applicant.

5.c) That, the respondent authorities have not taken into consideration that, even though the father of the applicant was getting pension the same is paltry amount and even otherwise, also, the father of the applicant was totally dependent upon the applicant for his medical expenses and for his livelihood etc. therefore, it cannot be said that, the father of the applicant was not dependent upon the applicant.

5.d) That, even otherwise, the applicant says that, the law on this point is very crystal clear by the judicial pronouncement of the Hon'ble Supreme Court so also of the Hon'ble Bombay High Courts and other High Courts. Such as, in the matter of 'State of MP and others Vs. M.P. Oza and another' (1998) SCC (2) 554 and also in the case of 'Anil Dattatraya Kulkarni Vs. State of Maharashtra', decided in the Writ Petition No.8899 of 2012 by the Hon'ble High Court of Bombay that, even the father or mother of the government employee are getting pension, they are dependent on the government employees i.e. their son and, therefore, such son i.e. government employee is entitled for medical reimbursement and expenditures if any, occurred.

5.e) That, even otherwise, it is absolutely clear

that, in the present matter, when the father of the applicant was getting paltry pension, he is physically, mentally and financially and even in the old age absolutely dependent upon his son i.e. applicant, who is the government employee and, therefore, the view taken in rejection of the medical reimbursement claim of the applicant by the respondent authorities is absolutely illegal, arbitrary and bad in law, violating Art. 14 of the Constitution of India, 1950."

6. On notice the respondents appeared and by a common reply dated 05.12.2017 resisted the O.A., in which all the adverse averments, contentions and grounds raised therein are denied. It is stated that the impugned order is perfectly legal, correct and proper since as per Central Services (Medical Attendants) Rules the applicant is not entitled to the medical reimbursement, since his father was not dependent on him and was a pensioner. It is stated that as per the details given by the applicant at the time of joining the service on 04.04.2011, his father late Shri B.D. Patil was reported to be an employee of Zilla Parishad, Satara and after retirement he was getting pension. It is not disputed that the applicant's father was admitted in Ruby Hall Clinic, Pune in two spells of short duration and subsequently he died. It is stated that at the time of his death the applicant's father was drawing monthly pension of Rs.17,000/-. The applicant is, therefore, not entitled to the reliefs

sought.

7. The applicant's father was thus admittedly drawing more than Rs.3500/- + Dearness Allowance per month as pension. Hence as per rules he cannot be said to be dependent on the applicant. This has reference to the Government of India, Ministry of Health O.M.No.11012/1/98-CGHS(P) dated 10.12.2008 and Government of India, Ministry of Health OM.No.S-14025/56/79-MS dated 19.05.1979. The initial limit of monthly pension was enhanced to Rs.3500/- + D.A. thereon with effect from 01.01.2009. Since the applicant's father died thereafter in the year 2015 and at that time was receiving handsome amount of monthly pension of Rs.17,000/-, he is covered under the said OM and hence cannot be said to be dependent family member of the applicant. There is no ambiguity in the impugned order which calls for any interference. The claim is, therefore, rightly rejected it is stated.

8. It is stated that citations of decision relied upon by the applicant as mentioned in the grounds, the ratio laid down therein is not applicable to the present case since the facts are different. Hence on the basis of those decisions no relief can be granted to the applicant. The O.A. is, therefore, liable to dismissed.

9. On 06.04.2018 when the matter was taken up for final hearing, heard Shri R.S. Kadam, learned Advocate for the applicant and reply arguments of Shri K.P. Anil Kumar, learned Advocate for the respondents.

10. I have carefully gone through the entire pleadings of the parties and documents relied upon by them in support of their rival contentions. I have carefully gone through the citations of the decision relied upon by the applicant.

FINDINGS

11. The only controversy involved for resolution of this Tribunal in the present O.A. is whether the impugned order dated 02.12.2015 rejecting the applicant's claim for reimbursement of expenses incurred by him towards medical treatment of his father, who is retired State Government employee getting pension is liable to be set aside as illegal, improper or incorrect and the applicant is entitled to the reliefs sought.

12. So far as the facility of medical treatment to the Central Government employees is concerned the same is governed by the Central Services (Medical Attendant) Rules, 1949. The Central Government employees are entitled to receive medical treatment at the dispensaries established under the Central

Government Health Scheme (for short CGHS) by the Ministry of Health and Family Welfare. The Central Government servant is required to contribute some amount for getting free medical treatment at the CGHS Dispensaries, for which amount is deducted regularly from his monthly salary if no option is given then such employee is at liberty to take medical treatment at Government Hospital or ofcourse at private Hospital at his expenses.

13. In the present O.A. the applicant has not made clear if he has opted for getting free medical treatment for himself and other family members, who are dependent on him and that he is the CGHS Card holder. However, the fact remains that the applicant's father retired as Zilla Parishad employee and was getting substantial amount of monthly pension at the time of his death. Initially at the time of his retirement in August, 2013, the monthly pension was fixed at Rs.7188/-. However, the same was revised from time to time and as stated in the application, the applicant's father was getting monthly pension of Rs.11,730/- till January, 2015, whereas according to respondents he was getting Rs.17,000/-. In any case it is clear that the applicant's father was getting substantial amount of pension for his maintenance. There is

nothing on record to show that his wife or any other family member was dependent on him. It is, however, not disputed that he was residing with the applicant at Goa.

