

**Shri O.N. Chhibber**

**vs**

**Union of India (UOI)**

Central Administrative Tribunal – Delhi

20 November, 2006

Bench: M K Gupta

ORDER

Mukesh Kumar Gupta, Member (J)

1. Applicant in this OA seeks direction to respondents to reimburse balance amount of Rs. 1,40,687.70 on account of medical expenses incurred along with interest at the prevailing market rate with consequential benefits including costs.

2. Admitted facts are that applicant retired as Section Officer from Department of Food and is presently 81 years old. Being a Central Government employee, he is covered by Central Government Health Scheme (CGHS) and being a pensioner, he is holding life CGHS Card No. P-000407. He underwent by-pass surgery (4 grafts) at Apollo Hospital, Madras in the year 1986. He developed severe chest pain and was taken to Apollo Hospital, Delhi on 03.01.2001. He was admitted there for angiography and keeping in view past history as well as report of angiography, emergency operation for Redo Surgery for CABG was performed on 05.01.2001. During his hospitalization, he remained in a semi paid room of said hospital. He was discharged on 14.01.2001. During the course of treatment, he incurred expenses amounting to Rs. 2,17,176.70, reimbursement of which was claimed on 05.02.2001. However, he was paid/reimbursed only Rs. 1,15,259/-.

3. His wife, Mrs. Kanta Chhiber was also under treatment of Medical Specialist of CGHS for diabetes & hypertension. She had a cardiac problem, which required immediate attention and, therefore, was admitted in a nearby Heart Centre on 20.11.2001. On the next date, she developed neurological problem too because of which she was shifted to nearest Sehgal Neurological Research Institute. She underwent an emergency brain operation on 22.11.2001. Unfortunately, she died late in the night on same day. During the course of treatment of his wife, he incurred an expenses amounting to Rs. 1,02,938/-. On claiming reimbursement, he was paid only Rs. 64,168/-.

4. In the back-drop of above, he made representation to Respondent No. 1 on 14.11.2002 and sought reimbursement of balance amount. Since no response was emanating, present OA was preferred. Earlier he filed Writ Petition (Civil) No. 1638 of 2006 before the Hon'ble Delhi High Court, which was withdrawn with liberty to approach this Tribunal. Granting such liberty, aforesaid Writ Petition was disposed of vide order dated 06.02.2006. Accordingly, he has filed MA No. 438/2006 seeking condonation of delay, stating that after the death of his wife in November, 2001, he was all alone and because of his deteriorating health condition, he had to go to USA to his only son for further treatment. Further he was suffering from acute

osteoarthritis of knee and lower back and, therefore, the delay was neither intentional nor deliberate, but bonafide. Medical certificates were also produced to support aforesaid contentions.

