

*Bejore Hon'ble M. S. Liberhan & S. S. Grewal, JJ.*

TARA SINGH CHEEMA,—*Petitioner.*

*versus*

STATE OF PUNJAB ETC.—*Respondent.*

*Civil Writ Petition No. 12953 of 1992.*

March 3, 1993.

*Constitution of India, 1950—Art. 14—Punjab Service (Medical Attendants) Rules, 1940—Rule 7—Right to reimbursement of expenditure incurred by the State employee for treatment abroad for specialised surgery—Medical experts opined that without treatment abroad employee would lose his eyesight—Director Health Services, Punjab also recommending treatment abroad—Government declining expenditure incurred on travelling, boarding and lodging etc.—Such refusal is un-warranted despite the fact that there is no provision in the 1940 rules—Employee is entitled to reimbursement in view of residuary powers under rule 7—Particularly when the State admitted that treatment was sanctioned by it as it was not available in India. Employee entitled to refund alongwith 12 per cent compound interest from date of submission of bill till payment.*

PER M. S. LIBERHAN, J.

*Held*, that though there is no specific rule under the Punjab Service (Medical Attendants) Rules, 1940 providing for medical treatment by the State or re-imbursing for the treatment in the foreign countries, at the same time it cannot be denied that the rules are not comprehensive. They have not provided for all eventualities. Residuary powers are left with the State for granting any concession relating to the medical treatment or attendance which is not authorised by the Rules. Reference may be made to rule 7.

*Held*, that reading the scheme of the rules and their object coupled with the directive principles of the Constitution and keeping in view the ground realities, there cannot be two views that the scheme provides for free medical treatment and reimbursement of the expenditure incurred by a State employee for his treatment. It is in the realm of their statutory rights, if the treatment is taken in accordance with the rules from the recognised institutes or as provided by the State. Thus, from the conspectus of the rules an irresistible conclusion, which is discernible is that the authorised medical attendant of the State can send the State employee to the Specialist for the treatment. If done so, the employee would be entitled for travelling allowance for the journey to the headquarters of the specialist or the Medical Officer to whom he has been referred and back, as well as the expenditure incurred on the attendant.

(Para 6)

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*Held*, that the State employee needing medical aid necessary for his treatment and not available in the country would be entitled for reimbursement of the expenditure incurred in connection with his treatment. It has virtually become part and parcel of the service conditions of the Government employees. The conduct of the State has raised the expectations of the Government employees and it would not be in the interest either of the State or public good or the employees to deny such right at this stage. It cannot be treated as just a dole to a few.

(Para 7)

*Held*, that once the State has accepted that the treatment was essential, it was not available in the country, the petitioner did take the treatment, and had incurred expenditure, it would not be in the interest of justice to decline him the re-imbursment of the expenditure incurred by him, for travelling, boarding, lodging as well as reasonable expenditure incurred by him on himself and on his attendant, in connection with the treatment.

(Para 11)

*Held*, that declining the expenditure incurred on travelling, boarding and lodging etc. would amount to logically declining the facility of medical treatment abroad to which the Government employee entitled to if the treatment is not available in India and it is essential for him to get treatment particularly when it is certified so by non-else but state itself.

(Para 11)

PER S. S. GREWAL, J.

*Held*, that admittedly, the State Government on compassionate grounds had allowed re-imbursment in several cases including those specified by the petitioner. Similarly, the case of the petitioner has also been considered on compassionate grounds and a sum of Rs. 1 04,546.01 paise was sanctioned for his treatment abroad in recognition of his right to get medical reimbursement, which was necessitated for his treatment abroad, on the recommendations of the Director Health Services and other competent authorities. The aforesaid right of the petitioner has since ripened into a legal right and denial in respect of reimbursement concerning boarding, lodging and travelling of the petitioner and his attendant, which was essential for getting specialised treatment abroad, would adversely affect his legal right for getting reimbursement in respect of the aforesaid items. Such change in position to the disadvantage of the petitioner would not be permissible in view of the facts and circumstances of the present case. It is thus too late in the day for the State Government to retrace its steps and it would be estopped from taking up the plea that such medical reimbursement of the petitioner is limited only in respect of expenses incurred on treatment alone on the basis of hospital bills and denying reimbursement to the petitioner in respect of his claim of Rs. 61,242 incurred by him for travelling, lodging and

boarding and that of the attendant who was permitted by the State Government authorities to accompany the petitioner, when he left India for his treatment abroad, whereas on number of other occasions the State Government made reimbursement in respect of travelling, lodging and boarding as well to other officers, for their treatment abroad. Some of these instances have been referred to in the earlier part of the judgement.

(Para 14)

*Held*, that all these facts clearly show discrimination on the part of the State Government for not allowing travelling, lodging and boarding expenses incurred by the petitioner (who was a member of Punjab Superior Judicial Service) for his treatment abroad while he was accompanied by his wife, as attendant. He went abroad solely for specialised treatment. The action of the State in denying reimbursement to the petitioner on this ground is purely arbitrary, discriminatory and clearly violative of Article 14 of the Constitution.