14. In the light of the above referred admitted fact, the question is whether the applicant's father can be said to be dependent family member of the applicant for claiming reimbursement of expenses incurred by applicant towards his medical treatment taken in private hospital outside State of Goa i.e. at Pune in Maharashtra. As per the OM relied upon by the respondents the Government has fixed the minimum limit of family pension to consider the dependency. It is obvious that if the Government servant is getting family pension less than Rs.3500/- per month + D.A. thereon, he can be said to be dependent family member. However, in the present case the applicant's father was admittedly getting pension more than aforesaid amount fixed by the Government. It is obvious that on recommendations of the 5th Central Pay Commission, the income limit for dependency for the purpose of extending CGHS coverage to family members of the Central Government employees was enhanced to Rs.3500/- per month + D.A. thereon from Rs.1500/- per month + D.A. thereon, as per OM of Government of

India, Ministry of Health and Family Welfare dated 10.12.2008 referred by the respondents. Thus the minimum limit has been revised to Rs.3500/- per month as basic pension and D.A. thereon.

15. From the above discussion, it cannot be said that applicant's father was financially dependent on the applicant for his maintenance, since he was getting substantial amount which was sufficient for him especially when it is not pleaded or shown that it was insufficient for his maintenance including expenses incurred for routine medical treatment for illness.

16. However, the learned Advocate for the applicant submitted that dependency means financial as well as physical dependency. In other words, according to him if the family member residing with the Government employee to whom he has declared as family member is physically dependent on the employee, whatever expenses incurred by him towards medical treatment of such dependent family member, is liable to be reimbursed. In support of above contention, the learned Advocate for applicant placed reliance on the decision rendered by the Hon'ble Supreme Court in **State of M.P. and others Vs. M.P. Ojha and another, (1998) 2 SCC 554**. In that case provisions of M.P. Civil Services (Medical

Attendance) Rules, 1958 and particularly Rule 2(d) (ii) thereof which defines the term 'family' has been considered, which includes the parents wholly dependent on the Government servant. In that case, it was held that a retired father of the Government employee who was getting monthly pension of Rs.414/- was wholly dependent on his son and hence the latter is entitled to reimbursement of medical and travelling expenses incurred on his father's treatment. The aforesaid Civil Appeal has been filed by the State Government against the judgment and order dated 30.06.1989 of the Madhya Pradesh Administrative Tribunal, Jabalpur in O.A.683/1988.

17. It is thus obvious that the applicant's father in that case received the medical treatment for heart disease viz. Angioplasty followed by by pass surgery some time in the year 1988 and at that relevant time as per the then prevailing State Government rules, it was held that the monthly pension of Rs.414/- was much less than the prescribed limit and hence it was held that his father was wholly dependent on the son who was State Government employee. In the peculiar facts of that case, the relief was granted by the Tribunal which was finally confirmed by Hon'ble Supreme Court.

18. The learned Advocate for the applicant has

invited attention of this Tribunal to Para 13 of the aforesaid decision, in which it was held in reference to the term "wholly dependent", that dependence may be financial as well as physical. It is also held that the impression "wholly dependent" has to be interpreted with reference to the rule in which it occurs, keeping in view the object of the rule. The basic rule of interpretation of statute was also considered. For the sake of convenience and ready reference, Para 13 of aforesaid order is reproduced here:-

"The expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the rules in which it appears. It is not necessary to make an attempt to define the expression "wholly dependent" which should be applicable to all cases in all circumstances. It is also not necessary to look into other provisions of law where such expression is defined. That would lead to results which the relevant rules may not have contemplated. The expression "wholly dependent" occurring in M.P. Civil Services (Medical Attendance) Rules, 1958, cannot be curtailed by reading into it the definition given in Supplementary Rule 2(8). Further, the expression "wholly dependent" as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily, dependence means financial dependence but for a member of family, it would mean other

support, may be physical, as well. To be "wholly dependent" would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound, he may not necessarily be wholly dependent. (emphasis supplied)

In the present case, the father was 70 years' old and was sick. It cannot be said that he was not wholly dependent on his son. The son had to look after him in his old age. Even otherwise by getting a pension of Rs.414/- per month which by any standard is a paltry amount, it could not be said that the father was not "wholly dependent" on his son. That the father had a separate capacity of being a retired government servant is immaterial if his case falls within the Medical Rules, being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the rules in a case like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It is not necessary to examine that the father could have himself applied to the competent authority for permission to get treatment outside the State. This is because the father, under relevant Medical Rules, was a member of the family of his son and was wholly dependent on him. The son is fully entitled to reimbursement for the expenses incurred on the treatment of his father and other travelling expenses. Appeal dismissed."

