

K.K. Kharbanda
Petitioner

versus

The Union of India & Ors.
Respondent

In the High Court of Delhi at New Delhi

+ W.P. (C) 6049/2005

Citations: [2009] INDLHC 940

Judgment delivered on: 23.03.2009

Coram: Honourable Mr. Justice Kailash Gambhir

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1. By way of this writ petition filed under Articles 226 and 227 the petitioner seeks setting aside and quashing of the orders dated 19.07.2004, 17.09.2004 and 29.07.2004 whereby various medical claims raised by the petitioner were rejected. The petitioner further seeks writ of mandamus to direct the respondents to reimburse total medical claims as submitted by him during follow up treatment of his wife as an outdoor patient.

2. Brief facts relevant for deciding the present petition are as under:-

3. The petitioner retired from service in July, 2004 and during the course of employment his wife Smt. Kiran Kharabanda was suffering from the fatal disease "Brain Cancer" and was under medical treatment for a long time and ultimately she expired on 12.09.2002. She was also operated upon for brain tumour on 05.09.2001 at G.B. Pant Hospital, New Delhi. After the operation, she was discharged on 12.09.2001 and on the same day, she was further referred to LNJP Hospital for Radio Therapy treatment and on completion of the same, she was referred back to G.B. Pant Hospital for further treatment in OPD, which continued for a long time till her death. The W.P. (C) No. 6049/2005 Page 2 of 30 Petitioner submitted his claim for Rs.8,709/- on 13.03.2002 for reimbursement of the medical expenses for the aforesaid operation of the brain tumour of his wife along with all the relevant documents and bills duly countersigned and certified by the authorized Medical Authorities. He also submitted a representation dated 19.03.2002, and requested that in view of the fact that Cancer disease is classified as Special Disease, the reimbursement of the claim should be excluded from the ceiling limit of Rs.3,600/- p.a. The Respondents paid an amount of Rs.3,600/- vide Cheque No. 387604 dated 01.10.2002, withholding the balance amount without any reason. The Petitioner submitted a representation dated 14.10.2002, to the Accounts Officer, Export Inspection Agency, Delhi, and while drawing the Respondents' attention to the claim so submitted by him, for the cancer treatment of his wife, he also submitted that the same may not be considered and apportioned under the ceiling limit of Rs.3600/- p.a. The Petitioner's wife, suffering from brain cancer, ultimately expired on 12.09.2002. Prior to this, as there was no positive response from the Respondents, the