(Para 17)

*Held*, that the respondent-State has been negligent in not deciding the claim of the petitioner within a reasonable time, even though the claim was submitted by the petitioner about 13 years back. The petitioner would be entitled to get compound interest on the amount of Rs. 61,242 at the rate of 12 per cent from the date the petitioner submitted his bills till the date of payment. Even the reimbursement to the petitioner, concerning his treatment on the basis of actual bills paid to the Hospital authorities was sanctioned after a lapse of about 11 years i.e. 15th May, 1991. The inordinate delay was mainly because of the negligence of the State in not deciding this simple matter within a reasonable period. Thus, the petitioner would also be entitled to get compound interest at the rate of 12 per cent from the date the petitioner submitted his bills till the date of payment in respect of said reimbursement.

(Para 18)

*M. S. Libershan, J.*

(1) Basically, the respondent-State of Punjab accepted in pith and substance that the petitioner while working as District & Sessions Judge, in the cadre of superior judicial service with the State of Punjab developed some eyes problem. In February, 1980, his eye sight was rapidly deteriorating. After going through various medical tests, the petitioner was diagnosed to be suffering from a disease known as Intra-Cellular Tumour (Chromophobe Adenoma), an ailment having risk to life. Since there was no treatment available in the country for this disease, on being recommended by the respondent-State of Punjab, for his treatment in U.S.A the petitioner left in huff-huff for States accompanied by his wife. Necessary foreign exchange were provided by the Ministry of Finance. The petitioner

was treated by Dr. E. M. Housepian in Presbyterian Hospital at Columbia in the city of New York. Post operation care as well as examination by the Expert was advised for 10 weeks. The respondent-State of Punjab certified that the treatment was justified and there was no other alternative but for this treatment in the U.S.A.' (Reference may be made to Annexure P-17. The factum of minimum expenses, asserted by the petitioner to be the most economical for himself and the attendant's boarding and lodging, their two ways air tickets expenses, the fare and number of daily trips from the place of stay to the hospital and the number of days required by the doctors for hospitalisation of the petitioner, are not in controversy. Reimbursement to the named persons for their travelling expenses, boarding and lodging, and their other expenses incurred in connection with their treatment including the expenditure incurred by their attendants are also not in dispute.

(2) The only objection raised is that the employee of the State are allowed re-imbursement of medical charges in accordance with the provisions of the Punjab Services (Medical Attendants) Rules, 1940. The State Government in relaxation of instructions, rules and other statutory provisions on extreme compassionate grounds to deplete the hardship in individual case has allowed the reimbursement referred to above. It was done in the case of the petitioner too and actual hospital bills were paid to him on 15th May, 1991. The delay in processing the case was attributed to the petitioner. It is stated that the petitioner did not properly maintain the record/bills etc. The right to claim interest is denied. The claim for reimbursement was received on 11th August, 1980 by the respondent. It is admitted that other persons named, received the money in advance for incurring expenditure on their medical treatment abroad as well as entire expenditure incurred by them on travelling, boarding, lodging etc. spent by them including spent on their attendants was reimbursed.

(3) Conceptually, it is accepted that the objectives of an employer is to generate efficiency in service, foster appropriate attitude to grow, achieving excellency in service, win the loyalty of the workmen, smooth running of the administration, maintaining independence of the executive keeping its employees worry-free etc. which result in efficient service which is conducive for running healthy administration. The State service is not purely a concept of master and servant but some thing more. The State employee is a statutory employee and enjoys the statutory status. The service conditions are governed by the Acts, the Statutory Rules and Executive instructions fill in the gap not provided for by the Rules etc.

(4) Rules, ensuring the health of their employee by providing treatment or reimbursement for expenditure incurred in treatment, apart from being in consonance with the directive principles of State Policy enshrined in the Constitution are part and parcel of the social-welfare Legislation in a welfare State. It is legislation meant to improve the working conditions of the State employees which in turn is conducive for the better administration by the State. Providing medical attendance free of cost is an act towards securing health and strength of the workers and to further ensure that the economic necessities of the employees do not force them to enter in to a vocation unsuited to their strength or outside their job. The State is bound to endeavour at raising the living conditions of the people and improvement of public health.

(5) Keeping in view the above audible object, the State provided rules called the Punjab Services (Medical Attendance) Rules, 1940 amended from time to time. I may hasten to add *that though there is no specific rule under the Rules providing for medical treatment by the State or re-imbursing for the treatment in the foreign countries, at the same time it cannot be denied that the rules are not comprehensive. They have not provided for all eventualities. Residuary powers are left with the State for granting any concession relating to the medical treatment or attendance which is not authorised by the Rules. Reference may be made to rule 7.*

