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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.3039/2003

New Delhi this the 26th day of August, 2005.

Hon'ble Mr. Shanker Raju, Member (Judl.)

R.K. Mittal,
R/o 65-D, Pocket 6,
Site-2, Phase-I, Dwarka,
New Delhi-45. -Applicant

(By Advocate Shri Gopal Dutt)

-Versus-

1. Union of India,
through the Secretary to the Govt. of India,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.

(By Advocate Shri Arun Bhardwaj)

2. Secretary, Ministry of Information and Broadcasting,
Shastri Bhawan, New Delhi. -Respondents

(By Advocate Shri S.M. Arif)

1. To be referred to the reporters or not? Yes/No Yes
2. To be circulated in the outlying Benches or not? Yes/No Yes

S. Raju

(Shanker Raju)
Member (J)

(2)

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ORDER (ORAL)

By virtue of this OA a challenge has been made to inaction of respondents whereby a balance amount of Rs.1,26,267/- for the AVR surgery carried out at Escort Heart and Research Institute is denied.

2. Applicant while working as Director in Doordarshan has retired on superannuation on 31.10.2001. Being a beneficiary of CGHS in view of memorandum dated 18.9.96 applicant has been treated for rheumatic heart disease. During his treatment at Safdarjung Hospital on 27.9.2000 applicant was referred by the Medical Officer of Safdarjung Hospital, New Delhi for angiography from any of the CGHS approved hospital. Applicant applied for permission from

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respondent No.1 for angiography to be done at Escort Heart Institute, New Delhi and after approval of the same angiography was done on 15.11.2000 at the said hospital. He was diagnosed as suffering from rheumatic heart disease, severe as, Angina on exertion with normal coronaries with LVEF 50% and was advised surgery in view of his symptomatic status and CART findings. On 3.1.2000 Medical Officer of Safdarjung Hospital referred applicant for treatment for Aortic valve replacement at any of the CGHS approved Centres. Applicant accordingly applied through proper channel and was granted permission by respondent No.2 to be investigated by the Medical Superintendent Escort Heart Institute, New Delhi, which is one of the recognized private hospitals as per OM dated 18.9.96. Accordingly no objection was accorded for operation at Escort Heart Institute. An estimate of Rs.2,40,000/- was given by the Escort Heart Institute to applicant, against which an advance of Rs.1,00,000/- was paid to him. The surgery was performed on 2.4.2001 and applicant was discharged on 9.4.2001, incurring a sum of Rs.2,40,000/-. The applicant submitted his medical bill along with relevant certificates for reimbursement. However, the bill was restricted to Rs.99,000/- as per package rated fixed by respondent No.1's order dated 18.9.96 at serial No.3.22 of Annexure II. Accordingly a total sum of Rs.1,13,850/- was sanctioned and thereafter an amount of Rs.13,850/- was paid to him after adjusting the advance of Rs.1,00,000/-.

3. Learned counsel for applicant states that once he has taken treatment in a recognized hospital, hospital is bound to charge

package rates and in the event for the surgery of a retired government servant more amount is charge than the package rates then either it should be recovered by the Government from the hospital or such hospital should be de-recognized. A decision of the High Court of Delhi in **Milap Singh v. Union of India**, 2004 V ALD Del 521 is relied upon.

4. On the other hand, respondents' counsel vehemently opposed the contentions. It is stated that re-imbursement under CGHS is done as per the rates approved by the Ministry of Health and applicant is not entitled to amount more than the package rates.

5. On careful consideration of the rival contentions of the parties, in **Prithvi Nath Chopra v. Union of India**, 2004 IV AD,Delhi 569 the observations, which is reproduced in **Milap Singh's** case, is as under:

"14. The undisputed position that emerges is that a patient is entitled to reimbursement of the full amount of medical expenses and not only at the rates specified in the circular of 1996 and in case respondent No.2 has charged a higher rate, than could have been charged, it is for respondent No.1 to settle the matter with respondent No.2. The petitioner cannot be deprived of the reimbursement. The observations in para 26 of the Prithvi Chopra's case (supra) are useful in this behalf, which are as under:-

