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Central Administrative Tribunal
Principal Bench

OA No.1147/2003

New Delhi this the 26th day of February, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.A. Singh, Member (A)

Shri S.P.G. Dhaka,
R/o 1/7104, Shivaji Park,
Shahdara, Delhi.

Applicant
(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The Chief Secretary,
Govt. of NCT of Delhi.

2. The Director of Education,
Govt. of NCT of Delhi,
Sham Nath Marg,
Old Secretariat,
Delhi.

3. The Dy.Director of Education,
Govt. of NCT (East),
Rani Garden,
Delhi-110 031.

Respondents.

(By Advocate: Shri Harvir Singh)

O R D E R

Hon'ble Shri Shanker Raju, Member (J)

Applicant through this OA has sought reimbursement of an amount of Rs.1,02,333/- with interest incurred on medical expenses.

2. The matter in the light of decision of the High Court of Delhi in V.K. Gupta Vs. Union of India in CW NO.4305/2001 decided on 5.4.2002 has been referred to the Division Bench.

3. Applicant who has retired as a Post Graduate Teacher (PGT) in Delhi suffered a heart

stroke on 30.10.2001 and was admitted to the Escorts Heart Institute and was operated on 12.11.2001. Applicant was discharged on 17.11.2001. Discharge summary of the applicant shows a bill of Rs.2,12,000/- which the applicant had paid to the hospital and also spent Rs.11,484.55 on medicines.

4. Applicant submitted the bills to the respondents enclosing emergency treatment certificate and essentially committee certificate etc.

5. On 16.9.2002, a cheque for an amount of Rs.1,21,647/- was sent to the applicant. Applicant requested for reimbursement of the remaining actual amount incurred on medical expenses.

6. Learned counsel for applicant Shri B.C. Maini by referring to a decision of a High Court of Delhi in V.K. Gupta's case (supra) contends that therein having regard to the OM dated 18.2.1996 and the fact that the revised rates have not come-forth from the Government and were effective till 1996, actual expenses incurred on medical treatment have been allowed. In this conspectus, it is stated that the applicant is also entitled to the benefit of the judgment and the actual expenses incurred on medical treatment.

7. Whereas Shri Harvir Singh who later on appeared for respondents contends that applicant is entitled only for Rs.1,21,647/- as per the prevalent

rates, as such the actual benefits cannot be accorded to him.

8. On the other hand, in the rejoinder, learned counsel for applicant states that in a Railway case of one **S.R. Jha Vs. Union of India** ATJ 2003 (2) 168, actual benefits have been paid relying upon the decision of Delhi High Court.

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. Maintenance of health and safety is a part and parcel of the State function under the directive principles enshrined in the Constitution of India. From time to time the Ministry of Health had issued Office Memoranda to recognise the hospitals and the package rates. The Memoranda issued by Government of NCT on 9.2.1992 are operative from 22.5.98 and have to be inforce for a period of two years thereafter the same have not been revised in so far as Government of NCT is concerned. However, in principle the rates as prescribed by Ministry of Health are adopted by the NCT. In **V.K. Gupta's case (supra)** by the High Court of Delhi was in the context of an employee of the High Court seeking full reimbursement. The controversy is whether the approved package rate reimbursed to the petitioner, therein as per OM dated 18.9.96 which was in-effect for a period of two years thereafter whether

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it was required from the Government to revise the rates? This is on the basis that cost of treatment is rising over a period of time and applying rates which have ceased to be ineffect is not justified. In this conspectus, actual expenses have been ordered relying upon the decision of the Apex Court in **State of Punjab & Others Vs. Mohinder Singh Chawla** JT 1997 (1) SC 416.

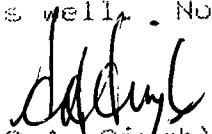
11. We have applied our mind to the rival contentions. In Mohinder Singh's case (supra) by the Apex Court though a Division Bench decision by two judges a decision in **State of Punjab & Others Vs. Ram Lubhaya Bagga & Others** 1998 (3) ATJ 154 examine the vires of new policy laid down by the State Government in so far as curtailing the medical expenses and also the institutions where medical treatment is taken in Mohinder Singh Chawla's case, which has been duly considered. The Apex Court irrespective of whether the policy laid down by the State or by the Central Government in so far as violation of Articles 14 and 21 of the Constitution of India is concerned observed that the State having unlimited resources to spend on any of its projects includes providing medical facilities which cannot be unlimited and to the extent of finances permit. Accordingly, policy has been tested and qualified the test laid down under Articles 21 and 47 of the Constitution of India. However, as a passing reference, an observation has been made hoping that Government shall give consideration to the budget.

12. Having regard to the above, the decision of High Court in V.K. Gupta's case (supra) is per incuriam of Ram Lubhaya Bagga's case (supra) and cannot be treated as a valid binding precedent.

13. We are also of the view that though the rates were valid upto 1998 in the present case keeping in view the rising cost of treatment should have been brought at par when the applicant had taken treatment but the permissible reimbursement has been allowed to the applicant. However, this is not in-consonance with the cost of treatment. In such an event, we cannot issue a mandate or encroach upon the decision of the executive authorities but re-consideration can be ordered.

14. The Apex Court in **State of Punjab Vs. Mohan Lal Jindal** 2002 (2) SCC (L&S) 162 ordered on re-consideration on humanitarian grounds.

15. In the result for the foregoing reasons, we dispose of this OA with a direction to the respondents to re-consider the claim of the applicant for medical reimbursement in the light of our observations and also the fact that the rates have been revised lateron, which may have applicability on the applicant as well. No costs.


(S.A. Singh)

Member (A)


(Shanker Raju)

Member (J)