(6) Reading the scheme of the rules and their object coupled with the directive principles of the Constitution and keeping in view the ground realities, there cannot be two views that the scheme provides for free medical treatment and reimbursement of the expenditure incurred by a State employee for his treatment. It is in the realm of their statutory rights, if the treatment is taken in accordance with the rules from the recognized institutes or as provided by the State. Thus, from the consequent of the rules an irresistible conclusion, which is discernible is that the authorised medical attendant of the State can send the State employee to the Specialist for the treatment. If done so, the employee would be entitled for travelling allowance for the journey to the headquarters of the Specialist or the Medical Officer to whom he has been referred and back, as well as for the expenditure incurred on the attendant. If the medical attendant keeping in view the exigencies of the disease and the circumstances certify that the employee needs an attendant, then the employee would be entitled to draw the expenses incurred by him on the attendant in connection with the treatment of the patient including the expenditure incurred on the attendant's journey, boarding

lodging etc. Letter No. 12874-5 HBI-74 Rs. 29316 dated 14th November, 1974 provides that in case an employee or his family while on leave to another Station incurs an expenditure on treatment and he is obliged to stay at that place, he would be entitled to reimbursement of all the expenditure incurred by him for the entire treatment. On a *pari-materia* analogy and consideration Rule 2.83 of the Punjab Civil Services Rules provides that the Government employee would be entitled to travelling allowance for the journey undertaken by him to obtain the medical advice at Station for which he was compelled to leave on account of non-availability of medical facility at the place of his posting. Similarly, attendant would also be entitled to the similar allowance if the employee is allowed to take the attendant with him in accordance with the advice of medical attendant. Reference may be made to rule 2.83 of the Punjab Civil Services Rules. State instructions dated 1st June, 1954, though these relate to a particular hospital viz. T. M. Hospital, Bombay, provide that in case a patient is required to make subsequent visits to the hospital for the purpose of periodical check-up/examination, he would be entitled to travelling allowance and other expenses for all such subsequent visits.

(7) The respondent by its instructions dated 22nd January, 1953 laid down the policy for reimbursement of medical expenses incurred on medical treatment taken abroad. It is envisaged that the employee of the State Government needing treatment abroad shall make an application to the State duly authenticated by the Chief Medical Officer 15 days in advance which would be examined by the Medical Board, which would certify that the treatment is not available in India and treatment abroad is necessary. The reimbursement without the prior approval of the medical board is permissible with the concurrence of the Finance Department. It is categorically discernible that once it is certified that the medical treatment is not available in India and it is necessary to take the treatment abroad the Government employee would be entitled to re-imbusement of the expenses incurred for the treatment. The State has been reimbursing its employee for their treatment abroad keeping in view the instructions issued from time to time. In view of the ground realities, it has practically been accepted by long act and conduct of the respondent, including the instructions issued relating to reimbursement and for treatment abroad, that the Government employee has a right for medical treatment abroad at the state expenditure in case the treatment is not available in India. This has become not only a tradition but for all intents and purposes an accepted norm of the service condi-

tions. The State is thus estopped by its acts and conduct from denying this right to the petitioner. "State employee needing medical aid necessary for his treatment and not available in the country would be entitled for reimbursement of the expenditure incurred in connection with his treatment. It has virtually become part and parcel of the service conditions of the Government employee. The conduct of the State has raised the expectations of the Government employees and it would not be in the interest either of the State or public good or the employees to deny such right at this stage. It cannot be treated as just a dole to a few employees".

(8) In my considered view in the circumstances of the instant case when the State has categorically accepted in an unambiguous terms that the treatment of the petitioner abroad was justified and there was no alternative remedy available to the petitioner, the respondent has rightly agreed for reimbursement. Reference may be made to Annexure P. 17.

(9) The respondent accepted factually that the treatment was not available in India. Without treatment the petitioner would have lost his eye-sight totally, apart from giving rise to many other complications resulting in the hazard to his life itself. The petitioner had been reimbursed partially i.e. for the expenses incurred by him to pay the bills of the Hospital and the Surgeon including money spent on the medicines.

(10) What has not been re-imbursed and is claimed in the petition is the amount spent by the petitioner on travelling, boarding, lodging and two way fare from the place of boarding to the hospital on himself as well as the attendant. Reference may be made here to the admitted fact that the respondent did re-imburse the persons named in the earlier part of the judgment the expenditure incurred by them on boarding, lodging, air fare and other expenses essentially incurred in connection with their treatment abroad.

(11) "On examination the ground realities and the circumstances of the instant case, I am of the considered view that once the State has accepted that the treatment was essential, it was not available in the country. The petitioner did take the treatment, and had incurred expenditure. it would not be in the interest of justice to decline him the re-imburement of the expenditure incurred by him, for travelling, boarding, lodging as well as reasonable expenditure incurred by him on himself and on his attendant, in connection with his treatment." Rather, it would be highly unreasonable to refuse the re-imburement. Justice seems to dictate that the employee should be re-imbursed the