26. It can also not be disputed that the Indraprastha Apollo Hospital has been made available land at token amount and it was for the respondents to have settled the amounts of reimbursement at the hospital. If the respondents have any grievance about the quantification of the amount charged, it is for the respondents to take up the matter in issue with the Apollo Hospital. But that cannot deprive the petitioner of full reimbursement of the amount as charged by the recognized Indraprastha Apollo Hospital. In fact, the petitioner has been compelled to pay the charges first and thereafter

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reimbursement is taking place while the present policy is stated to be one where the respondents are directly billed by the approved hospitals which policy is salutary since the patient may not at a time have the funds available to first pay the amount and then claim the reimbursement.

15. A writ of mandamus is, thus, issued directing respondent No.1 to reimburse the petitioner to the full extent of the bills raised by respondent No.2 Hospital and the balance amount of Rs.1,05,000/- be remitted to the petitioner within a maximum period of one month from today."

6. A Bench of this Tribunal in **Pramod Kumar v. Union of India & Ors.**, (OA No.966/2004) decided on 21.2.2005, meticulously dealt with this aspect of full re-imbursement to a government servant and held as follows:

"31. Recently the High Court of Delhi in **J.K. Saxena** (supra) while referring to the decision of Division Bench observed as under:

"4. Reference may be invited to the decision of this Bench in V.K. Gupta v. Union of India reported at 97 (2002) Delhi Law Times 337 and a decision of the Division Bench in Sqn. Commander Randeep Kumar Rana Vs. Union of India (WP(C) No.2464/2003). The Division Bench in the above cited case had, while dealing with the amount charged in excess than the package rate, held as under:-

'Now we come to the plea which has been taken by the respondent in the counter affidavit. It has been contended in para 11 of counter affidavit that it is the duty of the citizens to see and ensure that such recognized hospital do not charge excess of the package rates. How a citizen can ensure that a hospital does not charge over and above the package rate? The power to lay down guidelines is with the respondent. A citizen is a mere spectator to what State authority do and decide. If the hospital has charged over and above the package rate, the respondent is under an obligation to pay such charges as the petitioner has incurred over package rates at the first instance and if in law State can recover from the hospital concerned, they may do so but they cannot deny their liability to pay the Government employee, who is entitled for medical reimbursement.'

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In view of the foregoing dictum, as laid down by the Division Bench, petitioner is entitled to reimbursement of the full amount. A writ of mandamus shall issue to the respondent to pay the balance amount of Rs.36,000/- to the petitioner within six weeks from today. In case, payment is not made, petitioner would also be entitled to interest @ 9% per annum on the aforesaid amount in future."

32. If one has regard to the above the Division Bench decision of the High Court of Delhi is binding on me and as per it if the hospital has charged more than the package rate it is for the State to recover it from the hospital but does not deny the right of the government servant to get the actual expenses reimbursed.

33. Recently the Principle Bench of this Tribunal in OA-131/2002 (supra) decided on 22.12.2004 made the following observations:

"20. Counsel for respondents has also relied upon M.L. Kamra v. Lt. Governor & others III-2003 AISLJ 304 where reimbursement claim of a State Government employee, for taking treatment at Apollo hospital, was declined by the Court. However, it is not the case of the applicant because it was the case of the employee who has gone to the hospital of his own choice and Hon'ble Supreme Court had allowed the reimbursement of the claim made by the employee. Counsel of the respondents also cited Nirupam Pahwa vs. Union of India and others in OA-2516/2002 decided on 14.7.2003 where the Railways had restricted the reimbursement of the medical claim to the Railway employee to the rates prescribed at the Government hospital for such treatment. The OA was dismissed by the Tribunal. It was held that the applicant had chosen the private hospital for treatment of his wife since he wanted her to be treated by certain doctors who are working for the private hospital chosen by the applicant. It is not a case of emergency treatment. In Northern Railway Section Officer/Assistant Audit Officers Association versus Union of India and others OA-3309/2001 decided by the Principal Bench on 31.03.2004 wherein the facility of Class-A Pass availed by them as Gazetted Officers had been withdrawn since the grade in which the applicant was working was a non-Gazetted grade in the Railway and in view of the judgment of the Hon'ble Supreme court dated 20.04.1993. It was observed that the issuing passes/PTO was within the prerogative of Ministry of Railway/Railway Board and the facilities provided to the Railway employees would be subject to the policy guidelines laid down by the department. The judgment does not throw light on the question which requires