petitioner sought personal hearing with the director on W.P. (C) No. 6049/2005 Page 3 of 30 07.08.2002 and was assured that the medical claims would be placed in Agenda for consideration in the Council's next meeting. However, there has been no decision by the Respondents. A representation reiterating the Petitioner's request for medical reimbursement was also submitted to the Director on 14.10.2002. Another set of six and four medical claims for self and wife's treatment was also submitted on 1.11.2002 to the Respondents with the request that the same may also be considered, which could not be submitted in time due to the circumstances beyond Petitioner's control and requested that the delay in submission of the same be kindly condoned. Finding no response, the Petitioner submitted another representation dated 16.12.2002, giving the details of his medical reimbursement claim, amounting to Rs.770/- + Rs.395.65 + Rs. 449.35 + Rs.470.75 total Rs.2,085.75, requesting for an early payment. The Respondents vide their letter dated 18.03.2003, sent a DD for a total amount of Rs.8,620/- which included Rs.5020/- as salary for the month of January - February 2003 and Rs.3600/- towards the medical reimbursement. Nothing has been said as to why the total W.P. (C) No. 6049/2005 Page 4 of 30 amount has not been reimbursed, despite the Govt.'s decision on the subject and Respondents' own policy. The Dy. Director addressed a letter dated 19.02.2003, to the Joint Director (Incharge), Export Inspection Agency, Chennai, Delhi, Mumbai and Kolkatta, as also to the Dy. Director (Incharge), Kochi, whereby he communicated the decision of the Export Inspection Council, so taken in 93rd Meeting that existing facility for medical reimbursement stands modified to the effect that the reimbursement of the expenditure on cancer, diabetes, mental diseases, Tubercular diseases etc., is allowed without any ceiling to the full extent as per C.S. (M.A.) Rules, as long as treatment is taken in terms of the Rules. The petitioner submitted a representation dated 29.04.2003, and while acknowledging the aforesaid D.D. which was sent by the respondents vide letter dated 18.3.2003, stating that the deductions have been made from his salary without any intimation to him. With regard to the medical reimbursement, he submitted that he has already preferred 14 medical bills by way of reimbursement for an amount of Rs.23,000/- and in the absence of the details, it is not possible to make out as to which item the amount of Rs.3600/- W.P. (C) No. 6049/2005 Page 5 of 30 paid relates. The Petitioner again submitted a representation dated 18.06.2003, stating that he has not received any reply to his representation dated 29.04.2003 and requested for making full payment of the medical claim already submitted. He also addressed a representation dated 16.12.2003, to the Adviser and Chairman, Grievances Cell, Export Inspection Council of India and referred to his medical claims bills, amounting approx. Rs.20,000/-, lying unattended in E.I.C, which were submitted with regard to the treatment of his wife suffering from cancer, who was operated upon in G.B. Pant Hospital, New Delhi and later was receiving medical attention in LNJP Hospital and also Rajiv Gandhi Cancer Institute and Research Centre, New Delhi. While reimbursement claim relating to the sickness of Petitioner's wife was pending, he also fell sick and had to be admitted in Sunder Lal Jain Hospital, Ashok Vihar, Delhi where he remained from 26.02.2004 to 29.02.2004. An amount of Rs.13,366/- was incurred and paid to the Hospital by the Petitioner. Vide his representation dated 10.04.2004, he requested for payment of the same. Upon finding no response, the Petitioner submitted another representation dated W.P. (C) No. 6049/2005 Page 6 of 30 24.05.2004 addressed to the Chairman, grievances Cell, and complained that numerous representations, so submitted to the Respondents, have not elicited any positive response from the Respondents and medical bills submitted by him, approximately for an amount of Rs.20,000/- were lying unattended with the Respondents. He lamented that even his representation has not been acknowledged by the Respondents. That with reference to the Petitioner's representation dated 24.05.2004, the Respondents issued a letter dated 04.06.2004, the Respondents issued a letter dated 04.06.2004, informing the petitioner that the matter is under consideration and is being

looked into and he would be informed about the action taken in due course towards the settlement of his claim and at the same time, the delay and inconvenience caused was regretted. The Petitioner submitted a representation dated 22.06.2004, and invited Respondents' attention to long chain of correspondence so pending. He stated that vide letter dated 18.06.2004, again details were asked of the pending reimbursement bills, which the Petitioner gave, but even then the matter was not finalized and substantial amount of the medical bills were not paid to him W.P. (C) No. 6049/2005 Page 7 of 30 in violation of the C.S. (M.A.) Rules and E.I.C. Policy. The respondents issued a letter dated 25.06.2004, and in response to letter dated 26.06.2004, it was said that the matter was referred to E.I.A, Delhi, for necessary report and it was observed that there is no pending bill with the Agency in respect of petitioner's wife treatment from March 2002 to 12.09.2002 and the petitioner was asked to provide either a copy of the claim or certain details so that the case could be taken up with the Agency for necessary action. That the petitioner vide his letter dated 6.7.2004 in response to their aforesaid letter gave full details of his claim with regard to the treatment taken by him in Sunder Lal Jain Hospital, Ashok Vihar, Delhi. He stated that the said Hospital is run by a Trust and has been recognized by the Central Government under C.G.H.S. for reimbursement of the medical claims. He requested that since the treatment was taken in Delhi, the payment may please be paid as per Govt. Hospital's rates in Delhi in terms of the C.G.H.S. Rules, so applicable. That despite all this, the medical claim for the treatment of his wife, who suffered from cancer and ultimately expired on 12.09.2002, has not yet been finalized. In his W.P. (C) No. 6049/2005 Page 8 of 30 representation dated 12.7.2004 he also referred to different bills submitted by him and requested for early payment. He also submitted that in May 2002, he was transferred from Delhi to Chennai on papers when he was already on long leave due to his wife's suffering from cancer. He stated that all medical claims were directly submitted to E.I.C. as per the directions of the Director (Q/C) when the petitioner sought an interview with her on 7.8.2002. The respondents issued a letter dated 19.7.2004 informing the petitioner that he has been reimbursed the medical expenses incurred by him while under treatment in Sunder Lal Jain Hospital, Ashok Vihar, Delhi at the rates applicable to CGHS beneficiaries at Delhi, and medicines purchased after the indoor treatment i.e. 29.02.2004 cannot be reimbursed and hence disallowed. It was further stated therein that the charges for Endoscopy, Room Rent and Doctor's fee have not been reflected specifically in the final bill and as such the same were also disallowed. That Export Inspection Council Authorities vide their letter dated 29.07.2004, informed the petitioner that two bills have not been settled due to the reason that the treatment was taken at OPD for which there is a W.P. (C) No. 6049/2005 Page 9 of 30 maximum ceiling of Rs.3600/- p.a. which he has already exhausted. The four bills sent to E.I.A., Chennai, could also not be allowed for the same reason. That the petitioner addressed a representation dated 30.07.2004 whereby the petitioner objected to the rejection of his claims on the grounds so mentioned by the respondents. He stated that the medicines purchased by him after his discharge from the hospital on 29.2.2004 were prescribed by the Doctor (Incharge) of the hospital and were very much for the restoration of his health. He invited their attention to the Govt. of India decision under Rule 3 of the C.S. (M.A.) Rules and requested for total reimbursement of his bills. That the petitioner again submitted a self-contained representation on 26.08.2004 whereby he stated that the claims for the reimbursement of the medical expenses incurred towards his cancer suffering wife were submitted as per the Director's directions and assurance so given when the petitioner met her on 7.8.2002. He also invited his attention to the fact that for a considerable period, the claims preferred by the petitioner were not readily traceable with the respondents and he was asked to submit details, which he complied with, W.P. (C) No. 6049/2005 Page 10 of 30 with a hope that the same will be reimbursed. With regard to the rejection of the claim of the expenses incurred in OPD treatment, the petitioner submitted that

