Before S.S. Nijjar & S.S. Grewal, JJ

R.C.P. KARN,—Petitioner

versus

UNION OF INDIA & OTHERS,—*Respondents*

C.W.P. No. 12701 OF 2002

16th May, 2003

Constitution of India, 1950—Arts. 21, 47 & 226— Central Services (Medical Attendance) Rules, 1944- Rls. 3 & 6 —Policy decisions of the Govt. of India dated 19th August, 1993 and 31st October, 1994—Treatment from a Govt. recognised hospital—Claim for reimbursement of medical expenses—Govt. reimbursing the amount at the approved rates—R1.6 enables the Controlling Officer to reject the claim for reimbursement if he is dis-satisfied with genuineness of the claim—However, before rejection of claim an opportunity to the claimant of being heard is required to be given—Petitioner entitled to reimbursement as per the policy framed by the Govt. of India—Action of the Govt. restricting the reimbursement according to approved rates neither violative of Art. 21 nor Art. 47—Petition liable to be dismissed.

Held, that the respondents were duty bound to comply with the proviso to rules 3 and 6 of the Rules, even if, the respondents were going to reject the claim of the petitioner, it was necessary for the Controlling officer to give an opportunity of hearing to the petitioner.

(Para 2)

Further held, that the petitioner was undergoing treatment in the P.G.I. He was informed that there was no possibility of conducting the required operation for at least six months. It cannot be held that the P.G.I. had referred the petitioner to the Escort Hospital as the P.G.I. was unable to perform the operation. It appears that the petitioner got treatment from the Escort Hospital voluntarily. Under the rules, the petitioner is entitled to reimbursement of the medical expenses for treatment which is taken from a recognised Hospital. Undoubtedly,

the Escort Hospital is recognised. In such circumstances, the petitioner would be entitled to the reinbursement of the expenses according to the rates approved by the Union of India in the letters dated 19th August, 1993 and 31st October, 1994.

(Para 6)

R.D. Bawa, Advocate, for the petitioner

A.K. Sharma, Advocate, for the respondent

JUDGEMENT

S.S. NIJJAR, J. (ORAL)

(1) Mr. Bawa has brought to our notice the provisions of Rule 3 of the Central Services (Medical Attendence) Rules, 1944 (hereinafter referred to as 'the Rules), which provides that on a certificate being issued by the Authorised Medical Attendent, the Government servant shall be entitled to reimbursement of the Medical expenses incurred by the employee for his treatment. Further more, Rule 6 of the rules, provides that a government servent shall be entitled to free of charge treatment which has been availed by the government servent in any hospital at or near the place where he falls ill as can in the opinion of the authorised medical attendent provide the nessary and suitable treatment. This Rule further provides that if no such hospital as referred to in sub-clause (a) is available, the employee can avail medical treatment from such hospital other than a government hospital at or near the place where the employee falls ill. However, a proviso is added to Rule 3 as well as Rule 6 enabling the Controlling Officer to reject the claim for reimbursement if he is dis-satisfied with the genuineness of the claim. This proviso, enjoins on the Controlling Officer to take a decision after giving an opportunity to the claimant of being heard. This proviso also requires the Controlling Officer to communicate to the Claimant his reasons, in brief, for rejecting the claim. After the communication of the order rejecting the claim, the employee (claimant) has a right to 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. It is not disputed that the claim of the petitioner relates to treatment which was taken from 14th July, 2001 to 23rd July, 2001. The petitioner had undergone an operation

of Coronary Artery By-Pass Surgery, popularly known as By-pass surgery' at the well known Escort Hospital, New Delhi. This hospital is stated to be recognised by the Government. The total claim of the petitioner was in the sum of Rs. 1,95,000. According to Mr. Bawa, the claim of the petitioner would be over and above Rs. 1,95,000 as the aforesaid amount were spent by the petitioner only on the by-pass surgery. The petitioner has, however, been refunded a sum of Rs. 89,700. Not satisfied with the reimbursement, the petitioner had made a representation to the authorities which is dated 20th June, 2002 (Annexure P—6). No decision has been taken by the respondents on the aforesaid representation.

(2) We are of the considered opinion that the respondents were duty bound to comply with the proviso to rules 3 and 6 of the Rules, even if, the respondents were going to reject the claim of the petitioner, it was necessary for the Controlling Officer to give an opportunity of hearing to the petitioner. Since Mr. Bawa has argued the matter on merits, it is not necessary to remand the matter to the respondents for taking a decision on the representation which has been submitted by the petitioner. We proceeded on the basis that the representation, Annexure P-6,made by the petitioner has been rejected by the authorities.

(3) Mr. Bawa has submitted that the present case is squarely covered by a Division Bench judgment of this Court given in the case of **Madhu Sharma** *versus* **The Principal, Kendriya Vidyalaya, Sector 31, Chandigarh, (1)** The aforesaid case has been followed in a subsequent judgment of this Court in the case of **Naunihal Singh** *versus* **The Union of India and others** (C.W.P. No. 16201 of 1999), decided on 9th May, 2000.

