

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA
(CIRCUIT BENCH AT PORT BLAIR)

LIBRARY

O.A. 20/AN/ 2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihsial, Administrative Member

Shri P. Manoharan,
Aged about 54 Years,
S/o late M.P. Nair,
Working as Senior Ophthalmic Assistant,
G.B. Pant Hospital,
Directorate of Health Services,
Port Blair – 744 104.

Applicant.
Versus

1. Union of India
Through the Secretary to
Government of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi – 110 001.

2. The Lieutenant Governor,
Andaman and Nicobar Islands,
Port Blair – 744 101.

3. The Chief Secretary,
Andaman & Nicobar Administration,
Port Blair – 744 101.

4. The Secretary (Health),
Secretariat building,
Andaman & Nicobar Administration,
Port Blair – 744 101.

5. The Director,
Directorate of Health Services,
Andaman & Nicobar Administration,
Port Blair – 744 104.

6. The Assistant Director (Admn.),
Directorate of Health Services,

Andaman & Nicobar Administration,
Port Blair - 744 104.

7. The Medical Superintendent,
G.B. Pant Hospital,
Port Blair - 744 104.

..... Respondents.

For the applicant : Ms. A. Nag, Counsel

For the respondents : None

Reserved on : 07.06.2019

Date of Order : 19.6.19.

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been filed to seek the following reliefs:

"8.a) An order / orders / quashing / setting aside the Memo dated 10.08.2018 issued by the Assistant Director (Admn.) whereby the applicant was asked to deposit an amount of Rs. 4,28,881/- through challan within 30 days failing which the salary for the forthcoming month of the applicant will be withheld for payment.

b) An order / orders / quashing / setting aside the Memo dated 06.12.2018 issued by the Assistant Director (Admn.) whereby the applicant was directed to remit the unspent amount of Rs. 4,28,881/- in lumpsum within one month.

c) An order / orders / direction / Directing the respondent authorities to release an amount of Rs./185755/- in favour of the applicant which is the balance amount that was spent in the treatment of the applicant.

d) An order / orders / direction / directions directing the respondent authorities to act in accordance with law.

e) An Order to issue directing the respondents to produce the records of the case before this Hon'ble Tribunal so that consonable justice may be done.

f) Costs and incidentals of the application may be awarded to the applicant.

g) Such other or further order direction or directions, as your lordships deem fit and proper in the interest of justice."

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2. The order impugned reads as under:

" No. 3 – 69/Med/Reimburse/DHS/2018/4421
ANDAMAN & NICOBAR ADMINISTRATION
DIRECTORATE OF HEALTH SERVICES

Port Blair, dated 06th December, 2018

M E M O

Sub: Refund of balance amount of Medical advance of Rs. 4,28,881/- reg

With reliance to his representation and subsequent reminder No. – 1, it is to inform to Shri P. Manoharan, Sr. Ophthalmic Assistant attached to G.B. Pant Hospital, Port Blair that as per Rule 6 of GS (MA) Rules, read with GID (1) below Rule and GID (12) below Rules 2, the medical reimbursement claim was carefully examined and worked out to Rs. 11,71,119/- and the balance amount of Rs. 4,28,881/- is required to be refunded in lumpsum to the Govt. account through Challan in the State Bank of India, Port Blair within one month from the date of receipt of this memo as he has already drawn the medical advance of Rs. 16,00,000/- (Rupees Sixteen Lakhs only) needs to be adjusted in full.

Shri P Manoharan, Senior Ophthalmic Assistant of G.B pant Hospital, Port Blari is hereby again directed to remit the unspent amount of Rs. 4,28,881/- (Rupees Four Lakhs Twenty Eight thousand Eight hundred and Eighty one only) in lumpsum within one month from the date of receipt of this Memo.

*Sd/-
Assistant Director (Admn)
Directorate of Health Services
Port Blari."*

3. The case of the applicant in a nutshell is as under:

The applicant was appointed in 1986 as Ophthalmic Assistant, under the Directorate of Health Services, Port Blair. In 2006 he was promoted to the post of Ophthalmic Assistant. As he was suffering from severe ache in his bones he had to undergo test at G.B. Pant Hospital, Port Blair who referred him to any recognized hospital. He went to Apollo Hospital where he was diagnosed with multiple myeloma and to undergo bone marrow transplantation. Consequent thereto he submitted an application for medical advance and was granted Rs. 9, 00,000/- on 30.10.2017. He proceeded for his treatment. He spent the entire Rs. 9, 00,000/- for his treatment and required or further amount for which he submitted another application in December, 2017. He was granted Rs. 7,00,000/-, sanctioned