the disease from which the petitioner's wife was suffering falls under Special Category for which as per Govt. of India's decision , full reimbursement has to be done. The Respondents issued a letter dated 17.9.2004 whereby the petitioner was intimated that the decision taken by the E.I.C. to consider prolonged treatment beyond the ceiling was granted by the Council on a particular given date and that petitioner's claim are prior to that date and as such the same cannot be extended to cover his case. The grievances Cell of Ministry vide O.M. dated 24.09.2004, while referring to the petitioner's representation dated 26.08.2004, requested the concerned Section to look into the matter and intimate the same to the Grievances Cell. The Grievances Cell also vide letter dated 26.10.2004 informed the petitioner that E.I.C., New Delhi vide their letter dated 17.09.2004 have already communicated their decision regarding reimbursement of his medical claim. Aggrieved with the acts of the respondent the petitioner preferred the present appeal.

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4. Mr. G.D. Bhandari counsel for the petitioner submitted that the claim of the petitioner to the ceiling limit of Rs.3600/- could not have been restricted by the respondent as the wife of the petitioner was suffering from a deadly disease of brain cancer which has been classified as a special disease. Counsel for the petitioner also strongly placed reliance on a letter dated 19.2.2003 addressed by the Deputy Director, Incharge of the Export Inspection Council conveying the decision of the Council in its Board Meeting wherein the decision was taken to relax the medical reimbursement without a ceiling in the case of medical expenses incurred on the diseases such like as Cancer, Diabetes, Mental Diseases, etc. Counsel further submitted that many representations were submitted by the petitioner claiming reimbursement of the various medical claims concerning the expenditure made by the petitioner on the follow up treatment of his wife as an outdoor patient but wrongfully and illegally the respondent rejected the said claims of the petitioner. The important question as per the petitioner arising in the present petition is as to whether the respondent can deny reimbursement of medical expenses by W.P. (C) No. 6049/2005 Page 12 of 30 restricting the payment of medical claims only to the extent of indoor expenses while rejecting the expenses incurred as an outdoor patient. In support of his argument counsel for the petitioner placed reliance on the following judgments of the Apex Court and various other High Courts:-

1. (1998) 8 SCC 469 K. Kuppusamy and Another Vs. State of T.N. And others
2. 1999 (5) SLR 2 (P&H) Krishna Kumari (deceased) and his LRs. Vs. State of Haryana and others
3. 1998 (5) SLR Ravi Kant Vs. The State of Haryana and others
4. 1994 (4) SLR 523 (P&H) Santosh Phagat vs State of Haryana.
5. 1999 (5) SLR 67 (P&H) Ajit Singh Kakkar vs Secy. Govt of Punjab.
6. Milap Singh vs. CGHS, Delhi High Court decided on 24.1.2004.
7. (1997) 2 SCC 83 State of Punjab & Ors. Vs. Mohinder Singh Chawla & Ors.
8. Dr. G.P. Srivastava vs UOI - Mumbai Bench of CAT in OA No. 1015/1996 decided on 24.4.97.