(4) Mr. Sharma appearing for the respondents has submitted that the claim of the petitioner is lible to be rejeted as he would be entitled to reimbursement only at the approved rates which have been prescribed in a decision taken by the Union of India's letter No. G.I.M.H. & F.W., O.M. No. S—14025/55/92—MS, dated the 19th August, 1993 and S—14025/43/94—MS, dated the 31st October, 1994. It is not denied that the hospital from which the petitioner took treatment is a recognised hospital. According to approved rates given, the petitioner would be entitled to the amount already reimbursed.

(1) 1998 (1) S.C.T. 31

He further submits that the writ petition is liable to be dismissed on the short ground that the petitioner has concealed the meterial facts from this court.In support of the submission with regard to approved rates, Mr. Sharma has relied on a judgment of the supreme Court in the case of **State of Punjab and others** *versus* **Ram Lubhaya Bagga etc. etc., (2)** and **Union of India and others** *versus* **S.K. Rampal, (3)** Learned counsel has made particular reference to paragraph 11 of the judgement in S.K. Rampal's case *(supra).*

(5) We have considered the submissions made by the learned counsel for the parties anxiously.

(6) It is the case of the petitioner himself that he was undergoing treatment in the P.G.I. He was informed that there was no possibility of conducting the required operation for at least six months. It cannot be held that the P.G.I. had referred the petitioner to the Escort Hospital as the P.G.I. was unable to perform the operation. It appears that the petitioner got treatment from the Escort Hospital voluntarily. Under the rules, the petitioner is entitled to reimbursement of the medical expenses for treatment which is taken from a recognised hospital. Undobtedly, the Escort Hospital is recognised. In such circumstances, the petitioner would be entitled to the reimbursement of the expenses according to the rates approved by the Union of india in the letters dated 19th August, 1993 and 31st October, 1994. In Madhu Sharma's case *(supra)*, a Division Bench of this Court has held that limitations on reimbursement cannot be made to such a degree that it may become wholy unrealistic. It was also noticed that the Court was not examining a case where the petitioner had gone abroad for treatment or to a costly eminent hospital in the country itself. She had chosen P.G.I., Chandigarh, where costs of treatment regarding all ailments is less than even escort and Apolo Hospitals at Delhi. The actual cost of the pacemaker had been duly certified by the Additional Professor of Cardiology of P.G.I. Thus the claim of the petitioner was found to be *bona fide.* She had acted in an emergency. At the same time, in that very case, the Division Bench also observed that "in so for as petitioner having spent the amount while taking a room in the private ward and not in a general ward is concerned, the learned counsel has rightly withdrawn challenge made in that direction and we are also of the view that the status of the petitioner did not permit her to have a private ward, she would have better gone for general

(2) AIR 1998 S.C. 1703
(3) Vol. CXXII (1999-2) P.L.R. 373

ward". Therefore, the Division Bench rejected the claim which was found to be unjustified. From the above, it becomes apparent that even in Madhu Sharma's case *(supra),* this Court had not held, as a general proposition, that entire medical expenses are to be reimbursed even in the face of statutory rules or the instructions issued by the appropriate authorities.

(7) In Naunihal Singh's case, the Division Bench has allowed the writ petition by relying on the Division Bench judgment in Madhu Sharma's case *(supra).* It is to be noticed that the Division Bench judgment in Madhu Sharma's case *(supra)* was delivered on 18th May, 1998, whereas the judgment in Naunihal Singh's case *(supra)* was rendered on 18th May, 2000.

(8) As noticed earlier to counter the case set up by the petitioner, Mr. Sharma has relied on a judgment of the Supreme Court in Ram Lubhaya Bagga's case *(supra).* In the aforesaid case, the Supreme Court was considering the case of a Punjab Government employee who suffered a severe heart attack on 13th March, 1995 and was taken to the Escorts Heart Institute and Research Centre in an emergency. On 27th March, 1995, he underwent coronary artery by-pass graft surgery. He was discharged on 10th April, 1995. The entire expenses incrurred on the treatment, surgery, post-operative check up etc. came to Rs. 2,11,758.70 P. He submitted the bill to the government for reimbrusement. The State of Punjab pleaded that under the New Policy dated 13th February, 1995 the treatment from private hospitals could only be taken if the same is not available in any government hospitals. For treatment from private hospitals, it was necessary to obtain a No Objection Certificate from the Civil Surgeon. In cases of emergency, approval could be obtained *ex-post facto*.. Since there was no approval of the Civil Surgeon, the reimbursement was denied to the patient/claimants. In the Supreme Court, the claimants argued that the restrictions imposed in instructions dated 13th February, 1995, were violative of Article 21 of the Constitution of India. After referring to the various policies issued by the State of Punjab, the Supreme Court in paragraph 24 of the judgment, held as follows :—

> "In this regard, Mr. Sodhi appearing for the State of Punjab has specifically stated that as per the Director's decision under the New Policy, the present rate admissible to any employee is the same as prevalent in AIIMS. It is also submitted, under the new policy in case of emergency if prior approval for treatment in the private hospital is not obtained, the *ex-post facto* sanction can

be obtained later from the concerned Board or authority for such medical reimbursement. After due consideration we find these to be reasonable".