5. Ms. Madhumita Bhattacharjee, learned Counsel, vehemently contended that respondents have wrongly treated the hospital from where he had taken treatment as private unrecognized hospital though the fact remains that as early as OM dated 18.09.1996 was issued, Indraprastha Apollo Hospital had been recognized for specialized & general purpose treatment and diagnostic procedure. By relying on Hon'ble Delhi High Court judgment reported in 122 (2005) DLT 450 K.S. Mathew v. Union of India and Anr. it was contended that applicant is entitled to full reimbursement of expenses incurred and the claim cannot be restricted to the ceiling limit prescribed under OM issued by the Government of India. The said judgment relied on as many as six judgments rendered prior to said date, including the ones of Hon'ble Supreme Court in State of Punjab v. Ram Lubhaya Bagga, wherein it was observed that the Government could fix its own rates as it does not have unlimited funds at its disposal, besides State of Punjab and Anr. v. Mohinder Singh Chawla, wherein it was held that the right to health is a right of life and the State has a Constitutional obligation to provide health facilities. In V.K. Gupta v. Union of India, the OM dated 25.10.2001 issued by Govt. of India, which prescribed reimbursement of package rates had been considered and the Hon'ble Court held that cost of medical treatment has been rising over a period of time and the respondents cannot deny the actual reimbursement from a hospital recognized by them for treatment on the basis of applying the rates as per previous memorandum which was intended only for a period of two years and subject to revision. Similarly, 2004 (13) SCC 562 Suman Rakheja v. State of Haryana and Anr. was pressed. In said case, in an emergency the patient had to be immediately admitted in a private hospital, & the relief of medical reimbursement had been granted. Reliance was placed on K.P. Singh v. Union of India and Ors. particularly para - 6, wherein it has been noticed that the beneficiary of the Scheme will receive reimbursement only at the rate approved by the CGHS, regardless of the fact that in his particular town or city there are only private hospitals and no government hospital; there is, therefore, no option for him but to enter a private hospital for such treatment. Direction was issued therein to the Union of India to immediately reconsider this aspect and give appropriate directions thereon. It was also suggested to take steps to update its approved rates on an annual or, at least, biennial basis. Lastly, reliance was placed on Consumer Education and dResearch Centre and Ors. v. Union of India and Ors. wherein it has been held that the jurisprudence of personhood or philosophy of right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. The expression 'life' assured in Article 21 does not connote mere animal existence or continued drudgery through life. Right to health and medical care to protect his health and vigor while in service or post-retirement is a fundamental right of a worker under Article 21, read with Articles 39 (e), 41, 43 & 48-A.

6. Respondents resisted the claim laid by filing their reply, stating that reimbursement under CGHS is made as per rates fixed by Ministry of Health & Family Welfare and any additional expense is to be borne by the beneficiary. The treatment was taken in a private unrecognized hospital. However, reimbursement was made at CGHS approved rates in view of the treatment under emergency. It was emphasized that reimbursement to the applicant was made as per Govt. approved rates. Judgments referred to by him are applicable to individual cases. Ministry of Health & Family Welfare OM dated 11.07.1997 has been referred to, to

emphasize that the expenditure to be reimbursed by the parent department/CGHS Directorate would be restricted to package rate/rates approved by the Government from time to time.

7. Applicant reiterated contentions raised in O.A. by filing rejoinder.

8. I have heard learned Counsel for the parties and perused the pleadings and material placed on record.

9. On a pointed query raised, as to whether respondents issued any written communication rejecting his claim for medical reimbursement of entire amount, learned Counsel for respondents candidly stated that he cannot comment on other than what has been reflected in the counter affidavit. However, learned Counsel contended that judgments relied upon were rendered in a given fact and circumstances and would have no universal application.

10. Upon hearing learned Counsel for the parties and on bestowing my careful consideration to all aspects of the case, I may note that Indraprastha Apollo Hospital is a recognized hospital by the Ministry of Health & Family Welfare for specialized treatment. The emergency admission of applicant's wife and her operation had also not been disputed. The Certificate issued on this aspect, narrating her condition, has also not been disputed. Specific certificate issued to this effect is available at pages 53 - 55, stating that facilities provided were immediate basic essential for patient's treatment to prevent serious deterioration in the condition has not been questioned. Respondents have also not objected to the MA filed by applicant seeking condonation of delay. In Suman Rakheja (supra) the medical claim was not entertained on the ground that treatment in Apollo Hospital, which was a private and not recognized/approved at that point of time, cannot be reimbursed. Similarly, in case K.L. Mathew (supra), the Hon'ble Delhi High Court, following earlier judgments, emphasized that 'actual reimbursement' should be the criteria and not the one as restricted by the ceiling rates notified by the Ministry of Health & Family Welfare. Following the ratio laid down vide aforesaid judgments, as relied upon, I find no justification and basis in Respondents stand that applicant had been allowed reimbursement at CGHS approved rates.

11. In view of discussion made hereinabove, OA is allowed. Respondents are directed to reimburse balance amount of Rs. 1,40,687.70 to the applicant. However, in the circumstances, prayer for grant of interest is not allowed. Above exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.