9. CWP No. 1228/1994 G.S. Bhangoo Vs. Export

Inspection Council and another decided by Delhi

High Court on 5.8.1994.

10. (2001) 7 SCC 708 State of A.P. vs. Nallamilli Rami Reddi.

5. Opposing the present petition counsel for the respondent No.2 submitted that the respondent being a statutory body has its own rules and regulations governing the W.P. (C) No. 6049/2005 Page 13 of 30 reimbursement of medical claims and Central Government Rules and Regulations are not ipso-facto applicable on the employees of the Export Promotion Council and Export Inspection Council/Export Inspection Agencies unless adopted by the EPC and EIC. Counsel for the respondent No.2 further submitted that as far as expenses incurred by the patients towards OPD treatment is concerned, the council has prescribed an annual ceiling limit of reimbursement which was revised from time to time and the last revision had taken place in the year 1989 when an annual ceiling of reimbursement of Rs.3600/- per annum was prescribed for OPD treatment, irrespective of any disease. Counsel further submitted that the said ceiling limit was unanimously applied to all employees without any exception or relaxation thereto till 19.2.2003 when again the same was modified pursuant to a decision taken by the Council in its 93 rd meeting, whereafter, the reimbursement of expenditure on some special disease like cancer, diabetes, mental disease, etc was allowed to the full extent as per CS (MA) Rules without there being any ceiling limit. Counsel thus contended that prior to 19.2.2003 the reimbursement of medical claims for OPD patients W.P. (C) No. 6049/2005 Page 14 of 30 was under the said ceiling limit of Rs.3600/- whereafter for the specified diseases the ceiling limit was lifted and medical reimbursement could be claimed as per the CS (MA) Rules to the full extent for the said specified diseases.

6. In support of his contentions counsel relied on judgment reported in (1998) 4 SCC 117 State of Punjab and others vs. RamLubhaya Bagga and others

7. I have heard counsel for the parties and perused the record.

8. The following issues arise in the present petition:

1. Whether the ceiling limit of Rs. 3,600/- is applicable in the facts of the instant case.

2. Whether the decision of the Board meeting of Export Inspection Council taken in the 93rd meeting removing the ceiling limit in the cases pertaining to medical reimbursement for treatment of diseases like cancer, tuberculosis, mental diseases etc. can be made applicable retrospectively.

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3. Whether the medical claims concerning the expenditure incurred by the petitioner on the follow up treatment of his wife as an outdoor patient is reimbursable.

4. Whether for the CT scan of the whole of the abdomen Chennai rates will apply instead of the Delhi rates.

9. The blanket ceiling limit of Rs. 3,600/- per annum for OPD treatment irrespective of any disease was approved as per the Board decision in 1989 and since then no revision took place. In 2003 in the 93rd meeting, the Export Inspection Council removed the ceiling to the full extent for certain diseases, viz. Cancer, Diabetes, Mental Diseases, Poliomyelitis, Cerebral Palsy and Spastics, Tubercular Diseases, Leprosy and Thalassaemia as per Central Services (Medical Attendance) Rules, 1944, as long as treatment is taken as per provision of CS (MA) Rules including AMA's fees.

10. Time and again the Apex Court has emphasized to the Government and other authorities for focusing and giving priority to the health of its citizens, which not only makes one's life meaningful, improves one's efficiency, but in turn gives W.P. (C) No. 6049/2005 Page 16 of 30 optimum output. It is now settled law that right to health is an integral part of the right to life and that it is the duty of the State to bear the expenditure incurred by a Government servant suffering from ailments which require treatment at approved specialty hospitals.