expenditure incurred by him in connection with his treatment abroad when the same is not available within the country. I may venture to state that the respondent has miserably failed to show even remotely much less reasonably what the petitioner would have or could have done in the circumstances. No circumstance or factors have been pointed out, for the petitioner to be treated differently than the other Government employee named in the petition, who were, admittedly, reimbursed the actual expenditure incurred by them. The proposition put forth by the respondent that the petitioner would be entitled only to actual expenditure incurred on the medical treatment and not for his going to foreign country would amount to rendering not only object of medical aid to state employees illusory but also render the permission for treatment abroad redundant, particularly, when the treatment was not available in the country. The proposition advanced by the respondent is manifestly absurd. The reimbursement of the actual expenditure incurred by the petitioner is implicit in the scheme of the rules. The instructions as referred to above, the peculiar facts and circumstances of the case in hand makes the intention of the rules abundantly clear. The intention of the State is further fortified and self evident when the State has in fact reimbursed the persons similarly situated. "Declining the expenditure incurred on travelling, boarding and lodging etc. would be riddled with anomaly which cannot be presumed to have been the intention of the State while providing for such a welfare scheme. Declining the expenditure incurred on travelling, boarding and lodging etc. would amount to logically declining the facility of medical treatment abroad to which the Government employee is entitled to if the treatment is not available in India and it is essential for him to get treatment particularly when it is certified so by none-else but state itself. I am unable to decide any reason nor has any been pointed out nor any can be reasonable discerned in peculiar facts and circumstances of the case in hand for declining the expenditure on the items referred to above, particularly, when there is no dispute with respect to the expenditure incurred". It is impossible to identify any particular reason much less reasonable which can be said with any degree of confidence to be reasonable for segregating the expenditure incurred on travelling, boarding and lodging including two way fare from the place of boarding to the hospital for re-examination and continuity of treatment by the patient, as well as attendants' expenditure incurred and certified by the medical attendant as necessary to accompany the Government employee for his treatment.

(12) I have no hesitation in coming to the conclusion that reimbursing the expenditure would serve the purpose of justice and



equity in the facts and circumstances of this case and denying the same would amount to deny the medical treatment to the petitioner at the State expenditure to which the petitioner is entitled for the numerous reasons stated above. My above observations are further strengthened by the principles laid down precedently to the effect that even the State largesse or concessions cannot be granted or refused arbitrarily. The State is bound to satisfy the Court that there were specific peculiar facts and circumstances justifying the different treatment to the petitioner. The State has not only miserably failed to show any reason to treat the petitioner differently, but has not even cared to put forth in its defence any reason much less a plausible one to defend its action of withholding reimbursement of the expenditure claimed by the petitioner.

(13) There is no dispute with respect to the amount spent by the petitioner in connection with his treatment. In view of the facts and circumstances and the unreasonable attitude adopted by the State in declining the re-imbusement of the expenditure in question to the petitioner while allowing the similar claims to the similarly situated persons, the impugned act of the State is totally arbitrary and capricious. The petitioner was kept running from pillar to post for reimbursement of the expenditure already incurred so far back as in 1980 till 15th May, 1991 when the claim was segregated into two parts. After a long ambittered battle at the Executive level, the petitioner was able to persuade the respondent in 1991 i.e. after 11 years to reimburse him partially, i.e. only the expenditure incurred on the hospital bills and the medicines. Even after this long drawn battle, the petitioner failed to persuade the State to reimburse the amount spent by him and his attendant in connection with his treatment by way of travelling expenses, boarding, lodging and local fare from the place of boarding to the hospital and back. The respondent has miserably failed to point out any reason much less a plausible one for segregating the claim of the petitioner and refusing to allow reimbursement of one part.

(14) The writ petition is to be allowed and respondent-State is to be directed to pay Rs. 61242.00 to the petitioner with 12 per cent compound interest from the date the petitioner submitted his bill for reimbursement till its payment. It is made clear that the interest shall be payable on the entire amount i.e. from the date the bills were submitted till the date of actual payment of expenditure incurred and granted. Further same interest shall be paid on the balance amount till the date of payment from the date of submission of bill for reimbursement.

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S. S. Grewal, J.

(1) The petitioner, retired District & Sessions Judge, from Punjab Superior Judicial Service, has prayed for reimbursement of the total expenditure incurred by him for the treatment of intracellular tumour (Chromophobe Adenoma) in United States of America, together with interest at the rate of 18 per cent per annum, on the reimbursement given to him after delay of 10 years, as well as on the remaining outstanding amount.

(2) In brief, facts relevant for disposal of this writ petition are that in January and February, 1980, while posted as District & Sessions Judge, Ropar, the petitioner felt that his eye-sight was rapidly deteriorating, and felt constant strain on his eyes. The Local Civil Surgeon referred the petitioner to Post Graduate Institute, Chandigarh. X-ray examination of the skull revealed increase in the size of the sella which were also noticed which led to the diagnosis of existence of intracellular tumour (Chromophobe Adenoma) CAT scanning at All India Institute of Medical Science, New Delhi, confirmed the finding with regard to the presence of tumour-intra-cellular mass with supra-cellular extension (chromophobe adenoma). On the basis of result of X-ray and CAT scanning, Civil Surgeon, Ropar, certified that keeping in view the nature of ailment, health and life of the patient, it was necessary that the petitioner be taken to U.S.A. for his treatment where better technological expertise was available. The Director Health Punjab, Chandigarh, also examined the petitioner. After examination of the patient on 17th March, 1980, Director Health Services, Punjab, Chandigarh agreed with the aforesaid report and recommended for the treatment of the patient abroad and also recommended an attendant to accompany the patient and release of foreign currency for this purpose.