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vide order dated 28.12.2017 by the Andaman & Nicobar Administration. After his treatment got completed he submitted bills on 03.04.2018. Instead of releasing the balance amount of Rs. 1,85,755/- he was issued a memo stating that he was entitled only to an amount of Rs. 11.71,119/- and was asked to return the amount of Rs. 4,28,881/-. The applicant submitted two representations on 24.09.2018 and another on 19.11.2018 requesting the authorities to clear his entire medical claim. On 06.12.2018 he was issued with another memo asking him to return an amount of Rs. 4,28,881/- within one month as an unspent amount. The applicant has contended that the authorities cannot ask him to return the amount as he was granted advance by the Andaman & Nicobar Administration with full knowledge of his entitlement and the amount claimed is well supported by documents duly signed by the doctors of Apollo Hospital and therefore the action of the respondent authorities is illegal and against the law.

The claim for reimbursement is however, supported by medical Bills.

4. The applicant in support of his contention that that he is entitled to full reimbursement has relied upon the decision Shri Taqui Imam –vs. UOI & Ors., in O.A. 5/A&N/2004 which is extracted hereinbelow, to the extant found relevant and germane to the issue:

"In this case the applicant has claimed medical reimbursement to the tune of Rs. 72,664.86p which was illegally withheld by the respondents along with interest @ 12% per annum from the date of submission of the medical bill.

xxx The applicant as per advice of the Escort Hospital, Delhi subsequently underwent Open Heart By-pass Surgery (CABG) in May, 2002 and an advance of Rs. 95,300/- was taken by him from the respondents. After successful operation the applicant submitted the final bill amounting to Rs. 2,48,358.73p in September, 2002 for reimbursement. But the respondent authority again restricted the claim to Rs. 1,83,1601.430 and did not sanction the balance of Rs. 65,197.70p. Thus the applicant was denied a Total amount of Rs. 72,265.90p. The applicant made representations but to no avail."

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3. The respondent authorities have justified their stand in deducting the aforesaid amount by stating that as per Medical Attendance Rules, the amount claimed to have been spent by the applicant is not admissible, therefore they have justifiably denied the excess claim.

4. In this case undisputedly the applicant was referred from G.B. Pant Govt. Hospital, Port Blair to Escort Hospital, New Delhi for specialised treatment for his heart ailments. xxx

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5. The question of reimbursement of medical expenses incurred by an employee for treatment undertaken in a private recognised hospital was considered by the Hon'ble Supreme Court in case of State of Punjab -vs- Ram Lubhaya Uagga reported in AIR 1998 SC 1703. In that case the respondent employee also underwent treatment at Escort Hospital, Delhi and was denied full reimbursement as per the relevant rules. However the Apex Court has held that the entire amount should be paid as the employee had to take such treatment in the said private hospital in emergency.

xxx it may be pertinent to mention that the Chandigarh Bench of this Tribunal in the case of R P Mehta -vs- UOI, 2002(1) ATJ 264 relying on above cited decision of the Hon'ble Supreme Court considered the matter of reimbursement of medical reimbursement with reference to CCS (Medical Attendance) Rules and held that the Govt. can not restrict expenditure falling under "Medical Attendance" and "Medical Treatment", but can restrict the expenditure incurred for "other medical facilities".

6. In view of the above, we are of the view that the applicant's claim for the balance amount of Rs. 72,265.90p is required to be reconsidered by the respondents in the light of the above decisions and if any additional amount is admissible, he should be paid the same. However, he is not entitled to any interest in view of the decision of the Apex Court in the case of reported in 1997(1) SCSL Om Prakash Gargi Vs. State of Punjab & Ors. page 1.

7. Accordingly the respondent authorities are directed to examine the claim of the applicant in the light of the decision of the Chandigarh Bench read with the decision of the Apex Court and pay him the admissible amount, if any, within four months from the date of communication of the order.

5. Ld. Counsel for the applicant prayed for identical direction.
6. Ld. Counsel for the respondents did not raise objection to such consideration.
7. Accordingly, with the consent of the parties, we dispose of this O.A. with a direction upon the respondents, particularly respondent Nos. 5 or 6 to examine the grievance of the applicant in the light of the decision referred to supra, including Ram Lubhaya Bagga, and act in accordance with law.
8. The respondents are directed to issue reasoned and speaking order with proper breakup demonstrating vividly the reason for treating such an amount as 'unspent' and release the amount if found eligible.

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Till such time the impugned order shall remain stayed.

9. The present O.A. accordingly stands disposed of. No costs.

(N. Neihsial)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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