11. The expression 'life' ingrained in Article 21 does not connote mere animal existence or continued drudgery throughout life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. Health of the workman enables him to enjoy the fruits of his labour and, therefore, it is necessary to keep him physically fit and protect his health. In that case health insurance, while in service or after retirement was held to be a fundamental right and even private industries are enjoined to provide health insurance to the workmen. When we speak about a right, it correlates to a duty upon an individual employer, Government or any other authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under W.P. (C) No. 6049/2005 Page 17 of 30 Article 21 casts obligation on the State. The obligation includes improvement of public health as its primary duty. Further to secure protection of one's life is one of the foremost obligation of the State. It is not merely a right enshrined under Article 21 but an obligation cast on the State to provide this both under Article 21 and under Article 47 of the Constitution. In this regard the Hon'ble Apex court, in State of Punjab & Ors. Vs. Ram Lubhaya Bagga Etc. Etc. - (1998) 4 SCC 117, while referring to its earlier decision in Paschim Banga Khet Mazdoor Samity v. State of West Bengal, [1996] 4 SCC 36; observed as under:

"Para 16 - It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State has to be kept in view."

12. At this juncture, it would be worthwhile to reproduce Rules 3 and 6 of CS (MA) Rules, 1944, which are as under: W.P. (C) No. 6049/2005 Page 18 of 30 "3. (1) A Government servant shall be entitled, free of charge, to medical attendance by the authorized medical attendant. (2) Where a Government servant is entitled under sub-rule (1), free of charge, to receive medical attendance, any amount paid by him on account of such medical attendance

shall, on production of a certificate in writing by the authorized medical attendant in this behalf, be reimbursed to him by the Central Government:

Provided that the Controlling Officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the Controlling Officer shall communicate to the claimant the reasons. In brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of forty- five days of the date of receipt of the order rejecting the claim. Provided that the Government shall reject any claim if it is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter, while doing so, the Government shall communicate to him the reasons, in brief, rejecting the claim; and the claimant may submit an appeal to the Central Government within a period of forty-five days of the date of communication of the order rejecting this claim.

6(1)A Government servant shall be entitled, free of charge, to treatment-

(a) in such government hospital at or near the place where he falls ill as can in the opinion of the authorized medical attendant provide the necessary and suitable treatment; or (b) if there is no such hospital as is referred to in Sub-clause (a) in such hospital other than a government hospital at or near the place as can in the opinion of the authorized medical attendant, provide the necessary and suitable treatment.

6(2) where a Government servant is entitled under Sub-rule (1), free of charge, to treatment in hospital, any amount paid by him on W.P. (C) No. 6049/2005 Page 19 of 30 account of such treatment shall, on production of a certificate in writing by the authorized medical attendant in this behalf, be reimbursed to him by the Central Government....."

13. On perusal of the CS (MA) Rules, 1944, it is manifest that no ceiling limit has been imposed by the Government under the said Rules. It has been admitted by the Standing Counsel for NCT of Delhi, Mr. Dilip Mehra that the Export Inspection Council follow the said rules to provide medical facility to their employees in regard to hospitalization only and for the OPD treatment the Council has prescribed annual ceiling/limit for reimbursement, which is revised from time to time. The counsel for the petitioner drew attention of the Court to the office circular of Export Inspection Council bearing No. EIC/D(Q)/C/22/90 dated 13th July, 1990, letter dated 8th March, 1978 to the Deputy Medical Superintendent, wilmington Hospital and letter dated 28th January, 1978 to the Medical Superintendent, St. Stephens Hospital, wherein the Joint Director & Deputy Director of EIC have clearly written that the EIC and EIA follow Central Government Rules and are governed by Central Civil Services (Medical Attendance) Rules, 1944 as amended from time to time. However, it is not in dispute that W.P. (C) No. 6049/2005 Page 20 of 30 medical facilities to the employees of EIC and EIA are under the broad policy and frame work of CS(MA) Rules for hospitalization etc. but the same are not applicable in entirety as far as the OPD treatment is concerned. The Council has prescribed an annual ceiling/limit of reimbursement, which was revised from time to time and as per the last revision taken place in the year 1999, an annual ceiling of reimbursement of Rs. 3,600/- per annum was prescribed for OPD treatment irrespective of any disease. Counsel for the respondent further stated that the said ceiling limit was unanimously being applied to all the employees without any expenditure or realization thereto till 19th February, 2003 when the same was modified pursuant to the decision taken by the Council in their 93rd Board meeting. The said ceiling limit was lifted and the

reimbursement of expenditure even for OPD treatment for per patient suffering from serious disease such as cancer, diabetes, mental disease, poliomyelitis, cerebral palsy and spastics, tubercular disease, leprosy, Thalassaemia was allowed as per the provision of CS(MA) Rules to the full extent without any ceiling.