(3) Since the tumour on the pituitary gland was in an advance stage. the medical authorities felt that in case the same was not promptly operated upon, there was risk of its rupture which could result in total blindness and some other complications. The oversize of the tumour started putting constant pressure on the optic nerve of the petitioner, thereby affecting his vision. In order to save total loss of his eye-sight, the petitioner accompanied by his wife as his attendant, had to leave for U.S.A. For this purpose, the Finance Ministry provided the necessary foreign exchange.

(4) Dr. Baldev Singh, Professor Emeritus Department of Neurology in All India Institute of Medical Sciences, New Delhi, recommended

treatment from Dr. E. M. Housepian, who was working in the Hospital in U.S.A. in the field of special type of surgery. The petitioner contacted Dr. E. M. Housepian, who furnished estimate of expenditure telegraphically and on its basis, Reserve Bank of India ordered the release of \$ 16,000 (dollars) for which the petitioner had to pay Rs. 1,29,760. In order to visit U.S.A. the petitioner purchased two return tickets of Pan-Am from New Delhi to New York for Rs. 18,314. The petitioner on reaching New York got himself admitted in the Presbyterian Hospital at Columbia University in the City of New York. After the operation, the petitioner for a few days was kept in the Intensive Care Unit, and later on was shifted to a private room. After his discharge as an indoor patient, the treatment continued as an outdoor patient. For the hospital care and medicines alone, the petitioner had to spend more than rupees one lac. Receipts issued by the authorities of the said hospital were attached with the medical bill for reimbursement submitted by the petitioner to the State of Punjab (respondent No. 1) through the High Court of Punjab and Haryana, Chandigarh (through its Registrar).

(5) It was next pleaded that the petitioner and his wife stayed in Scarsdale a suburb of New York, while the Hospital was situated in street No. 160 of Manhattan (down Town) and the distance between the two places had to be covered partly by taxi, partly by train and partly by sub-way (underground railway). The two-way fare from residence to Railway Station for a single person was 4.10 dollars, whereas, for two persons it was 5.10 dollars. During the period of hospitalisation of the petitioner, his wife alone commuted, while for the rest of the period during which the treatment as an outdoor patient was received, the petitioner and his wife both undertook journeys. For this purpose in all six single trips and 35 double trips were undertaken. The petitioner in all had to pay to the taxi company a total sum of \$ 5 and for two persons it was double of the said amount. The petitioner's wife undertook six single journeys and 35 double journeys. For this purpose, the petitioner had to pay \$ 380 dollars (Rs. 3081). The railway tickets purchased were collected at the station of destination by Railway authorities and no certificate could be obtained from the Railways for the journeys undertaken.

(6) The petitioner and his wife stayed for a period of nearly 10 weeks at New York for hospitalisation and follow-up treatment. With a view to economise during the interregnum, the petitioner and his wife chose to stay as paid guest since hiring hotel accommodation for a private tenement with a kitchen facility would have been much more costlier. The petitioner had to pay a sum of Rs. 36,900 (\$ 4,550) on this account.

(7) In view of the urgency involved, it was neither practicable, nor advisable to obtain monetary help from the Punjab Government to finance the treatment and incidental expenses like air fair, boarding and lodging etc.

That an amount of Rs. 61,242 had been claimed by the petitioner, the details whereof are as follows :—

1. Return air fare of the petitioner and due attendant from New Delhi to New York,— <i>vide</i> Annexures P1 & P2.	Rs. 18,314-00
2. Taxi Fare at New York, during the period of treatment,— <i>vide</i> Annexure P3. \$ 203.10	Rs. 1,647-00
3. Train fare at New York during the period of treatment,— <i>vide</i> Annexure P-4. \$ 380.	Rs. 3,081-00
4. Boarding and lodging charges during the Sojourn at New York,— <i>vide</i> Annexure P-5, \$ 4550.	Rs. 36,900-00
5 Expenses on two Car Trips from Ropar to New Delhi-IST while leaving for the United States of America and second on return from U.S.A. (Rs. 650 per trip).	Rs. 1300-00
Total	Rs. 61,242-00

(8) The petitioner,—*vide* letter dated 31st July, 1980 submitted the medical bill for reimbursement to the Hon'ble High Court which in turn,—*vide* its letter No. 26932-Gaz., dated 28th October, 1980 forwarded the same to the Punjab Government for sanction. Initially, the Punjab Government declined to sanction the bill and,—*vide* its letter dated 10th November, 1980 conveyed its decision to the High Court. Keeping in view the fact that the petitioner had been financially hard hit, the Hon'ble High Court again requested the Punjab State Government to review its decision. Thereafter, the High Court repeatedly pressed the claim of the petitioner for reimbursement and the matter was then placed before the High Powered Committee of the Administrative Secretaries of the Punjab Government. The committee evolved a novel method and made recommendation on 8th November, 1982 to the effect that the petitioner be reimbursed expenses to the extent his treatment would have cost him in an authorised hospital in India. The High Court—*vide* its letter dated 9th April, 1983 (annexure P-9) asked the State Government to honour the bill of the petitioner and order its reimbursement.