determination in the present case. Counsel for respondent next cited H.C. Bhandari vs Union of India OA-1023/2003 decided on 20/07/2004. It was a case where the respondents were directed to consider the case of the reimbursement of medical expenses of Railway employee taken at Escorts Hospital at the rate prescribed at AIIM in light of the judgment of the Hon'ble Supreme Court referred to. The judgment also came to the rescue of the respondent in this case because of its own distinguishing features. Firstly, in the present case reference has already been made to the AIIMS for treatment of the patient, secondly, the treatment was taken at a recognized hospital, thirdly, the treatment was taken at an emergency. Counsel for respondents had himself suggested that the reimbursement of the claim may be restricted to the rates prescribed at AIIMS. The Apollo Hospital was a recognized hospital and expenses for treatment undertaken there could have been reimbursed as per rule had the patient been referred to that hospital. The Central Railway Hospital had, in fact, referred the patient to the AIIMS where on account of non-availability of bed she could not be given emergency treatment. To save her life the patient was admitted in the Apollo Hospital which was nearest to the place where the need of emergency treatment arose. It was also a recognized hospital.

21. For the reasons stated above, the rejection of the claim of the applicant for treatment by the order impugned in this case is not sustainable. It is, accordingly, set aside. It is directed that the respondents shall give reimbursement to all the expenditure incurred by the applicant on the emergency treatment of his mother Smt. Bilquis Fatima taken at Apollo Hospital at the same rate at which it would have reimbursed the medical claim had the treatment been taken by the patient on referral to the said Apollo Hospital by the Central Hospital of the Railways. In the circumstance, the parties are left to bear their own costs."

34. The Courts are not precluded from taking a pragmatic view of the situation being a Welfare State the Medical Attendance Rules and re-imbursement of medical expenses is a beneficial legislation to protect the life of a government servant and it is the duty of the Government to provide necessary infrastructure. It is very unfortunate that except AIIMS no other hospital of the Government is well equipped to meet the exigencies and to facilitate the object of Article 21 in protecting the life of the government servants and their families. It is high time for the Government to think over it and to provide such an infrastructure to these hospitals by upgrading them to bring at par with other private specialized hospitals. The

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basic object for recognition of private hospitals was the same. The government servant or his family members when taken seriously ill with all logic and rational and as a normal human tendency seeks the best of the treatment which is available at private hospitals recognized by the Government. On approaching these Institutions it is expected by the government servant that the medical treatment tendered and expenses incurred would be reimbursable within the package rate as specified by the Government. If the hospital charges more there is no attribution to it by the concerned government servant who is helpless and constrained in order to save himself and the members of his family from the verge of death. Bargain arrived at by the private recognized hospitals is not only inhuman but also victimization of government servant as the very condition of their recognition in case a government servant approaches them for treatment is to charge from the Government directly the medical expenses at the package rate. Exceeding the aforesaid amount is neither justifiable nor reasonable. With the limited sources and monthly contribution to the medical scheme even if the state limit finances to the project of health, yet it does not absolve them from strict adherence to the package rates and directives from time to time to the concerned hospitals. I earnestly hope that the Ministry of Health and Family Welfare would ponder over this and take appropriate measures, yet any fault of the government servant on equitable principles and legitimate expectation he cannot be deprived of the actual reimbursement of the amount incurred on the treatment in an emergency, though charged wrongly by the hospital. There are ways and means and resources with the Government to recover the aforesaid amount or to take appropriate measures against the erring Institutions. In that event, law shall take its own course."

7. In the light of the above, denial of full claim of applicant, as medical reimbursement, cannot be sustained in law. Accordingly, OA is allowed. Respondents are directed to accord to applicant remaining amount sane amount already paid, as medical expenses incurred on his treatment, within one months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)