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14. Be that as it may, health service forms a very important part of existence of an individual. Government servants are provided the benefit of medical aid as within the limited financial emoluments available to them they would be unable to meet large medical expenses which may arise in certain exigencies. The chances of seeking such medical aid increases as the years go by and a person gets older. In fact the better medical facility back-up is required at that age.

15. The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a Hospital recognised by them for treatment on the basis of the rates as per the previous decision of 1989 herein, which cannot remain static and should be revised regularly. When the policy was adopted in 1989, the rates fixed had nexus with the actual treatment cost charged by the hospitals. When the treatment was taken by the petitioner and his wife in 2001-2002, the hospitals had revised/ raised their rates but still the respondents reimbursed the petitioner as per its 1989 policy. The hospitals cannot be blamed for raising the cost of treatment due to the components of treatment becoming costlier. But the W.P. (C) No. 6049/2005 Page 22 of 30 Government has to bear the expenses incurred by the Government Servant as the Government servant cannot within his limited earning bear the expenses for the treatment of his ailments. In this regard, the Supreme Court had duly noted in *State of Punjab and Ors. v. Mohinder Singh Chawla etc.* JT 1997(1) SC 416 as under:

"The right to health is integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference where at the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee."

16. But, the entire blame shifts on the Council, for the sole reason that it did not revise the rates, for the year 1989 till 2003 which it was under an obligation to do. The present case is based on peculiar facts and circumstances and the petitioner has approached this Court feeling aggrieved with the withholding of the medical reimbursement claim to the full extent as regards the treatment of the wife of the petitioner for the cancer disease for which ceiling limit was removed later on. Thus, as discussed above, definitely, it was arbitrary on the part of the council not to revise the rates from time to time to keep the balance W.P. (C) No. 6049/2005 Page 23 of 30 between the rates charged by the hospitals and the reimbursement offered to the beneficiaries. Although, in the decision of the Apex Court in *Ram Lubhaya Bagga (supra)*, the Apex Court has in unequivocal terms held that the policy decision of the State regarding medical reimbursement cannot be questioned but it does not mean that a policy decision of 1989 would continue to be applicable even in a case where the treatment was taken in 2001-2002. With the changing scenario, political, social and financial, the policy of reimbursement cannot remain static. Respondents were required to be more responsive and could not in a mechanical manner deprived an employee of his legitimate reimbursement,

especially on account of their own failure in not revising the rates. The respondent cannot be permitted to wash its hands and leave the petitioner employee to face the vagaries of the demands made from him over and above the ceiling rates. The stand of the respondent is that the medical reimbursement for OPD patients was to be governed as per the ceiling limit laid down by the Council, which was periodically being revised, does not appear to have any rational or logic as once the patient suffering from any of the W.P. (C) No. 6049/2005 Page 24 of 30 aforesaid serious disease was allowed medical reimbursement under the CS (MA) Rules as an indoor patient then how the same patient could be deprived or restricted to some limit for the medical expenses incurred by him/her as an outdoor patient. There cannot be any two opinions that for such serious disease the medical expenses to be incurred by the patients are comparatively very high as cost of medicines that too from reputed pharmaceutical companies for such disease is comparatively very high and therefore, if the patients are deprived of the medical reimbursement as an outdoor patient then in such a situation either patients would be deprived to get further proper medical treatment as an outdoor patient or they would be left in lurch to meet their ultimate fate. I, therefore, do not find that denial of actual medical reimbursement as an outdoor patient or restricting them to any limit could have any sound reasoning or rational. However, considering the fact that the petitioner has not challenged any such decision of the Council restricting the ceiling limit to Rs. 3,600/- for the outdoor patients, therefore, the same cannot be set aside in the present writ petition. Nevertheless since the respondent Council has W.P. (C) No. 6049/2005 Page 25 of 30 already lifted the said ceiling limit in their 93 rd board meeting and has made applicable CS(MA) Rules to the outdoor patients suffering from the said diseases and the amount having been claimed by the petitioner towards the medical reimbursement as an outdoor patient being very small, I am of the view that in the interest of justice I must allow said medical reimbursement in favour of the petitioner keeping in view the peculiar facts of the present case.