(9) The petitioner on the basis of News Item published in the issue dated 3rd March, 1985 of Indian Express learnt that Shri Surinder Nath (then) Advisor to Punjab Government left for U.S.A. for coronary angioplasty/bypass surgery on the advice of Dr. P. L. Wahi of P.G.I., Chandigarh. An advance of Rs. 2.5 lacs was paid to him for his treatment abroad which included the cost of air fare for the patient and one attendant. Besides, there were other precedents where one Pashora Singh, a Junior Engineer, was paid Rs. 1.25 lakh for his treatment abroad; Shri Ram Lal Chitti was paid Rs. 1.44 lakh for surgery in London. The case of Shri P. H. Vaishnav, a senior IAS Officer of the Punjab Cadre, was also recommended and was paid in advance the amount needed for his treatment abroad, even though the Surgeon in Canada after examining the said patient opined that no surgery was needed. The petitioner brought all these facts to the notice of the High Court,—vide letter dated 5th March, 1985 (annexure P-11). On the basis of the aforesaid instances, the High Court again requested the Government to accord sanction to the entire medical bill of the petitioner, copy whereof was endorsed to the petitioner (annexure P-12). In the year 1985, the Finance Department partly accepted the recommendation of the Administrative Department regarding reimbursement of the medical bill and granted the approval only to reimburse the actual expenses incurred by the petitioner on his treatment abroad on the basis of actual hospital bills, whereas, travelling and other expenses incurred by the petitioner were dis-allowed without any justification in an arbitrary manner, on the ground that his case was different from that of Dr. Chuttani. The petitioner was informed regarding the stand of the Punjab Government through the High Court,—vide its letter dated 11th March, 1986 (annexure P-14) and was asked to resubmit the revised medical bill, in view of the decision of the Punjab Government. In accordance with the said direction, without prejudice to his claim to receive the balance amount, the petitioner re-submitted the revised medical bill comprising actual expenses paid to the Hospital authorities.—vide letter dated 25th April, 1987. In the aforesaid letter, the petitioner had clearly stated that the claim was being submitted only for a part of total expenditure incurred and that he had not in any manner relinquished his right to recover the left out portion of the expenditure. The petitioner had also claimed compound interest at the rate of 12 per cent per annum. That after a long lapse of 11 years, part of the amount i.e. Rs. 1,04,546 was sanctioned, which amount did not contain any interest on account of delayed payment. Even though, the Health and Finance Department had already given clearance, the revised bill was sent to the Health Department for approval. Vide letter dated 5th May, 1991 (annexure P-19), the later department

informed the Administrative Department that there was no need of further approval as it had already given its opinion on 27th September, 1981. All this showed how casually the functionaries of the Punjab State had been treating the bill of the petitioner, and, caused undue delay in processing the papers without any justification. According to the petitioner he has been discriminated arbitrarily in violation of Article 14 of the Constitution of India; that he was not allowed travelling, boarding, lodging and other expenses for himself and for one attendant whereas Shri P. N. Vaishnav and at least six other Government officers were reimbursed the entire expenses incurred by them including the amount spent on travelling, boarding and lodging. The petitioner has accordingly claimed an amount of Rs. 61,242.00. According to the petitioner there was no justification in denying the reimbursement to the petitioner in respect of travelling, boarding and lodging expenses as detailed above, with interest at the rate of 18 per cent per annum from June, 1980 till the date of actual payment. The petitioner has further claimed interest at the rate of 18 per cent per annum on the amount already paid to him after a lapse of about 11 years.

(10) The Punjab State in its written statement raised preliminary objections that the employees of the State Government are allowed reimbursement of medical charges in accordance with the provisions of the Punjab Services (Medical Attendance) Rules, 1940 and instructions issued thereunder from time to time. The said provisions do not contain any provision in regard to the reimbursement of medical charges for the treatment taken abroad. In the first instance the claim of the petitioner amounting to Rs. 1,23,861.24 paise including charges for boarding, lodging and travelling, was examined at Government level in consultation with the department of Health and Family Welfare was rejected. Thereafter, on the written request of the Registrar, Punjab and Haryana High Court, the State Government on 15th May, 1991 in relaxation of the aforesaid instructions and rules on extreme compassionate grounds, being an individual case of hardship, reconsidered the matter and allowed reimbursement of the claim on the basis of actual hospital bills paid by the petitioner to the extent of Rs. 1,04,546. The aforesaid decision of the Government was conveyed to the Registrar, Punjab and Haryana High Court, Chandigarh, and was requested to workout the exact amount reimbursable in accordance with the aforesaid decision of the State Government. However, instead of bifurcating his claim in accordance with the directions issued by the Government the