19. In that case since the applicant who was State Government employee has taken his ailing father to Mumbai i.e. outside Madhya Pradesh after seeking due permission of the Competent Authority. In the present case there is nothing on record to show that for getting the medical treatment at Pune in Maharashtra, the applicant has secured permission of respondents since he was working in Goa which is adjoining State. It is stated that in the aforesaid case the father of the employee was sick and hence he was shifted to Mumbai. However, there is nothing on record to show that father who was getting meager amount of pension was unable to move or was bed ridden or was mentally ill and hence needs constant attention and physical support. In the present case also there is nothing on record to show that before the applicant's father was admitted in Ruby Hall Clinic, Pune for the first time on 10.05.2015 immediately before that he was bed ridden or unable to move and needs constant support and attention of the family members. At that time he was 70 years of age only and there is no pleadings to this effect that he was not keeping good health immediately before he was taken to Ruby Hall Clinic, Pune for medical treatment of head injury sustained by him.

It appears that he accidentally fell down and hence suffered the head injury. In this respect it is simply mentioned in Para 4(c) in the O.A. that the applicant's father was not only mentally and physically but also financially dependent on the applicant as the pension amount was very meager and it was difficult for the father to meet his expenses including medical expenses out of the said amount. Hence he was absolutely dependent on the applicant. However, in absence of specific pleadings it cannot be said that the applicant's father was wholly dependent on the applicant, since he was getting substantial amount of pension at the time when he was admitted in Ruby Hall Clinic, Pune.

20. It is true that in Para 4(d) of the O.A. the applicant stated that due to old age his father frequently required to take medical assistance and was on various occasions was required to be admitted in Ruby Hall Clinic, Pune. However, there is no pleadings to the effect that his father was unable to move or became handicapped or was mentally sick and was unable to understand and was required constant support. In such circumstances of the case, it cannot be said that the decision relied upon by the applicant is applicable in the present case of which facts are different. It is true that

this Tribunal is aware of the fact that after 60 years and during old age every person needs some support. However, in the present case, it cannot be said that the applicant's father was physically dependent on the applicant immediately before he was admitted in Ruby Hall Clinic, Pune. Unfortunately he could not respond positively to the treatment and succumbs to head injury after getting treatment for a period of about six months. It may be stated that after he was discharged from the hospital second time on 20.07.2015 till he died on 12.11.2015 i.e. for a period of about four months he needs some physical support to satisfy his routine pursuits. However, for the reasons stated above it cannot be said that any case for medical reimbursement has been made out by the applicant, especially when element of physical dependency has not been considered in the impugned order and the claim has been rejected on the sole ground that the father of the applicant was getting substantial amount of pension and hence he was not wholly dependent on him.

21. During the course of arguments, learned Advocate for the applicant placed reliance on another decision rendered by the Hon'ble High Court of Bombay in **Anil Dattatraya Kulkarni Vs. State of**

Maharashtra and another, 2014(1) Mh.L.J. 667, and stated that in that case also the applicant's 85 years old mother was getting pension of about Rs.7,983/- per month and she was financially and physically dependent on the applicant who has spent more than Rs.6 lakhs on the medical treatment. The pension amount was wholly inadequate to meet her medical expenses and hence the petitioner was held to be entitled to the medical reimbursement. In that case the provisions of Maharashtra Civil Services (Medical Attendance) Rules, 1961 and particularly Rule 2 thereof and Government Resolution dated 11.11.2011 is considered, in which the expression "wholly dependent" as appearing in definition of the terms family was interpreted. Reliance was also placed on the aforesaid decision in **State of M.P. and others Vs. M.P. Ojha and another (referred supra)**. However, in that case it is obvious that the petitioner's old mother was suffering from various ailments such as Chronic Obstructive Pulmonary disease due to left ventricular failure. The facts of the present case are thus different in which it is not shown that immediately before the applicant's father was admitted at Ruby Hall Clinic, Pune he was unable to move without physical support and was suffering from

number of diseases, which required physical support to him and hence he was physically dependent on the applicant. It can safely be said that the physical condition of the applicant's father was good, although he was getting regular medical treatment to keep him fit. As such it cannot be said that he was financially or physically dependent on the applicant before he was admitted in hospital for the treatment.

22. In such circumstances of the case, the decisions relied upon by the applicant in support of his claim cannot be made applicable to the present case in which the applicant failed to establish that his father was financially and physically dependent on him or his other family members.

23. From the above discussion it is obvious that no fault can be found with the impugned order, although it cannot be disputed that the dependency can both financial as well as physical. This being so it cannot be said that the impugned order is in any manner illegal, improper or incorrect, which calls for interference by this Tribunal in exercise of power of judicial review vested in it.

24. In the result, the applicant is not entitled to any relief. The O.A. is, therefore, liable to be dismissed. It is accordingly dismissed.

25. In the facts and circumstances of the case the parties are however directed to bear their respective cost of this O.A.

26. The Registry is directed to forward certified copy of this order to both the parties at the earliest.

Place: Mumbai.
Date : 11.04.2018.

(Arvind J. Rohee)
Member (Judicial).

H.