17. The law is therefore, well-settled that right to health is an integral part of life and the Government has constitutional obligation to provide the health facilities to its employees or retired employees and in case an employee requires a specialised treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses. It is in this context that the Supreme Court in Mohinder Singh Chawla etc. (Supra) observed as under:

"It is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the government servant has suffered an ailment, which required treatment at, a specialized approved hospital and on reference whereat the government servant has undergone such treatment therein, it is but the duty of the State to bear the W.P. (C) No. 6049/2005 Page 26 of 30 expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee."

18. In view of the foregoing discussion, the ceiling limit of Rs. 3,600/- shall not be applicable in the facts of the present case and the policy decision relaxing the said ceiling limit, which was conveyed to the petitioner vide letter dated 19/2/2003, would become applicable confining to the present case. Therefore, the petitioner is entitled to the reimbursement of the complete expenditure incurred on the treatment of his wife and himself. Thus, the issue no. 1 is decided in the negative and issue no. 2 is decided in the affirmative.

19. As regards the third issue of the reimbursement of the expenses incurred upon the wife of the petitioner as an outdoor patient, the law is well settled, that no distinction can be made

between the expenses incurred on outdoor treatment and indoor treatment. If the outdoor treatment is an integral part and connected with the indoor treatment, the expenses incurred in the former are reimbursable. The reason behind providing medical facilities to the Government employees is that the employee puts his body and mind with his employer and, therefore, the employer owes a duty to keep him in good health W.P. (C) No. 6049/2005 Page 27 of 30 so that he is able to perform his duties, consequently the employer, reimburses him, for the medical expenses which he incurs for keeping himself to keep him in a state of fit body & mind. If only indoor treatment will be allowed to be reimbursed then employee would get admitted to a hospital for even minor problems which can be treated as outdoor patient, which would ultimately burden the State. Therefore, making distinction on the basis of indoor patient and outdoor patient for the purpose of reimbursement is clearly unsustainable and has no rational basis.

20. Cancer comes in the category of chronic disease. Even after treatment at the hospital the follow up treatment continues because of the possibility of relapse of the same. Thus, clearly the expenses incurred upon the wife of the petitioner as an outdoor patient, are reimbursable. Therefore, the issue no. 3 is answered in the affirmative.

21. As regards the fourth issue regarding applicability of the Madras rates and Delhi rates, I do not find any reason of dispute. The fact that the treatment was taken at Delhi is sufficient to W.P. (C) No. 6049/2005 Page 28 of 30 conclude that the rates shall be applicable as per the place where the hospital is situated, i.e. Delhi rates. Merely because the petitioner was transferred to the Chennai office would not mean that the rates of CT scan as applicable at Chennai should be applied. Therefore, the answer to the fourth issue is that the rates as per Delhi shall be applicable for reimbursement of expenses incurred on the CT Scan.

22. When a Government employee puts forth a bona fide claim for reimbursement of his medical bill, it should not be taken lightly and the approach of the Government in such matters should be justice oriented. Such claims should be treated in a humanitarian manner keeping in mind the totality of circumstances. In view of the foregoing, I feel that EIC by its arbitrary approach made the petitioner to suffer not merely the agony of withholding the medical expenses, which were reimbursable, under the guise of ceiling limit but also made him go through the tribulation of litigation.

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23. As discussed above, the judgment relied upon by the counsel for the respondents is of no assistance to respondents in the facts of the present case.

24. At this stage, it is made clear that the decision in the present case is based on the peculiar facts of the present case and the same shall have no precedential value.

25. In view of the foregoing discussion, the impugned orders dated 19/7/2004; 29/7/2004 and 30/7/2004 are hereby quashed as being arbitrary. The petitioner is directed to approach the respondent Council with his claims with proper documentation and the respondent Council is directed to reimburse the entire claim in the light of this order. The respondent Council shall give effect to the above by making medical reimbursement within one month from today.

26. Petition stands allowed in the above terms. 23rd March, 2009 KAILASH GAMBHIR, J.
pkv