petitioner revised his claim by adding more amount to the tune of Rs. 1,47,829.88 paise and in order to sort out the matter a letter was written to the High Court on 27th July, 1987 (annexure R-1). In response thereto, the petitioner made clarification through his letter dated 5th September, 1988 addressed to the Registrar, Punjab and Haryana High Court, Chandigarh but did not return the original claim papers to the Government for which back reference had to be made to the High Court,—vide letter dated 26th September, 1988 (annexure R-2). However, after observing the essential administrative procedure, a sum of Rs. 1,04,546.01 paise was sanctioned in favour of the petitioner on 15th May, 1991, without any delay. It was further pleaded that the claim of the petitioner was promptly attended and examined at Government level and the actual expenses of the medical charges were sanctioned to the petitioner and no portion of his claim was left out. The delay, if any, was attributed to the petitioner himself, who, failed to properly maintain the record/bills and submitted incomplete claim or revised the same again and again. The petitioner was not entitled to claim interest at the rate of 18 per cent per annum. On merits, it was submitted that the medical reimbursement claim of the petitioner was received in the first instance through the Registrar, Punjab and Haryana High Court on 11th August, 1980, and that the charges for taxi, boarding and lodging were not admissible under the rules. It was further pleaded that under the Punjab Services (Medical Attendance) Rules, 1940 and instructions issued thereunder, medical charges to the Government employees for the treatment taken abroad, were not permissible. The State Government had allowed reimbursement of the medical charges in certain cases after considering the merits and hardship in each individual case (including those referred to by the petitioner) on compassionate ground. Similarly, the case of the petitioner had been considered on extreme compassionate ground and a sum of Rs. 1,04,546 was sanctioned to the petitioner. It was pleaded that whole of actual amount of medical expenses had been sanctioned without any undue delay; that no claim of the petitioner was left out, and, that no legal or constitutional right of the petitioner has been infringed. It was further asserted that the delay if any occurred was on the part of the petitioner who submitted incomplete reimbursement bill and the State Government had to make lengthy correspondence to get the papers completed and discrepancies removed as detailed above.

In the instant case, admittedly the State Government had reimbursed the petitioner concerning his actual treatment abroad, on the basis of bills in respect whereof payment had been made by the petitioner.

(11) Admittedly, the petitioner who was posted as District and Sessions Judge, Ropar, suffered from intracellular tumour (Chromophobe adenoma) in the year 1980. In view of the serious ailment, for better treatment, the medical authorities including the Director Health Services Punjab recommended the treatment of the petitioner abroad. For this purpose he was also permitted to take one attendant with him. After completion of the formalities the petitioner accompanied by his wife went to U.S.A. for his treatment. Admittedly, the State Government on compassionate grounds had already made reimbursement to the extent of Rs. 1,04,546 to the petitioner in respect of his treatment in the Hospital in United States of America, on the basis of actual bills paid by the petitioner. Necessary sanction for this purpose was accorded on 15th May, 1991 in relaxation of provisions of Punjab Services (Medical Attendance) Rules, 1940 and instructions issued thereunder from time to time.

(12) The petitioner has now pressed his claim for reimbursement to the tune of Rs. 61,242 towards the expenditure incurred by him for travelling, boarding and lodging. The petitioner has asked for payment of Rs. 18,314 on account of return air fare ticket from New Delhi to New York. The other details of the claim concerning taxi fare, railway fare, boarding and lodging in U.S.A. as well as two car trips, one from Ropar to New Delhi and the second on return from U.S.A., have already been given in the earlier part of this judgment. In his petition, it has been specifically pleaded by the petitioner on the basis of News Item dated 3rd March, 1985 that an advance of Rs. 2.5 lakhs was paid to Shri Surinder Nath (then Advisor to the Punjab Government), for his treatment abroad. This amount also included cost of air fare for the patient and one attendant. The other instances quoted are that of one Pashora Singh, J.E., who was paid Rs. 1.25 lakhs for his treatment abroad. Shri Ram Lal Chitti was paid Rs. 1.44 lakhs for surgery in London, whereas Shri P. H. Vaishnav a senior I.A.S. Officer of the Punjab Cadre was paid an advance amount needed for his treatment in Canada. In his case the Surgeon in Canada after examination had opined that no surgery was needed.

(13) In para No. 20 of the petition, it has been specifically pleaded that Shri Surinder Nath, Advisor to the Punjab Government had left for U.S.A. for by-pass surgery and the amount sanctioned was towards the costs of air fare for the patient, one attendant and treatment. Perusal of the News Item (annexure P-10) shows that Shri Surinder Nath was neither a Punjab Government employee,



nor, a pensioner. He is a retired Police Officer who was posted as Advisor to the Punjab Government and the type of surgery which he underwent abroad was available in India at number of places. The averments made in para 20 of the petition referred to above have not been specifically denied by the State in its return and would thus be deemed to have been admitted. In para No. 31 of the petition, it has been specifically pleaded by the petitioner that Shri P. H. Vaishnav received financial assistance in advance for his proposed by-pass surgery in Canada. He never underwent any surgery on the advice of the doctors in Canada. The air fare charges of Mr. Vaishnav and one attendant together with boarding and lodging were borne by the State Government. This averment too has not been specifically denied and would be deemed to have been admitted.