With regard to the approved rates, the Supreme Court in paragraph 29 of the judgment, observed as follows :—

"No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence, we come to the conclusion that principal of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitition of India".

(9) In view of the aforesaid enunciation of law, we find that the petitioner's claim for reimbursement had to be adjudicated in accordance with the approved rates given in the notifications dated 19th August, 1993 and 31st October, 1994.

(10) Mr. Sharma has also relied on a Division Bench judgement of this Court in S.K. Rampals's case *(supra)*. This petition relates to the claim for reimbursement of medical expenses incurred by a central government employee. He also did not take permission for treatment from the Escort Hospital at Delhi. In paragraph 11 of the judgment, the Division Bench held as follows:—

"11. The policy relating to reimbursement of expenditure, framed by the Government of India provides that medical claim for specialised treatment for heart diseases and kidney transplantation be settled as per the schedule of rates approved for the treatment of C.G.H.S. beneficiaries from time to time at private recognised hospitals under that scheme or the actual charges, whichever is less and all other cases be settled as per the item wise ceilings prescribed in the annexures attached to the policy. It is indeed true that Escort Hospital where the respondent-applicant got treatment

is one of the recognised hospitals by the Government of India for getting specialised treatment. It is also the conceded case that the applicant did not seek prior approval of the concerned authority for getting treatment in the recognised private hospital. In any case, the applicant is entitled to reimbursement of medical claim as per the policy of the Government of India. The applicant submitted a tentative bill of the Escorts Hospital for getting treatment. An amount of Rs. 1,39,000 was sanctioned being 80% of the amount demanded. However, before the applicant actually underwent treatment, he was informed that he was entitled to reimbursement of Rs. 72,480 under the policy decision and not Rs. 1,74,000 or Rs. 1,39,000 for which sanction had been conveyed. The applicant was thus paid the amount as admissible under the policy of 1994. According to the applicant, he was entitled to full reimbursement. He thus filed an application before the Central Administrative Tribunal claiming reimbursement of the entire amount spent on the treatment in a private recognised hospital. As already noticed, the Tribunal granted the relief as prayed. It is in this situation to be seen, whether the applicant was entitled to full reimbursement as claimed by him and granted by the Tribunal. After going through the policy, we find that the applicant certainly got treatment from a recognised private hospital but he is not entitled to reimbursement of full medical claim. He is entitled to reimbursement as per the policy framed by the Government of India and in vogue at the relevent time. Learned Tribunal has granted relief only by placing reliance on the jugdments referred to above and has not given any other reason in support of the relief granted to the applicant. In that view of the matter, the order of the Tribunal, Annexure P=5 cannot be allowed to stand and the same deserves to be quashed.

(11) In Madhu Sharma's case *(supra)*, the judgemnt of the Supreme Court in Ram Lubhaya Bagga's *(supra)* was not cited before the Division Bench of this Court. As noticed earlier, the judgment of the Supreme Court in Ram Lubhaya Bagga's case had been rendered on 26th February, 1998, whereas the judgment of the Division Bench

of this Court in Madhu Sharma's case had been rendered on 18th May, 1998. The judgment in Naunihal Singh's case *(supra)* has been given only on the basis of the judgment of the Division Bench in Madhu Sharma's case *(supra)*. Even at this stage, the judgment of the Supreme Court in Ram Lubhaya Bagga's case *(supra)* was not brought to the notice of the Division Bench.

(12) Mr. Bawa had submitted that the judgment in Ram Lubhaya Bagga's case *(supra)* would not be applicable as it related to the employees of the Punjab Government. We are not impressed by the submission made by the learned counsel. The Supreme Court has categorically held that the policies restricting the reimbursement cannot be held to be violative of Article 21 or Article 47 of the Constitution of India. These are policies framed by the experts after taking into consideration all relevant data, on fact and law, including constraints based on the resources of the State. It has been held by the Supreme Court that it would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it has to be seen whether the new policy violates Article 21 of the Constitution when it restricts reimbursement on account of its financial constraints. The Supreme Court has held that no State of any country can have unlimited resources to spend on any of its projects. It cannot be said that the aforesaid observations of the Supreme Court are limited only to the policies relating to the employees of the State of Punjab. It is the law declared under Article 141 of the Constitution of India. It is binding on all. In any event, the judgment of the Division Bench of this Court in S.K. Rampal's case *(supra)* related to the claim made by a Central Government employee. The Division Bench has categorically held that although the applicant got treatment from a recognised private hospital, but he is not entitled to reimbursement of full medical claim. It was also held that he is entitled to reimbursement as per the policy framed by the Government of India and in vogue at the relevant time.

(13) In view of the aforesaid observations, we find no merit in the present petition. Dismissed. No costs.

R.N.R.