(14) The only plea taken by the State is that although Punjab Services (Medical Attendance) Rules, 1940 and the instructions issued thereunder from time to time do not contain any provision in regard to the reimbursement of medical charges to the government employees etc. for their treatment abroad, the State Government on compassionate grounds had allowed reimbursement for treatment alone and not in respect of expenditure incurred by the petitioner and his attendant for boarding, lodging and travelling. The argument is without any merit. Admittedly, the State Government on compassionate grounds had allowed reimbursement in several cases including those specified by the petitioner. Similarly, the case of the petitioner has also been considered on compassionate grounds and a sum of Rs. 1,04,546.01 paise was sanctioned for his treatment abroad in recognition of his right to get medical reimbursement, which was necessitated for his treatment abroad, on the recommendations of the Director, Health Services and other competent authorities. The aforesaid right of the petitioner has since ripened into a legal right and denial in respect of reimbursement concerning boarding, lodging and travelling of the petitioner and his attendant, which was essential for getting specialised treatment abroad, would adversely affect his legal right for getting reimbursement in respect of the aforesaid items. Such change in position to the disadvantage of the petitioner would not be permissible in view of the facts and circumstances of the present case. It is thus too late in the day for the State Government to retrace its steps and it would be estopped from taking up the plea that such medical reimbursement of the petitioner is limited only in respect of expenses incurred on treatment alone on the basis of hospital bills and denying reimbursement to the petitioner in respect of his claim of Rs. 61,242 incurred by him for travelling, lodging and boarding and that of the attendant

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who was permitted by the State Government authorities to accompany the petitioner, when he left India for his treatment abroad, whereas on number of other occasions the State Government made reimbursement in respect of travelling, lodging and boarding as well to other officers, for their treatment abroad. Some of these instances have been referred to in the earlier part of the judgment.

(15) It is pertinent to note that no cogent or plausible explanation has been put forth on behalf of the State for denying boarding, lodging and travelling expenses to the petitioner when the same has been paid to Shri Surinder Nath (then Advisor to the Punjab Government), as well as to Shri P. H. Vaishnev, an I.A.S. Officer. The latter even did not undergo heart surgery in Canada. The case of the petitioner is on much better footing. On the recommendation of the Medical Authorities including Director, Health Services, Punjab, he went to States for better treatment. The petitioner was operated upon in U.S.A. and had to stay there for post operative care. His wife had accompanied him as an attendant. It is quite evident that the petitioner and his wife went to States only for the sake of petitioner's treatment and not for any other purpose. In view of the facts and circumstances of the case in hand, the respondent-State was not at all justified in refusing reimbursement in respect of expenditure of Rs. 61,242 incurred by the petitioner for his and that of his attendant's boarding, lodging and travelling, particularly, when it had granted reimbursement in respect of such expenditure in case of Sarvshri Surinder Nath, the then Advisor to the Punjab Government, P. H. Vaishnev, an I.A.S. Officer and some others, who were similarly situated, or, had no better right than the petitioner for getting complete reimbursement for their specialised treatment abroad.

(16) The instance of reimbursement allowed to Dr. P. N. Chuttani, for his medical treatment alone would not in any manner advance the case of the respondents. Dr. Chuttani underwent surgery in U.S.A. while he was a member of the President's party travelling in a chartered plane getting free facility of boarding and lodging. Obviously, in his case there was no necessity of allowing reimbursement for his boarding, lodging and travelling and, the Finance Department rightly approved reimbursement of expenses incurred on treatment alone on the basis of hospital bills. The case of Dr. Chuttani was entirely different from the case of the present petitioner. Thus, on the basis of Dr. Chuttani's case there was no justification for denying reimbursement concerning expenditure

incurred by the petitioner for his treatment as well as that incurred for his own and for his attendant's travelling, lodging and boarding.

(17) Apart from that, admittedly, as detailed in para 30 of the petition, the State had reimbursed Shri Pashora Singh J.E. for his treatment abroad and was paid Rs. 1.25 lakhs whereas Shri Vikas Wadawan, a temporary Engineer was paid Rs. 2,80,500 for his treatment abroad. Mere fact that the State had reimbursed the petitioner to the extent of Rs. 1,04,546.01 paise on compassionate grounds, would not absolve the State from reimbursing the petitioner for his claim of Rs. 61,242 for travelling, lodging and boarding, referred to above. Denial of the petitioner's claim in this regard by the respondent State was not at all justified particularly when it had reimbursed Sarvshri Surinder Nath, the then Adviser to the Punjab Government. P. H. Vaishnev, an I.A.S. Officer when they went abroad for their treatment as already discussed in the earlier part of the judgment. All these facts clearly show discrimination on the part of the State Government for not allowing travelling, lodging and boarding expenses incurred by the petitioner (who was a member of Punjab Superior Judicial Service) for his treatment abroad while he was accompanied by his wife, as attendant. He went abroad solely for specialised treatment. The action of the State in denying reimbursement to the petitioner on this ground is purely arbitrary, discriminatory and clearly violative of Article 14 of the Constitution.

(18) The respondent-State has been negligent in not deciding the claim of the petitioner within a reasonable time, even though the claim was submitted by the petitioner about 13 years back. The petitioner would be entitled to get compound interest on the amount of Rs. 61,242 at the rate of 12 per cent from the date the petitioner submitted his bills till the date of payment. Even the reimbursement to the petitioner concerning his treatment on the basis of actual bills paid to the Hospital authorities was sanctioned after a lapse of about 11 years i.e. on 15th May, 1991. The inordinate delay was mainly because of the negligence of the State in not deciding this simple matter within a reasonable period. Thus, the petitioner would also be entitled to get compound interest at the rate of 12 per cent from the date the petitioner submitted his bills till the date of payment in respect of said reimbursement.